

## Denazification: the role of the arbitration chambers (in Bavaria)

The Allies were aware long before the end of the war that, in addition to military victory, the political cleansing of Germany (*denazification*) had to be an essential war goal. However, the realization (*Direktive JCS 1067 of November 11, 1944*) of smashing ideological structures deeply rooted in the population - the complexity of which only gradually became apparent - and taking action against National Socialist elements at all levels of society proved to be effective very soon a mammoth task that could hardly be mastered by the victorious powers. In the absence of uniform guidelines for dealing with party members and political (co)responsible, it was initially up to the ideas of individual US commanders to use previously captured documents to determine the respective involvement of suspects or their personal guilt; since military security was first and foremost due to the rather chaotic conditions, the standardization of denazification measures as a whole only came about step by step through directives and control council laws of the military government. Several waves of mass redundancies increasingly led to the collapse of the German administration, initially in the management of official institutions, but without considering replacements, and later also in important positions in the economy.

As a result of massive political pressure from the USA with the demand for faster results and the so-called *USFET directive of July 7, 1945* as a generally binding instruction of the *US Forces European Theater*, the review of around 14 million Germans (US zone) should then be carried out using a 131-item questionnaire to learn more about their CVs. More than 13 million of these questionnaires were actually submitted - more or less truthfully, since ultimately an improvement in the personal situation (job!) and better access to ration cards depended on a positive assessment. Due to the now easing security situation of the US armed forces, a recognizable financial reduction in the administrative costs of the military government and a *transfer of the denazification costs* to German authorities (as part of the implementing provisions for *Law No. 8*) were considered: objections were to be reviewed at district level by commissions made up of at least three unincriminated Germans, with decisions still being the responsibility of the military government. In connection with this, the US military government for Swabia (since June 8, 1945) also maintained its own Augsburg office headed by [Major Everett S. Cofran](#) (1903-1946), 3rd Military Government Regiment.



With *Law No. 104 for the Liberation from National Socialism and Militarism of March 5, 1946* ("Liberation Law"), based on *Control Directive No. 24 of January 12, 1946* and passed by the State Council of the American occupation area, the Americans began in their zone of occupation (Bavaria, Greater Hesse and Württemberg-Baden), to give the political cleansing (regardless of criminal prosecution!) partially into German hands: by September 10, 1946, 183 so-called *arbitration chambers (tribunal panels)* were set up, 7 appeals chambers and a court of cassation as the supreme supervisor for revisions. The presidency was held by "public plaintiffs" who should be qualified to hold judicial office or at least be qualified for higher administrative service and who could also prove an unencumbered past. Two "assessors" (who are as familiar as possible with the local conditions) supplemented these jury or lay courts.

After hearing prosecution/exculpation witnesses, the differentiated division of those affected into five categories (*principal culprits/war criminals - incriminated/activists/militarists/beneficiaries - less incriminated/probationary group - followers - exonerated*) should be according to *Control Council Directive No. 38, Section II of 12. October 1946* ensure uniform treatment across zones when ordering expiatory measures. These ranged - according to the individual degree of responsibility - from an obligation to do reparations and reconstruction work (labor camps up to ten years) to the loss of legal claims from public funds (pension) to confiscation of assets (foundation of the Bavarian State Office for Asset Management and Restitution/BLVW, July 1946), an exclusion from public offices or the restriction of political activity

(active/passive right to vote), and were sometimes perceived as a form of social discrimination and arbitrary authority that was difficult to bear. Over time, the verdicts were milder, but this meant relatively tougher sanctions for lighter cases with supposedly lesser guilt, which were only processed first due to the sheer number of procedures. The burden of proof to invalidate the presumption of guilt lay with the person concerned, which ultimately prompted many of the accused to issue each other corresponding certificates of exculpation ("Persilscheine"), which also favored the appointment or classification as a follower or exonerated person in the vast majority of the arbitration board proceedings carried out became.

On May 28, 1948, the military government ended all control measures of its denazification program, which means that this task was transferred in its entirety to the new government (foundation of the Federal Republic of Germany, May 23, 1949), which agreed across fractions to stop the political re-education measures, at least officially. By the deadline of December 31, 1949, 6,780,188 of the famous questionnaires had been evaluated in Bavaria, with the result that 72% of those questioned (after paying lip service to democracy) were not affected. Of the remaining 28%, many were categorized and dealt with by the chambers through the numerous amnesties that remained. One final result is interesting here<sup>1</sup>: 0.27% remained as the main culprit (Group I), 3.85% as the accused (Group II) and 18.31% as less charged (Group III). Based on the total number of 13.41 million questionnaires submitted, the picture in the American occupation zone is even more devastating, with 1,654 main culprits (0.012%), 22,122 activists/offenders (0.17%) and 106,422 lesser offenders (0.8%).

Blocked assets still under *property control* were to be released on a recommendation to the state governments, and pardons were to apply in the case of labor camp sentences. The next "denazification measure" discussed was the reclassification of workers, employees and civil servants in the public service on the basis of Art. 131 GG, which, however, required a solution at federal level. On April 10, 1951, the so-called Law 131 was passed for civil servants to be reinstated, but also for former professional soldiers, which even allowed Gestapo and SS members to be re-employed<sup>2</sup>. Returnees and prisoners of war who had not yet returned were also freed from denazification by a law passed unanimously by the Bavarian state parliament on October 10, 1953. The 2nd federal impunity law of June 1954 finally amnestied all criminal offenses with up to three years' worth of punishment that had been committed between October 1944 and July 1945 on the basis of orders or other legal obligations. The Allies' denazification measures could hardly have failed more grandiosely.

In Bavaria, the exemption law should formally remain in place for another five years, which was mainly due to the constant disagreements between the ministries; the "2. Law for the Completion of Political Liberation" of August 3, 1954, in which a definitive end to denazification was scheduled for October 30, 1954, as well as the "3. Final Law" of December 17, 1959 ultimately meant the end of the arbitral tribunal chambers, also in Bavaria.

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<sup>1</sup> <https://www.historisches-lexikon-bayerns.de>, with further information

<sup>2</sup> Almost at the same time, as a sort of moral compensation, the Bundestag unanimously passed the law regulating compensation for National Socialist injustices for members of the public sector.

## Operation Overcast resp. Operation Paperclip 1945 - 1955

*Operation Overcast*, based on a secret document of the *Joint Chiefs of Staff*, was a US military effort to recruit German scientists, chemists, physicians, industrial technicians or other specialists and to secure their expertise, especially in advanced areas such as military technology (Especially with wing sweeps, glide bombs, anti-aircraft missiles or rockets). In particular, in relation to Stalin's USSR, which had been allied immediately beforehand, any armaments gaps were to be prevented by withdrawing access and the company's own development work was to be reduced, regardless of reparations such as the shipping of leftover war technology, dismantling of production equipment or appropriation of German patents.

From 1945, selected German prisoners of war and civilian prisoners were transferred to the USA (initially for six months and without relatives) under the code name *Operation Paperclip* (derived from the paper clips inserted in the relevant files, which relevant researchers identified as "*Paperclip Boys*"). Their number was initially limited to 450, then to 1,000 after the program was expanded in 1946 and allocated to the various branches of the armed forces, whereby no (!) convicted war criminals should be found among them; in fact, however, Nazi burdens played hardly any role in the selection or had no consequences at all, since given the limited contingent, the self-interest of the USA clearly outweighed and was carefully screened only with regard to professional qualifications. The extremely loose regulations (e.g. to justify Wernher von Braun's NSDAP and SS membership) even made it possible - after it became apparent that the scientists would probably stay longer - for spouses/families<sup>3</sup> to join them and later for naturalization in the USA (so-called Project Paperclip), occasionally even under changed names.

This approach, especially the immigration of German Nazi scientists and, in part, their proven use in US secret programs, was very controversial within the American public, which reacted largely with incomprehension and rejection after the announcement by US President Harry S. Truman.

Annie Jacobsen, *Operation Paperclip: The Secret Intelligence Program that Brought Nazi Scientists to America*. 2015



<sup>3</sup> Approval for family members to join them came in 1947 as a reaction to the deportation of German specialists and their families to the Soviet Union as part of Operation Osoaviakhim in 1946 (*Операция Осовавихим*)