

only help the nation as a whole come to terms with its repressive past, but also help transcend this past with a buoyant vision of the future.

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Cross-references: Apology; Council for Aboriginal Reconciliation; Genocide; Historical Injustices; National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, the Stolen Generations Inquiry; Reconciliation.

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## **Austria**

In postwar Austria, state institutions and private organizations repeatedly attempted to address the atrocities committed on Austrian soil during the Nazi period (1938–1945). Transitional justice initiatives influenced the country's self-perception of its role in the Nazi crimes. Austria considered itself a victim of Nazi Germany until the 1980s, when society accepted that the country had also played an active role in the Nazi war machine (see entry on Germany – the Nazi Past). Transitional justice remains important for Austrian society and politics.

### **The Repressive Past**

In 1938, the Republic of Austria ceased to exist as an independent state when it became part of the Third Reich. During the first weeks of the occupation, between 50,000 and 70,000 Jews, socialists, communists, and others critical of the Nazi regime were arrested and, in most cases, executed. Until the end of World War II, the Schutzstaffel (Protection Squadron, known as the SS) and the police were in charge of public security in Austria. The SS was a paramilitary organization and the most important agency of the Nazi regime. Its members considered themselves superior in racial purity and ability to other Germans and national groups. While initially the SS operated alongside other important state agencies such as the army and the police, by the end of the war it had gained control over all government agencies in an effort to eliminate perceived threats to the Nazi state. The Sicherheitsdienst (Security Service, known as the SD), the most important organ of the SS, sought to detect the regime's enemies. In Austria, it also played an important role in persecuting the Jewish population. Apart from the SS, the police was a further important pillar of the Nazi dictatorship in Austria. The Geheime Staatspolizei (secret state police, known as the Gestapo) was the most feared. Acts of sheer brutality, degradation, and humiliation were part of a daily routine. Apart from

terrorizing the general public, the Gestapo was in charge of solving labor disputes and intimidating workers who seemed to lack a proper work attitude. Thousands of laborers were detained, tortured, and often sent to the front lines. During the final stages of World War II, prisoners of war, forced laborers, and foreign laborers became the preferred target of the Gestapo. Its victims faced severe punishment even for minor offenses. Being late for work, for example, led to the deportation of the offender to concentration camps. Male foreign workers, especially from Poland and other Eastern European countries, were publicly executed without legal basis for having “illegal relations” (private relationships) with Austrian or German women. The Kriminalpolizei (criminal investigative police, known as the Kripo) was another division of the Austrian police in charge of investigation and prevention of “non-political criminal activities.” Crime prevention included the persecution of the Roma (the Gypsies).

During the Nazi era, concentration camps existed not only in Germany but also in other territories occupied by the Germans. Shortly after the occupation in 1938, the Nazis built the first concentration camp on Austrian soil near the village of Mauthausen, Upper Austria. A number of smaller subcamps were constructed in all parts of the country to accommodate the rising number of inmates and the growing labor demand of the war industry. The Mauthausen concentration camp was a labor and extermination camp equipped with gas chambers and crematories. It was designed to fulfill the political function of exterminating perceived enemies and meeting the demands of the German war industry at the same time. Inmates had to work for German and Austrian companies under inhumane conditions. They suffered from severe malnutrition, constant abuse, and beatings. Those unable to continue to work were murdered. Apart from the gas chambers, a variety of other methods – such as lethal injections, medical experiments, starvation, and drowning – were used to carry out the regime’s policy of extermination through work. In the early years of the occupation, inmates mostly comprised German, Austrian, and Czechoslovak socialists, communists, anarchists, homosexuals, and people of Roma origin. Later, prisoners of war and Jews formed the largest categories of inmates. More than 100,000 people lost their lives in Mauthausen.

The Nazi regime’s policy of “racial hygiene” was also implemented in Austria. About 10,000 people with a range of conditions thought to be hereditary, such as schizophrenia, epilepsy, and Huntington’s chorea, fell victim to the regime’s sterilization programs. Compulsory sterilization was also mandated for chronic alcoholism and other forms of social deviance. In addition, the policy of “racial hygiene” led to the killing of several thousand handicapped children in special clinics in the cities of Vienna, Graz, and Klagenfurt. Another 70,000 people considered “useless” were killed under the euthanasia program T4.

### **Transitional Justice**

In April 1945, the Allies gained full control over Austria. The occupied territory was divided into British, French, Soviet, and American zones and governed by the Allied Commission for Austria. As indicated in the Moscow Declaration of 1943, Austria was considered a victim of the Nazi regime and it was in the interest of the Allies to restore peace and order in the occupied country. Austria thus immediately regained independence. An interim coalition government, including socialists, conservatives, and communists, was formed at the end of April 1945.

Immediate postwar transitional justice initiatives were carried out by the occupying powers and the interim coalition government, with the latter gradually gaining more authority to deal with all different types of crimes committed during the Nazi period. There was consensus among the occupying powers and the interim government that such initiatives should lead to the destruction of the Nazi Party (the National Socialist German Workers' Party, Nationalsozialistische Deutsche Arbeiterpartei or the NSDAP) and all its related organizations, the denazification of the entire state apparatus, and the prosecution of the perpetrators. The Americans enforced their denazification policies most vigorously, whereas the British and the French were more pragmatic. Thus, even ranking Nazi members were allowed to remain in administrative government positions in cases where a vacancy would have compromised the reconstruction process. The Russian authorities were instrumental in the establishment of an interim Austrian government and entrusted it with the enforcement of transitional justice policies.

### *International Court Proceedings*

The International Military Tribunal tried twenty-two of the most prominent Nazi leaders in the German city of Nuremberg in November 1945 (see entry on Nuremberg Trials). A series of trials were also held by the U.S. military in order to prosecute other leading Nazis. Of these, the Mauthausen Camp Trials were the most relevant to Austria's postwar transitional justice process. Sixty-one officials of the Mauthausen concentration camp were indicted. In 1946, fifty-eight officials were sentenced to death by hanging and three to life imprisonment. In nine cases, the death sentence was commuted to life imprisonment.

### *The Prohibition Act and Denazification*

The Prohibition Act (Verbotsgesetz) of August 1945 was designed to prevent the reoccurrence of a Nazi state and to provide the legal framework for prosecuting Nazi crimes. The Act stipulated that the Nazi Party and all its related organizations be dissolved and all their property be transferred to the state. Moreover, any attempt to reestablish such organizations was declared a criminal act. Violators faced severe sentences, including the death penalty. According to the Act, all members of the Nazi Party and its related organizations had to register with the authorities. The registration was necessary to start the process of denazification. In July 1947, the government announced that, based on the information gathered through the registration process, a total of 960 people were removed from high-ranking positions in the state and private sector, some 70,000 of 300,000 civil servants were suspended, and 36,000 other employees lost their jobs in the private sector.

The original version of the Act was very controversial. For example, it allowed registered members of the Nazi Party who were not actively involved in party activities to petition for exemption. This regulation caused serious bureaucratic problems, because more than 85 percent of the Nazis claimed that they had not been active members. A further problem was that the Act did not distinguish between those who were key figures in the Nazi Party and those who held lower positions in the Nazi hierarchy. All Nazis were thus equally sanctioned regardless of the scope of their involvement. In 1947, the Prohibition Act was revised and the National Socialist Act (Nationalsozialistengesetz) was implemented.

The new Act defined the criminal offenses contained in the Prohibition Act in more detail and distinguished between those who held key positions in and those who were “mere followers” of the Nazi regime. Within a year after the Act was passed, the first category numbered 43,468 (accounting for 8 percent of all registered Nazis), while the second included 487,067. The new Act extended the compulsory registration to individuals who were not Nazi Party members but who actively supported the Nazi regime. As a result, 22,000 public servants were suspended. Thus, one-third of the public servants in office in 1945 lost their jobs because of the Prohibition Act. Suspension was one of the “atonement measures” (Sühnefolgen) registered supporters of the Nazi party faced. According to two Acts, high-ranking Nazi Party leaders and other highly active regime supporters had to accept a number of atonement measures, including the payment of special taxes and compensation, the deprivation of civil rights, and a ban on holding positions in public institutions. The group of lower-ranking Nazi supporters (“mere followers”) faced similar but less harsh punishment.

### *The Special Courts*

The National Socialist Act further established special courts (Volksgerichte) to deal exclusively with crimes mentioned in the Prohibition Act and the War Criminal Act of 1945. In August 1945, the first such court was set up in Vienna. Soon afterward, three others were established in other major Austrian cities. These courts’ verdicts were final; no appeal was possible. Sentences were immediately carried out. The Supreme Court (Oberster Gerichtshof, OGH) could void the judgment and request a retrial with different judges if it observed major discrepancies in the way the special court handled the case. Only those who had no past record of any affiliation with the Nazi regime could become special court judges. The special courts were closed in 1955, when the ordinary courts took over the duty of convicting the perpetrators. Between 1945 and 1955, the special courts held about 90,000 pretrial hearings. There were some 28,000 indictments, and main trials took place in about 25,000 cases. Approximately 90 percent of the main trials were held before 1950. Some 70 percent of the 20,000 people standing trial were found guilty. Almost all of the convicted were Austrians. About half of the trials took place in the Vienna special court. On average, every second indictment led to a conviction.

### *The War Criminal Act and Court Trials*

The interim government passed the War Criminal Act (Kriegsverbrechergesetz) in June 1945. The Act was necessary for several reasons. Existing laws did not cover crimes against humanity, such as denunciation and deportation. Moreover, the German Criminal Code, in force at the time when the crimes were committed, addressed offenses such as murder and personal injury, but the sentences were considered too lenient given the nature of the crimes committed by the Nazis. The interim minister of justice referred to the Act as an exceptional law seeking to deal with exceptional crimes. Whereas some legal experts criticized the Act’s retroactive provisions for violating legal principles, most jurists did not consider the Act’s retroactivity as morally problematic. Some legal theorists argued that at the time the Act was passed, no equal or higher legal norm prohibited or restricted retroactive legislation. Others pointed out that in 1935 the Nazis had amended the German Criminal Code (Article 2) to permit the retroactive prosecution of any

action that deserved punishment according to the “sound feelings of the people.” In the Declaration of Independence of April 27, 1945, the interim government noted that the Nazis had to be treated under the same exceptional legal framework that they forced upon the Austrian people. The Act covered offenses such as war crimes, transgression of the right to human dignity, expropriation, and denunciation. Sentences depended on the type of crime committed, the role of the accused in the crime, and the crime’s systematic or nonsystematic character. The Act provided for lighter sentences in cases where the accused acted on instructions from his superiors. The Act explicitly read that perpetrators could not claim their innocence by stating that they had just executed orders. Amnesty was granted only in cases when the perpetrator could prove that he/she had committed the crime against her/his own will. None of the accused in the postwar trials could provide sufficient evidence to back such a claim. Tougher sentences were given to those who gave orders or committed the same crime repeatedly. Perpetrators were sentenced to death for committing crimes systematically.

The Act defined war crimes as offenses that contradicted the natural requirements of humanity and violated the generally accepted principles of international law. All key government members during the Nazi period and all other high-ranking members of the Nazi party were declared war criminals who had to be sentenced to death. No evidence of their actual involvement in a crime was necessary because it was believed that whoever had held such positions in the Nazi hierarchy was undoubtedly involved in the planning and ordering of Nazi atrocities. More than 10,000 trials were held on the basis of the War Criminal Act. More than half of the cases dealt with denunciation. No high-ranking members of the Nazi regime were tried under the Act. Some were captured by the Allied forces and tried in Nuremberg or in U.S. trials. Others committed suicide or were killed during the closing days of the war. Moreover, a large number of Nazi Party leaders succeeded in fleeing the country under a different name with travel documents issued by the International Committee of the Red Cross.

### *Amnesty and Prohibition of Nazi Propaganda*

Former members of the Nazi regime were prosecuted in Austria, but there were also calls for amnesties. Many former Nazi Party members considered themselves victims of the Nazi terror rather than perpetrators. This view was supported by conservative politicians who were reluctant to lose the 500,000 former Nazi Party members who were looking for a new political affiliation in postwar elections. During the late 1950s, the Austrian political elite agreed to grant amnesty to those involved in Nazi crimes by abolishing the War Criminal Act and amending the National Socialist Act. Since then, war criminals can only be tried for offenses under the more lenient Criminal Code. There is no statute of limitations for Nazi crimes carrying the death penalty before its abolition in 1950. In total, thirty-five trials have been organized since 1957. Of the forty-nine people indicted, twenty-three were found not guilty and twenty found guilty. In five cases, the trials were suspended. The government at the time believed that, after more than ten years of prosecution, the focus of their anti-Nazi efforts should shift from prosecution to prevention and memorialization. The War Criminal Act was thus abolished, but the Prohibition Act remained in force. Trying to reestablish Nazi organizations, contacting or financing such organizations, or producing propaganda material remain criminal offenses in Austria and carry a minimum prison sentence of ten years. If the offender

or the action is particularly dangerous, the penalty is life imprisonment. Belonging to organizations that pursue the aims of the Nazi Party carries a minimum sentence of five years imprisonment. Anyone who denies, grossly trivializes, approves of, or seeks to justify the Nazi genocide or other crimes against humanity in a publication, broadcast, other media, or in any other public manner accessible to others faces imprisonment of between one and ten years.

Several hundred offenders have been found guilty recently. The most prominent case involved the British historian David Irving, who denied the existence of the Nazi crimes in 1989 in two speeches. On entering Austria in 2005, he was arrested, charged under the Prohibition Act, and sentenced to a one-year prison term, which he served.

Right-wing activists and members of the right-wing Austrian Freedom Party have publicly criticized the Act for violating the freedom of expression. The general public and mainstream politicians have vigorously denied such claims, and there seems to be consensus among the Austrian political elite not to abolish the Prohibition Act. By passing the Act, the Austrian government made it clear that the Nazi crimes were historical facts that need not be proven again in court. Supporters note that the European Court of Human Rights repeatedly ruled that the Act's provisions were in line with the European Convention of Human Rights. Article 17 of the Convention explicitly grants governments the right to protect their democratic values and institutions. The Act signals that nobody can belittle the numerous crimes against humanity committed by the Nazi regime and gives respect to the victims, especially those who survived the Nazi terror. The Act's supporters consider it inhumane to glorify and/or trivialize the Nazi atrocities in front of those who suffered and still suffer from the psychological and physical pain caused by those atrocities.

### *Compensation*

For more than thirty years, Austrians considered themselves victims of Nazi Germany and systematically denied any direct involvement of Nazi state institutions and ordinary citizens in the Nazi crimes. Austria therefore refused to pay compensation to victims of these crimes. This attitude changed when former UN Secretary-General Kurt Waldheim ran in the 1986 Austrian presidential elections. The campaign was marred by rumors of Waldheim's participation in war crimes (discussed later). Although they could not be substantiated, the allegations triggered public debate about Austria's participation in Nazi crimes. The year 1986 marked a change in Austria's perception of its role in World War II from being solely a victim of the Nazi regime to being a perpetrator. The Austrian Chancellor Franz Vranitzky confirmed this change in a parliamentary speech in mid-1991.

In 1995, the Austrian government established the National Fund of Austria to offer financial compensation to those who fell victim to Nazi injustice or left Austria to escape such persecution. Victims can receive 5,087 Euros as acknowledgment for the Nazi injustice they suffered. There is no deadline for filing an application. As of late 2010, more than 155 million Euros had been paid to 30,000 victims. In 2001, the Fund was also put in charge of paying compensation for withdrawn tenancy rights, household property, and personal valuables and effects. The deadline for application was June 30, 2004. The 23,000 individual applicants received about 8,500 Euros each in the form of lump-sum payments. Most applicants were of Jewish origin.

Austria's new self-perception, together with increasing pressure from associations of victims living in the United States, led during the late 1990s to the establishment by the Austrian government of other special funds, including the Fund for Reconciliation, Peace and Cooperation, and the General Settlement Fund. The Fund for Reconciliation, Peace and Cooperation was set up in 2000 and accepted applications until 2005. The fund offered a total of 436 million Euros as financial compensation to more than 132,000 forced laborers who worked in Austria between 1938 and 1945. The General Settlement Fund, established in 2001, granted victims of the Nazi regime and their heirs compensation for material loss. Those victims who resided on the territory of present-day Austria and, as a consequence of Nazi persecution, suffered loss through either confiscation or a ban on the exercise of their profession could apply for monetary compensation until May 28, 2003. In total, the Fund paid US\$210 million in compensation to more than 19,800 applicants representing more than 100,000 individual victims.

### *Rewriting History Books*

The new Austrian self-perception of its role in the Nazi crimes was also reflected in school history textbooks. While those published before the late 1980s portrayed Austria as a victim of the Nazi regime, those published afterward acknowledged its participation in those crimes.

### *The International Committee of Historians and the Kurt Waldheim Case*

Austrian diplomat and politician Kurt Waldheim (1918–2007) served as United Nations Secretary General (1972–1981) and President of Austria (1986–1992). During the 1985 presidential campaign, the World Jewish Congress alleged that Waldheim had served as an officer in the Nazi Stormtroopers (Sturmabteilung, SA) in 1942–1943, and that he had kept these activities hidden. In response, the Austrian government mandated an International Committee of Historians to investigate Waldheim's actions between 1938 and 1945. In its February 1988 report, the Committee found that Waldheim served in the SA, but participated in no war crimes. As noted earlier, the 'Waldheim affair' triggered debates on Austria's role in Nazi atrocities.

### **Conclusion**

Transitional justice in postwar Austria has been manifold. Immediately after the war, transitional justice amounted to the prosecution of key Nazi perpetrators and the denazification of state institutions. Another stage began in 1957 with the passing of the Amnesty Act and the growing importance of reconciliation and prevention. In the mid-1980s, the 'Waldheim affair' marked the third stage. Subsequently, Austria no longer considered itself a victim of Nazi Germany and began to acknowledge its active role in the Nazi war machine. As a consequence, more active reconciliation through compensation began in the early 1990s and still positively influences the country's transitional justice efforts.

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Cross-references: Compensation Packages; Germany – the Nazi Past; Nuremberg Trials.

### *Further Readings*

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## **Azerbaijan**

After gaining independence from the Soviet Union in 1991, Azerbaijan's approach to transitional justice has tended mainly toward forgiving and forgetting the injustices of the bloody communist past, which resulted in widespread human rights violations from 1920 to 1991, when the country was a Soviet republic. This approach resulted from the nature of the communist regime, post-independence political instability, lack of will on the part of the main political formations, and the Nagorno-Karabakh war between Azerbaijan and Armenia.

### **The Repressive Past**

Created in 1918, Azerbaijan was the first modern parliamentary republic in the Muslim world, and the first predominantly Muslim country to grant women the right to vote shortly thereafter. In April 1920, the country was invaded by Soviet troops and turned into the Azerbaijan Soviet Socialist Republic, which it remained until October 18, 1991, when it proclaimed its independence. As other communist-controlled Soviet republics, Azerbaijan had to endure Stalinist terror campaigns, mass deportations, Russification (the imposition of Russian language, identity, and culture), and mass surveillance effected at the order of the hegemonic Communist Party by the Committee for State Security (Komitet Gosudarstvennoy Bezopasnosti, KGB).

Given that valuable documents were kept confidential, destroyed, or transferred to Moscow immediately before 1991, there are no estimates for either the number of KGB agents who spied on Azerbaijani citizens or the number of Azerbaijanis victimized by the Soviet regime. Some 12,000 Azerbaijani civilians were killed in the Azeri genocide (Soyqırım) from March 30 to April 3, 1918 by the Bolshevik Baku Soviet. Historian Jamil Hasanli (1991) stated that 40,000 people were convicted for imaginary crimes between 1937 and 1938. From 1937 to 1940, 12,000 persons were imprisoned each year. During the 1930s and the 1940s and in the early 1950s, some 70,000 persons were subject to arrest, deportation, and other forms of repression (including 29,000 intellectuals). Historian Eldar Ismayilov (2007) claimed that the events of 1937 should be considered a genocide, because the communist regime planned to execute 1,500 persons every three months during that year. According to military historian Shamistan Nazirli (2006), in 1937, sixteen Azerbaijani generals were executed. Persons who knew foreign languages were killed in order to destroy the intelligentsia. According to historian Ziya Bunyadov (1993), they were called “enemies of the nation” and were killed after court hearings that sometimes lasted only fifteen minutes. Furthermore, Azerbaijanis were deported to Central Asia, Siberia, and remote areas of Russia as “enemies of Bolshevism.” According