

# The Berlin Administration of Justice after 1945 – Factual and Personnel Continuities with the Nazi Justice System

## Presentation of the Project and State of Research

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### I. Introduction

On 17 May 2018, the former Federal Minister of Justice Katarina Barley gave a lecture entitled “Die Rosenberg – Das Projekt und seine Folgerungen für die Juristenausbildung” (The Rosenberg – The Project and its Implications for Legal Education) during a discussion event at the Department of Law of the Free University Berlin.<sup>1</sup> Core of the lecture was the subject of judicial injustice as part of Nazi injustice and the continuity of the careers of perpetrators and incriminated persons in German post-war justice. At the end of the speech, the Minister referred to the endeavor to reform legal education in order to familiarize future generations of lawyers with philosophical, historical and social foundations, which do not necessarily have to be the subject of university education but could be and could also become examination material.<sup>2</sup> My colleague Jan Thiessen will speak on this topic in more detail at the end of this event.

In 2018, the state of Berlin, under the initiative of Justice Senator Dirk Behrend and the Senate Department of Justice, promoted the project proposed by the Berlin legal historians Thiessen and Czeguhn, who organize this meeting with the title “The Berlin Administration of Justice after 1945 – Factual and Personnel Continuities with the Nazi Justice System”. As early as 1987, Renate Künast had submitted an application to establish a research and documentation center that would also investigate personnel continuities and failed sanctions within the justice system after 1945. However, the fall of the Berlin Wall and other issues that, as a result, were given priority had initially prevented the project from becoming a reality. Thus, the project started in 2018 with four student assistants and further funds for literature and equipment.

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<sup>1</sup> *Markus Heintzen*, Das Berufsethos von Juristen als Thema der Juristenausbildung, in: Gerd J. Nettersheim/Doron Kiesel (Hrsg.), Das Bundesministerium der Justiz und die NS-Vergangenheit, 2021, S. 275 – 290.

<sup>2</sup> See also <https://www.antisemitismusbeauftragter.de/Webs/BAS/DE/bekaempfunganti-semitismus/initiativen/juristenausbildung/juristenausbildung-node.html>, last visit 03. 03. 2022.

## II. First Steps in Statistics

First, all people listed in the business distribution plans of the Senate administration between 1949 and 1976 were recorded in an Excel spreadsheet. Then the names recorded were compared with the personnel files of the Senate Administration. An initial evaluation of the personnel files revealed the following statistical variables or historical peculiarities. 29 people began their work in the Berlin judiciary/administration between 1945 and 1949, at a time when sovereign power in Berlin was still directly in the hands of the Allied Command. All other examined people were taken over by the Senate Administration for Justice in the 1950s or 1960s. A first comparison with the results of the “Rosenburg file” indicates that the personnel of the Berlin Senate Justice Administration was slightly younger than that of the Federal Ministry of Justice.<sup>3</sup> This may be due to the fact that the comparable positions in the federal administration were somewhat more exposed than those at the state level. The occupational and educational background of the predominantly male (156 out of 178) group of people is, as expected, homogeneous. Almost all of them had a legal education, the next largest occupational group was that of stenographers or businessman, other occupational groups such as interpreters remained isolated cases. If they exercised a profession between 1933 and 1945 (a total of 44 out of 178), the majority (40 people) worked in the civil service. Only a few were lawyers or worked in the private sector during this time (private sector 22 out of 178). The geographical origin is more widely spread, with the place of birth in and around Berlin (62 persons) forming the main focus. A second focus is the area of the later Soviet occupation zone or German Democratic Republic (39 persons), especially Dresden (3 persons). However, it should be noted that some personnel files are incomplete and therefore the curriculum vitae of the employees, especially between 1933 and 1945, cannot always be reconstructed without gaps, relying on this basis alone. Of particular interest is the membership of staff in the NSDAP. Among the people evaluated, 19 (10.67%) had belonged to the NSDAP (cf. 53 per cent for BMJ = Bundesministerium der Justiz), 12 of them at management level, 14 in the higher civil service, none among other personnel. For two files, no information on the career group could be provided. A similar picture emerges for membership in affiliated associations of the party, which nevertheless, as expected, are present to a greater extent than NSDAP membership as such. Of the 178 people studied, 52 were members of at least one NS organization, with many holding several memberships.

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<sup>3</sup> Concerning the Rosenberg project see [https://www.bmj.de/SharedDocs/Publikationen/DE/Akte\\_Rosenburg\\_Geschichtsband\\_1.pdf?\\_\\_blob=publicationFile&v=20](https://www.bmj.de/SharedDocs/Publikationen/DE/Akte_Rosenburg_Geschichtsband_1.pdf?__blob=publicationFile&v=20), last visit 03.03.2022; *Manfred Görtemaker/Christoph Safferling*, Die Akte Rosenberg. Das Bundesministerium der Justiz und die NS-Zeit, München 2016.

### III. First Case Studies

The figures determined for NSDAP membership are very clearly below the results of the “Rosenburg file”. This leads to research questions for the further project. Was greater care taken in the selection of personnel in Berlin than in Bonn to ensure that former party members did not dominate positions in the administration of justice?

Or did Berlin have fewer applicants with Nazi pasts from the outset? Did the former party-affiliated lawyers prefer working in the Federal Ministry of Justice to working in the Berlin administration? Was the Berlin Senate Justice Administration in the function of a state justice ministry an authority without tradition because the Prussian Justice Ministry and the Reich Justice Ministry were “enriched” as part of the “equalization” of the Reich and the states?

Or did incriminated persons systematically conceal their past?

Answering these questions is more difficult due to the fact that, as far as can be seen, no records of rejected applicants have been preserved. However, it is noticeable that in a considerable number of cases the past of employed persons gave rise to accusations or indications of discrimination at the time of recruitment or during their term of office, which were investigated more or less meticulously. This does not only concern the burden of Nazi party membership, special court activities or the like.

Communist activities were repeatedly brought into discussion during the Cold War. Later employees of the Senate Administration and the judiciary left the German Democratic Republic from 1950 onwards and applied for employment in Berlin as “recognized refugees.” As expected, the applicants tried to distinguish themselves from the German Democratic Republic regime, for example by emphasizing their status as political refugees or – like Gerhard Voigt<sup>4</sup> (born 1911), Gerhard Sadler<sup>5</sup> (born 1922) and Kurt Zabel<sup>6</sup> (born 1901) – their opposition to the SED regime. In this context, the further question arises as to how possible GDR involvement in relation to the Nazi past was weighted in the personnel policy on the part of the Senate Administration for Justice.

The first evaluation of the files suggests that the demarcation from the GDR regime was more important than the demarcation from the Nazi past of the applicants and that the personnel policy also promoted continuity in this way. The Senate administration took great care to shield itself as far as possible from any feared infiltration by the GDR. Accordingly, applicants from the GDR were often not only checked regarding their Nazi past at the Berlin Document Center, but also at the “Sub-committee of Independent Lawyers of the Soviet Zone,” founded in 1949, for their possible political ties to the GDR. Where such involvement was suspected, the political reliability and usefulness of the applicant or employee was quickly ques-

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<sup>4</sup> Personnel file of G. Voigt: Az.: I-B/1. V. 17, p. II and p. 7.

<sup>5</sup> Personnel file of G. Sadler: Az.: I-B/3. S. 10, pp. If. and pp. 7, 10.

<sup>6</sup> Personnel file of K. Zabel: Az.: I/B-1.3.11 (“Sonderheft”), pp. 1, 45 f., 58 f.

tioned. In the cases investigated, the geographical situation is evident, which possibly led to personnel from East Berlin or from the SBZ/GDR being pushed into administrative positions in the western sectors of Berlin to a greater extent or at least in a higher concentration than in the western occupation zones. The Cold War also had a noticeable impact with regard to Carl Creifelds<sup>7</sup> (born 1907), head of the criminal law department, who was particularly prominent because of the “Rechtswörterbuch,” and his deputy department head Heinz-Günter Lell<sup>8</sup> (born 1904). Both were named in the GDR “Brown Book” and similar publications as “Nazi lawyers” in West Berlin. As is well known, Creifelds, although elected by the Judicial Selection Committee, was not appointed a judge at the Federal Supreme Court by Federal President Heinrich Lübke because of his work in the criminal law department of the Reich Ministry of Justice. In contrast, Heinz-Günter Lell was able to become Chief Public Prosecutor in Berlin from 1959.<sup>9</sup> Until 1939, Lell had brought Landesverrat (treason) cases to trial as a Reich prosecutor at the People’s Court. Not only his immediate superior Creifelds, but also the further management level considered the known charges unobjectionable with regard to Lell’s employment in the Berlin judiciary and judicial administration.<sup>10</sup>

The Senate administration made similar sweeping assessments of the Nazi past in other cases. On one hand this concerns Erich Weiß<sup>11</sup> (born 1902), judge at the Berlin Regional Court. Although he was not a party member, Erich Weiß worked as a district court councilor and public prosecutor at the district court in Breslau (1941–42) and was, among other things, a member of the criminal appeals chamber and, from 1942 to October 1943, a district court councilor at the district court in Gdansk and at the special court in Gdansk, until he was drafted into the military. After the war, he first was a judge at the Radeberg District Court (1946–50), then at the Dresden District Court (1950–52), where he was a member of the criminal division. After fleeing from the GDR and a short period at the Senate Administration for Finance, Weiß successfully applied for a position as a civil judge at the Berlin Regional Court in 1952, which he held until his retirement (1966). In addition, from 1953 onwards he worked as an assessor at the Restitution Offices, which were also staffed with incriminated lawyers.<sup>12</sup> The personnel file does not raise any problems concerning the time at the Special Court in Danzig, on the contrary: the Senate Administration was content with the fact that Erich Weiß was not a member of the NSDAP or its subsidiary organizations.<sup>13</sup> Nothing is known about his activities at the Special Court. However, since it

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<sup>7</sup> Personnel file of C. Creifelds: Az.: I/B. C. 14.

<sup>8</sup> Personnel file of H.-G. Lell: Az.: I-B/1. L. 55.

<sup>9</sup> *Ibid.*, p. I.

<sup>10</sup> *Ibid.*, pp. 9 f.

<sup>11</sup> Personnel file of E. Weiß, Az.: I-B/1.W.58.

<sup>12</sup> See CV of E. Weiß, *ibid.*, pp. Iff.

<sup>13</sup> *Ibid.*, pp. 4 f.

is certain that judges at special courts were often involved in death sentences or other unjust sentences, further research in Polish archives is indicated here.

In individual cases, anti-Semitic persecution was made the subject of personnel decisions or at least noted in the files, as the cases of Kurt Prager<sup>14</sup> and Hans Altmann<sup>15</sup> show. In view of the evaluation to date, it cannot yet be reliably concluded that survivors and returnees tended to choose Berlin as their professional and private center of life rather than elsewhere. However, Curt Bergmann (born 1888),<sup>16</sup> who was disbarred as a lawyer and notary in Dresden in 1938, should be mentioned. Bergmann was able to escape further persecution by emigrating to England. After his return to Dresden, he, now President of the Senate at the Higher Regional Court, came under suspicion of being an English informant at the beginning of the Cold War. When he spoke out against the concept of the People's Judges, he was threatened with impeachment and prosecution, so Bergmann fled to the western part of Berlin.<sup>17</sup> After a short period of temporary work at the reparations offices, Bergmann was dismissed, ostensibly due to health restrictions.<sup>18</sup> Bergmann and, to a greater extent, his wife, unsuccessfully accused Federal President Theodor Heuss and Senator Kielinger that persecution and flight had not been taken into account in the decision-making process due to anti-Semitic reservations in the Senate administration – in other words, that anti-Semitism had continued to influence personnel decisions.<sup>19</sup> In fact, his permanent employment with the reparations offices had initially been explicitly advocated with the idea of reparations for the dismissal in 1938, before the health restrictions were brought to the fore.<sup>20</sup>

The way the Senate Administration has dealt with these very different pasts can be characterized as follows. The personnel files clearly show that the affiliation of applicants and/or employees to Nazi organizations was generally insignificant for the Senate Administration. It should be noted that the majority of the group of people examined here found employment in the Berlin judiciary/administration in the course of the 1950s, i. e. in a phase in which affiliation to Nazi organizations was considered insignificant in the face of the Cold War, even nationwide. It is therefore hardly surprising that it did not play a major role in the Berlin Senate administration either if the applicant or employee had a Nazi past. Thus, in addition to the self-disclosure, enquiries were often (although not always) made with the Berlin Document Center or the Allied High Commission about the applicants' past. However, if a membership was found, it was hardly ever critically examined by the senate administration. In almost all cases, membership of Nazi organizations was therefore rarely more

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<sup>14</sup> Personnel file of K. Prager, Az.: I/B.1.P.22, pp. If.

<sup>15</sup> Personnel file of H. Altmann, Az.: I/B-1.A.1, pp. If.

<sup>16</sup> Personnel file of C. Bergmann, Az.: I p16 B 1710, p. I.

<sup>17</sup> *Ibid.*, pp. 1 f.

<sup>18</sup> *Ibid.*, pp. 41 ff.

<sup>19</sup> *Ibid.*, pp. 44 f.

<sup>20</sup> *Ibid.*, pp. 50 ff.

than a marginal note. NS party membership as such did not stand in the way of further employment in the Berlin administration if the person was professionally qualified. Those who, like the aforementioned Erich Weiß, were not NSDAP members did not have to fear any more in-depth investigations. Research into the practical activities of applicants and employees between 1933 and 1945 seems to have been virtually non-existent. Proximity to communism, on the other hand, could be an obstacle to employment or promotion, as long as the accusations were not recognizable as obviously malicious denunciations.<sup>21</sup> With regard to anti-Semitic persecutees, there are indications that the Senate administration was generally willing to take into account the persecution suffered in the sense of a certain reparation, but that this did not necessarily lead to employment in the judiciary or the administration of justice.

#### **IV. The Work in the Federal Archives and the Landesarchiv**

The aim of the second phase of the project was to find out additional information about the personalities in question as well as to corroborate existing information with further sources. This was to enable an assessment of the working methods and thoroughness of the Senate Administration for Justice in the years after 1945.

The core of the activity consisted of sifting through and evaluating the holdings of the state and federal archives. Initially there was also the Berlin State Administration Office, but no files relevant to the project were available here. The archive was closed from March to May 2020 as well as in November and December 2020 due to the hygiene measures for COVID-19 and work was completely interrupted.

The subject of the investigations in the State Archives were the “B holdings” there. Those of the West Berlin authorities and institutions from 1945 to 1990. In a few cases, the “A holdings” were also consulted, which comprise the entire holdings up to 1945.

First, all people investigated in the first phase of the project were searched in the databases of the State Archives. In the process, 65 files on 30 persons were found. 35 of these files could be clearly assigned to the people investigated. In the case of the remaining 30 files, a clear assignment was not possible, among other things because of different dates of birth or biographies. These could therefore not be considered. Due to the interruption of the investigations in November 2020, only 21 of the allocated files can be included in this report. The density of the files made it possible to closely follow up and complete some of the curricula vitae. Regarding denazification procedures, only a few results can be noted so far. Since access to the archive’s internal list of denazification cases is not possible yet, only the results of the 7 cases examined can be given. However, these few cases already indicate that a more in-depth investigation of the processes could be informative. And this investigation

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<sup>21</sup> A striking example is the aforementioned Kurt Zabel who allegedly was a member of the KPD.

is likely to be very revealing based on recently recovered copies of files. The files mentioned could no longer be found in the Senate's archives but were cited in a dissertation. Contacting the author of the dissertation revealed that she still had a copy archived. The files have now been scanned and listed in the project. They mainly concern the hearings of cases brought directly before the Senator of Justice, which were mainly about denazification and problem cases. The evaluation will take place in the next few months. The investigations in the state archives have shown that a more detailed evaluation of the denazification procedures can provide further information on how the Senate Administration for Justice dealt with previous National Socialist incriminations. In order to find and evaluate all the files in question, a further investigation would be useful and promising. The examination in the Federal Archives also served to compare the personnel files of the Senate Administration for Justice with the information stored in the Federal Archives. Furthermore, there was the search for further records or parallel record keeping. The examination of the personnel file was particularly aimed at searching for files that are not yet recorded in the digital index of the Federal Archives and the reconstruction of professional careers before entering the careers in the administration of justice. In particular, the basic data was examined such as date and place of birth, legal training and affiliation to National Socialist organizations, particularly with regard to whether the self-disclosures and/or the assessments of others in the files of the Senate Administration for Justice are consistent or contradictory with the Federal Archives.

An interesting case in this context that only came to light through the files stored in the Federal Archives is that of Dr. Herbert Widtfeldt.<sup>22</sup> The file in the archives of the Senate Justice was only accompanied by a special booklet for allowances. The personnel file of the Reich Ministry of Justice (fonds R3001) was therefore considerably more informative. Widtfeldt passed the legal examinations "with distinction" and "excellently" and was awarded a doctorate ("magna cum laude"). In his official evaluations, he was consistently described as "excellently qualified", "very hard-working" and as one of the best judges at the Regional Court.

In June 1938, he was appointed by Dr. Otto Palandt as a part-time member of the Reich Examination Office. Widtfeldt was a member of the NSRB, RDB, NSV, Luftschutzbund, Reichskolonialbund, Bund Deutscher Osten, Arbeitsdank and BNSDJ. He has been candidate to party member in the NSDAP since 01.05.1937. According to an assessment by the Gauleitung "reprimanded deficiencies in active commitment to the movement" and on 07.10.1939 objected to a promotion, his admission to the party had been rejected in January 1938. In September 1939 Widtfeldt appealed against this refusal to the Reich Treasurer for a decision, which had not yet been issued. In an assessment the Gauleitung of Saxony states confirms: "Oberlandesgerichtsrat Dr. Widtfeldt is a member of the NSV and was also a member of SAR 1 (SA Reserve 1) until he had to resign from it in 1934 because he was unfit for service. He belongs to the BNSDJ and to the RDB. He also reads the National Socialist daily

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<sup>22</sup> Personal file of H. Widtfeldt, R 3001/80338.

press. He attends very few of the movement's events. He is free from pride of place, behaves in a comradely manner and participates generously in donations. There is no reason to doubt his political reliability. If Wildtfeld became a member of the party is not noticed in the files.

There were new findings on persons who could already be considered incriminated according to the files of the Senate Administration. According to the file, Max Vielau was a "loyal supporter of National Socialist goals," had published a volume of poetry about the people and the fatherland, but was later considered too risky for the office of judge in Berlin due to his "lack of tact in political matters" and was therefore transferred.<sup>23</sup> Nevertheless, his basic National Socialist attitude was not in doubt; he was regarded as "absolutely reliable politically." He was a member of the NSRB, NSV, RLB, NS-Altherrenbund as well as the RKB; loyal service and badges of honour were awarded. In this respect, various details were concealed from the Senate Administration. Walter Plümcke was a block leader in the NSRB for a short time and a squad leader during the semester break, as well as head of the NSRB's young lawyers' group and block leader of the NSV.<sup>24</sup> It was already known about Gerhard Pfennig that he was a member of the NSDAP and the NSRB. The files in the Federal Archives show that he was also a member of the SA, the NS-Volkswohlfahrt and the Reichsluftschutzbund. In addition, it was noted that he had left the judicial service in the meantime as of 1939.<sup>25</sup> Walter Paust was a defendant in proceedings before a court of honour for gross neglect of duty as a lawyer.<sup>26</sup> Gerhard Voigt was seconded on 10 February 1944 as a commissioned public prosecutor in Berlin, which was not noted in the Senate file.<sup>27</sup> Erwin Stolpe was dismissed on the basis of the "Law for the Restoration of the Professional Civil Service."<sup>28</sup> Details like these were to be expected in view of a large number of similar curricula vitae. However, they illustrate that many smaller and larger gaps in the form of dates and places of birth, legal training and memberships in Nazi organizations can be completed through the files in the Federal Archives.

A further examination of the holdings of the Federal Archives is so necessary, as the year 2020 has unfortunately impaired in-depth research to a very large extent. Further archive visits were planned for January 2021; corresponding dates were booked, but had to be cancelled at short notice by the Federal Archives due to the pandemic. The above-mentioned interruptions to the investigations in 2020 have meant that many files could not yet be viewed. At least 15 holdings stored in the Federal Archives confirmed in the comparison with the files of the Senate Department of

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<sup>23</sup> Personal file of M. Vielau, R 3001/78950.

<sup>24</sup> Personal file of W. Plümcke, R 3001/70955.

<sup>25</sup> Personal file of G. Pfennig, R 3001/70704; R 9361-I/2643; R 3101/36828.

<sup>26</sup> Personal file of W. Paust, R 3001/70431; R 8-VI/93.

<sup>27</sup> Personal file of G. Voigt, R 3001/79087.

<sup>28</sup> Personal file of E. Stolpe, R 3001/77597.



Justice could therefore not yet be indexed. The examination of the first 31 personnel files gives reason and hope for further detailed and comprehensive results.

## V. The Website Project

The limited research possibilities due to the pandemic and the time resources freed up as a result were used to create a website for the project and to develop its content. In cooperation with the CEDIS department of the Free University, Center for Digital Systems, the very motivated assistants drew up a plan for building a website. Here I would now like to show you some examples and present the future website, which is freely accessible to all.<sup>29</sup>

The website is divided into five sections:

News, the project presentation, the structure of the Senate administration after 1945, and CVs and continuities.

Under the point News we will present the latest findings of the project, new discoveries in archives, developments and latest results. Newspaper articles and press reports on the project are also included in this section.

The section The Project serves to present the research content and objectives. The course of the research work is also documented here.

In the subdivision Structure after 1945, the areas of responsibility of the Senate Administration are first recorded and explained. This deals in particular with personnel and organizational issues, the judiciary, organization and planning, as well as the court constitution. The factual responsibilities are then linked to personal names, and individual curricula vitae are initially presented in neutral terms. This information is then used for an evaluation, in which individual biographies are explained and presented in more detail at the end. The list of these biographies is then used to create the basic case for the section on continuities. Here, the focus is on concrete cases of employees of the Senate Administration who have a conspicuous, National Socialist curriculum vitae during the Third Reich. As an example, the biography of Dr. Hans Steuerwald is shown here, who was a Scharführer in the SA during the Third Reich and was certified as having National Socialist sentiments in his service.<sup>30</sup> After the war, he was subsequently President of the Law Examination Office in the Senate Administration.<sup>31</sup>

In the evaluations, individual statistics can also be called up to document conspicuous features and differences from other projects with the same content. But simple statistical tables also complement the worldwide web presence.

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<sup>29</sup> <https://www.im-nordsternhaus.de/>, last visit 03.03.2022.

<sup>30</sup> See personnel file of H. Steuerwald, Az.: I-B/1 St 12, pp. Ibf. and Personnel File of the Reich Ministry of Justice, Az.: I p 25. I. 6/37, pp. 11 f.

<sup>31</sup> Personnel file of H. Steuerwald, Az.: I-B/1 St 12, p. 106a.

As explained, the internet presence project has been increasingly pursued in recent months. Subsequently, the visual presentation and content editing will soon be completed, so that the project will then be presented on the web and made accessible to the public.

After 2021, however, the future work will certainly have to lie in the archival work again. Much has literally been left lying around and must be continued. New leads will have to be followed up and possibly trips to other archives will have to be made to supplement biographies outside Berlin.