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Were the German Deserters the Wehrmacht Judge's Victims?

German historians have argued that the judges of the German armed forces, or the Wehrmacht, based their sentences on their ethnic, eugenic and Social Darwinian views. The reason behind their view is the unwillingness of the post-Second World German War Federal Republic to revoke the National Socialist era verdicts. The German Parliament revoked only the ones that were based on the accused's ethnicity or political views. The Bundestag did not revoke those passed for those with self-inflicted injuries or deserters because the Western Allies had also sentenced their soldiers for these crimes. German scholars had advocated revoking the verdicts, and they considered the March 3, 1986, Bundestag ruling unsatisfactory.

Dr Manfred Messerschmidt, a professor of German military history, and Fritz Wüllner, the director of the Freiburg military archive, argued in their 1987 work that the public and German politicians had a false impression about the Wehrmacht justice, and that they could not change their minds using the normal methods of historical research. Messerschmidt and Wüllner's work influenced both later scholars and the policies of the October 3, 1990, unified Germany. The Social Court of the Federal Republic overturned the death sentences passed by the Wehrmacht on September 11, 1991.[1]

The Research Questions

This article[2] handles the problems with the view that the judges based their desertion sentences on their own views, and with the claim that deserters had political motives. Did the judges belittle mitigating factors such as soldiers' domestic problems because they wanted to sentence the accused to death?

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[1] Manfred Messerschmidt and Fritz Wüllner, *Wehrmachtjustiz im Dienste des Nationalsozialismus.* Nomos, Baden-Baden 1987, 9, 92, 96, 99, 230; Manfred Messerschmidt, *Die Wehrmachtjustiz 1933–1945*. Ferdinand Schöning, Paderborn 2005, 443, 449; Nikolaus Wachsmann, *Hitler's Prisons*. Yale University Press, Yale 2004, 346, 355.

[2] This article is based on the conclusions of my 2020 dissertation that analysed the policy towards several offences including desertion, the accused soldier's motives, and to what extent the judges' prejudices affected the accused soldiers' sentences and whether they were converted to front line probation. Kimmo Lackman, *Eugenics, racial superiority and social Darwinism: the cornerstones of German military justice, 1939–1945?* University of Oulu, Oulu 2020.

Did they do so because the accused were Polish or Czech or because they had committed crimes before entering military service? Did the German doctors assist the judges in passing death sentences for those who had done poorly in school or civilian work life? Messerschmidt and Wüllner made these arguments in their 1987 work and blamed the judges for ignoring the Adolf Hitler's April 14, 1940, Führer Act. It decreed that desertion was punishable with death if its motivation was a fear for one's life, the accused had stolen or had priors, or tried to flee abroad. Childhood, domestic issues, and mistreatment in service mitigated it.[3]

Later scholars followed their example, but they went further. The scholars did not consider deserters to be victims because the judges refused to transfer the accused to front line probation in the Eastern Front, rather, they argued that the accused had political motives.[4] This article analyses these scholars' arguments. Did the judges prefer death sentences over sending deserters to front line probation? Did the judges have the authority to convert their verdicts to front line probation? Did the deserters or those fleeing the penalty units have political motives?

Sources and prior literature

The Wehrmacht had several penalty units. On December 21, 1940, Hitler ordered that those who had served a part of their sentence could be released to front line probation to the 500th Probation Battalion, and on April 2, 1942, that sentences over three months must be served in unarmed field convict detachments near a front. The probation battalions and the penalty units were all units of the German Army. The Wehrmacht had three service branches. One of them was the army (Heer). The other two were the German Air Force and the Navy (Luftwaffe and Kriegsmarine).

The studies that are referred to in this article were written at three different times. Scholars wrote about the Wehrmacht justice in the 1980s because they believed that the German people had a false impression about it or because they believed that the Germans were forgetting the lessons of the war. Messerschmidt and Wüllner's *die Wehrmachtjustiz im Dienste des Nationalsozialismus* has been referred to, but scholars like Dr Hans Peter Klausch also feared that the rising neofascism in the German Federal Republic would be used in the German Democratic Republic propaganda. His works include the 1987 *Die Gesichte der Bewährungsbataillone 999 unter besonderer Berücksichtigung des antifasischtischen Widerstandes* and the 1995 *Bewährungstruppe 500*. They reflect how the literature changed after the 1990 German reunification.

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[3] Messerschmidt and Wüllner 1987, 92, 114; Thomas Walter, "Schnelle Justiz-gute Justiz?'' *Opfer der NS- Militärjustiz*. Mandelbaum Verlag, Wien 2003, 32.

[4] Thomas Geldmacher, "Auf Nimmerwiedersehen". *Opfer der NS-Militärjustiz*. Mandelbaum Verlag, Wien 2003, 134; Messerschmidt and Wüllner 1987, 114; Christoph Rass, *Menschenmaterial*. Ferdinand Schöning, Paderborn 2003, 169–172.

Klausch wanted the German people to remember how some had risked their lives to fight the National Socialists. He did not consider the soldiers' absences without leave as a form of antifascist resistance, because most of them wanted to see their families, and argued that the National Socialist or NS state introduced the front-line probation to combat rising criminality in the Wehrmacht. The situation also affected how willing it was to release convicts to the front-line probation.[5]

Klausch, like other scholars, changed his view after the 1990 German unification, when Germany wanted to deal with its German Democratic Republic and the NS era past and funded research concerning their legal systems.[6]

The scholars who, between 1992 and 2003, wrote about the Wehrmacht justice are united in that they were more willing to believe that the accused had political motives than earlier scholars. For example, Klausch argued in his 1995 work that those using homosexuality to receive a dishonourable discharge from the military service were left-wing activists. The scholars achieved their goal, because on May 27, 1998, the Bundestag revoked all sentences passed for self-inflicted injuries, and on May 17, 2002, all sentences passed for desertion. On July 14, 1999, the Austrian Parliament or Nationalrat revoked the verdicts for self-inflicted injuries, but its ruling overturned the deserters' sentences only if there was evidence that the accused had political motives.

This was a disappointment to the scholars advocating their rehabilitation. For example, Prof. Walter Manoschek began his article compilation work *Opfer der NS-Militärjustiz* after the assembly failed to rehabilitate the deserters. The scholars writing the articles argued that they did not require evidence before arguing that the deserters had antifascist motives.[7] The Austrian scholars were not alone, because German scholars made similar arguments. For example, Drs Birgit Beck and Christoph Rass argued in their works *Wehrmacht und sexuelle Gewalt* and *Menschenmaterial* that those who were absent without leave because they had relationships with Soviet women had political motives, and that those with self-inflicted injuries belonged to a group of Wehrmacht anti-fascists.[8]

Later scholars' studies did not radically differ from the above German and Austrian scholars' studies. They included article compilations with topics like military justice in the occupied areas, or the scholars wanted to present an overview of Wehrmacht justice.

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[5] Peter Klausch, *Die Geschichte des Bewährungsbataillone 999 unter besonderer Berücksichtigung des antifaschistischen Widerstandes*. Pahl-Rugenstein Verlag, Köln 1987, 1, 56, 58, 69, 76, 87– 90, 217; Messerschmidt and Wüllner 1987, 41.

[6] Hans Peter Klausch, *die Bewährungstruppe 500*. Temmen Verlag, Bremen 1995, 7; Norbert Haase/Brigitte Oleschinski, "*Das Torgau Tabu*, Zur Einführung". *Das Torgau Tabu*. Forum Verlag, Leipzig 1993, 7.

[7] Ludwig Baumann, "Was damals Recht war". *Was Damals Recht War*. Be.bra Verlag, Berlin 2008, 21–23; Geldmacher 2003, 134; Klausch 1995, 23–25; Walter Manoschek, "Die Arbeit zweier Jahre-eine Einleitung". *Opfer der NS-Militärjustiz*. Mandelbaum Verlag, Wien 2003, 2, 5.

[8] Birgit Beck, *Wehrmacht und sexuelle Gewalt*. Ferdinand Schöning Verlag, Paderborn 2004, 230; Rass 2003, 169–170.

The scholars who wrote their works between 2005 and 2015 feared, like earlier scholars, that the Wehrmacht justice has not received enough attention. Examples include *Was damals Recht war* by Ulrich Baumann and Magnus Koch, and *Wehrmachtjustiz* by Dr Peter Kalmbach.[9]

The topic of my 2020 dissertation was to what extent the German court martial judges' views affected their rulings like Messerschmidt and Wüllner have argued, and it criticized the above referred scholars' arguments. The work cited studies written between 1971 and 2015, and what they had in common was that the authors advocated repealing the soldiers' sentences, wrote about the ordinary soldiers' lives, or studied the German policies in the occupied areas. The Wehrmacht justice was only rarely their main point of interest.[10] My dissertation aimed to correct this. There were no similar works that solely concentrated on the Wehrmacht justice and the accused soldiers' motives.

Its source material consisted of Wehrmacht court martial sentences in which a sentence was converted to a front-line probation. Many scholars refer to front line probation, but their views are contradictory. The above referred scholars are those that most other scholars cite. The material was chosen from the 3600 court martial cases archived in the German Military Archive of Freiburg. The cases represented all service branches. The cases began with a commanding officer's or CO's performance review. They continued with eyewitness testimonies and other evidence and with an indictment that listed the charges. The COs often considered one of the charges to be the main offence that warranted trial. The performance reviews and military police reports are short, to the point and open about the accused's motives.[11]

The material contradicts the earlier scholars' views in several ways, the most important of which is the status of the judges. Most of the army sentences referred to in this article were Berlin command area court cases. The reason for this is that the Berlin court heard most of the army cases that were converted to front line probation. All the service branches had their own courts. Their main courts in Berlin oversaw admiralty, air command area, and divisional courts. The court of the Berlin command area was the army supreme court that reviewed cases that lower courts had heard but whose sentences higher officers had refused to confirm. Most army accused were tried in a divisional court, even though they were also tried in a command area or an army group court.

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[9] Claudia Bade, "Die Wehrmachtjustiz im Zweiten Weltkrieg". *NS-Militärjustiz im Zweiten Weltkrieg*. V&R unipress, Göttingen 2015, 21; Baumann 2008, 24; Peter Kalmbach, *Wehrmachtjustiz*. Metropol Verlag Berlin 2012, 19; Wolfram Wette, "Einleitung". *Filbinger-eine Deutsche Karriere*. Klampen Verlag, Springe 2006, 13.

[10] See e.g. Lackman 2020, 336-340, 351-357, 420-423, 434-442

[11] MA-5-2003/A-2285, Wehrmacht court martial files, Bundesarchiv-Militärarchiv, Freiburg (the archive ID, archive and location will not be mentioned hereafter); RW 55/801, 15; RW 55/1588a, 2; RW 55/2291, II; RW 55/2425, II; RW 55/2944, III; RW 55/3975, 4; RW 55/4044, III; RW 55/4366, III, 2.

A German law of May 12, 1933, defined the higher reviewing officer or a Gerichtsherr as a military district or division commander, or their Luftwaffe or naval equivalent.[12] A court martial was preceded over by three judges. One of them was an attorney, another was an officer, and a third was a soldier with a similar rank as the accused.[13]

How much did the judges' prejudices influence the deserters' sentences?

The scholars' views about the deserter's motives are conflicting, and it is hard to understand them without knowing about the German and Austrian scholars' debate about the Wehrmacht justice in the 1980s and 1990s. For example, Messerschmidt and Wüllner argued that the Wehrmacht judges did not consider domestic problems as a mitigating factor for absence without leave, whereas later scholars like Rass argued that domestic absences were sentenced leniently.[14] Both arguments are problematic because the original cases indicate that the military situation affected how the judges viewed the soldiers' domestic absences, and how severe their verdicts for absence without leave were.

Two common factors that affected their severity were whether the accused was absent without leave during an active operation and if he served on a front line. The sentences for absence without leave varied in 1940 from a year to 18 months for those who did not serve on a front line or who were absent during the 'phony war' of the winter of 1940. Those who were absent during the Polish war or had delayed their travel to the Western Front were sentenced to five to seven years in the penitentiary.[15] The sentences for domestic absences were rare during the second and third war year (1941/1942), but the soldiers' domestic absences were a problem in later war years. The soldiers sentenced for desertion in 1942 had been absent without leave in the winter of 1942 or in the spring when the NS state cut the German civilians' rations.[16] The deserters' sentences varied from eight to fifteen years in the penitentiary.[17]

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[12] Kalmbach 2012, 67; Manfred Messerschmidt, "Das System Wehrmachtjustiz". *Was damals Recht war*. Be.bra Verlag, Berlin 2008, 28; Joachim Philipp, "der Gerichtsherr in der Deutschen Militärgerichtsbarkeit bis 1945". *Militärgesichte* 6/1988, 543; Christoph Rass and Rene Rohrkampf, "Dramatis Personae". *Was Damals Recht War*. Be.bra Verlag, Berlin 2008, 95.

[13] Maria Fritsche, *österreichische Deserteure und Selbstverstümmler der deutschen Wehrmacht*. Böhlau Verlag, Wien 2004, 97; Kalmbach 2012, 65; Messerschmidt and Wüllner 1987, 40.

[14] Messerschmidt and Wüllner 1988, 93, 107; Rass 2003, 172.

[15] RH 69/1890, 20; RW 55/26, 21; RW 55/27, 29; RW 55/88, 035; RW 55/192, 90. The Second World War began in Europe on September 1, 1939. The operations between Germany and the Western Allies were paused in the autumn of 1939 and the winter of 1940. This six-month long lull in the war year has been called the 'phony war'.

[16] Wolf-Dieter Mechler, *Kriegsalltag an der* "*Heimatfront*". Hannoversche Studien 4. Hahnsche Buchhandlung, Hannover 1997, 168.

[17] RW 55/1167, 65–75; RW 55/1724, 9–14; RW 55/1817b, 54–55; RW 55/1818b, 31–33.

Many of the reservists called to service in 1943 had been exempted earlier because they had psychiatric or health problems, and the Wehrmacht courts charged those who had domestic problems because they set a bad example for those reservists. Soldiers fleeing after hearing that 'Berlin was in ashes' were a problem because stories about soldiers who lost their nerve likely affected the civilians' morale. The accused had heard about the home front air raids and fled to see if their family still lived, or they had delayed their return from their leave because their homes were damaged. Their sentences varied from three years in prison to ten years in the penitentiary depending on whether the judges believed that they had deserted or been absent without leave.[18]

The Berlin court heard many of the cases in the autumn of 1943 when the Allied air raids became worse than ever before.[19] These facts make the argument that the sentences passed for domestic absences were lenient problematic. All the deserters sentenced to death by the Berlin court in 1944 had also stolen from German women or they had domestic or health problems.[20]

This is an important point because this contradicts the view that the judges based their desertion verdicts on their eugenic and social Darwinist views. The Nationalrat repealed the verdicts passed for self-inflicted injuries in 1999, but some of its representatives opposed repealing the deserters' sentences because some of them had committed crimes. This was also a common view in Germany. Messerschmidt and Wüllner argued that the judges based their desertion sentences on their prejudices because they had also sentenced deserters who had not stolen to death. Austrian scholars who advocated repealing their sentences argued that the *violent deserters*' small number proved that the other deserters were neither violent nor wanted to serve the Wehrmacht. They ignored that the *Austrian occupation theory* was not debated in the Nationalrat until 1999, and that their cited examples were from times like the winter of 1942 and 1944, when the army suffered setbacks.[21] The cases in the material of this article were from the same times as their examples.

Both when the accused offended and how their crimes affected civilians or other soldiers were what determined who was a 'violent deserter.' Most of them had raped or stolen from German women. The accused had stopped their travel to the Western Front in the spring of 1940 and stolen a German woman's car, had raped a woman during the winter of 1942 when the army suffered a defeat in the Eastern Front, or they had extorted money from an elderly woman during the air raids of the autumn of 1943.

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[18] RW 55/2026, 81–84; RW 55/2572, 29–34; RW 55/2597, 24; RW 55/3665, 26; RW 55/4691, 37.

[19] Mechler 1997, 188; Jana Nüchterlein, *Volksschädlinge vor Gericht*. Reihe Rechtswissenschaften, Band 74. Tectum Verlag, Marburg 2015, 84. Both Dr Mechler and Dr Nüchterlein argue that the worst air raids of the war began on November 22, 1943.

[20] RW 55/3583, 80–82; RW 55/3712, 47–49; RW 55/4366, 43–45.

[21] Geldmacher 2003, 134, 151–153; Manoschek 2003, 2. Messerschmidt and Wüllner 1987, 95, 107. The Austrian Occupation Theory alleges that Austria was an occupied country during the Second World War, and that it was not responsible for the NS-state's crimes.

Those stealing from German men were not always prosecuted. The cases contradict the view that the judges targeted deserters with a criminal record, or that the non-violent deserters had political motives, because the deserters' crimes were an issue only when they were public or if they committed them at a time when the army had met a setback.[22]

The scholars seemed to believe that the army heard all absence without leave cases. The issue with the argument that the judges targeted those who had done poorly in school or civilian work life is that the Wehrmacht courts also targeted them at specific times. Many of the reservists called to service in later war years had been exempted earlier because they had psychiatric or health problems, and many of those charged with desertion in 1942 and 1943 had gone to a special school, grown up in an orphanage, or their relatives had committed suicide or been in a mental institution. Their sentences ranged from three to seven years,[23] but the cases do not support the view that the German doctors aided the judges in prosecuting deserters. The judges consulted a doctor if the accused had previously acted oddly in peace time, but they did not need to consult a doctor before passing a death sentence.

The judges passed more lenient sentences to those who had not found their way home from school and whose absence without leave had not attracted attention, but they did not consider it mitigating that the accused had a father who had molested his brother and sister if his fellow soldiers had seen him flee a fox hole during an enemy barrage.[24] The Berlin court heard these types of cases especially during the fourth war year, when the 6th army was defeated in Stalingrad, and the Allied raids became worse.[25] The army judges and the accused soldier's COs did comment their success in school and working life but they did so mainly when the accused had stolen.[26] The doctors considered a lack of success in school or working life a mitigating factor, but it varied whether the judges agreed with their diagnosis.[27]

Messerschmidt and Wüllner's argument about the judges' ethnic views is also problematic because they do not explain why, for example, the Polish soldiers who feared that their families might suffer were a threat in 1944. The likely reason why death sentences were passed for Eastern Europeans during the war's sixth year (1944/1945) is that ethnically German people were forcibly recruited in late 1943.[28]

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[22] RW 55/88, 032; RW 55/1818b, 33; RW 55/3583a, 82; RW 55/3922a, 35; RW 55/3926, 28, 59.

[23] RW 55/1087, 16; RW 55/2026, 69; RW 55/2106, 31; RW 55/2277, 46–50; RW 55/2626, 30.

[24] RW 55/1588a, 56–57; RW 55/2944,126–128; RW 55/3389, 43–45; RW 55/4518, 20, 30.

[25] Michael Burleigh, *Kolmas Valtakunta*. A Finnish Translation by Seppo Hyrkäs of the *Third Reich*. First published in 2000. Werner Söderström Osakeyhtiö, Helsinki 2004, 776–780.

[26] RW 55/801, 15; RW 55/1290, 62-64; RW 55/1817b, 55; RW 55/2106, 31; RW 55/3712, 63.

[27] RM 123/90589, 4, 13; RW 55/188, 48-50; RW 55/192, 69, 90; RW 55/289, 111.

[28] Ryszard Kaczmarek, "Polen in Wehrmachtuniform". *NS-Militärjustiz im Zweiten Weltkrieg*. V&R unipress, Göttingen 2015, 82; Messerschmidt and Wüllner 1987, 99, 107.

This was evident in the material of this article because airmen and seamen, those exempted because of health issues [29], and the ethnically German were then the remaining German reserves. However, the problem with the argument that the judges passed death sentences based on their own ethnic views is that Eastern European soldiers were charged only at specific times like from May to July of 1944. Messerschmidt and Wüllner cited their death sentences from this same time.

Most ethnic Germans in the material of this article had offended in the spring of 1944 and were tried after D Day on June 6,1944. What the accused had in common with each other was that they were absent without leave because they had health or domestic problems. German accused were, however, sentenced more severely than the ethnic German Polish. The Polish infantrymen and seamen who had evaded service with health problems were sentenced to five to eighteen months in prison. Divisional courts sentenced German soldiers to death for self-inflicted injuries, whereas the Berlin court sentenced those who had domestic problems to seven years in the penitentiary if their COs suspected that they were *Pole-friendly*.[30]

In the winter and summer of 1944, the court also heard all the cases where the accused were homosexual. The cases do not support the Klausch's argument that those using this evade military service were left-wing activists because all accused in the material for this article whose charges *included* homosexuality had been absent without leave because they had health or domestic problems.

The accused had stopped their travel to the Eastern Front during the air raids of the autumn of 1943 or they had checked into a hospital with falsified papers and gone to a hotel room with a man. They were charged for absence without leave or evading service with fraud, but their homosexuality *proved* that they were 'asocial'. This justified a harsher sentence for their offence than other airmen or seamen received for absence without leave, or the Berlin judges argued that their prior sentence for homosexuality proved that they had tried to desert. The problem with Klausch's argument is that most homosexual soldiers had been sentenced for their *crime* before entering military service, and other deserters had similar health and domestic problems. This includes those who were sentenced to death. Typical soldiers' health and domestic problems were chronic pain and family homes damaged in the air raids. The judges had less sympathy for those who had health problems than for those who wanted to help their families, and some doctors argued in their evaluations that the accused could not manage their chronic pain because they were homosexual.[31]

[29] RL 42/188, 27; RL 42/1462, 31; RM 123/90245, 31; RM 123/90531, 18– 19; RM 123/94091, 29.
[30] RH 69/4106, 21; RM 123/90589, 13; RM 123/94085, 21; RW 55/3571, 30; RW 55/3657, 15, 47.
[31] RL 42/188, 12; RM 123/90622, 11; RW 55/3665, 26; RW 55/3712, 49; RW 55/4518, 20.

The judges' attitude was also evident in their sentences. Soldiers who had delayed their return from a leave or stopped their travel because their families' homes had been damaged in the raids were sentenced with six to eighteen months in prison. The judges openly stated that they sentenced them more leniently because they wanted to help their families.[32] Those who had fled their Eastern Front unit after hearing about the raids or because of their health problems were punished with five years in the penitentiary. Homosexual accused who had stopped their travel to the Eastern Front could be sentenced to ten years in the penitentiary, but this does not support Klausch's theory. The Berlin court sentenced to death soldiers who had prior sentences for homosexuality, but they had also been absent without leave before and had deserted while they were on a leave because of their domestic issues.[33]

Did the judges have the authority to convert the deserters' sentences to front line probation?

The main problem with the Messerschmidt and Wüllner's argument that the judges preferred death sentences over front line probation is that the court martial verdicts must be reviewed by a higher reviewing officer or the Gerichtsherr, and only they could release deserters to front-line probation. They based their recommendations on how the accused had behaved in prison and served before trial.[34] The reviewing officers converted some of the soldiers' sentences to a six-week disciplinary detention. The other convicts had to serve a part of their sentence. The higher officers did not release the convicts to front line probation without a recommendation from the prison wardens.[35] The soldiers sentenced for desertion had to serve a year to two years and six months of their sentences before front-line probation could be deliberated. Both reviewing officers and wardens were more loath to pardon those sentenced for desertion than those sentenced for absence without leave.[36] This shows that the judges did not decide whether the deserters' verdicts were converted to front line probation. This was a reviewing officer's decision to make. The judges made inquiries of their COs if the accused were still usable as soldiers, but the higher officer could always commute, for example, a death sentence to a penitentiary sentence.[37] Messerschmidt and Wüllner did comment on the Gerichtsherr tradition and argued that the army generals believed left-wing activists were more prone to desert.

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[32] RW 55/3718, 23; RW 55/3754, 21; RW 55/3879, 23; RW 55/4041b, 26; RW 55/4044, 31.
[33] RW 55/3665, 26; RW 55/3712, 46-49; RW 55/4518, 30; RW 55/4691, 37.
[34] RL 42/188, 27; RM 123/94091, 29-30; RW 55/27, 54; RW 55/188, 33; RW 55/1802, 104.
[35] RW 55/412, 44; RW 55/2018, 44; RW 55/2026, 85; RW 55/2180, 32; RW 55/2291, 53.
[36] RW 55/192, 110; RW 55/523, 66; RW 55/1049, 66; RW 55/1820b, 46; RW 55/3309, 72.
[37] RH 69/1875, I; RH 69/4106, 22; RW 55/3583, 84; RW 55/3712, 63; RW 55/4366, III.

German Democratic Republic scholars traced the origins of the Gerichtsherr tradition to eighteen-century Prussia, where the king had delegated the right to approve court martial rulings to senior officers.[38] Messerschmidt and Wüllner argued, however, that the judges based their court martial rulings on their ethnic, eugenics, and Social Darwinist views. They ignored the situation at the front, the mood at the home front and current manpower needs that affected the verdicts referred to in this article. A soldier was tried if his absence without leave affected them, and a higher officer ordered a court martial to convene. The Gerichtsherr also approved the deserters' death sentences or converted them to front line probation. Criminal record, ethnicity, and lack of school or work life success affected the sentences if the charged offence was a threat to the Wehrmacht discipline, operations, or its image.[39] The argument that the deserters had political motives has three problems.

Both Klausch and Messerschmidt and Wüllner argued in the 1980s that the Wehrmacht deserters were victims because their sentences did not fit their crimes. Messerschmidt and Wüllner argued that the deserters who had not stolen were victims, but they did not have political motives. Scholars like Rass have also pointed out that the Wehrmacht soldiers were only rarely charged for homosexuality. The anti-fascist soldiers that Klausch studied in the 1980s were political prisoners that the Wehrmacht recruited to the Special Probation Battalion 999, but the 999 soldiers were closely monitored, and it was difficult for them to organize resistance. The 999 men had helped Greek partisans, but the partisans had told them to stay in their units and warn them of German raids.[40] Klausch argued, however, after the 1990 German reunification, that soldiers who had evaded service with rarely prosecuted offences were anti-fascists. His argument is problematic, because all homosexuals in the material of this article had also been absent without leave. This is important because the violent deserters whose small number proved that other deserters had political motives were charged when their crimes were a threat to the Wehrmacht's image, while homosexuals were charged when soldiers' health problems were an issue.

[38] Messerschmidt and Wüllner 1987, 93; Philipp 1988, 534.
[39] RH 69/4106, 22; RH 69/1875, 1a-4; RH 69/4415, 8, 28; RW 55/3583, 84; RW 55/4366, 64.
[40] Klausch 1987, 216, 538; Messerschmidt and Wüllner 1987, 107; Rass 2003, 290.

Conclusions

The argument that the German deserters were the Wehrmacht judges' victims is problematic because the scholars' arguments are contradictory.

The view that the violent deserters' small number proved that the others had political motives is problematic because the accused in the material of this article had made offences at a specific time when their crimes affected the home front morale, and this determined who was a violent deserter. Most of them had raped or stolen from German women. The argument about the judges' social Darwinist prejudices is problematic because the judges commented on the deserters' problems in civilian life mainly when they had also stolen, and they did not need to consult a doctor before passing a death sentence. The argument that the judges' ethnic views affected the sentences is problematic because most ethnic German accused were tried in 1944 when the Wehrmacht forcibly recruited ethnically German people, and the accused had similar health and domestic problems that were a problem then. The argument that soldiers who had domestic problems were sentenced leniently for absence without leave is problematic because the situation affected how the judges viewed soldiers' domestic absences. They were a problem in later war years when many reservists had health problems. The courts charged homosexual soldiers for absence without leave mainly when the Wehrmacht viewed those using health problems to evade military service as an issue.

All the deserters sentenced to death in 1944 had stolen from women, or they had domestic or health problems. The argument that the judges belittled mitigating factors for the soldiers' absences without leave because they preferred death sentences over front line probation is problematic because only higher officers could release deserters to front-line probation. The reviewing officers based their recommendations on how the accused had behaved in prison and served before trial. Those sentenced for desertion had to serve a year to two years and six months from their sentences before front-line probation could be deliberated. These conclusions reflect the various problems in the literature about the Wehrmacht justice. The main reason for this is the scholars' disinterest in studying the Wehrmacht justice beyond wanting to rehabilitate the court-martialled soldiers, and the scholars' tendency to overemphasize the judges' influence. The reviewing officer's and prison warden's role is belittled or ignored. This article is based on the conclusions of my 2020 dissertation that analysed the policy towards several offences, including desertion, the accused soldier's motives, and to what extent the judges' prejudices affected the accused soldiers' sentences and whether they were converted to front line probation.

Abstract

German historians asked the Parliament of the German Federal Republic (Bundestag) in 1986 to revoke the sentences passed for desertion during the Second World War. The scholars argued that the deserters were victims because they were Polish or Czech citizens who feared that their families would suffer retaliation, they had done poorly in school or civilian work life, or they had committed crimes before entering service or during their absence without leave.

The scholars also argued that the military court judges of the German Armed Forces based their sentences on their ethnic, eugenic and Social Darwinist views, and that the deserters' sentences did not match their crimes. The scholars argued that the judges belittled mitigating factors for the soldiers' absences without leave because they wanted to sentence them to death as deserters instead of transferring them to front line probation on the Eastern Front. This argument has two problems. One of them is that the judges did not have the authority to convert deserters' sentences to front line probation. A higher officer had to order a court martial to convene before it could charge a soldier for absence without leave. The officer also approved the accused's death sentence or converted it to front line probation. A higher officer had to review all the German court martial verdicts. They based their recommendations on how the accused had behaved in prison and served before trial.

The scholars' arguments were also problematic because the current situation affected how the military court judges viewed the soldiers' absences without leave. A sentence for the offence varied depending on whether the accused was absent without leave during an active operation and if they served on a front line. Those sentenced for desertion were typically absent during active operations or the judges hearing the cases believed that the accused's absence without leave urged others to try the same thing. The soldiers sentenced for desertion in 1940 were absent without leave in the autumn of 1939. The accused of 1942 had been absent without leave in the winter of 1942 or in spring when the National Socialist state cut the German civilians' rations. Those sentenced for desertion in 1944 had health or domestic issues and had been absent without leave in the winter of 1944.