

**A lawsuit has been filed with the Spanish Audiencia Nacional requesting the handover from the United States of four members of the criminal organisation SS Totenkopf-Sturmbann to enable them to be tried in the Spanish courts:**

**Johann Leprich, Anton Tittjung, Josias Kumpf and Iwan (John) Demjanjuk**

### **I. Introduction**

At 13:40 ( UTC/GMT +1 hour) on 19 June 2008 a criminal lawsuit was filed at the offices of the Audiencia Nacional (Madrid) on behalf of several survivors and family members of Spanish victims of the Nazi regime.

After 60 years, these individuals come before the Spanish justice system for the first time, a system which has not hitherto acknowledged them as victims. In the majority of cases, they have not had their Spanish nationality returned to them, which obliges them to bring their claim to the Spanish courts with the nationality granted by countries such as Belgium, Austria and France.

The initial plaintiffs in this lawsuit are: David Moyano, survivor of Mauthausen, born in Spain, former French combatant and a Belgian national; Silvia Dinhof-Cueto, an Austrian national, daughter of Victor Cueto, a survivor of Mauthausen from Asturias, Spain, now deceased (Victor Cueto was one of the founders of the Commemorative Association of Spanish Republicans in Austria, an organization of which Silvia Dinhof-Cueto is now a member); Jesús de Cos Borbolla, a Spanish national, whose father, Donato de Cos Gutiérrez was taken prisoner at Dunkirk pocket and killed at Gusen, Mauthausen; Concha Ramirez Naranjo, a Spanish national whose husband, Gabriel Torralba, was imprisoned in Auschwitz Concentration Camp and later transferred to Flossenbürg Concentration Camp, where he was eventually liberated by US troops. Also participating in the lawsuit is Aurore Gutiérrez, a French national, whose grandfather Augustín Puente Lavin and two uncles, Marcos Puente Izaguirre and Francisco Elías Puente Izaguirre, were killed at Sachsenhausen.

The primary focus of these proceedings is on the Spanish victims of the concentration camps at Mauthausen, Sachsenhausen and Flossenbürg.

The initiation of this lawsuit, led by Equipo Nizkor, is supported by various organizations representing the victims of Franco and the victims of the Nazi concentration camps.

This lawsuit is based, *inter alia*, on the evidence relied on in the Judgement of the International Military Tribunal at Nuremberg in 1946 which held that the SS, including the Death's Head Battalion (SS Totenkopf-Sturmbann), was a criminal organisation involved in the "the persecution and extermination of Jews, brutalities, and killings in concentration camps, excesses in the administration of occupied territories, administration of the slave labour programme and the mistreatment and murder of prisoners of war" as well as other crimes.

## II. Brief Description of the Concentration Camps referred to in this lawsuit

### MAUTHAUSEN

A concentration camp at Mauthausen, near the city of Linz (Austria), existed from May 1938. From this date to the end of 1942/beginning of 1943, the camp was used as an internment centre and prisoners were put to work as part of the punishment. From late 1942/early/1943 till the end of the war, the number of prisoners increased and numerous subcamps were established, where the prisoners worked for war-related industries.

At the beginning, the prisoners at Mauthausen were mainly from Austria and Germany, and most of these were arrested after the *Anschluss*, or Nazi occupation of Austria. During the period 1943 to 1945, the prisoners in the Mauthausen complex were there for reasons of race, religion, nationality or political beliefs. Among the prisoners held at Mauthausen were Russian, British and North American prisoners of war; political opponents of the Nazis, including Yugoslav, Polish, Soviet, Spanish and many other European citizens as well as Jews.

The operation of Mauthausen was exclusively the responsibility of the Death's Head Battalion of the SS. A directive of 2 January 1941 classified the concentration camps into three categories and Mauthausen was placed in level three, the severest. The objective of the decree was clear: those deemed hostile to the Nazi regime for political, racial or other reasons were to be imprisoned in a level three concentration camp and were to be treated with the utmost severity and were, in effect, to be worked to death. Not even prisoners of war were to come out alive.

From its official establishment until the liberation of the camp by the 3rd U.S. Army on 5 May 1945 hundreds of thousands of prisoners from numerous European and non-European countries endured the terrible conditions of internment and torture by the SS. Most of them did not survive.

According to the evidence submitted to various courts - primarily the main Nuremberg Trial and the 1967 Cologne Trial - there were over 7,000 Spanish prisoners in this camp, of which it is known that at least 4,300 were exterminated. The majority were arrested by SS troops in France from 1940.

The surviving Mauthausen death books (*Totenbuch*) alone recorded over 400 Spaniards as executed out of the thousands who were killed there.

### SACHSENHAUSEN

A month after he came to power in Germany in January 1933, Hitler persuaded the President of the Republic of Weimar to sign an emergency decree suspending constitutional civil rights. The Nazis were then permitted to imprison their political opponents. One of the most convenient locations, 30 km north of Berlin, was the city of Oranienburg. In July 1934 it became a permanent concentration camp incorporated into the SS Office of the Inspector of Concentration Camps and from July 1936 it became known as Sachsenhausen. It was the first concentration camp to receive a significant number of people deported from France in the first convoy which left Compiègne on 24<sup>th</sup> January 1943. Some of those who left in that convoy are recorded on the next day, 25 January, at Sachsenhausen concentration camp, including various Spanish nationals. There were also Spanish nationals in the convoys that left Compiègne on April 28 and Mai 8, 1943.

The Spanish political prisoners at Sachsenhausen camp included Francisco Largo Caballero, one of the historic leaders of the PSOE (Spanish Socialist Workers' Party) and the UGT (Workers' General Union), who became Labour Minister (1931-1933), Head of Government (September 1936-

## Equipo Nizkor - Case summary

May 1937) and Minister for War during the 2<sup>nd</sup> Spanish Republic. He survived until the liberation of the camp but soon after, in a fragile state of health, died in Paris on the 23<sup>rd</sup> of March 1946.

### **FLOSSENBÜRG**

Flossenbürg was established in 1938 near the German town of the same name, about 8 miles from Weiden. Built at relatively high elevation, the camp endured a cold climate for most of the year. The location of the camp made additional construction difficult and as a result overcrowding increased and was only slightly alleviated by making the prisoners work and sleep in shifts. Unhygienic conditions inevitably led to epidemic disease and the prevalence of lice. Poor rations of inadequate food resulted in malnutrition and lowered resistance to disease. This situation deteriorated further in the last months of the war with increased food shortages.

Flossenbürg had its own SS Death Head's Battalion led by SS *Untersturmführer* Bruno Skierka, whose activities earned him a death sentence (later commuted) from an American military court after the war.

Flossenbürg was originally a men's camp, although there were subcamps for women during the war and some female political prisoners were brought in to work in a camp brothel located near the cellblock. As of 1st January 1945 Flossenbürg and its subcamps had a total of 3,046 guards (including 521 female warders) responsible for preventing the escape of 40,437 prisoners (including 11,191 women).

Separated from other prisoners were a number of Allied POWs. The NCO in charge of the cellblock from June to December 1944 recalled finding about 15 Allied officers when he arrived there "two of whom were shot in June or later on, at different times". A Yugoslav prisoner recalled seeing 13 naked bodies hanging in the cellblock courtyard near the end of the war, one tattooed with the name "Mary" in English spelling. An SS man told him they were Americans and Britons. An Austrian prisoner also recalled seeing these corpses and ascertained that they were Anglo American POWs. A Swiss prisoner imprisoned in the cellblock from February 1944 testified that American and British POWs were brought to the camp in spring 1944 and held in darkened cells.

Between 1938 and 1945 approximately 30,000 prisoners died in Flossenbürg, roughly three quarters of them during the last nine months of the war. As many as 1,500 people were brought to Flossenbürg for the execution of extrajudicial death sentences ordered by the Reich Security Main Office. There were also some public hangings on the roll call square, and one such killing took place in December 1944 in front of the assembled prisoners next to a decorated Christmas tree.

According to a U.S. postwar tabulation (Nuremberg Document NO-393), there were 155 Spanish citizens at Flossenbürg, of whom 60 died.

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### **III . SUMMARY OF THE LEGAL HISTORY WHICH LED TO THESE SS DEATH HEAD'S BATTALION MEMBERS BEING SUBJECT TO REMOVAL FROM THE UNITED STATES.**

#### **Johann Leprich**

Leprich was born in Birk, Rumania in 1925. In November 1943 he became a member of the Waffen SS and soon after commenced service as a uniformed guard at Mauthausen concentration camp

## Equipo Nizkor - Case summary

in Austria where he served until April or May 1944. While at Mauthausen, Leprich became a member of the SS *Totenkopf-Sturmbann*. He took part in the persecution of Jews, gypsies and other ethnic groups as well as political prisoners of various European nationalities, including Spaniards. In June 1945, Leprich was captured by the US Army and held as a prisoner of war until liberated in June 1946. He concealed his wartime service and illegally obtained US citizenship.

In 1987, Johann Leprich was denaturalised -i.e. his citizenship obtained through naturalisation was revoked- by the U.S. District Court for the Eastern District of Michigan.

Following his denaturalisation, Leprich went into hiding from 1987 to 2003 in Canada and the United States. On 1 July 2003, he was found by federal agents hiding in a secret compartment built under the basement stairs in a home he formerly occupied with his wife. Following his apprehension in July 2003, the Government filed a complaint in immigration court requesting that Leprich be removed from the United States. An immigration judge granted that request in November 2003; that decision was affirmed by the Board of Immigration Appeals in March 2004. In 2006 the United States Court of Appeals for the Sixth Circuit considered three appeals filed by Leprich concerning his denaturalisation and removability, and found for the Government in each case. Leprich had been detained since his 2003 arrest, and on 18 September 2006 Leprich filed another habeas corpus action. Given a Supreme Court ruling that most prisoners cannot be indefinitely detained pending removal, the Government released Leprich on 16 October 2006. The court subsequently dismissed his habeas action as moot. Although he was ordered removed to Romania or, in the alternative, to Germany or Hungary, no country has agreed to take him and remains in the United States.

The participation of Leprich in persecution for the purpose of extermination and in other acts constituting crimes against humanity including murder, extermination, enslavement, deportation, torture and other inhumane acts, specifically in the persecution of Spanish nationals imprisoned in the camp of Mauthausen, is established by his membership of the SS *Totenkopf* and his service as an armed guard at the camp.

### **Anton Tittjung**

Tittjung enlisted in the SS in October 1942 and remained within the organisation until the end of the war in 1945. Tittjung was also a member of the Death's Head Battalion and his service as an armed guard is clearly documented in a SS troop list of 26 July 1944 which shows that Anton Tittjung was a member of the 5th Company SS Death's Head Battalion deployed to Mauthausen and to one of its subcamps, Gross-Raming. During the period in which Tittjung served at the camp the number of deaths in Mauthausen oscillated between 200-300 prisoners a day in 1943 and 350- 400 a day in 1944.

Tittjung obtained entry into the US in 1952 and in 1973 obtained US citizenship, at all times concealing his service with the SS Death's Head Battalion. A 1990 decision of the District Court, Eastern District, Wisconsin ordered his denaturalisation based on the evidence of this concealment.

In 1994 Tittjung was ordered removed to Croatia; this order was subsequently affirmed by the Board of Immigration Appeals and the 7th Circuit Court of Appeals. He remains in the United States as no country has agreed to take him.

The participation of Tittjung in persecution for the purpose of extermination and in other acts constituting crimes against humanity including murder, extermination, enslavement, deportation, torture and other inhumane acts, specifically in the persecution of Spanish nationals imprisoned in

## Equipo Nizkor - Case summary

the camp of Mauthausen, is established by his membership of the SS *Totenkopf* and his service as an armed guard at the camp.

### **Josias Kumpf**

In a decision dated 10 May 2005, the US District Court, Eastern District, Wisconsin revoked an order of 9 May 1964 granting Kumpf US citizenship. The court also revoked his certificate of naturalisation no. 8707719. In coming to its decision the court relied on the following facts:

Kumpf was an ethnic German born in Yugoslavia who served in the Waffen SS from October 1942 until May 1945 when the war ended. From October 1942 to October 1943 he served as an armed guard in Sachsenhausen, where the Nazis imprisoned, brutally treated and killed thousands of prisoners for reasons of race, religion, national origin and political opinion. Kumpf started service as a private and received a promotion. He was remunerated for his service by the Nazis, given an SS uniform to wear and bore a distinctive SS tattoo. He was trained in the use of arms and to prevent prisoners from escaping, if necessary by shooting them. He knew that there were gas chambers at Sachsenhausen and stated "I hear they put people in and that's all. They don't come out no more, that's what I hear." The Nazis granted leave to Kumpf on various occasions during which he visited Berlin and his family in Yugoslavia.

In October 1943 the Nazis transferred him and other guards to the SS training camp of Trawniki, in occupied Poland, a camp administered jointly by the SS and the German police. The SS also administered an adjacent labour camp where 8000 Jews were interned as prisoners including at least 400 children.

At the end of the war the Soviets captured Kumpf and made him a prisoner of war. During this period he abandoned his SS uniform and had his tattoo removed with acid, in order to avoid identification as SS. When he was liberated by the Soviets he was reunited with his family in a displacement camp in Austria. In 1956 he applied for an emigrant visa under the provisions of the Refugee Relief Act stating that from 1942 to 1945 his place of residence was "German Army: Germany, Poland, France". He concealed his war time service from the authorities and was granted US citizenship in 1964.

Removal proceedings against Josias Kumpf, were commenced by the Department of Justice Office of Special Investigations (OSI) on June 1, 2006. These removal proceedings followed Josias Kumpf's denaturalisation by the United States District Court for the Eastern District of Wisconsin, May 10, 2005. The District Court revoked his citizenship concluding that Mr Kumpf had obtained it illegally.

On January 3, 2007 the immigration court in Chicago, Illinois ordered his deportation to Germany, or if Germany would not accept him to Austria, Serbia or any other country that would accept him. This order was upheld by the Board of Immigration Appeals on 22 May 2008. He has not yet exhausted all possible appeals.

The participation of Kumpf in persecution for the purpose of extermination and in other acts constituting crimes against humanity including murder, extermination, enslavement, deportation, torture and other inhumane acts, specifically in the persecution of Spanish nationals imprisoned in the camp of Sachsenhausen, is established by his membership of the SS *Totenkopf* and his service as an armed guard at that camp.

## Equipo Nizkor - Case summary

### Iwan (or John) Demjanjuk

Iwan Demjanjuk began service with the Germans as an auxiliary guard at the Trawniki training camp in the middle of 1942. Soon after his arrival he was given Trawniki identification number 1393 and *Dienstausweis* (service identification document) no. 1393. At Trawniki, Demjanjuk received a uniform and rifle and was given training. He was given the rank of *Wachmann* (soldier private). On 22 September 1942 he was deployed as a guard to the Nazi work farm LG Okzow. He returned to Trawniki and was then assigned to the concentration camp of Lublin, known as Majdanek, where he served during the winter 1942-1943. Thereafter he again returned to Trawniki. On 26 March 1943 he was assigned on SS special detachment to Sobibor. He arrived at Sobibor on 26 or 27 March 1943 and whilst there he participated in the process of extermination at Sobibor. He thereafter again returned to Trawniki and on 1st October 1943 he was transferred to Flossenbürg concentration camp where he served at least until 10<sup>th</sup> December 1944, at least 14 months. During his service at all of these camps he guarded the prisoners and prevented their escape.

Four documents in two different archives establish Demjanjuk's service as a guard at Flossenbürg. The first is a transfer authorisation, dated 1 October 1943, addressed from SS Training Camp Trawniki to the Camp Command at Flossenbürg Concentration Camp, dispatching 140 guards, including *Wachmann* Iwan Demjanjuk, born on 3 April 1920, to Flossenbürg. The copy which has survived is an unsigned carbon, but it has the words "to remain" written on it in red pencil, apparently to apprise Trawniki's personnel office that the men would not be returning. The second document is a Flossenbürg weapons log, dated 1 April 1944, which states that "*W[achmann]* Demjanjuk" had been issued a rifle, model 24(t), serial no. D 6255, on 8 October 1943 and, in a separate entry, that "Demjanjuk" had also been issued a bayonet, model 1101(t), serial number B E/26, the same day. The log is signed by an SS *Unterscharfuhrer* Ebert, as camp armorer, and SS *Obersturmfuhrer* Ludwig "Lutz" Baumgartner. The third document is a roster, dated 3 October 1944, listing guard-duty assignments for the following day. This roster, signed by the commander of the SS Death Head's Battalion Flossenbürg, SS *Untersturmfuhrer* Bruno Skierka, indicates that "Demjanjuk 1393" was assigned to guard the "bunker construction detail", armed with a rifle. The fourth document is a list of 117 men with Trawniki ranks, including *Wachmann* Demjanjuk, No. 1393. In addition to the four wartime documents, there are also postwar statements by a former Flossenbürg guard naming Demjanjuk as a fellow guard there.

Demjanjuk was denaturalised by the US District Court, Northern District of Ohio, on 21 February 2002; on 30 April 2004, the US Court of Appeals for the Sixth Circuit upheld the District Court's decision.

In turn, on 28 December 2005, the Chief immigration Judge ordered removal to Ukraine, with alternate orders of removal to Germany or Poland. The Board of Immigration Appeals denied Demjanjuk's appeal on 21 December 2006, upholding the Decision of the Immigration Judge.

On 30 January 2008 the US Court of Appeals for the Sixth Circuit denied Demjanjuk's petition for review and, on 19 May 2008 the US Supreme Court denied Demjanjuk's petition for a writ of certiorari.

The participation of Demjanjuk in persecution for the purpose of extermination and in other acts constituting crimes against humanity including murder, extermination, enslavement, deportation, torture and other inhumane acts, specifically in the persecution of Spanish nationals imprisoned in the camp of Flossenbürg, is established by his membership of the SS Totenkopf and his service as an armed guard at that camp.

#### IV. JURISDICTION OF THE SPANISH COURTS

Thousands of Spaniards were sent to Nazi concentration camps during the Second World War including Mauthausen, Sachsenhausen and Flossenbürg. In those camps, prisoners of many nationalities, including Spaniards, were subjected to systematic persecution for the purpose of extermination.

This lawsuit is brought on behalf of former prisoners and direct family members of former prisoners of Mauthausen, Sachsenhausen and Flossenbürg camps, who now seek the effective protection of the Spanish Courts in the prosecution of some of those responsible for these crimes.

In its Judgement No. 327/2003, of 25 February 2003, concerning serious crimes committed against the civilian population of Guatemala, the Supreme Court sought to limit the scope of the extraterritorial jurisdiction of the Spanish Courts. On an appeal from a judgement *en banc* dated 13 December 2000 of the Audiencia Nacional (Criminal Division) dismissing the lawsuit, the Supreme Court upheld the appeal in part and confirmed the jurisdiction of the Spanish Courts but only in respect of acts alleged to have been committed against Spanish citizens. In summary, the Supreme Court held that national courts have jurisdiction over serious crimes committed abroad where there is a legitimate connection to a national interest in a given case. Specifically in this case it stated that it was possible “to find such connection in the nationality of the victims”.

The Spanish Constitutional Court however held that this decision was not compatible with the principles governing this kind of serious crime. Thus, the highest court of Spain, in its judgement dated 26 September 2005, stated that “art. 23.4 of the LOPJ grants a broad scope to the principle of universal justice given that the only express limitation which it applies thereto is that of *res judicata*; that is to say that the accused has not been absolved, pardoned, or convicted in another country. In other words, from an interpretation based on the literal sense of the provision as well as from the *voluntas legislatoris*, the only conclusion is that the Organic Law of Judicial Power establishes a principle of absolute universal jurisdiction, i.e. not subject to restrictive criteria concerning modification or procedure and with no hierarchical ranking with respect to other rules concerning application of jurisdiction, given the fact that, in contrast to other criteria, that of universal justice is based on the particular nature of the crimes prosecuted”.

Similarly in Judgement No. 16/2005 of 19 April 2005, in the case of *Adolfo Scilingo*, in setting out the context of the case, the Court stated: “On 28 June 1996, the Court issued a judgement declaring that Spanish jurisdiction was competent to try the alleged crimes, agreeing, among other things, that the Ministry for Foreign Affairs should remit information concerning those Spaniards or persons of Spanish origin who were killed or disappeared in Argentina during the years 1976 to 1983 as well as with respect to any legal proceedings which have taken place in respect of such acts, and that it should issue a Rogatory Commission to Argentina on the same terms”. Therefore, according to the judgement of 19 April 2005, the competence of the Spanish courts to try criminal acts committed outside national territory at that time, 1996, was linked to the existence of Spanish victims in that country. The same judgement recognised that 610 victims of Spanish nationality (including sons and grandchildren of Spaniards) had been identified for the purposes of the case.

In Europe, the imprescriptibility of crimes against humanity and its retroactive application have been ratified by a Decision of the European Court of Human Rights on 17 January 2006 (*Kolk and Kislyiy v Estonia*) where the Court reaffirmed that: “No statutory limitation shall apply to the following crimes, irrespective of the date of their commission: [...] b) Crimes against humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nuremberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, eviction by

## Equipo Nizkor - Case summary

armed attack or occupation and inhuman acts resulting from the policy of apartheid, and the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, even if such acts do not constitute a violation of the domestic law of the country in which they were committed."

**We therefore believe that there is no substantive or procedural reason why the State of Spain should not comply with its obligations in international law, with respect to Spanish victims and to the victims of National Socialism during the Second World War who were exterminated in the concentration camps of Mauthausen, Sachsenhausen and Flossenbürg and that it should request the formal handover from the United States of Johann Leprich, Anton Tittjung, Josias Kumpf and Iwan (or John) Demjanjuk so that they can be placed at the disposition of the Spanish Courts.**

### **Gregorio Dionis**

President Equipo Nizkor

Charleroi (Belgium) and Madrid (Spain), 23 June 2008.

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