

Protocol of a Miscarriage of Justice

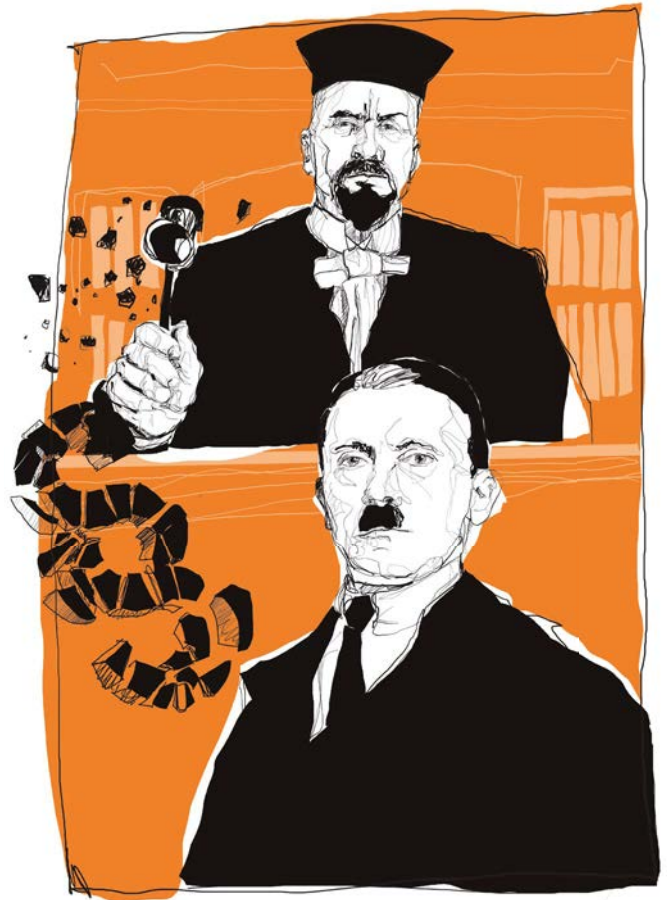
100th anniversary of the Hitler Trial

In November 1923 the headline in the *Völkischer Beobachter* read: 'Hitler and Ludendorff establish *völkisch-nationalistic dictatorship*'. The putsch of 8/9 November, however, had failed, and on 26 February 1924 the trial of its initiator began. Four weeks later the verdict was passed: **Adolf Hitler was sent to prison for five years. Nonetheless, the sentence was reduced that same year to just under nine months. By December 1924, Adolf Hitler was already a free man again.**

From that moment onwards, the preparations he had drafted in prison were put into practice: the reorganisation and promotion of the NSDAP using all forms of propaganda and self-promotion. The set-up of professional and armed storm troopers and the generation of extensive financial options with the help of industry. Eight years later, Adolf Hitler was on his way to becoming an absolute dictator. Within twelve years, he was to plunge Germany and the rest of the world into immeasurable despair.

What happened at the *Volksgericht* (People's Court) in Munich between 26 February and 1 April 1924 was a miscarriage of justice due to the way the trial was conducted and the numerous perversions of justice. The Bavarian judiciary had the opportunity and the duty to prevent Hitler's triumphal advance. According to the legislation of the time, the presiding judge would clearly have been obliged to pass a much harsher sentence. Hitler's deportation from the German Reich would, legally, have been inevitable and even the death penalty could not have been ruled out on the basis of the laws in force. In retrospect, the lessons to be learnt from 1924 should be a warning and an appeal to civil society to fight all anti-democratic and anti-semitic tendencies hostile to the good of humankind.

The design of the exhibition in the inner courtyard is based on the motif of the chair. A chair is a piece of furniture with a specific function that provides an opportunity to socialise. On 8 November 1923 Hitler climbed onto a chair to be seen above the crowd and to announce that the government had been violently disposed. The chairs in this exhibition have been put together incorrectly and, therefore, fail to fulfil their proper function. The assembly instructions



were ignored, just as the judge presiding over the Hitler Trial disregarded legislation. The consequence of this miscarriage of justice was a wrongful conviction that Hitler could only have seen as a success. The trial made him famous throughout Germany and marked the beginning of his rise through parliament and in the streets as the undisputed leader of the Nazi movement.

The Putsch

The Year of Crisis 1923

In 1923 hyperinflation, caused by a dire economic crisis, brought great hardship and affliction. Adolf Hitler, leader of the NSDAP, used the suffering of the German people for his propaganda. The first rumours of a putsch by Hitler emerged already in November 1922.

For the Bavarian government, 'Red Berlin' was responsible for the crisis. A strong political leader was sought in Bavaria as a result. It was decided to appoint a State Commissioner General: Gustav von Kahr. Kahr pursued a patriotic, national political agenda.

As a result of this development, Hitler saw great prospects of success for his putsch plans.

On 8 November 1923 he saw his big moment had come. At 6 p.m. his armed troops – the SA regiment 'Munich' – stood ready for action outside the 'Bürgerbräukeller' beer hall in their uniforms and with their steel helmets.

8 November 1923

So-called patriotic associations have gathered in the overcrowded 'Bürgerbräukeller' beer hall (now 'Gasteig').

The most powerful man in Bavaria, the State Commissioner General Dr. von Kahr, is speaking. Suddenly there is a commotion. Adolf Hitler elbows his way through the crowd, a loaded pistol in his hand. Behind him is his 'Stoßtrupp' – his 'shock troop' with guns. To make himself heard, Hitler climbs onto a chair and fires a shot at the ceiling. He shouts:

**"The national revolution has broken out.
The Bavarian government has been deposed.
The government of the German 'Reich' has
been deposed".**

Half of Bavaria's ministers are arrested and the most powerful men in Bavaria: Ritter von Kahr, endowed with dictatorial powers, Hans Ritter von Seißer, the head of the Bavarian police and Otto von Lossow, the commander of the Reichswehr in Bavaria, were led into an adjoining room and forced at gunpoint to become members of a new government.

The first cracks

Hitler left the beer hall to continue his putsch elsewhere in the city. This move came too late. The occupation of the main railway station had failed. The seizure of communication centres, police buildings and newspaper offices, wherever this actually happened at all, had been inadequately prepared and failed because of resistance on the part of the soldiers and the police.

In the meantime, the former General Erich Ludendorff had arrived at the 'Bürgerbräukeller'. He was to lead the 'March on Berlin' if the putsch in Munich had been successful. In Hitler's absence, he gave the order to release the alleged defectors Kahr, Seißer and Lossow against a pledge of honour.

The three distanced themselves from Hitler's plans that very night. Behind his back, they alerted the Reichswehr and other official bodies.

9 November 1923

In the morning, the newspapers announced the success of the putsch. There could, however, be no more talk of that.

Ludendorff ordered all the putschists to gather in the city centre. Reichswehr soldiers as well as civilians reportedly enthused about the coup d'état. The streets were full of onlookers and the putsch gained a new impetus. The procession crossed the Ludwigsbrücke and on through Isartor to Odeonsplatz.

Units of the Bavarian State Police stood in the way of the advancing Nazis, their guns at the ready.



**"Everyone was
shouting ,Heil' "**

Contemporary witnesses on the mood in Munich city centre

A hail of bullets marked the end

The procession faltered, shots were fired. Hitler was pulled to the ground by his companion who had been fatally shot, and injured his shoulder. 15 putschists, 4 policemen and a bystander were killed in the course of the attempted putsch. Hitler fled to Uffing, to the villa of the Hanfstaengl family of art dealers. When the police appeared on 11 November 1923, Hitler panicked and wanted to shoot himself. A gardener had revealed his whereabouts. Helene Hanfstaengl was able to convince Hitler to put the gun down.

The putsch, that was referred to as an 'operetta' in Berlin, had finally failed.

On 26 February 1924, the trial of the putschists charged with high treason begins at the *Volksgerecht* (People's Court) in the Infantry School building in Munich.

The course and outcome of the trial are marked by the extreme leniency of the presiding judge, Georg Neithardt, who greatly sympathises with the putschists' political views.

When the verdict is passed on 1 April 1924, the wrong decision made by the Volksgerecht is patently clear and is to have dire consequences.

The Trial

Day 1

Munich, Blumenburgstrasse: On 26 February 1924, Adolf Hitler and his co-defendants enter the packed courtroom at 9:30 am. Throngs of onlookers congregate outside. Strict security measures are in place.

The trial is conducted by the reactionary and opportunistic presiding judge of the Regional Court, Georg Neithardt. He is assisted by a legal assessor and three lay judges. The public prosecutor, Ludwig Stenglein, represents the prosecution. The 'Grounds for the Indictment' are read out: *"The indictment against all those accused [...] is that of the jointly committed offence of high treason."*

At 2:30 pm, Hitler gives his first speech for the defence. He speaks for three hours.

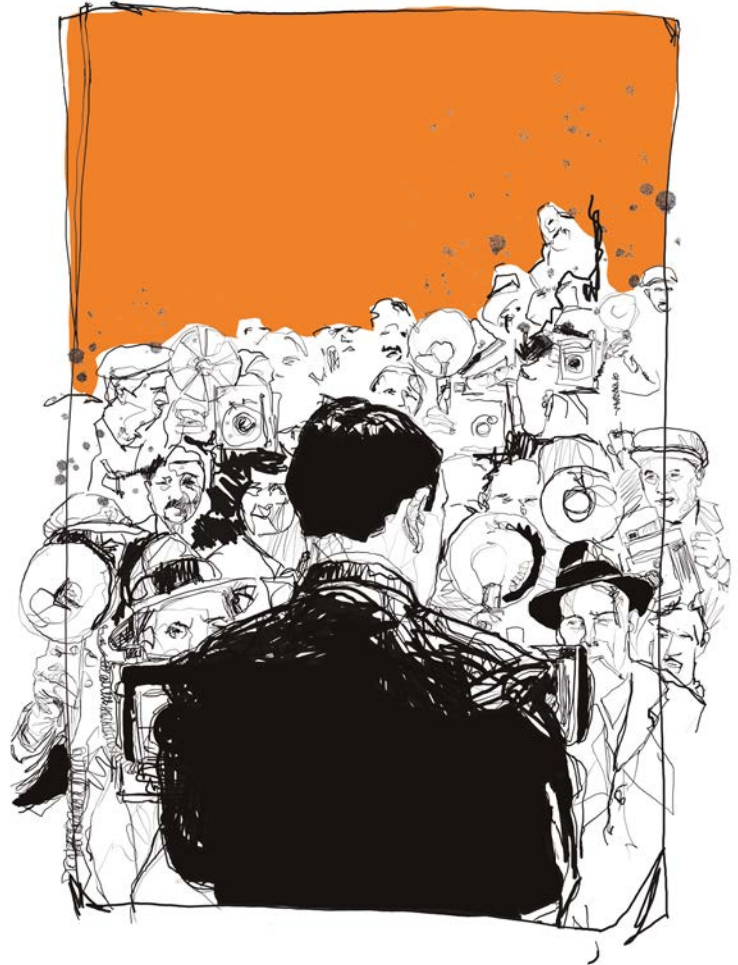
Adolf Hitler in the Role of the Prosecutor

Hitler often takes the floor without being asked and interrogates other defendants and witnesses without the court intervening. He turns his defence into a perpetual prosecution:

"We wanted the state budget to be brought into proper order. [...] We wanted our people to rise up against the threat of enslavement; we wanted the time to come, finally, when we would not accept one slap in the face after another with ever-enduring patience."

The Right-Wing Nationalist on the Bench

The right-wing conservative Georg Neithardt is appointed presiding judge of the People's Court in Munich in 1919. In this position, he had already conducted the trial of Anton Graf



Arco auf Valley, the murderer of the first Prime Minister of the Free State of Bavaria, Kurt Eisner. Arco is initially sentenced to death on 16 January 1920 but later pardoned and released from prison early. The court expressly waives the obligatory revocation of his civil rights.

The verdict identifies the court under Neithardt as far-right and extremely nationalistic which is the very reason why Neithardt is appointed to preside at the Hitler Trial in 1924.

The Verdict

Day 8

One of the defending lawyers, Karl Kohl, frequently diverts from the point and insults the public prosecutor in a libellous manner. First public prosecutor, Stenglein, resigns as a consequence and leaves the courtroom in protest. The lawyer Kohl comments sarcastically: *"There are still enough public prosecutors out there."* The transcript of the court proceedings records: *"Hilarity in the courtroom."*

Day 9

Kohl is made to apologise. Stenglein is forced to carry on.

From the Courtroom

When the verdict is passed on 1 April 1924, the courtroom in the infantry barracks is once again bursting at the seams. *"When the presiding judge reads out that § 9 paragraph 2 of the Law for the Protection of the Republic ('Deportation') cannot be applied to Hitler, there are cheers from the public."*

**The Sentence:
5 years *Festungshaft***

**Release from prison:
9 months later**

The criminal law professor Alexander zu Dohna on the severity of the sentence:
"It cannot be denied that the effective severity of the sentence [...] does not lend the necessary weight to provide the constitutional order with the protection to which it is entitled and unfortunately so urgently needs."



Hitler's comment on the sentence

"May you find us guilty a thousand times over. In history, the goddess of eternal judgment will smilingly tear up the case of the public prosecutor – for she shall acquit us."

The Sentence

Imprisonment

Anyone sentenced to *Festungshaft* (lit.: 'detention in a fortress') for political crimes could expect to serve their sentence in a 'secure stronghold'. Adolf Hitler, however, who is given such a sentence, is sent to prison in Landsberg instead.

'House rules for prisoners in *Festungshaft*'

Those in *Festungshaft* are held under more lenient conditions than those of other prisoners. *Festungshaft* is considered an 'honourable' form of imprisonment and inmates are to be addressed with the addition of 'Mr.' to their name.

There is no compulsory labour and the cells are cleaned by prison staff. Beer, wine, spirits, tobacco and cigarettes are permitted. Prisoners can wear their own clothes and meet each other during the day.

Under these almost luxurious conditions, Adolf Hitler writes the two volumes of *Mein Kampf*, dedicated to those who died during the Beer Hall Putsch.

Grappling with Hitler's imprisonment

The public prosecutor's office tries to prevent Hitler's release after an all-too-short a period. During his term in prison, Hitler shows that 'good conduct' is not to be expected at all from him. He keeps up a lively correspondence on political matters, for example, although this is strictly forbidden.

The prison director in Landsberg, however, campaigns in Hitler's favour and contradicts the public prosecutor: "The prisoner is especially worthy of parole".

In December 1924, the Higher Regional Court decrees that Hitler is to be released from prison 'immediately'.



**The period of probation:
3 years, 333 days, 21 hours
and 50 minutes**

The jurisdiction of the court

The trial is heard by the Bavarian People's Court. Jurisdiction, however, actually lay with the Reich Court in Leipzig. The case should have been heard there by the *Staatsgerichtshof* (State Court) under the Law for the Protection of the Republic. The politically highly significant question of jurisdiction is never officially addressed in the case of the Hitler Trial.

The investigative judge at the *Staatsgerichtshof* in Leipzig issues an arrest warrant for Hitler, Göring and Ludendorff. Bavaria refuses to put this into force.



“The State Court is to have jurisdiction in cases of [...] high treason [...].”

§ 13 paragraph 1 of the Law for the Protection of the Republic of 21 July 1922

Not Considered Pertinent to the Trial

The attempted putsch, a murderous undertaking carried out by heavily armed men, is played down in court as a ‘propaganda campaign that took an unfortunate course’.

According to the court, the theft of more than 14 trillion marks is a ‘sequestration of monies to support the organisation’ and, as such, not considered pertinent to the trial.

The taking of hostages during the putsch and the offence of carrying loaded weapons during public parades are not considered pertinent to the trial.

Only a few of the 78 witnesses summoned are actually heard. Only the witnesses for the defence are sworn in.

“What happened on Odeonsplatz and at the Wehrkreis [military district] commando will not be assessed in the courtroom.”

Judge Neithardt on the exchange of fire at the Feldherrnhalle (Field Marshals' Hall). In this way, he simply excludes the killing of the policemen, the passer-by and the putschists from the proceedings.



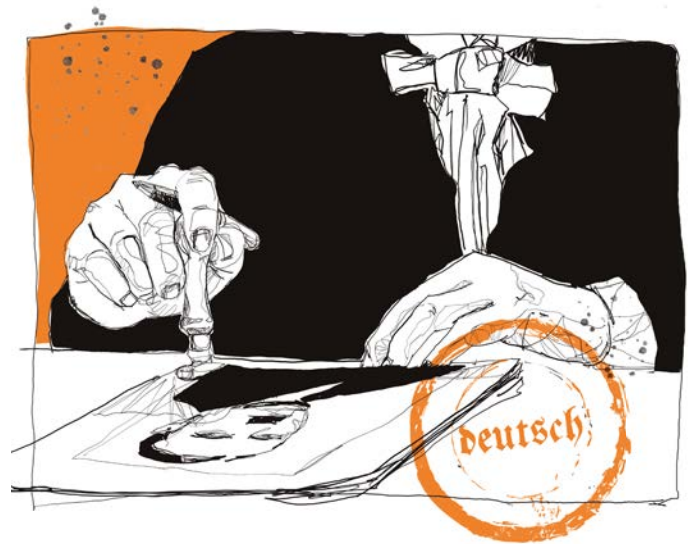
Deportation to Austria

Adolf Hitler did not have German citizenship. In accordance with § 9 paragraph 2 of the Law for the Protection of the Republic, he should have been deported to Austria.

The presiding judge, Neithardt, justifies his refusal to expel Hitler with the words: *"He considers himself a German. For a man who thinks and feels like Hitler does, who voluntarily served in the German army during the war for four and a half years",* the deportation law should not apply.

"This has nothing to do with justice; this is arbitrariness".

The criminal law professor Alexander Graf zu Dohna on the fact that § 9 paragraph 2 is not applied.



Judge and Admirer

The right-wing, conservative judge, Georg Neithardt, does not even try to hide his admiration for the accused.

He offers Hitler a stage in front of an audience of millions to deliver monologues lasting several hours and diatribes against the Reich government.

When the judges retire to deliberate, the lawyers of the accused putschists come and go. The 'Grounds for the Verdict', 44 typewritten pages long, are ultimately drawn up by Neithardt himself. They are evidently never discussed with the other judges.

The lenient verdict in the Hitler Trial earns Neithardt a promotion to President of the Munich Higher Regional Court just a few months after Hitler seizes power in 1933.

"The defendants [...] had to be given the opportunity to air their grievances frankly and in public".

Neithardt later on his decision to let the defendants hold hour-long monologues



Völkisch-Nationalistic Sentiment Mitigates Sentence

The death penalty could and should have been given, being the appropriate punishment and reaction to the bloody *coup d'état*.

Such a sentence was permissible by law; between 1918 and 1924, the Bavarian People's Courts pronounced the death sentence in twenty cases. Such a sentence would, therefore, have merely been a logical consequence in Hitler's case.

Regardless of this, Hitler is only sentenced to the minimum of 5 years *Festungshaft*, with mitigating circumstances being granted. The only mitigating circumstances mentioned by the court, however, are the defendants' *völkisch*-nationalistic sentiments.

"The court has also come to the conclusion that the defendants were guided in their actions by a pure patriotic spirit and by the noblest, selfless will".

The *völkisch*-nationalistic sentiments of the defendants, cited as mitigating circumstances in the grounds given for the sentence passed.



On Probation

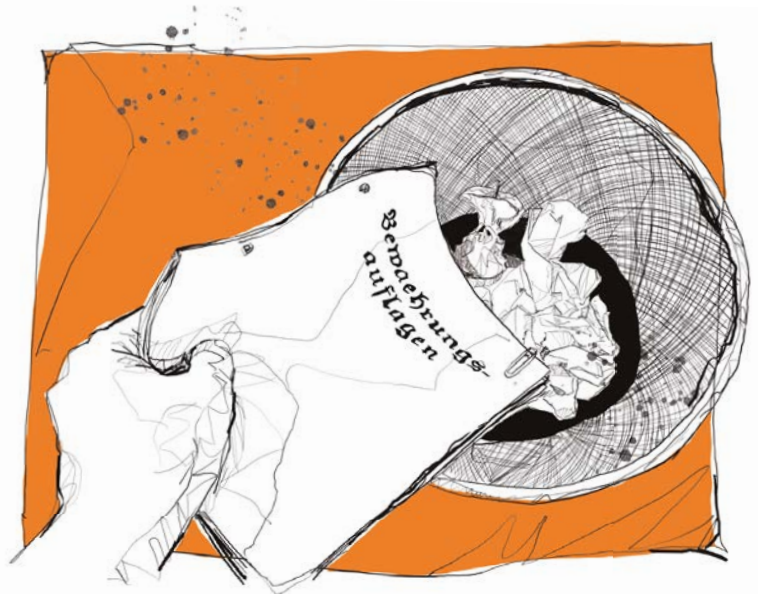
In September 1921, Hitler and three supporters violently brake up a meeting of the *Bayernbund* in the *Löwenbräukeller* and are consequently sentenced to three months in prison for breach of the peace by the People's Court Munich I, presided over by Neithardt.

Hitler is released from prison just one month later and the remainder of his sentence is suspended on probation until 1926. At the time of the putsch, therefore, Hitler is in fact on probation. Nevertheless, in the verdict passed in 1924, the judges gives him the prospect once again of probation.

There is not a single word about any of this in the verdict of 1 April 1924. Contrary to the law, Hitler's past and especially his criminal record are never brought up during the main trial at the People's Court.

The Munich police department warns:

Releasing Hitler early would present a 'constant danger to the security of the state'.



Justice Today

Today's legal system has a number of different instruments to protect our democracy from history repeating itself 100 years after the Hitler Trial.

In particular, in criminal proceedings relating to the offence of high treason, there is a possibility to appeal. As a consequence, the verdict passed by the court of first instance can be reviewed again by a higher court of law.

Judges and public prosecutors are subjected to background checks regarding their loyalty to the constitution when they are appointed to the Bavarian civil service, with clearance sought from the Regional Office for the Protection of the Constitution. This screening is carried out regardless of the existence of specific grounds or not. Section 9, Item 2 of the German Judiciary Act clearly stipulates:

“Judicial tenure may only be given to a person who makes it clear that he or she will at all times uphold the free democratic basic order within the meaning of the Basic Law.”

