

As cold cases go, few could be more deep frozen than investigations into atrocities committed by Nazis and their collaborators during the Second World War. Yet the Central Office for the Investigation of National Socialist Crimes in Ludwigsburg is still hard at it and for the first time, has extended its net to the UK. The BBC has revealed that a 96-year-old man living in Telford, Shropshire, was being investigated until his death in October 2017. Moreover, German prosecution staff have been to Kew to inspect immigration records of those who came to Britain after the war and may have concealed a murderous past. The extraordinary thing is that most of these ‘suspects’ were not German and neither were their alleged crimes committed on German soil. But I believe that this intervention from Germany should be seen as a rebuke to the UK for its own half-hearted war crimes inquiries during the 1990s.

Here I must declare an interest. The 96-year-old under investigation until his death was Stanislaw Chrzanowski, originally from Slonim in Belarus. When the War Crimes Act was passed in 1991, I was the BBC Home Affairs Correspondent. Five years later I travelled to Slonim to search out evidence that may have led to Chrzanowski’s prosecution. A Catholic deacon described how, as a fifteen-year-old, he had witnessed Chrzanowski and another auxiliary policeman massacre at least 30 prisoners over a three-day period. There were other compelling circumstantial accounts linking him to war crimes. Officers from Scotland Yard’s war crimes unit interviewed Chrzanowski and passed a file to the Crown Prosecution Service. In November 1996, I received a letter from his lawyer informing me of the CPS decision that ‘the evidence is not such as to afford a realistic prospect of conviction’.

At the time I was not surprised. One credible eye witness does not make a prosecution half a century after the crime. I moved on to other suspects and played a role – through a graphic report on BBC Television News – in the Attorney-General’s decision to authorise the prosecution of another Belarussian, Anthony Sawoniuk, in 1999. Two days before the jury

returned its guilty verdict, the media was handed a briefing note and to say that I was astonished when I read it would be a gross understatement.

One of the four criteria to be met before a suspect was considered a serious candidate for prosecution was this : ‘proof that the defendant was in a position of command, responsibility is also an important factor in deciding on the defendant’s culpability’. (*Briefing re-War Crimes Unit – General Information*. March 1999). I was astonished for three reasons. One, that this stipulation is not to be found in the War Crimes Act. Two, the defence of ‘I was only obeying orders’ was demolished at the Nuremberg trials at the end of the war. And three, that, under the ‘laws and customs of war’, the principle of command responsibility is applied to a superior officer held culpable for the crimes of a subordinate. It has never been interpreted as a means of exculpation for the ‘foot soldier’ who commits egregious crimes. So, if, as the briefing note implies, other prosecutions were ruled out on the grounds that this criterion had not been met, there must be serious question marks over the judgment shown by the CPS and Attorney-General.

It is evident from the Ludwigsburg interest in Chrzanowski – a mere auxiliary policeman’ in command of nobody – that German prosecutors take a rather different view of ‘culpability’. (And, of course, German courts have ruled that a suspect can be prosecuted, even if there is no direct evidence of participation in a war crime, by dint of having been posted to a concentration camp). The briefing note also answered a question which had puzzled me over a number of years when I was told that files on several Nazi collaborators, against whom – according to police sources who confided in me – there was compelling evidence, had been stamped ‘no prosecution’. These suspects had not been in a command role.

Now, I am not arguing that some of these people should have been prosecuted. This is an argument about lack of transparency. The political battle to secure the passage of the War

Crimes Act was one of the most bitterly fought of recent years and required the application of the Parliament Act to force it through against the opposition of the Lords. Over the course of some nine years, more than £11 million, according to the police, was spent on investigating nearly 400 suspects (376 in England and Wales). Questions about the progress of inquiries were asked periodically in the Commons and yet, only at the very end of the single case which went to a full trial, was it revealed that ‘command’ would be a determining factor for prosecution.

This lack of transparency should be a wider concern. It appears that the Metropolitan police has never done a final report on its war crimes inquiries and that the files may remain closed to researchers for up to 50 years. This contrasts with a far greater degree of accessibility afforded by the war crimes units in Australia, Canada and Scotland.

We may never know why the bar was set so high for war crimes prosecutions in the UK. Conspiracy theorists will argue that the legal establishment was always uncomfortable with the process of prosecuting elderly men so long after the war. A more charitable explanation is that it was a flawed ‘public interest’ test. But unless we know the answer, a latter-day Stanislaw Chrzanowski, implicated in one of today’s many arenas of human rights abuse, may have little cause to fear that knock on the door.

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