

## The Halsmann Tragedy<sup>1</sup> (1928/29) and the Vienna Law Faculty

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*This project was made possible by a grant from the  
Zukunftsfonds der Republik Österreich.*

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<sup>1</sup> Cf. *Die Stunde*, 'The Halsmann Tragedy' ('Die Halsmann-Tragödie'), 31 October 1929. The comparison between the trial and a stage production was ubiquitous in the media at the time and has been remarked upon in recent publications; cf. especially Stefanie Langer, 'Schrift, Bild und Stimme. Medien des Gutachtens im Fall Halsmann', in: Alexa Geisthövel and Volker Hess (eds), *Medizinisches Gutachten: Geschichte einer neuzeitlichen Praxis* (Göttingen: Wallstein Verlag, 2017) 296-317, pp. 301-10.



## Part One: Death in the Alps

On 10 September 1928, Morduch Max Halsmann fell to his death while hiking in the Tyrolean Alps. Three months later, his son was convicted of patricide and sentenced to ten years' hard labour. What lay between these events was the beginning of one of Austria's greatest judiciary scandals, frequently dubbed "the Austrian Dreyfus Affair".

The murder case against Philipp Halsmann has received a modicum of scholarly attention especially in the last two decades; however, there exists to date no full-length account of the trial in English, and no detailed account of the efforts undertaken to rehabilitate Philipp Halsmann in any language. This article strives to close this gap. Drawing on the files held at the Tyrolean County Archives (TCA) and the Austrian State Archives (AStA), Hermine Hupka's privately held correspondence,<sup>2</sup> contemporary media coverage of the trial and contemporary as well as recent scholarly publications, it attempts to rectify certain long-standing misconceptions and to showcase the role individual members of the law faculty of the University of Vienna played in Philipp Halsmann's trial and its aftermath.

### Prologue – A fatal hike<sup>3</sup>

The bare bones of the events leading up to Morduch Max Halsmann's death can be reconstructed from the court records and contemporary accounts of the trial: The Halsmanns, a rich Jewish family from Riga, had spent the summer of 1928 on an extended tour through the Alpine regions of France, Italy and Switzerland. At an Italian hotel, a casual travelling acquaintance spoke warmly of the mountainous beauty of Tyrol. After bidding farewell to his daughter Liouba, who had to return to

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<sup>2</sup> My profound thanks are due to Josef and Hermine Hupka's grandsons for making this material available to me, and especially to Stephen Parkinson for his unwavering patience in answering my questions on his grandfather's involvement in the Halsmann affair.

<sup>3</sup> The following account of Morduch Halsmann's death and the first trial is synthesised from the court files (TCA 6 Vr 1380/28 and St 3978/28), a selection of contemporary accounts (Franz Pessler, 'Ein Bild des Prozesses', in: Österreichische Liga für Menschenrechte (ed.), *Der Fall Halsmann*. Schriften der Österreichischen Liga für Menschenrechte, vol. 3. (Vienna: Gilhofer & Ranschburg, 1931) 7-92; Wilhelm Gutmann, *Das Fakultätsgutachten im Fall Halsmann (Möglichkeit und Wahrscheinlichkeit): eine Kritik* (Berlin: Drei Masken Verlag, 1931); Karl Marbe, *Der Strafprozess gegen Philipp Halsmann. Aktenmäßige Darstellung und kriminalpsychologische Würdigung* (Leipzig: C. Hirschfeld, 1932); Ernst Ruzicka, *Max Halsmanns Ermordung: Der Schlüssel zur Wahrheit* (Berlin: Krystall-Verlag, 1930), and a recent book-length depiction of the case, Martin Pollack, *Anklage Vatermord: der Fall Philipp Halsmann* (Wien: Zsolnay, 2002). All translations are my own.

The transcripts of the first trial appear to have been lost (information received from the Tyrolean County Archives).

Paris to resume her studies after the summer break, Morduch Halsmann, a middle-aged dentist with mountaineering ambitions, insisted that he, his wife Ita and son Philipp, then a student at the Technical University in Dresden, should finish their holiday in Austria before returning to their home in the Latvian capital.

On 8 September, Morduch and Philipp embarked on an extended hiking trip from Mayrhofen to Jenbach via Dornauberg and Breitlahner. Mrs Halsmann had decided to journey to Jenbach by train and await the arrival of her menfolk at the hotel. On 10 September, father and son started out early to climb the Schönbichlerhorn in the company of a local tour guide. The guide later recalled that the two men were remarkably ill-equipped for the tour, but in good physical shape, and apparently on excellent terms, stopping frequently to take pictures of each other with Philipp's camera.

After a leisurely descent, the two men had lunch at the Furtschlagelhaus, where they agreed that Philipp – a young man of sedentary habits who was utterly exhausted by so much unaccustomed exercise – should accompany his father only as far as Mayrhofen, where he was to rest for a day before embarking on the last leg of the journey to Jenbach. Morduch would walk on alone and await Philipp's arrival at the hotel together with his wife. He promised Philipp that he would give him twenty Schillings for a hotel room as soon as they reached Mayrhofen, and asked him to write a few words of greeting and reassurance into his father's notebook to set his mother's mind at rest, as her husband knew she would worry when he arrived without their son.

The staff at the Furtschlagelhaus later remembered that the younger man was remarkably solicitous of the elder's well-being, taking pains to make sure that Morduch's unusual culinary demands were met. (He insisted on having the soup after the main course, thereby unintentionally ensuring that he would be remembered by servers and kitchen staff.) After the two men had finished their meal, they set out for Breitlahner. Morduch had convinced his son, who was suffering from a rash on his back and shoulders, to take off his shirt and let his father carry the small backpack so that he might benefit from the sunlight on his bare skin.

The ensuing events can be reconstructed from the accounts Philipp and a number of witnesses gave at the trial: around 2 p.m., the two hikers pass the Dominikushütte, where they happen to catch the attention of several of the guests. Roughly an hour later, Philipp appears at the Wesendlealpe, out of breath and visibly agitated: his father has slipped and fallen down some eight metres; he is critically injured and in urgent need of medical assistance. Alois Riederer, an eighteen-year old cowherd,

agrees to accompany Philipp back to the scene of the accident; a maid by the name of Marianne Hofer runs to fetch the doctor from Breitlahner.

The two men run back to where Philipp has left his father, Alois slightly ahead of the Latvian tourist and thus the first to reach Morduch, who lies lifeless on the banks of a small brook, his body half in and half out of the water. Before Philipp can catch up with him, Alois has already turned back, intercepting Philipp and telling him that his father is dead. Upon Philipp's insistence, the two young men try, but fail, to pull the body from the water.

At Philipp's behest, Alois sets out to get a stretcher. As he climbs up from the brook, he steps on a loose stone near the edge of the path and sends it rolling down the slope – a small misstep that will have momentous consequences. On the way, he meets two tourists – Nettermann and Schneider – whom he informs about the accident. When they arrive at the scene of the tragedy, Philipp begs them to help him carry the deceased up to the track. Again, however, the waterlogged body proves too heavy to handle. Attempting to help, Nettermann collects Morduch's scattered belongings – including papers and an empty purse – and returns them to the dead man's backpack. Philipp asks Nettermann and Schneider to guard the body while he runs to Breitlahner in order to place a phone call to his mother; he insists that he cannot leave it to strangers to inform her of her husband's death.

In his absence, Josef Eder, the landlord of the nearby Dominikushütte, appears on the scene. Eder is the first to utter a suspicion that Morduch's death may not have been an accident: the path is neither particularly narrow nor dangerous; there is no reason why Morduch should have slipped and fallen of his own accord. Eder's dog sniffs out traces of blood on the path and signs of some heavy object having been dragged through the bushes towards the brook. It is also Eder who first vaunts the theory that it was Philipp who is responsible for Morduch's death.

In the meantime, Philipp has met the rescue party led by the local physician Dr Rainer. Instead of continuing to Breitlahner, he decides to turn back with them. Eder easily convinces Rainer – incidentally a noted anti-Semite<sup>4</sup> – that the young Jew must have murdered his father. Philipp frantically denies the allegation; nonetheless, the two men decide to have him sent to Breitlahner under guard. Upon his arrival, Detective Superintendent Schumacher from Germany, who happens to be at

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<sup>4</sup> Niko Hofinger, "(...) man spricht nicht gerne vom Prozess, es sind noch zu viele Fremde da." Die Halsmann-Affäre in Innsbruck 1928-1991', in: Michael Gehler, Hubert Sickinger (eds), Politische Affären und Skandale in Österreich. Von Mayerling bis Waldheim (Vienna: Kulturverlag, 1995) 194-221 (here: 1-35); [https://www.academia.edu/22287960/...\\_man\\_spricht\\_nicht\\_gerne\\_von\\_dem\\_Prozeß\\_es\\_sind\\_noch\\_zu\\_viele\\_Fremde\\_da.\\_Die\\_Halsmann-Affäre\\_in\\_Innsbruck\\_1928-1991](https://www.academia.edu/22287960/..._man_spricht_nicht_gerne_von_dem_Prozeß_es_sind_noch_zu_viele_Fremde_da._Die_Halsmann-Affäre_in_Innsbruck_1928-1991) (accessed 14 November 2019), p. 3.

Breitlahner for entirely unrelated reasons, searches Philipp and inspects his body and clothes for blood stains; he finds none. At 11 p.m., Philipp is finally questioned by the local police and arrested; at that point, he has reached a state of physical and emotional exhaustion. Guarded by four policemen, he is finally allowed to go to sleep.

It is not until 5 p.m. on the following day that the coroner arrives on the scene of Morduch Halsmann's death.<sup>5</sup> By that time, much of the evidence has been tampered with or destroyed: the scattered belongings of the deceased have been collected and returned to the backpack, the body has been pulled from the brook and taken to Breitlahner; a large stone with traces of hair and blood adhering to its surface found near the body has been handled by several people and finally laid down at random, numerous more or less well-intentioned people have trampled all over what has now been designated a crime scene. To make matters worse, a heavy shower has come down, further muddying any clues that might have survived the rough handling of the helpers.

Philipp is forced to be present at the coroner's investigation but is not made acquainted with its results. Instead, some findings are deliberately withheld from the accused; a strategically placed stretcher serves to conceal the traces of blood on the path. Accused of his father's murder, Philipp tries hard to come up with a plausible account of the events preceding the death, in the process revising the story he has told to Nettermann the day before in a crucial point: Nettermann only remembers Philipp mentioning that he heard his father give a scream; now, Philipp asserts that he actually saw Morduch Halsmann fall. The coroner, Dr Kasperer, insists that Philipp indicate the exact location in which his father slipped and fell. Misled by the stone, Riederer has dislodged on his way to get a stretcher, he points to this spot. The coroner is evidently aware of Philipp's mistake, but does not confront him with it.

Later, badgered by Kasperer into reconstructing his own position at the time of the tragedy, Philipp relies on the same mistaken assumption to determine where he himself must have stood: close enough to hear his father's last scream and to see him stagger and fall, but unable to see down the slope to where the body finally came to rest. After a prolonged back-and-forth with the coroner, Philipp finally settles on a spot that strikes him as likely, indeed manages to convince himself that this was really the place from which he has observed his father's accident. Philipp will only find out at the trial that he has thus inadvertently placed himself with some precision on the exact scene of his father's murder: the spot he has indicated is that in which the largest amount of blood has soaked into the surface of the path – the spot in which Morduch

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<sup>5</sup> For a detailed description of the inspection of the crime site cf. Pessler, 'Bild', pp. 21–7.

Halsmann was evidently stricken down by his attacker. These are the key points on which the prosecution will later rely to prove Philipp's guilt.

In the meantime, the local newspapers have got hold of the story. Before the trial has begun, Philipp Halsmann is already declared guilty by the media: in the local press, the tone quickly shifts from neutral to hostile. "Accident or Murder?" the *Innsbrucker Nachrichten* asks on the day after the event, enlarging on "The Mysterious Death in the Zillertal" the day after. Only a week later, on 20 September 1928, a headline reads "A Father Battered to Death by His Own Son".<sup>6</sup>

The hostile atmosphere inevitably affects the witnesses, whom the police only now starts to question. "The *cause célèbre* has its effect. Everyone is convinced of Philipp Halsmann's guilt. What has not appeared suspicious before is now interpreted in a negative light. [...] What appears favourable, recedes in importance, if it isn't passed over entirely."<sup>7</sup> These words were later written by Philipp Halsmann's lawyer, who published a detailed and passionate account of the events leading up to the trial. Pessler's version is biased in his client's favour, but not inaccurate: most of what he writes is borne out by the archival material on the case.

In the course of the interrogations, entirely innocuous details are taken from their context and blown out of proportion: it was Morduch and not Philipp who had been seen to carry the backpack: clearly, the young man lacked consideration for his father. The two men had demanded separate bedrooms at the inn at which Morduch was to pass his last night: obviously, a quarrel must have taken place between them. Philipp had suggested that they climb the Schönbichlerhorn without a guide: undoubtedly, he was already then plotting to kill his father. To make matters worse, Morduch had on this occasion been heard to joke that Philipp was hoping to come into his inheritance – a favourite joke of Morduch's repeated on several occasions throughout the journey, as witnesses would confirm at the trial. In retrospect, it sounded decidedly sinister. On top of everything else, a young boy selling garnets had noticed the two men loudly talking to each other as they went along. He had not understood what they were saying, but their animated gesturing had convinced him that they must have been having an argument. Most importantly, Morduch Halsmann delighted in banter and ribald jokes; his son, in contrast, struck witnesses as taciturn and

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<sup>6</sup> *Innsbrucker Nachrichten*, 'Accident or Murder?' ('Absturz oder Mord?'), 13 September 1928; 'The Mysterious Death in the Zillertal' ('Der geheimnisvolle Todesfall im Zillertal'), 14 September 1928; *Allgemeiner Tiroler Anzeiger*, 'The Father Killed by His Own Son' ('Der Vater vom eigenen Sohn erschlagen'), 20 September 1928.

<sup>7</sup> Pessler, 'Bild', p. 33.

introverted, even hostile: it was only a small step from his unprepossessing demeanour to the assumption that he must have murdered his father.

Throughout the trial, great stress would be laid on this difference in the two men's characters as the prosecution struggled to come up with a motive. In the meantime, the newspapers vied with each other in concocting far-fetched theories of their own: Morduch had taken out life insurance, one newspaper erroneously claimed. Philipp had murdered his father to make sure that his beloved mother, who was unhappy in her marriage, was at one stroke delivered from an irksome husband and financially provided for.<sup>8</sup> Philipp had fallen in love with a pretty lass from Bregenz, another newspaper purported to know; Morduch had had to die because he had forbidden the match.<sup>9</sup> Neither of these stories proved true; both, however, were repeated and believed to a not inconsiderable degree.

While the newspapers speculated to their heart's content and the prosecution amassed dubious evidence of Philipp's guilt, many clues that pointed in the opposite direction were not followed up: at the site of Morduch Halsmann's death, the police had discovered footprints which did not match those left by the Halsmanns themselves or any of the rescue party; the massive wound on the dead man's forehead appeared to have been caused by an ice pick rather than the stone which had been identified as the most likely murder weapon – and neither of the Halsmanns carried a pick; Philipps body and clothes – a white shirt and trousers of a light brown-grey colour – were entirely devoid of blood stains or other marks; the money Morduch had carried in his purse and on his body – fifty Austrian Schillings and a large sum in Swiss Francs – had disappeared without a trace.

Two weeks later, the Austrian banknotes mysteriously reappeared on the spot, noticeably bloodstained but not otherwise very much worse for wear. Experiments conducted by the defence during the second trial showed that their condition was entirely incompatible with the assumption that they had lain unnoticed at the scene of Morduch Halsmann's death for a fortnight.<sup>10</sup> Moreover, photographs taken of the crime scene immediately after the event showed that the small pile of stones under which they had been found, had not been there when Morduch had died. Halsmann's supporters argued that only the true murderer could know that the banknotes had been taken. Since the fact that the missing money had not been found in Philipp's possession pointed towards his innocence, hinting as it did at the presence of a third

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<sup>8</sup> *Allgemeiner Tiroler Anzeiger*, 'The Patricide in the Zillertal' ('Der Vatermord im Zillertal'), 13 September 1928.

<sup>9</sup> *Imnsbrucker Nachrichten*, 'The Halsmann Case' ('Der Fall Halsmann'), 27 September 1928.

<sup>10</sup> TCA, 6 Vr 1380/28, transcript of the second trial, 9-20 September 1929, pp. 56, 59-61, 143-4.

party, the real murderer had replaced them to invalidate this argument.<sup>11</sup> However, no further investigation seems to have taken place. Even at this early stage of the proceedings, the guiding principle in the prosecutor's actions appears to have been an overriding conviction of Philipp's guilt.

### **Act One - The first trial, 13 to 16 December 1928**

The trial leading up to Philipp's first conviction was short and hastily conducted: Within only four days, from 13 to 16 December 1928, the prosecutor, Dr Siegfried Hohenleitner, rolled out his evidence against the young man in front of a jury undoubtedly already predisposed to find the accused guilty. The trial was presided over by the president of the Innsbruck regional court, Dr Anton Larcher, with Dr Arthur Köllensperger and Hermann Greinz acting as assistant judges.

The defence had little to go on: for the first two weeks after Morduch's death, Philipp had been prevented from communicating with his lawyer. Even afterwards, neither he nor Pressburger had been fully informed of the results of the police investigation or the inquest. Left in the dark with regard to a number of important facts, Philipp's defence relied on an attempt to prove that Morduch had died of natural causes: prone to fits of weakness and dizzy spells because of an underlying heart condition, Pressburger argued, Morduch had stumbled and fallen down some eight meter down the rocky incline, fatally fracturing his skull in the process, and had come to rest in the small brook at the bottom in which his son found him when he raced back after hearing his father's scream. The little evidence that Pressburger was allowed to present in court consisted mainly of a selection of letters from the Halsmanns' friends and family attesting to the close and respectful relationship Philipp had with his father, and a doctor's certificate attesting to Morduch's medical condition.

In this climate, any steps Ita and Ljouba Halsmann undertook could be - and indeed were - given an unfavourable interpretation. Their most crucial misstep was their choice of lawyer: In a desperate attempt to ensure Philipp's acquittal, they had hired Richard Pressburger, one of the best-known Viennese lawyers of the time. Pressburger had already won a number of desperate cases - criminal as well as political - and was said to have a near-magical touch with Viennese juries.<sup>12</sup>

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<sup>11</sup> This would later be pointed out by Glaser in a letter to the prosecutor, cf. TCA St 3972/28, letter from Richard Glaser to the prosecutor's office, 17 April 1929.

<sup>12</sup> Richard Pressburger (1862-1938) was considered one of the best criminal lawyers of his time. Among his most well-known cases were the murder trials against Hoflehner (1910) and Pruscha (1925), but also political trials like that against the former Secretary of War Auffenberg (1915), who had been accused of treachery, the trials against the assassins Siecynski (1908), Njegus (1912), Carniciu



The choice was as ill-advised as it was well-meant: the Tyrolean jury did not take kindly to being lectured by a lawyer from the capital. Pressburger's reputation also counted in his client's disfavour: an innocent man would not need someone of this calibre to prove his innocence, the reasoning went. On top of all other considerations, Pressburger, like Philipp Halsmann, was a Jew – a fact which was to gain overweening importance in the right-wing media's report of the case.<sup>13</sup>

To make matters worse, Philipp's manners and appearance did little to endear him to the audience or the jury. Contemporary newspaper accounts of the proceedings suggest that Philipp was woefully unaware that his fate depended on the impression he was making on the jury rather than on his actual guilt or innocence. Even those eyewitnesses who were predisposed in Philipp's favour, even convinced of his innocence, agree that his demeanour was unprepossessing, his behaviour sullen, arrogant and self-righteous. The general consensus among his supporters is that Philipp is a young man who improves drastically upon closer acquaintance.<sup>14</sup>

This is borne out by his behaviour in court: secure in the knowledge of his own innocence, Philipp appears outraged at the accusations levelled against him. The indignity of being put on trial for a murder he did not commit evidently brings out the worst in him. Repeatedly, he openly contradicts his own lawyer in court, interrupts him and turns directly to the jury, whom he lectures as a schoolteacher would his none too bright pupils. Pressburger tried hard to put a positive spin on Philipp's behaviour, alleging that the young man's want of diplomatic skill was proof of his innate honesty and straightforwardness. Nevertheless, Pressburger's half-joking remark that he developed an anxiety neurosis every time his client opened his mouth in court may well contain more than a small kernel of truth.<sup>15</sup>

What was most detrimental to Philipp Halsmann's chances of acquittal was, however, the fact that he was both a foreigner and a Jew. Tyrol had long been infamous for its 'antisemitism without Jews': the Jewish population in this region was negligible, but for centuries, myths and rumours about the ritual killing of Christian children had

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(1925), and Aziz Cami (1931), and against Major Eiffler (1935). On the side, Pressburger also handled civil-law cases, was lawyer to the Association of Austrian Theatre Directors and a member of the board of directors of the Vienna Raimund Theatre, and actively engaged in the abolition of the death penalty. Cf. ÖBL, p. 268; Pollak, *Anklage Vatermord*, pp. 87–8.

<sup>13</sup> Martin H. Ross, 'The Philippe Halsmann Affair' (unpublished manuscript, 1973) [http://digital.cjh.org/webclient/DeliveryManager?pid=512416&custom\\_att\\_2=simple\\_viewer](http://digital.cjh.org/webclient/DeliveryManager?pid=512416&custom_att_2=simple_viewer) (accessed 22 May 2020), p. 73.

<sup>14</sup> Cf. e.g. Marbe, *Strafprozess*, p. 27.

<sup>15</sup> Quoted in Ruzicka, *Max Halsmanns Ermordung*, p. 25; on Philipp Halsmann's behaviour in court cf. also Pessler, 'Bild', p. 43; Pollack, *Anklage Vatermord*, p. 96; Karl Meixner, 'Die Lehren des Halsmannprozesses' (1930) vol. 10 *Beiträge zur Gerichtlichen Medizin* 47–106, p. 84.

been making the rounds and found wide-spread belief.<sup>16</sup> Making no allowance for cultural difference and religious customs, the public judged Philipp's actions after his father's death by the standards of their own Roman Catholic faith. When Philipp insisted that after the inquest, his father should be wrapped in a linen shroud and buried as quickly as possible – in accordance with orthodox Jewish rites –, this met with incomprehension bordering on horror: how could this unnatural son deny his father a coffin and a proper funeral? Was this not proof that he wanted all evidence of his own heinous deed buried as quickly as possible?<sup>17</sup> In the course of the trial, witnesses and jurors were repeatedly heard to make antisemitic remarks – a fact that did not go unnoticed by the defence and would eventually make its way into the appeal for annulment of the first verdict.

What proved most damaging, however, was the fact that Philipp entangled himself in a web of contradictions regarding his own position at the time of the tragedy. Philipp claimed that his father had been in front of him but had stopped by the wayside to answer a call of nature. The son had gone on without him. After some time, he had heard what he described as a “faint scream”, upon which he had turned around just in time to see his father fall down the slope in an odd, forward-leaning pose. Repeatedly, he claimed that the image flashed before his mental eye like a strangely motionless snapshot.<sup>18</sup> He had immediately hurried back towards the scene of what he had assumed to be an accident. Upon his arrival, he had spotted his father's body lying in the brook some eight metres below the path, had climbed down and had unsuccessfully tried to pull his father back onto dry land. Realising that the not inconsiderable weight of the injured man in his sodden clothing made this impossible, he had ensured that his father's face was above the water line, cushioning the injured man's head on the shirt he had been carrying rather than wearing, and had run to fetch help. At that point, his father had been grievously injured and unconscious, but still breathing.

He claimed that it had taken him between two and five minutes to reach his father; however, he also insisted that the distance between them at the time of the tragedy had been no more than a few steps. The prosecution immediately latched onto this discrepancy: It was evident that Philipp's time estimate must be a deliberate lie. The

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<sup>16</sup> Lisa Silverman, *Becoming Austrians. Jews and Culture Between the World Wars* (Oxford et al.: Oxford University Press, 2012), pp. 34–5; Niko Hofinger, “Unsere Losung ist: Tirol den Tirolern!” Antisemitismus in Tirol 1918–1938’ (1994) vol. 21 no. 3–4 *Zeitgeschichte* 83–108, pp. 98–9.

<sup>17</sup> Pessler, ‘Bild’, pp. 44–5; Martin H. Ross, ‘The Philippe Halsmann Affair’ (unpublished manuscript, 1973). [http://digital.cjh.org/webclient/DeliveryManager?pid=512416&custom\\_att\\_2=simple\\_viewer](http://digital.cjh.org/webclient/DeliveryManager?pid=512416&custom_att_2=simple_viewer) (accessed 22 May 2020), p. 15; *Allgemeiner Tiroler Anzeiger*, ‘Remarks of a Layman on the Halsmann Trial’ (‘Bemerkungen eines Laien zum Prozess Halsmann’), 20 December 1928.

<sup>18</sup> E.g. TCA, 6 Vr 1380/28, transcript of the second trial, 9–20 September 1929, p. 21.

descent from the path to the banks of the brook below was by no means difficult; it would not take a man longer than a few seconds to climb down there. In addition, Philipp had all but admitted that he had stood in the exact spot in which his father had been attacked. From all of this followed that he must inevitably be the murderer. The defence, in contrast, took a more lenient view of the matter: The fact that Philipp's claims did not add up was evidence of nothing more than the state of shock in which he had found himself after witnessing his father's fall. Philipp was used to relying more on his own powers of logic and deduction than on the evidence of his senses. Once he had (however erroneously) convinced himself that he must have stood in the spot he had – reluctantly and only after being prompted – indicated to the coroner, he had reconstructed the rest of the events on this premise. It was typical of Philipp's mental make-up that he had immediately become convinced of the correctness of his own deductions, in which he now believed to such a degree that they had superseded his actual memory of events.<sup>19</sup> This theory was first aired by Theodor Erismann, professor of philosophy at the University of Innsbruck, and was supported by numerous expert opinions commissioned by the defence.<sup>20</sup>

Regardless of the psychological evidence cited by the defence, the prosecution insisted that the obvious discrepancy in Philipp's evidence revealed him as a cold-blooded murderer. The question why Halsmann, whom the expert witnesses had unanimously described as being far above average intelligence, would have chosen a defence strategy that was, as a contemporary commentator succinctly put it, “the most idiotic imaginable”, did not appear to concern them. In retrospective, Philipp Halsmann's half-baked account of his own actions after his father's death is one of the most telling pieces of evidence in his favour. It is inconceivable that a highly intelligent murderer should – in a situation in which he knew himself to have been unobserved by witnesses and hence free to invent whatever tale appeared most likely to prove his innocence – adhere with such tenacity and conviction to a version of events that so evidently spoke against himself. At the time, however, the stubbornness with which the accused stuck to an account that was so obviously impossible did little to endear him to the jurors.<sup>21</sup> In contrast, the solution presented by the defence was attractively simple: Philipp had, according to his own evidence, been on the scene of the crime. He was plainly lying about what had passed at the time of his father's death. Hence, he was the murderer. The fact that no plausible motive could be found for

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<sup>19</sup> TCA 6 Vr 1380/28, response of the defence to the expert medical opinion, 5 June 1929.

<sup>20</sup> Pessler, ‘Bild’, 23–4; for details cf. Theodor Erismann, ‘Die psychologischen Probleme im Fall Halsmann’, in: G. Kafka (ed.), Bericht über den XII. Kongress der Deutschen Gesellschaft für Psychologie in Hamburg vom 12.–16. April 1931 (Jena: Fischer, 1932), 322–31.

<sup>21</sup> Marbe, *Strafprozess*, pp. 49–51.

the deed and that numerous character witnesses attested to the amicable and respectful relationship between father and son made little impression on an audience already predisposed to find the accused guilty.

Given that Philipp himself insisted that no other person had been on the scene when his father fell, it is understandable that the prosecution did not follow up the slight clues pointing towards the presence of a third party. In fact, this was the least of the blunders committed by Halsmann's accusers during the trial: the results of the botched and belated investigation of the crime scene were presented as unassailable facts; a witness statement cited by the prosecutor proved, upon closer examination, to be non-existent; and the translations of Philipp and Morduch's correspondence intended to show the lingering animosity between the two were so ludicrously faulty that even the defendant at one point could not help laughing.<sup>22</sup>

The most problematic facet of the argument built up by the prosecution was the expert medical opinion, which left it open which of the victim's injuries had been caused by the fall and which had been inflicted by a third party. Bearing in mind that for the major part of the proceedings, the defence had insisted that Morduch Halsmann had died from injuries brought about by an accidental fall, the importance of this distinction can hardly be underestimated.

On 16 October 1928, Philipp Halsmann was found guilty of the murder of his father pursuant to §§ 134 and 135 No 4 of the Austrian Criminal Code 1852 (*Strafgesetz*). Eight out of twelve jurors have to agree on the accused's guilt in order to reach a conviction; in Philipp's case, nine jury members had answered "yes" to the question whether the young man had on 12 September 1928 on the way from the Dominikushütte to Breitlahner attacked his father with a stone and subsequently thrown him down the slope into the brook with the intent to kill. The verdict was ten years of hard labour, with a fast day yearly on the day of Morduch Halsmann's death. The court regarded "the nature of the relationship between the defendant and his father, to whom he had every reason to be grateful, and the above-average level of education he had enjoyed" as aggravating factors; in mitigation of the defendant's guilt, it cited "his relatively youthful age, the absence of prior convictions and his good character". Since the court had regarded these mitigating circumstances as "very important and preponderant", it had availed himself of its right to reduce the sentence

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<sup>22</sup> The translator, a Russian teacher at a nearby girls' school, had been unfamiliar with the name Morduch and had mistranslated the address "happy Morduch" in a birthday card signed by the whole family as "well-fed miser"; Pessler, 'Bild', p. 43. For corrections of other errors in his translations, see also e.g. TCA, 6 Vr 1380/28, transcript of the second trial, 9-20 September 1929, p. 148.

pursuant to § 338 of the Austrian Criminal Procedure Act 1873 (*Strafprozessordnung*) and had commuted the sentence from life in prison to ten years. Pursuant to § 3 of the Statute of 15 November 1867, RGBl. 131, the yearly fast day had been added.<sup>23</sup>

### Interval – The first plea for annulment

Philipp Halsmann was devastated and attempted suicide in his cell with a blade he had taken from a pencil sharpener.<sup>24</sup> Pressburger, in the meantime, in his client's name put in a plea for annulment, alleging that numerous procedural regulations had been violated during the trial to the detriment of the defendant's case: the court had, by ruling not to hear most of the evidence offered by the defence, violated procedural regulations and principles; some of the jurors had slept during the proceedings, so that the jury could not to be said to have been present in its entirety throughout the trial; and the instructions the judge had given to the jurors had been unclear, as he had not informed them of the number of votes necessary to either acquit or convict the defendant. Included with the plea was a letter from four professors from the University of Innsbruck – Theodor Erismann, Alfred Kastil, Ferdinand Kogler, and Theodor Rittler – who stated plainly that after witnessing the trial, they were convinced that the evidence presented against the accused was insufficient for a conviction. A copy of the letter had also been sent to the prosecutor's office.<sup>25</sup>

The prosecutor's answer was prompt and palpably offended: "It would be extraordinarily dangerous and would undermine the foundations of the administration of criminal justice if such expressions of opinion – regardless of the profession of those from which they originated – were to be allowed to influence the outcome of a criminal case. [...] To give equal weight to the personal opinions of occasional spectators and the decision of the jurors and to attempt to use them in all seriousness to back up an appeal, such an unusual attempt – and this is directed at the unbidden critics and the defence alike – shakes the very foundations of the unbiased application of justice and the free consideration of evidence of the lawful judges."<sup>26</sup>

Whether the Austrian Supreme Court (*Oberster Gerichtshof*) was at all influenced by the opinion of the four Tyrolean professors can no longer be ascertained; what is

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<sup>23</sup> TCA 6 Vr 1380/28, judgement of the LG Innsbruck, 16 October 1928 (copy).

<sup>24</sup> *Der Morgen*, 'Sensational End to the Halsmann Trial' ('Sensationelles Ende des Halsmann-Prozesses'), 17 December 1928; Pollack, *Anklage Vatermord*, p. 103.

<sup>25</sup> TCA St 3972/28, postscript to the first plea for annulment, n.d., received on 27 December 1928.

<sup>26</sup> TCA 6 Vr 1380/28, prosecutor's response to the plea for annulment, 4 January 1929.

certain, however, is that it shared Pressburger's concerns at least to a certain degree. In his presentation of the case, the advocate general, Dr Pietsch, stressed that the trial had been fragmentary at best because important character witnesses had not been heard and the medical expert's testimony had been inconclusive.<sup>27</sup> As a consequence, the Supreme Court ruled that the requirements of § 344 No 5 Austrian Criminal Procedure Act – which stipulated a retrial – had been met. The medical opinion, it concluded, left important points in “darkness”: In particular, the medical experts had declared in court that there was no palpable difference between the effects of a fall or a blow dealt with a stone, so that similar injuries might result from a falling body hitting a stone in its descent down a slope, and from a stone being thrown at the body, or from the body being hit with a stone. In the present case, the medical expert had nevertheless ruled out the possibility that Morduch Halsmann's injuries might have been caused by a fall, without giving reasons for this conclusion. Whether the members of the jury had based their decision solely on the medical evidence or had been influenced by the marks on the ground or the finding of the stone which had presumably been used as a weapon, could not be ascertained. In view of its decision on this point, the Supreme Court found it unnecessary to consider the other arguments raised by Pressburger. It remanded the case for retrial at the Innsbruck regional court.<sup>28</sup>

Despite the success of the appeal, this last point was, to a certain extent, a defeat for the defence, who had hoped that the venue of the trial would be moved to Vienna. As Pressburger had shown in his appeal to the Supreme Court, the highly tendentious reporting of the case in the local newspapers would make it virtually impossible to find a jury that was not already predisposed to find Philipp Halsmann guilty. To make matters worse, hints of the antisemitic propaganda that was to accompany – and complicate – the second trial had already begun to appear, and members of the first jury had been heard to make antisemitic remarks during the trial.<sup>29</sup> The prosecution had made light of these allegations: “To speak of a ‘swastika-infused atmosphere’ is a frivolous allegation which cannot be counted as a factual argument, or replace such.”<sup>30</sup>

In a report to the Ministry of Justice in Vienna, which had evidently grown concerned because of the outcry against the verdict in the Viennese newspapers,<sup>31</sup> the Innsbruck

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<sup>27</sup> Pessler, ‘Bild’, p. 50.

<sup>28</sup> OGH 13 March 1929 4 Os 18/29/7; cf. TCA St 3972/31/23 (copy of a copy); for a summary cf. Pessler, ‘Bild’, p. 50–51.

<sup>29</sup> Hofinger, “‘(...) man spricht nicht’”, p. 3.

<sup>30</sup> TCA 6 Vr 1380/28, prosecutor's response to the plea for annulation, 4 January 1929.

<sup>31</sup> Hofinger, “‘(...) man spricht nicht’”, pp. 17–22.

senior prosecutor enlarged on this theme: “Racial considerations only entered into the picture as far as family members, friends, and acquaintances of the Halsmann family had attended the trial in significant numbers, had already during the trial attempted to sway public opinion in the defendant’s favour, and had, after the jury had given its verdict, expressed its protest against the court and the jurors in no uncertain terms. As a consequence of these protests, a part of the remaining audience, primarily the womenfolk, has fallen into a humanitarian frenzy, and has unfortunately carried a number of personages with them.”<sup>32</sup> Among the “womenfolk” in question was Ottilie Stainer, president of the Innsbruck Red Cross, who had been looking after Philipp Halsmann after his conviction;<sup>33</sup> the “personages” were undoubtedly the four university professors who had lent their voice to the defence’s plea for a retrial.

“Racial considerations”, however, did play a significant role not only in the antisemitic diatribes directed at the accused and his supporters, but also in learned discourses surrounding the trial. Perhaps paradoxically, this becomes apparent less in publications siding with the prosecution – in which the mask only occasionally slips to reveal the underlying prejudices – but rather in those published in Halsmann’s defence. A case in point is the German psychologist Karl Marbe’s discussion of the trial, which benevolently explains Philipp Halsmann’s behaviour in court as “typical of an Eastern Jew”; similar points had already been made by Pessler and Kastil.<sup>34</sup> The thrust of the argument here is not, of course, that “Jewish” behaviour is unpleasant per se, but rather that the Tyrolean members of the jury had failed to take into account cultural differences and had perceived as unpleasant forms of behaviour which would have been entirely acceptable among the Latvian Jewish community. A second and even more essentialist argument was that patricide was out of keeping with a perceived “Jewish” mentality: “The Jew, as a rule, is not aggressive,” Marbe states categorically. “Moreover, one has to take into account that in Jewish circles, respect towards one’s parents and consideration for them are particularly pronounced. I have never even heard or read about a Jewish patricide. [...] A famous expert on the Old Testament has confirmed that it likewise does not mention a single

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<sup>32</sup> AStA, AVA, BM für Justiz (Ministry of Justice), Kart. 3402, Zl. 34417/1931 VI, report of the senior public prosecutor (*Oberstaatsanwalt*) Innsbruck to the Ministry of Justice, 28 December 1928; cf. Hofinger, “(...) man spricht nicht”, p. 3.

<sup>33</sup> Hofinger, “(...) man spricht nicht”, p. 3.

<sup>34</sup> Marbe, *Strafprozess*, p. 97; Pessler, ‘Bild’, pp. 22–3 and 46–7; TCA St 3972/28, addendum to the first plea for annulment, letter Prof. Kastil, received on 27 December 1928.

instance of a Jew killing his father.”<sup>35</sup> Similar views were current among the Jewish community in Vienna, which was taking an active interest in the case.<sup>36</sup>

In the meantime, the mood in Tyrol had darkened considerably. Leading Viennese newspapers had taken up the story and expressed their support for Philipp Halsmann. Their attacks against the judge and jury brought to the fore the Tyrolean newspapers, which grew ever more vocal in their support: “Pressure generates counter-pressure.”<sup>37</sup> Increasingly, the trial acquired a new facet as a veritable newspaper war between centre and periphery developed, in which Philipp Halsmann was to become a puppet tossed by opposing forces.

The four professors who had expressed support for Philipp found themselves under attack; other supporters, among them Richard Glaser and Otilie Stainer, received anonymous threats.<sup>38</sup> The right-wing breach had finally come out in full force against the young man and was at pains to decry the ongoing efforts of Halsmann’s supporters as a conspiracy of the ‘Global Jewry’. A much-quoted example is a pamphlet published by the “Eiserner Besen (*Iron Broom*)”, a right-wing newspaper from Salzburg, copies of which were widely distributed in Innsbruck. The publication mixed well-worn conspiracy theories with rants against Philipp Halsmann, his family, lawyer, and the Viennese newspapers. In a pre-emptive strike, even the Supreme Court was discredited: “The big-shot lawyer from Vienna is now caballing in the world-wide Jewish press, aided and abetted by our ‘national’ bourgeois press, and throws mud and dirt at our people’s law court, lots of Jewish hot air is being generated, in order to help the poor Jew, who got nothing if not a very lenient punishment for his crime, get acquitted by the Supreme Court in Vienna, where, as we all know, the wind blows from a different quarter than at our Christian law court at Innsbruck, not yet infested by Jews and Socialists [...] For us, this trial is another indication of the omnipotence the Jewry has arrogated itself, and that we ourselves can easily break. Apart from this, the whole affair leaves us relatively unconcerned, since it cannot trouble us that one Jew has battered another to death.”<sup>39</sup> Likeminded newspapers from Innsbruck and environs published articles to the same effect,

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<sup>35</sup> Marbe, *Strafprozess*, p. 46.

<sup>36</sup> Ross, *Halsmann Affair*, pp. 17–8.

<sup>37</sup> Pessler, ‘Bild’, p. 49.

<sup>38</sup> Pessler, ‘Bild’, p. 49; Hofinger, “‘(...) man spricht nicht’”, pp. 4–5 and 7–8. A selection of these can be found in TCA St 3972/31/23.

<sup>39</sup> TCA 6 Vr 1380/28, pamphlet entitled “Austria’s Shame”. A different part of the same publication is quoted in Hofinger, “‘(...) man spricht nicht’”, pp. 5–6.



almost always combining attacks against Halsmann and the “Jewry” with those against the Viennese press, which was predominantly pro-Halsmann.<sup>40</sup>

In the meantime, both prosecution and defence were attempting to unravel the mystery of Philipp’s evidence concerning his position at the moment of his father’s fall: why was it that the young man would not budge from a standpoint that was so obviously untenable, and that could not even be reconciled with the version of events presented by his own lawyer? Philipp’s defence had been taken over by two lawyers from Innsbruck, Richard Mahler and Franz Pessler – the latter (like Hohenleitner) a former student of Rittler’s, who had thought highly of both men.<sup>41</sup> Pressburger, however, evidently remained active in the background. Pessler and Mahler now sought to convince the court to obtain an expert psychological opinion, which the prosecution adamantly opposed. It is worth mentioning in this context that expert psychological witnesses were still something of a rarity at that time. While the practice was gaining acceptance in Germany, Austrian courts had not yet come to accept practitioners of the relatively new science of psychology as experts in criminal cases.<sup>42</sup> Instead, the prosecution sought an expert psychiatric opinion from the Innsbruck faculty of medicine, details of which will be discussed below. What has to be highlighted at this juncture is that pursuant to § 126 Para. 2 Austrian Criminal Procedure Act 1873, a ‘faculty expert opinion’ of this kind was to be obtained when prior expert opinions had diverged on important points, or when a case appeared to pose greater than ordinary difficulties. A faculty expert opinion was considered decisive; it could not be challenged, superseded or augmented by additional expert opinions, even if it showed obvious gaps.

## Act Two – The second trial, 9 September to 19 October 1929

Despite the efforts of the defence, almost a year had passed when Philipp Halsmann’s second trial began. This time, the presiding judge was Dr Josef Ziegler, with Drs Federspiel and Wolf as assistant judges. The prosecutor was again Dr Siegfried Hohenleitner.<sup>43</sup> The defence had thoroughly revised its position: It had abandoned its efforts to prove that Morduch Halsmann had died a natural death caused by his cardiac issues coupled with dizziness and fatigue brought on by the strenuous hike. Instead, it had come around to the view of the prosecution, namely that Morduch

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<sup>40</sup> For details, see Hofinger, ““(…) man spricht nicht””, pp. 6-8.

<sup>41</sup> *Der Tag*, ‘Innsbruck Professor for Criminal Law Dr Rittler to Represent Halsmann’ (‘Innsbrucker Strafrechtslehrer Professor Dr. Rittler vertritt Halsmann’), 4 December 1930.

<sup>42</sup> For a detailed discussion of this point, cf. Marbe, *Strafprozess*, pp. 122-47.

<sup>43</sup> TCA, 6 Vr 1380/28, transcript of the second trial, 9-20 September 1929, p. 1.

Halsmann had indeed been murdered, and concentrated its efforts on proving that the deed could have been committed by a third party. Given that the accused had, in his own account of his father's death, literally put himself on the crime scene, this was an unenviable task. It was made harder by the fact that Philipp's lawyers had to fight several battles at once. Again and again, stories about Philipp Halsmann's callousness and lack of filial piety resurfaced: a particularly damaging rumour had it that Philipp had watched his father's autopsy from his bedroom window at the inn to which he had been taken after his arrest, seemingly unmoved. His lawyers succeeded in showing that this was a technical impossibility, since the room had no view of the shed in which the postmortem had taken place; nonetheless, the damage to the accused's reputation had been done and could not be repaired.<sup>44</sup> Repeatedly, the financial position of the Halsmann family was entered into in some detail – presumably not least with the intention of showing that, contrary to rampant speculation in the press, Philipp would have had nothing to gain from murdering his father and that the family, who had depended on the income from Morduch's lucrative practice, was now virtually penniless.<sup>45</sup>

This was by no means the only point of the proceedings at which Ziegler made the defence's task more difficult than it need have been. Throughout the trial, he denied many of the defence's motions to take additional evidence, closely following the arguments of the prosecution on these occasions, even though some of the defence's suggestions would have been highly relevant to the matter in hand. For instance, Erismann had of his own accord conducted experiments with a man-sized puppet of Morduch's height and weight, which he had repeatedly thrown down the slope to determine the exact time frame for the commission of the murder, and thus to prove that the deed could have been committed by an unknown third party before Philipp arrived on the spot.<sup>46</sup> The defence also once again demanded an expert psychological opinion on the likelihood of Philipp misremembering his exact location at the time his father fell, and the time it had taken him to run back to where the body was found.<sup>47</sup> Five private expert opinions commissioned by the defence were declined as irrelevant and untrustworthy, as they had been "bought" by Halsmann's lawyers. An expert medical opinion to the effect that the massive wound on Morduch's forehead

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<sup>44</sup> TCA, 6 Vr 1380/28, transcript of the second trial, 9–20 September 1929, pp. 61, 66–7, 85, 89–90; Pessler, 'Bild', pp. 75–6.

<sup>45</sup> E.g. TCA, 6 Vr 1380/28, transcript of the second trial, 9–20 September 1929, pp. 11–12; 126; 135–7.

<sup>46</sup> TCA, 6 Vr 1380/28, transcript of the second trial, 9–20 September 1929, p. 44; Pessler, 'Bild', pp. 68–9.

<sup>47</sup> TCA, 6 Vr 1380/28, transcript of the second trial, 9–20 September 1929, p. 107, 129.

could not have been caused by the stone believed to have been the weapon used in his murder met with the same fate.<sup>48</sup>

Even much less spectacular evidence was hotly contested: Again, the presiding judge only reluctantly entered into details concerning the Halsmanns' peaceful family life and the respect and esteem in which Philipp held his father. Philipp's camera and the photographs that father and son had taken of each other on their last hike had ostensibly been lost, and only reappeared after the verdict, so that they could not be shown as evidence of the good understanding between the two men shortly before the elder's death.<sup>49</sup> The loss of the camera had an added significance: Pessler had argued that a person who attacks another in a fit of rage would be most likely to use the first thing that came to hand as a weapon. In Philipp's case, this would have been the heavy camera he was carrying, which in this case would certainly have sustained a certain amount of damage in the process and would have been covered in Morduch Halsmann's blood. Hence, being able to show that it was still in pristine condition would have strengthened the argument for Philipp Halsmann's innocence.<sup>50</sup> Ziegler even refused to hear an independent ophthalmologist on the topic of Philipp's weak eyesight: the defence had argued that Philipp, who was near-sighted and wearing glasses of insufficient strength, might have mistaken the figure of the assassin bending over his father's body for that of Morduch bending forwards at the brink of the abyss. Towards the end of the proceedings, Mahler vented his frustration in court: "Everything that might help the defendant is made so difficult for the defence,"<sup>51</sup> he complained – upon which Ziegler promptly threatened to remove him from the case. It is an exchange that exemplifies the hostility which Philipp and his lawyers encountered in the Innsbruck court, and which made his defence uphill work at the best of times, and virtually impossible at the others.<sup>52</sup>

In contrast, the prosecution had a much more grateful task: during the entire trial, hardly a single motion brought by the prosecutor was denied by the presiding judge. The expert opinions also played into the hands of the prosecution. The testimony of the medical experts, Drs Werkgartner and Meixner, clearly rested on the premise that Philipp had committed the deed and appeared to be given with a view towards proving Philipp Halsmann's guilt against all odds rather than with the aim of

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<sup>48</sup> TCA, 6 Vr 1380/28, transcript of the second trial, 9–20 September 1929, p. 156.

<sup>49</sup> TCA, 6 Vr 1380/28, transcript of the second trial, 9–20 September 1929, p. 92, 140; Pessler, 'Bild', p. 73.

<sup>50</sup> TCA, 6 Vr 1380/28, transcript of the second trial, 9–20 September 1929, p. 91.

<sup>51</sup> TCA, 6 Vr 1380/28, transcript of the second trial, 17–19 October 1929, p. 25.

<sup>52</sup> TCA, 6 Vr 1380/28, transcript of the second trial, 17–19 October 1929, p. 27.

establishing the facts of the case.<sup>53</sup> Particular emphasis lay on the fact that Philipp's body and clothing had been devoid of bloodstains when he was arrested. In view of the extensive injuries inflicted on the victim, and the copious amount of blood he had lost as a result, it seemed unlikely that the murderer should have escaped without a mark. In his expert opinion, Werkgartner had attempted to write this down to the dark brown colour of Philipp's trousers masking the traces of blood on his legs.<sup>54</sup> (Surprisingly, this assertion went unchallenged by Philipp Hasmann's lawyers; only much later, Werkgartner was forced to publicly admit that he had not seen, much less examined, the pair of trousers in question, and was surprised to learn that in reality they were of a light greyish brown hue.<sup>55</sup>) Referring to another case of his experience, he further explained that in some cases, it appeared that the blood sprays away from the assailant; hence, an absence of bloodstains could not be taken as evidence of Philipp's innocence.<sup>56</sup> The medical experts had chosen a dramatic mode of presenting their findings, which must have further strengthened the impression they left on the minds of the members of the jury, all of whom were medical laymen. In a slide show, pictures of the site of the crime were followed by close-ups of the injuries sustained by the victim, accompanied by detailed explanation. The experts even offered to show Morduch's head - which had been severed in the course of the postmortem and preserved for further reference in a glass jar - to the jurors, who accepted.<sup>57</sup>

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<sup>53</sup> Cf. TCA, 6 Vr 1380/28, expert medical opinion Meixner/Werkgartner (copy). Cf. also Meixner, 'Lehren des Halsmannprozesses', in which the author also implicitly assumes that Philipp Halsmann was guilty (especially pp. 78 and 84); for a discussion of this point, cf. Gutmann, *Fakultätsgutachten*, 58-61.

<sup>54</sup> TCA, 6 Vr 1380/28, transcript of the second trial, 9-20 September 1929, p. 152; Pessler, 'Bild', p. 73.

<sup>55</sup> *Der Morgen*, 'The Second Phase of the Halsmann Case' ('Die zweite Phase des Falles Halsmann'), 29 December 1930; cf. also *Neue Freie Presse*, 'New Evidence in the Halsmann Case' ('Neue Aktenstücke im Fall Halsmann'), 19 July 1931.

<sup>56</sup> TCA, 6 Vr 1380/28, transcript of the second trial, 9-20 September 1929, pp.151. For details, cf. Ruzicka, *Max Halsmanns Ermordung*, p. 103; Josef Hupka, 'Fiat Iustitia: Für die Ehrenrettung Philipp Halsmanns' (29 and 30 November 1930) *Neue Freie Presse* 3-4 and 8-9, p. 9; Pessler, 'Bild', p. 73. The case to which Werkgartner referred had, however, been markedly different: not only had the injuries inflicted on the victim been considerably fewer and less deep; the alleged murderer had also been wearing an apron, which was later found to bear traces of blood. In addition, a pail full of bloody water had been found behind her house at the time of her arrest. Nevertheless, she had been acquitted, because it could not be proven that the blood was of the same blood group as that of the victim.

<sup>57</sup> TCA, 6 Vr 1380/28, transcript of the second trial, 9-20 September 1929, pp. 150-1; for a detailed discussion, cf. Stefanie Langer, 'Schrift, Bild und Stimme. Medien des Gutachtens im Fall Halsmann', in: Alexa Geisthövel and Volker Hess (eds), *Medizinisches Gutachten: Geschichte einer neuzeitlichen Praxis* (Göttingen: Wallstein Verlag, 2017) 296-317, pp. 301-10.

The expert psychiatric opinion presented by the Innsbruck medical faculty proved even more problematic. After the trial, it would be heavily contested by experts throughout the German-speaking world, and stoutly defended by those who had authored it.<sup>58</sup> At the time of the trial, it may well have been the key instrument in securing Philipp Halsmann's conviction. In a trial in which there was no scarcity of contentious issues, this document proved the most contentious of them all. Even before it was presented in court, the defence had already taken issue with one of the experts selected by the faculty, Dr Eduard Gamper. Gamper had on repeated occasions voiced his conviction of Halsmann's guilt; to have this man working on the panel of experts, the defence felt, would predispose the faculty against the accused. The protest had been duly noted by the court; however, no objection was raised when Gamper was chosen to present the faculty's expert testimony in court.<sup>59</sup> Moreover, there was heated debate whether the choice of psychiatrists over psychologists had been a wise one, and one that was fair to the accused: Halsmann's supporters argued that psychiatrists were unused to dealing with the mentally healthy, and hence had a skewed idea of what mental health actually entailed. Used to pathological phenomena in sick persons, they were more likely to assume that no such phenomena could exist in the minds of someone who was of sound mind. In short: the Innsbruck psychiatrists would be likely to rule out the possibility that Philipp had unintentionally deceived himself into believing something that was plainly at odds with the facts, because they would argue that a mentally healthy person would not forget the distance in the first place, would not unconsciously fill the gap in his memory by a logical deduction in the second, and would not remain unaware that this had happened in the third. They would expect the mind of a mentally healthy person to function flawlessly, because flaws belonged to the realm of pathology. Psychologists, on the

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<sup>58</sup> E.g. Eugen Bleuler, 'Meinungsäußerung', in Wilhelm Gutmann, *Das Fakultätsgutachten im Fall Halsmann (Möglichkeit und Wahrscheinlichkeit): eine Kritik* (Berlin: Drei Masken Verlag, 1931) 74-95; Erismann 'Die psychologischen Probleme'; Sigmund Freud, 'Das Fakultätsgutachten im Fall Halsmann' (14 December 1930) *Neue Freie Presse* 13; Eduard Gamper, 'Das Gutachten der medizinischen Fakultät Innsbruck in der Strafsache gegen Philipp Halsmann' (1930) vol. X *Beiträge zur gerichtlichen Medizin* 107-141; Gutmann, *Fakultätsgutachten*; Heinrich Herrschmann, 'Über psychiatrische und psychologische Sachverständigentätigkeit im Indizienprozeß', Versammlungs-Bericht, Österreichische Landesgruppe der IKV. Sitzung vom 12. Februar 1931. (1932) vol. 22 *Monatsschrift für Kriminalpsychologie und Strafrechtsreform* 351-62; Josef Hupka, 'Fiat Iustitia' and 'Die Nichtigkeit der Urteilsgrundlagen', in: Österreichische Liga für Menschenrechte (ed.), *Der Fall Halsmann*. Schriften der Österreichischen Liga für Menschenrechte, vol. 3. (Vienna: Gilhofer & Ranschburg, 1931) 93-134; Marbe, *Strafprozeß*. For the full text of the expert opinion of the Innsbruck faculty, cf. Gutmann, *Fakultätsgutachten* pp. 10-26.

<sup>59</sup> TCA, St 3972/31/23, plea for annulment, received 6 November 1929.

other hand, would be aware that the mental functioning of a healthy person might well be impaired by stress, shock, or fatigue.<sup>60</sup>

As it turned out, the defence's doubts were well-founded. The question that had been posed to the faculty had been whether it was at all conceivable that Philipp had – as Erismann and the defence had alleged – forgotten the exact distance at which he had been from his father at the time of the fall, and had filled this gap in his memory with a construct deduced from his erroneous assumptions about the site of the attack without actually being aware that he was doing so. The answer was a categorical no. The experts believed Philipp's memory of his spatial and temporal distance from his father could not on any account have been accepted by the shock of finding the body. They stressed that the "painful experience" of seeing his father fall and running back to find his body must have been engraved on Philipp's memory, so that miscalculations regarding time or distance must be regarded as extremely unlikely. In addition, they held that the shock Philipp had experienced would not affect his memory of preceding events but only of those that occurred afterwards. This also explained why there were other gaps in Philipp's memory; for instance, he could not remember meeting and speaking to two female tourists whom he had passed on his way to get help, and who were later called as witnesses at the trial. While Erismann's theories (and his person) came under heavy attack, the arguments put forward by the defence, which differed from Erismann's in significant points, were not thematised at all by the faculty.

In addition, the Innsbruck experts went well beyond what had been required of them. Having answered the question posed by the court, they then proceeded to ask themselves two further questions: How was it possible that Philipp, if he was guilty of patricide, could protest his innocence with such conviction? And what could have been the motive that had driven him to kill his father?

The answer to the first question is somewhat surprising if one bears in mind that the faculty had categorically denied the possibility that Philipp could have forgotten the distance between himself and his father. With equal conviction, the experts now argued – drawing on the theories of Sigmund Freud – that such a deed was so much at odds with Philipp's otherwise gentle, dutiful nature, that he had suppressed all memory of it; in other words: he had simply forgotten he had killed Morduch, and was firmly convinced of his own innocence.

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<sup>60</sup> TCA 6 Vr 1380/28, response of the defence to the faculty expert opinion, 5 June 1929; TCA, St 3972/31/23, plea for annulment, received 6 November 1929; cf. also e.g. Hupka, 'Fiat Iustitia', p. 4; Marbe, *Strafprozeß*, pp. 122-47; Gutmann, *Fakultätsgutachten*, pp. 40-52 and 62.

For an explanation of the motive, the absence of which was the most glaring hole in the case presented by the prosecution, they reiterated their findings about the differences in the characters of the two men. The contrast between Morduch's extroverted, loud, occasionally coarse and boastful behaviour and Philipp's more withdrawn, gentle and refined temperament must have furnished enough material for conflict; evidence of occasional quarrels could also be gleaned from the correspondence between father and son. In addition, Philipp himself had stated that at the time of his father's death, he had found himself in a state of acute physical exhaustion, because he was wholly unaccustomed to so much exercise. In such states, the experts alleged, even gentle people can become subject to sudden outbreaks of aggression and violence; a fact evidenced by the eruption of quarrels between soldiers during long marches. In a final paragraph, the faculty speculated whether Philipp might not have been in the throes of an Oedipal conflict which had caused him to murder his father; evidence of which, they themselves admitted, could not now be found – allegedly because of the circumstances under which the examination of the accused had taken place. This part of the expert opinion would later be retracted, but found its way into the newspapers and into academic publications, where it would come under attack by experts and laymen alike.

In its original form, the expert opinion of the faculty never made it into court: by the time it was finished, too much new evidence had come to light, and the faculty had to be given time to revise its opinion. For it to do so, the proceedings were stayed for almost a month – an interruption that was to damage Philipp's position even further. Most members of the jury had returned to their homes in the countryside for the duration of the interruption. There, they inevitably became exposed to the media coverage of the trial. At that point, the tension between Tyrolean and Viennese newspapers had erupted into open warfare; as certain Viennese papers were becoming ever more vocal in their support of Halsmann – and critical of the way the trial was being conducted –, the Tyrolean regional press hit back, declaring its support of the presiding judge, the jury and the prosecution and painting Philipp in the blackest colours. In context, these appear mainly as reactions to the articles published in Vienna. Since the Viennese newspapers were, however, not read in the rural parts of Tyrol, so much of this mitigating context was lost on the readers. As Mahler and Pessler later put it, “public opinion became poisoned against the accused in the worst way imaginable.”<sup>61</sup>

The role the media played in Halsmann's second trial and conviction can hardly be overestimated. There was hardly a newspaper in Austria which did not devote page-

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<sup>61</sup> TCA 6 Vr 1380/28, plea for annulment of the second verdict, 6 November 1929.

long articles to the trial, usually – in accordance with the political background of the publication – clearly positioning themselves as either pro- or contra-Halsmann.<sup>62</sup> Even outside markedly right-wing circles in Tyrol, Philipp Halsmann evolved into a symbol for Vienna, reimagined as a citadel of Jews and Socialists, against which Tyrolean Christian culture and the integrity of the Austrian judiciary had to be defended. This stance becomes most marked in an article published by the *Vorarlberger Tagblatt*, which was also widely read in Tyrol. Entitled “The Jews and the Halsmann Trial”, the piece claimed that the enormous amount of public attention the trial had received was due only to the efforts of Halsmann’s Jewish supporters, who were by these means trying to apply enough pressure to bend Austrian justice to the collective will of the Jewry.<sup>63</sup>

The efforts undertaken by the defence to put a halt to this development backfired grievously: On 20 September 1929 – the day the proceedings were stayed – Mahler asked a number of newspaper editors – regional, national and international – to sign a telegram to Josef Slama, the Austrian Minister of Justice, in which they declared that they believed Philipp Halsmann innocent and begged the Minister to intervene to prevent a miscarriage of justice. The prosecution got wind of this undertaking and “invited” one of the signatories, Franz Baldauf, to make a statement to the effect that he had been coerced into signing the telegram.<sup>64</sup> Baldauf subsequently phoned the Ministry and retracted his signature. Consequently, the Ministry of Justice took no further steps in this matter.<sup>65</sup> The press inevitably got wind of the interlude, with the Tyrolean newspapers publishing articles in which they denounced what they termed the lawyer’s deception. A last attempt on Pressburger’s part to have the case against Halsmann dropped also came to nothing, although he sought a personal meeting with Slama.<sup>66</sup>

The “poisoned atmosphere” in Innsbruck not only found its expression in the newspapers. The NSDAP organised a lecture entitled “The Jew is the Master of the

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<sup>62</sup> For a detailed overview of the stances of individual Austrian newspapers, cf. Hofinger, “(...) man spricht nicht”, p. 10. One of the most markedly pro-Halsmann papers was the Viennese *Neue Freie Presse*; cf. Hans Haider, ‘Österreichs Dreyfusaffäre: Der Fall Philipp Halsmann’, in: Julius Kainz (ed.), *Ein Stück Österreich: 150 Jahre “Die Presse”* (Vienna: Holzhausen, 1998) 122–7.

<sup>63</sup> *Vorarlberger Tagblatt*, ‘The Jews and the Halsmann Trial’ (‘Die Juden und der Halsmann-Prozess’), 26 September 1929.

<sup>64</sup> In a report to the Ministry of Justice, the prosecutor’s office insisted that Baldauf had appeared of his own accord, albeit in another matter. Whilst there, it had merely been “suggested” to him that he might want to make a statement concerning the telegram, which he accordingly did.

<sup>65</sup> Pessler, ‘Bild’, pp. 78–81.

<sup>66</sup> AStA, AVA, BM für Justiz (Ministry of Justice), Kart. 3402, Zl. 34417/1931 VI, note concerning Pressburger’s request and his meeting with the Minister, 10 October 1929.



German People”, which explicitly referenced the Halsmann trial, and which was announced on bright red placards all over the city of Innsbruck. The posters were eventually removed by the prosecutor’s office because the statutory imprint was missing; however, they had been up long enough to garner attention. In a letter to the head prosecutor’s office, the Innsbruck prosecutor insisted that there was no antisemitic sentiment in Innsbruck; the posters had merely been the work of “a completely insignificant group”; they had been removed immediately and the lecture cancelled.<sup>67</sup> What went unsaid was the fact that the lecture did take place two weeks later under a different title.<sup>68</sup>

The Catholic church, too, joined the fray. In the Innsbruck Servitenkirche, one of the city’s largest churches, the priest denounced Philipp Halsmann from the pulpit as “a man whose conscience was dead within him” because he refused to confess to having murdered his father. At Richard Mahler’s behest, he ‘retracted’ his statement before his next sermon – “in a flat voice, as if he were making some administrative announcement” –, stating that he had been informed by Philipp Halsmann’s lawyers that *they* believed him innocent.<sup>69</sup>

An ambush on the prosecutor’s part left the defence equally defenceless: two days before the end of the trial, the prosecutor made reference in court to a case which had only come to his attention a couple of days earlier. A man by the name of Platzer had given a statement to the effect that he had encountered a poacher in bloodstained clothing near Breittlahner on the day Morduch Halsmann had died. He had given the man fresh clothes and had helped him cross the nearby border into Italy. However, Platzer’s story did not withstand further investigation; after entangling himself in contradictions, he finally had to admit that he had made up the whole tale. He claimed that an unnamed supporter of Philipp Halsmann had put him up to the deception, promising a considerable monetary reward; Platzer even claimed that he had already received the first instalment of the cash before he had contacted the police. “This is how they work to defend Philipp Halsmann!”, the prosecutor exclaimed in court.<sup>70</sup>

Pessler and Mahler fought hard to refute the claim. They insisted that the case be thoroughly investigated before the end of the trial to show that the defence had in no way been implicated in Platzer’s clumsy attempt at deception. They also applied for

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<sup>67</sup> TCA 6 Vr 1380/28, report from the Innsbruck prosecutor to the head prosecutor for Tyrol, 24 October 1929.

<sup>68</sup> Hofinger, “(...) man spricht nicht”, p. 13.

<sup>69</sup> TCA, St 3972/31/23, plea for annulment, received 6 November 1929; Pessler, ‘Bild’, pp. 75–6.

<sup>70</sup> TCA 6 Vr 1380/28, transcript of the second trial, 17–19 October 1929, p. 18.

several other cases to be laid before the jury, in which fraudsters had contacted the Halsmann family and his lawyers offering to make fake confessions for a monetary compensation and had naturally been turned down. Following the prosecutor's opinion, Ziegler dismissed these as irrelevant. With the credibility of the defence and the defendant thus irrevocably damaged in the eyes of the jury, there was little that Halsmann's lawyers could still hope to do.<sup>71</sup>

On 19 October 1929, Philipp Halsmann was found guilty for the second time. This time, the members of the jury had been asked not only whether the young man had attacked his father with the intent to kill (murder pursuant to §§ 134 and 135 No 4 of the Austrian Criminal Code), but also whether he had attacked him with the intent to wound, thereby accidentally killing him (manslaughter pursuant to § 140 Austrian Criminal Code). Only seven out of twelve jurors found Philipp Halsmann guilty of murder – too few for a conviction – but nine agreed that he had committed manslaughter. Philipp was thus sentenced to a very lenient four years of hard labour, with a fast day added each year, and to the payment of the costs of the trial and of his incarceration.

The second question had, in all probability, been the direct result of the faculty expert opinion, which had insinuated that Philipp might have attacked and killed his father in a fit of rage brought on by his state of bodily exhaustion. Soon after the verdict, the renowned Austrian professor of criminal law Carl Stooß wrote an article explaining that the question and the jurors' answer had been misguided: given the extent of Morduch Halsmann's injuries and the ferocity with which he had evidently been attacked, it was virtually impossible that the perpetrator could have intended anything less than Morduch's death. Stooß was positive that this mistake alone would cause the Supreme Court to overturn the verdict once more.<sup>72</sup>

No matter how doubtful the secondary question posed by the presiding judge appears from a legal point of view, it may have been perceived as a welcome compromise by the Innsbruck jury. Public opinion was split into two camps: on the one side those who were convinced of Philipp Halsmann's innocence and wanted to see him go free, on the other side those who wanted to see him in prison, either out of a genuine conviction of his guilt or for ideological reasons. The members of the jury were undoubtedly aware that no matter which decision they were to reach, they must be wrong in the eyes of half the interested public. In such a situation, the secondary

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<sup>71</sup> TCA 6 Vr 1380/28, transcript of the second trial, 17–19 October 1929; Pessler, 'Bild', pp. 85–6.

<sup>72</sup> Carl Stooß, 'Der Fall Halsmann. Vor der Revisionsverhandlung' (19 January 1930) *Neue Freie Presse* 2–3; idem, 'Was ist Totschlag?' (1931) vol. 60 no. 8 *Juristische Blätter* 179.

question might have struck them as the ideal way out of the quandary; in reality, it only had the dubious merit of angering both parties to an equal degree.<sup>73</sup>

### **Epilogue – The second plea for annulment**

Again, Halsmann’s defence team immediately entered a plea for annulment. Once more, Philipp Halsmann proved his own worst enemy: he expressly forbade his lawyers from calling into doubt the defendant’s accountability at the time of the attack – a way out which followed more or less naturally from the expert psychiatric opinion, which had, after all, hinted that Philipp had killed his father in a sudden, unaccountable fit of rage brought on by tiredness, and had afterwards forgotten all about the deed. Erich Saxl, a Viennese lawyer whom Mahler and Pessler had recruited to help in the preparation of the plea, promptly resigned over this conflict. Pessler and Mahler evidently considered doing the same but were persuaded that this would be inadmissible in their case because they had already represented Halsmann for the whole of the second trial and could not now abandon his case without detrimental effects on his chances of winning the appeal.<sup>74</sup> Saxl cleverly attempted to circumvent Philipp’s prohibition by spelling out his arguments in some detail in a letter to the court – ostensibly to explain his resignation. The Innsbruck regional court, quick to scent an ulterior motive, promptly attempted to reject the letter, only to be reminded by Halsmann’s lawyers that it had no right to do so because it was not a formal plea.<sup>75</sup>

The written plea, an impressive document running to well over a hundred pages in length, details the facts of the case and critiques the way in which the court handled the available evidence before moving on to the grounds for annulment as such. In its first parts, it reiterates all the facts that spoke against Philipp’s guilt – dwelling especially on the loving relationship between father and son, the absence of blood or traces of a fight on Philipp’s body and clothes, the fact that a considerable sum of money was still missing and had not been found in the accused’s possession; the Schilling notes found in a state of exemplary preservation on the site of the murder two weeks after the event; and the obvious shortcomings of the Innsbruck medical faculty’s expert opinion and presenting a convincing case for the assumption that

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<sup>73</sup> Cf. Jakob Wassermann, ‘Offener Brief an den Präsident der Republik’ (27 October 1929) *Neue Freie Presse* 1–2, p. 1; Hofinger, “(...) man spricht nicht”, pp. 15–6.

<sup>74</sup> TCA 6 Vr 1380/28, prosecutor’s response to Erich Saxl’s letter of resignation to the court, 15 November 1929.

<sup>75</sup> TCA St 3972/31/23, Philipp Halsmann’s complaint against decisions of 18 and 19 November 1929, received on 23 November 1929.

Philipp had been wrongly accused. The second – shorter and considerably less impressive – part dealt with the actual grounds for annulment, which were limited to the court’s refusal to allow the motions for evidence brought by the defence, and the fact that no expert psychological opinion had been sought. In addition, Halsmann’s lawyers rightly criticised that the evidence had not been re-taken and the witnesses re-heard after the interruption, even though the interruption had exceeded a month and the members of the jury had been influenced by the media coverage of the trial during the interval. The third part contained a plea to move the retrial to Vienna, because the atmosphere in Innsbruck had grown so inimical towards Halsmann that there was no chance of an objective trial or a positive outcome.

The structure and contents of the document caused something of a fracas at the Innsbruck regional court, which attempted to reject part one of the plea as irrelevant to the annulment, arguing that it was an implicit appeal to the Supreme Court to reopen the trial because of grave doubts concerning the way the evidence had been handled by the court of first instance (§ 362 Austrian Criminal Procedure Act 1873). This, however, the regional court deemed inadmissible at this stage of the proceedings. After a brief tussle with Philipp’s lawyers, who reminded the regional court that it had no authority to decide what the Supreme Court should be allowed to read, it evidently passed on the plea in its entirety.<sup>76</sup>

This time, however, the decision of the Supreme Court did not fall in Halsmann’s favour: after three days during which the entire case had been rolled out before the court and Rittler, who had taken on the task of presenting the case of the defence in Vienna, had made the most of the arguments offered by Halsmann’s lawyers, the Supreme Court decided to uphold the Innsbruck judgement while emphasising that it was not competent to rule on the guilt or innocence of the defendant.<sup>77</sup>

## Part Two: Philipp Halsmann in Vienna

With the Supreme Court’s decision, Philipp Halsmann and his supporters could only hope for the judgement to be reviewed when and if new evidence came to light or for the president of the Republic of Austria to issue a formal pardon. With these options before them, the theatre of operations for the defence shifted to Vienna.

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<sup>76</sup> TCA St 3972/31/23, Philipp Halsmann’s complaint against decisions of 18 and 19 November 1929, received on 23 November 1929.

<sup>77</sup> *Neue Freie Presse*, ‘The second cassation proceedings in the Halsmann case’ (‘Der zweite Kassationsprozess im Fall Halsmann’), 21 January 1930.

### Prologue – An appeal to the president

One of the first public gestures of support for Philipp Halsmann even before the repeal of the plea for annulment had come from the writer Jakob Wassermann, who published an “Open Letter to the President of the Republic” in the *Neue Freie Presse*. The appeal foregrounded the extent to which racist and antisemitic considerations had been a determining factor in the verdict, and begged the president to free Halsmann, who, Wassermann was adamant, had been wrongly accused and wrongly convicted. “Mr. President, I, who am writing this, am a Jew. I have at no point neglected to open my visor, I am standing freely, in the middle of the bridge, open to the wind. I have, in an endangered position, achieved much that was meritorious, in both camps, on this side of the bridge and on the other, not least as far as the idea of justice is concerned. If someone now were to say to you: there, you see how the Jews stick up for each other, then I know no other answer than: It is pity enough that it is only the Jews who do so, not all human beings. [...] Prevent this unparalleled injustice, Mr President, as head of this state, with all means at your disposal, and you will have prevented it a thousandfold, since every deed carries uncounted seeds of similar deeds within it. We are waiting. I am waiting.”<sup>78</sup> After the Supreme Court had upheld the judgement, numerous voices were to take up Wassermann’s plea. One of the most vocal and committed was Josef Hupka, professor for commercial law and bills of exchange law at the University of Vienna. How Hupka came to be involved remains a mystery: he was neither, as is occasionally claimed,<sup>79</sup> Halsmann’s lawyer nor in any other way officially affiliated with the defence team. Himself of Jewish origin – albeit long converted to Roman Catholicism – he was a man of exemplary moral courage, who suffered neither fools nor injustice gladly. Having followed the media coverage of the trial (as newspaper readers at the time could hardly avoid doing), he evidently regarded it as a moral duty to exert his not inconsiderable influence in Halsmann’s favour.

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<sup>78</sup> Wassermann, ‘Offener Brief’, p. 2.

<sup>79</sup> E.g. Kenneth J. Weiss, ‘Bearing False Witness. Psychiatric Testimony in Nazi-Influenced Austria, 1928–29’ (June 2012) vol. 40 no. 2 *Journal of Psychiatry and Law* 185–218, p. 198; Deborah Weinstein and Allen Arpadi, ‘Prior Life: the Tragedy that Transformed a Master’ (May–June 2000) *American Photo*, 60–64 and 104, p. 64.

### Act One - Freeing Philipp Halsmann

After the judgement of the Supreme Court, a large number of petitions of grace arrived at the Ministry of Justice and the Federal Chancellery. The first of them was sent by Morduch Halsmann's brother and sister, Moritz Halsmann and Ita Grekpec;<sup>80</sup> it was followed soon after by a lengthy petition for mercy from his widow and daughter.<sup>81</sup> Ita and Liouba alleged that Philipp had long been suffering from tuberculosis, and that a prolonged stay in prison would have irreversible consequences for his health: "The sentence of the jury court was imprisonment, not death. You alone can ensure, by virtue of your high office, that the sentence remains limited to the former, that it is not against its intention by the force of circumstance converted to a death sentence."<sup>82</sup>

Halsmann's former lawyer Franz Pessler likewise continued his efforts to help the young man, for whom he had evidently conceived an affection. At his suggestion, ten of the twelve former jury members signed a letter asking the president „with regard to the fact that the verdict had been based on circumstantial evidence only, and that the livelihood of a family is in danger [...] while fully upholding the verdict they had given, to be merciful."<sup>83</sup> In the following weeks and months, a large number of further petitions - from Philipp's former fellow students at the Dresden University of Technology, Latvian members of parliament, law professor Gustav Radbruch and two hundred of his students from Heidelberg, the French and Austrian Human Rights Leagues, a petition organised by the Viennese lawyer Karl Büchner-Römer and signed by 38.000 people, and even a letter from Albert Einstein - arrived at the Ministry; all, however, to no avail.<sup>84</sup>

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<sup>80</sup> AStA, AVA, BM für Justiz (Ministry of Justice), Kart. 3402, Zl. 34417/1931 VI, petition of grace from Moritz Halsmann and Ita Grekpec (née Halsmann), 22 April 1930.

<sup>81</sup> AStA, AVA, BM für Justiz (Ministry of Justice), Kart. 3402, Zl. 34417/1931 VI, petition of grace from Ita and Liouba Halsmann, 26 April 1930.

<sup>82</sup> AStA, AVA, BM für Justiz (Ministry of Justice), Kart. 3402, Zl. 34417/1931 VI, petition of grace from Ita and Liouba Halsmann, 26 April 1930.

<sup>83</sup> AStA, AVA, BM für Justiz (Ministry of Justice), Kart. 3402, Zl. 34417/1931 VI, petition of grace from the members of the jury, 30 April 1930.

<sup>84</sup> AStA Akt Halsmann, petition of grace from the students of the Technische Hochschule Dresden, n.d. (received on 12 July 1930); petition of grace from the Austrian League of Human Rights, 6 June 1930; petition of grace from the French League of Human Rights, 19 February 1930; petition of grace from Max Laserson members of the Latvian parliament, 21 March 1930; petition of grace from Gustav Radbruch and further professors and students of the University of Heidelberg, 5 March 1930; petition of grace from Karl Büchner-Römer, 14 June 1930; AStA, Akten der Präsidentschaftskanzlei (files of the president's office), petition of grace from Albert Einstein, 20 February 1930.

While Philipp's sister Liouba had taken to touring Europe with the aim of enlisting support for her brother,<sup>85</sup> Josef Hupka likewise realised that the most promising hope for ensuring Halsmann's release lay in securing help from outside Austria. He therefore contacted the famous Viennese journalist, translator, and salonière Berta Zuckerkandl, who remembers Hupka's visit in her memoirs.<sup>86</sup> The direct result of Hupka's efforts was a letter from Zuckerkandl to her sister, who had married the brother of the French premier minister Clemenceau, in which she gives a moving, if somewhat inaccurate, account of the case.<sup>87</sup> By a lucky chance, the Austrian Chancellor Schober had at the time been planning a visit to Paris and had asked Zuckerkandl to accompany him. During Schober's stay in the French capital, he also met with the former prime minister Painlevé. Painlevé was not only a close friend of Zuckerkandl's, but had also been a staunch supporter of Dreyfus, with whose case that of Philipp Halsmann increasingly came to be compared.<sup>88</sup> Zuckerkandl was not the only one eager to enlist his help on Halsmann's behalf: Liouba Halsmann had also spoken to him shortly before Schober's visit and had received his promise that he would do what he could to help her brother.<sup>89</sup>

After the meeting, Painlevé handed Zuckerkandl a letter to Schober, asking her to make sure that it reached him in person. Zuckerkandl elected to deliver the letter (which she had read beforehand) herself; in a letter to her sister, she describes its contents and its effect on the Austrian chancellor: Schober had been shocked to be reminded so urgently of his word of honour and had stated that there was nothing he could do if it turned out that the Minister of Justice had already signed the sentence against Halsmann. In order to keep his word, he had then phoned Slama, who had not yet signed, and had arranged for the matter to be laid before the president. Miklas would ensure that Halsmann would be freed, he assured Zuckerkandl. "For two

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<sup>85</sup> For details on Liouba Halsmann's efforts, cf. Nicole Emanuel, 'Philippe Halsman. A Personal Story' (January 2008) vol. 9 no. 1 *In Touch, the Newsletter of the American Friends of the Jewish Museum Hohenems Inc.* 8-12.

<sup>86</sup> Klaus Taschwer, 'Kämpfer gegen Antisemitismus und Opfer der Shoah. Leben und Sterben von Josef Hupka (1875-1944), Ordinarius für Handels- und Wechselrecht an der Universität Wien', in: Johannes Koll (ed.), *"Säuberungen" an österreichischen Hochschulen 1934-1945* (Vienna: Böhlau, 2017) 459-89, p. 478.

<sup>87</sup> Berta Zuckerkandl, *Österreich intim. Erinnerungen 1892 bis 1942*, Kindle Edition (Vienna: Amalthea, 2013), n.pag., letter from Berta Zuckerkandl to Mme Paul Clemenceau, 1929. Among other errors, Zuckerkandl claims that Eder testified to having been an eyewitness of the murder. This is borne out neither by the archival material nor by contemporary accounts; nonetheless, it resurfaces occasionally in recent literature on the case.

<sup>88</sup> Lucian O. Meysels, *In meinem Salon ist Österreich. Berta Zuckerkandl und ihre Zeit* (Wien, München: Herold Verlag, 1984), pp. 257-8; Zuckerkandl, *Österreich intim*, n.pag., letter from Berta Zuckerkandl to Mme Paul Clemenceau, 1929.

<sup>89</sup> Emanuel, 'Philippe Halsman', p. 11.

years, men of high intellectual rank, especially Prof. H., have been fighting for the honour and the life of an innocent man. I am happy to have been the mail carrier of his fate,” Zuckerkandl concluded.<sup>90</sup>

As in her summary of the case itself, this account calls for some clarification: of course, it was not a sentence which lay awaiting the Minister’s signature but the decision regarding one of the many petitions of grace, most likely that of Ita and Liouba Halsmann. It is noticeable that this is the only petition that appeared to warrant more than a cursory refusal – not because of the close relationship between the writers and the convicted man, but because of an inquiry from the chancellery. The file on Philipp Halsmann contains a lengthy and detailed statement signed by Slama, which aims to refute the concerns for Philipp’s health that mother and sister had raised. According to the resident physician at the prison at Stein, where Philipp was held captive, he showed no signs of tuberculosis. After a summary of the two trials which relies exclusively on the accounts furnished by the prosecution – Slama explains in a handwritten note at the end that he had thought it best to refrain from requesting the files to be sent from Innsbruck to Vienna to avoid attracting public notice –, the Minister concludes that these had been conducted with “rigorous objectivity” and that there was no indication that the members of the jury had been influenced by antipathy towards the accused. There could be no reasonable doubt in the rightness of the verdict; hence, Philipp Halsmann was to be treated “no worse, but also no better, than every other criminal”. After he had served half of his sentence, one might consider including him in one of the regular amnesties. Slama’s letter gives September 1930 as the earliest possible date for Philipp’s release.<sup>91</sup>

In order to ensure that this would indeed happen, Hupka enlisted the help of his friend Karl Hirsch, who was a high-ranking official at the Office of the Chancellery. In a letter to Hirsch, he stressed his conviction of Philipp’s innocence – a conviction, he reported, which was shared by Sigmund Freud, whom Hupka had asked to read Philipp’s *Letters from Prison to a Friend*. These letters, addressed to Philipp’s fiancée Ruth Roemer, had been published in 1930 in a desperate attempt to prove his innocence. “I have never, while I was following Ph.H.’s trial, doubted his innocence. Reading the letters has not brought anything new. I notice without surprise that there is no sentence that reveals the patricide, not one line that contradicts the

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<sup>90</sup> Zuckerkandl, *Österreich intim*, n.pag., letter from Berta Zuckerkandl to Mme Paul Clemenceau, 1930–31; cf. also Zuckerkandl, *Österreich intim*, n.pag., letter from Berta Zuckerkandl to Gottfried Kunwald; Meysels, *In meinem Salon*, 258–60.

<sup>91</sup> AStA, Franz Slama to the Office of the Chancellery, 13 June 1930; see also Hans Haider, ‘Der Fall Philipp Halsmann. Vom Justizskandal zum Fernsehgeheimnis’ (1990) vol. 39 *Das Jüdische Echo* 75–81, p. 76.



image one has conceived of an innocent man confronted with so dreadful an accusation. [...] Of course I beg you to avail yourself of this assessment without limitation.”<sup>92</sup>

In the background, however, there were forces at work to prevent or at least delay Halsmann’s discharge from prison. The president of the Innsbruck regional court had already written to the Ministry of Justice to ensure that Halsmann paid the costs of his trial and imprisonment prior to his release, “not only out of regard for the federal coffers, but also because it is likely that, given Philipp Halsmann’s psychological disposition, he would make the most of not having to pay, equating this with having successfully asserted his allegation that the judgement against him had been a miscarriage of justice.”<sup>93</sup>

A weightier argument came in the form of a letter from Ignaz Seipel, former chancellor of the Republic and still heavily involved in Austrian politics. He warned Slama against pardoning Philipp Halsmann for two reasons. The first was that the publishers of his letters to Ruth Roemer had insisted that Philipp’s current state of health made his release from prison a medical necessity. “This is an incredible allegation against the director of the prison, and especially against the doctors,” Seipel pointed out. If it were true that Halsmann was ill, it would be quite sufficient to have him moved to a hospital; there would be no need for a pardon.

The second and somewhat bizarre reason was connected to the media coverage of the trial at the Supreme Court. After the judgement, the Viennese newspaper *Der Morgen* had published a caricature which showed Justice personified, bearing a sword and a pair of scales. On the hilt of the sword was Philipp Halsmann, stretched out in a position reminiscent of Christ on the cross and surrounded by the Supreme Court judges in their robes, but without heads.<sup>94</sup> The conceit itself was not new; already after the second verdict, the satirical paper *Götz von Berlichingen* had published a pro-Halsmann poem in which it compared his fate to that of Christ at the Crucifixion.<sup>95</sup> This time, however, it had caught the attention of a number of members of parliament for the Christian Socialist party, which made it the subject of a parliamentary enquete.<sup>96</sup> A trial ensued, in which the editor of the *Morgen* was

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<sup>92</sup> AStA, AdR, BKA, Korr. 2.451/1930, Josef Hupka to Karl Hirsch, 2 September 1930.

<sup>93</sup> AStA, AVA, BM für Justiz (Ministry of Justice), Kart. 3402, Zl. 34417/1931 VI, President of the Innsbruck regional court to the Ministry of Justice, 16 June 1930.

<sup>94</sup> *Der Morgen*, 27 January 1930.

<sup>95</sup> *Der Götz von Berlichingen*, ‘Halsmann on the Cross’ (‘Halsmann am Kreuze’), 25 October 1929; cf. also Hofinger, “(...) man spricht nicht”, p. 25.

<sup>96</sup> *Innsbrucker Nachrichten*, ‘Parliamentary Enquete Concerning an Act of Blasphemy’ (‘Parlamentarische Anfrage wegen einer Gotteslästerung’), 30 January 1930.

accused of blasphemy pursuant to § 122 of the Austrian Criminal Code.<sup>97</sup> Seipel cautioned Slama against releasing Halsmann before the judgement in this affair had been given.<sup>98</sup>

Alerted by the Viennese journalist Ernst Klebinder of the *Wiener Sonn- und Montagszeitung*, who had evidently caught wind of the letter, Hupka telegraphed another of his numerous connections, the Austrian politician Josef Redlich, who was on fairly intimate terms with Schober. In a hasty telegram sent from Unterach on the Attersee, where he was spending the holidays with his family, Hupka asked Redlich to exert his influence with the Chancellor. Redlich reacted promptly: immediately after receiving the telegram, he sent a letter to Schober in which he stressed that it would be “a grievous injustice to allow ‘political’ – that is, party-political – influence to be exerted to an even greater extent than it has already been hitherto.”<sup>99</sup>

Upon his return to Vienna, Hupka joined forces with Klebinder. The two men took to haunting the office of the chancellery, where they attempted to convince Miklas, Schober and Slama to pardon Halsmann regardless of Seipel’s reservations.

Although the director of the cabinet stubbornly refused to acknowledge even the letter’s existence, their efforts did not, in the end, prove in vain: on 30 September 1930, Philipp was duly pardoned along with 120 other offenders.<sup>100</sup> It was “the last and most humanly beautiful act of Schober’s cabinet”,<sup>101</sup> which laid down its office – for reasons entirely unconnected to the Halsmann trial – on the very same day. As the files show, Halsmann’s pardon had been a last-minute decision: on 27 September, Slama had authorised the director of the cabinet to tell Hupka and Klebinder that he would not suggest to Miklas to pardon Halsmann: along with the rest of the cabinet, Slama had resigned on 25 September and would continue in office only until the end of the month. Hence, he felt unable to sign a pardon that was

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<sup>97</sup> *Der Morgen*, ‘The Case Against Us’ (‘Die Anklage wider uns’), 2 June 1930. The editor was eventually acquitted of blasphemy but fined 1.500 Schilling for insulting the Supreme Court; cf. *Der Abend*, ‘An Epilogue to the Halsmann Affair’ (‘Ein Nachspiel im Halsmann-Prozess’), 8 October 1930.

<sup>98</sup> AStA, AdR, Akten der Präsidentschaftskanzlei (files of the president’s office), Ignaz Seipel to Franz Slama, 30 August 1930.

<sup>99</sup> AStA, AdR, Akten der Präsidentschaftskanzlei (files of the president’s office), Josef Redlich to Johann Schober, 12 September 1930.

<sup>100</sup> AStA, AdR, 01/PK, Akten der Präsidentschaftskanzlei (files of the president’s office), Franz Slama an Wilhelm Miklas, 30 September 1930; *Neue Freie Presse*, ‘Philipp Halsmann Pardoned’ (‘Philipp Halsmann begnadigt’), 1 Oktober 1930.

<sup>101</sup> Hupka, ‘Nichtigkeit’, p. 129.

related to a “political issue”; he would leave the decision to his successor.<sup>102</sup> Three days later, he had added Halsmann to the list.<sup>103</sup> Evidently, the efforts of Halsmann’s stubborn supporters had paid off.

### **Act Two – The fight for Halsmann’s rehabilitation**

Once Philipp Halsmann had been freed, the media and general public gradually lost interest in the affair, even though the battle was only half won: released from prison, Halsmann had immediately been expelled from Austria, and had joined his sister in Paris. As a convicted murderer, he was barred from continuing his studies at the Technische Hochschule in Dresden. The next goal of his supporters was, therefore, to have the judgement reviewed and Halsmann proven innocent. On the front lines of this effort were Josef Hupka, Halsmann’s former lawyer Franz Pessler, and Ernst Ruzicka. The latter was a Viennese lawyer who had followed the trial with some interest and had published a number of speculative articles in the *Neue Freie Presse*, but had only become actively involved when an unknown man had appeared in his office and confessed to having murdered Morduch Halsmann.

The stranger, who went by the name of Johann Schneider, had extraordinarily detailed knowledge of the events surrounding Morduch Halsmann’s death and was the first person able to give an account that fit both Philipp’s story and the evidence. Convinced that Schneider was telling the truth, Ruzicka contacted the authorities. Upon closer investigation, however, Schneider appeared to have a watertight alibi. In the end, he was tried and sentenced to 90 days in prison for fraud.<sup>104</sup>

In the *Neue Freie Presse* of 29 and 30 November 1930, Hupka had likewise published a lengthy article on the Halsmann trial, in which he criticised the way the court had handled the evidence and had deconstructed both the expert medical opinion and the expert testimony of the Innsbruck medical faculty. He foregrounded the discrepancy between the extent of Morduch Halsmann’s injuries and the absence of bloodstains on Philipp’s clothing, the riddle of Philipp Halsmann’s exact location at the time of the tragedy, and the most problematic aspects of the expert psychiatric

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<sup>102</sup> ASStA, AdR, 01/PK, Akten der Präsidentschaftskanzlei (files of the president’s office), file note, 27 September 1930.

<sup>103</sup> ASStA, AdR, 01/PK, Akten der Präsidentschaftskanzlei (files of the president’s office), Franz Slama to Wilhelm Miklas, 30 September 1930.

<sup>104</sup> For a detailed account of Schneider’s confession and the consequences, cf. Ruzicka, *Schlüssel zur Wahrheit*.

opinion, dwelling also on the hostile tone it took against the accused – “one has the impression that one hears the prosecutor speak”.<sup>105</sup>

An extended version appeared a few months later in a pamphlet published by the Austrian League of Human Rights, of which Hupka was a prominent member. Hupka’s analysis was preceded by a detailed account of the case written by Franz Pessler – still the most accurate description of the two trials to date – and a foreword by Carl Brockhausen,<sup>106</sup> another high-ranking member of the League and a colleague of Hupka’s from the University of Vienna law faculty.<sup>107</sup> Hupka closed his account with an emotional appeal to the audience: “No power can redress the misfortune that has befallen Philipp Halsmann, the destruction of his youth by the pain and shame of two years’ enslavement in prison. But it is an obligation of honour of the state to do away with the *injustice* that a man groundlessly condemned is still held, in public life, to be the author of an ignominious crime. The legal means of his rehabilitation – which would be, at the same time, a rehabilitation of the judiciary – are given, and so are the legal prerequisites.”<sup>108</sup>

In his article, Hupka had called upon the “qualified experts” to give an opinion on the expert psychiatric opinion. Two weeks later, the *Neue Freie Presse* was able to publish a statement from “the most qualified of them all”, Sigmund Freud himself. It is not unlikely that Hupka had persuaded Freud to write to the newspaper, although there is evidence only that he had talked over his own article with him prior to publication.<sup>109</sup> In the only public statement Freud ever made with regard to a criminal case,<sup>110</sup> he showed himself highly critical of the way in which the Innsbruck faculty had applied his theories: invoking the Oedipus conflict would only have made sense if Halsmann had beyond all doubt been guilty of patricide; under the

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<sup>105</sup> Hupka, ‘Fiat Iustitia’, p. 4. On the tendentious language and structure of the expert psychiatric opinion cf. also Gutmann, *Fakultätsgutachten*, pp. 28–31 und 52–54; Bleuler, ‘Meinungäußerung’, pp. 75–78.

<sup>106</sup> Carl Brockhausen (1859–1951) was an honorary Professor of administrative law and *Kanzleidirrektor* (highest-ranking legal official) at the University of Vienna. In addition, he was a staunch pacifist and champion of international understanding; cf. Ernst C. Hellbling, ‘Brockhausen, Carl’, in: *Neue Deutsche Biographie* 2 (1955), 627–8. [online version]; <https://www.deutsche-biographie.de/pnd116552980.html#ndbcontent> (accessed 24 May 2020); see also Thomas Olechowski, Tamara Ehs, and Kamila Staudigl-Ciechowicz, *Die Wiener Rechts- und Staatswissenschaftliche Fakultät 1918–1938* (Vienna: Vienna University Press, 2014) pp. 62, 388, 469–70, 473, 519, 704, 725.

<sup>107</sup> Carl Brockhausen, ‘Geleitwort’, in: Österreichische Liga für Menschenrechte (ed.), *Der Fall Halsmann*. Schriften der Österreichischen Liga für Menschenrechte, vol. 3. (Vienna: Gilhofer & Ranschburg, 1931) I–IV.

<sup>108</sup> Hupka, ‘Fiat Iustitia’, p. 9 (italics in original).

<sup>109</sup> Weiss, ‘Bearing False Witness’, p. 206; Haider, ‘Österreichs Dreyfusaffäre’, p. 124.

<sup>110</sup> Weiss, ‘Bearing False Witness’, p. 207.

circumstances, it was “misleading” and “unnecessary”. Moreover, the theory that Philipp could have “repressed” his father’s murder struck Freud as “a rarity of the first order” in a mentally healthy person.<sup>111</sup>

While Brockhausen and Hupka were active for Halsmann’s rehabilitation, Philipp Halsmann’s opponents had also found an influential supporter at the University of Vienna. Wenzeslaus Gleispach, head of the department of Criminal Law, was a staunch anti-Semite and adherent of right-wing ideology who would as Rector go on to draft and implement the first student regulations based on ‘racial’ distinctions. He had repeatedly clashed with Hupka over university-related matters and had evidently taken umbrage at the prominent position Hupka occupied in public discourses on the Halsmann affair.

Five days after the publication of Hupka’s article, he had written to the Ministry of Justice and explained that he had been contacted by the editor of the *Monatsschrift für Kriminalpsychologie und Strafrechtsreform*, who had asked him for “an objective account of the Halsmann case based on the court files”. Since the Innsbruck regional court had not complied with his request to send the files on the Halsmann case to Vienna but had instead forwarded it to the Ministry of Justice, Gleispach felt obliged to give a detailed account of his motivation: Since no objective account of the case “had hitherto been published”, he planned to have one of his assistants fill this gap. Gleispach’s letter takes a number of pot shots at Hupka, stating that it was not appropriate for a legal scholar to “concern himself at all with the evidentiary value of individual pieces of evidence” – which Hupka had done at some length. An “attempt to replace the court’s opinion on the evidence with an academic opinion based only on a perusal of the files” was “unjustifiable from a scientific point of view”.<sup>112</sup> In the end, however, Gleispach was only moderately successful: he was informed that the files could not be sent to Vienna but that one of his assistants was welcome to come to Innsbruck to inspect them.<sup>113</sup> Nobody appears to have availed themselves of the invitation.

However, Hermann Herschmann, a forensic psychiatrist who taught at the Department of Criminal Law, gave a talk at a meeting of the Austrian chapter of the International Association of Criminology, in which he attempted to defuse Hupka’s criticism of the pseudo-Freudian arguments to which the Innsbruck medical faculty

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<sup>111</sup> Freud, ‘Fakultätsgutachten’, p. 13.

<sup>112</sup> AStA, AVA, BM für Justiz (Ministry of Justice), Kart. 3402, Zl. 34417/1931 VI, Wenzeslaus Gleispach to the Ministry of Justice, 4 December 1930.

<sup>113</sup> AStA, AVA, BM für Justiz (Ministry of Justice), Kart. 3402, Zl. 34417/1931 VI, Ministry of Justice, GZ 37.861-4/30.

had resorted. He also stated firmly that psychologists should only appear in court in matters related to the psychology of testimony and witness statements, if at all – an assertion that was enthusiastically applauded by the chair of the meeting, Wenzeslaus Gleispach. An account of the paper was duly published in the *Monatsschrift*.<sup>114</sup>

Undeterred by frictions within the faculty, Hupka continued his efforts towards a retrial. At the beginning of 1931, Pessler had been optimistic that this would come to pass before long. After Schneider's confession had been dismissed by the authorities, Ruzicka had singlehandedly continued the investigation, disproved Schneider's alibi and published his findings in a small booklet,<sup>115</sup> which he had also brought to the attention of the prosecutor's office in Innsbruck.

In addition, Anton Werkgartner, one of the medical experts, had publicly declared that the absence of blood on Philipp Halsmann had been a much stronger argument for his innocence than for his guilt. "Had one conducted the discussion before the jury differently", he continued, it would have been easy to convince them that Morduch Halsmann's murderer could not have escaped without blood all over himself.<sup>116</sup> At a public lecture, Hupka had confronted Werkgartner and had forced him to admit that he had never seen, much less examined, Philipp Halsmann's clothing.<sup>117</sup> In addition, Werkgartner had confirmed that the case he had referenced in court had been that of Karoline Kudisch, which – as outlined above – differed from Halsmann's in important details.<sup>118</sup>

Pessler's hopes, however, proved unfounded: The prosecutor tersely informed Ruzicka that the information contained in his treatise did not "appear adequate and sufficient to justify taking further steps towards a review of the judgement."<sup>119</sup> The Werkgartner episode likewise did not live up to its promising beginnings: informed

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<sup>114</sup> Heinrich Herrschmann, 'Über psychiatrische und psychologische Sachverständigentätigkeit im Indizienprozeß', *Versammlungs-Bericht, Österreichische Landesgruppe der IKV, Sitzung vom 12. Februar 1931*. (1932) vol. 22 *Monatsschrift für Kriminalpsychologie und Strafrechtsreform*, 351-62; cf. also Marbe, *Strafprozeß*, 137.

<sup>115</sup> Ruzicka, *Schlüssel zur Wahrheit*.

<sup>116</sup> AStA, AVA, BM für Justiz (Ministry of Justice), Kart. 3402, Zl. 34417/1931 VI, Philipp Halsman to the Minister of Justice, 15 June 1931; cf. also *Der Morgen*, 'The Second Phase of the Halsmann Case' ('Die zweite Phase des Falles Halsmann'), 29 December 1930.

<sup>117</sup> *Der Morgen*, 'The Second Phase of the Halsmann Case' ('Die zweite Phase des Falles Halsmann'), 29 December 1930; cf. also *Neue Freie Presse*, 'New Evidence in the Halsmann Case' ('Neue Aktenstücke im Fall Halsmann'), 19 July 1931.

<sup>118</sup> *Der Morgen*, 'The Second Phase of the Halsmann Case' ('Die zweite Phase des Falles Halsmann'), 29 December 1930; AStA, AVA, BM für Justiz (Ministry of Justice), Kart. 3402, Zl. 34417/1931 VI, Philipp Halsman to the Minister of Justice, 15 June 1931.

<sup>119</sup> TCA St 3972/28, Innsbruck prosecutor's office to Ernst Ruzicka, 13 March 1931.

of the medical expert's statements, the prosecutor invited Werkgartner to give an expert opinion on whether he could uphold his original expert opinion in light of the statements he had made in the meantime. Werkgartner stated that he saw no reason to make changes to the original expert opinion and charged 40 Schillings for his efforts.<sup>120</sup>

Nevertheless, Pessler and Ruzicka remained optimistic, hoping that two recent publications would convince the prosecution to file a motion for a retrial. One was a detailed critique of the expert psychiatric opinion by the psychologist Willy Gutmann, the second a defence of the same expert opinion by Eduard Gamper. Mahler personally delivered the latter publication to the prosecutor, pointing out that it clearly stated that the faculty had had doubts concerning Philipp's accountability at the time of the murder, and pointing out the necessity of reopening the case.<sup>121</sup>

Evidently getting impatient, Halsmann's supporters once again turned to the Ministry of Justice for support. On 9 June 1931, Hupka sent a memorandum entitled "The blighted revision in the Halsmann trial", which reiterates the arguments outlined above.<sup>122</sup> A few days later, he had a personal meeting with the Chancellor, in which he asked Schober to see that the prosecution did not put a spoke in the wheel of their efforts towards a review of the judgement. The very next day, he met with the official in charge of this matter to discuss further steps.<sup>123</sup>

In parallel to Hupka's efforts, Pessler drafted an appeal in Philipp Halsmann's name detailing the grounds for a revision, which he sent to the Ministry of Justice.<sup>124</sup> In a letter, Hupka expressed his support of the initiative and asked the department head in charge of the matter to give it his favourable consideration.<sup>125</sup>

After another month of waiting, Hupka published the substance of his memorandum in another newspaper article, presumably in an effort to exert pressure on the

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<sup>120</sup> AStA, AVA, BM für Justiz (Ministry of Justice), Kart. 3402, Zl. 34417/1931 VI, report from the Innsbruck prosecutor's office to the Ministry of Justice, 2 July 1931; memorandum Josef Hupka, 9 June 1931.

<sup>121</sup> TCA St 3972/28, file note, 18 April 1931.

<sup>122</sup> "Die vereitelte Wiederaufnahme im Halsmann-Prozeß", AStA, AVA, BM für Justiz (Ministry of Justice), Kart. 3402, Zl. 34417/1931 VI, memorandum Prof. Hupka, 9 June 1931.

<sup>123</sup> AStA, AVA, BM für Justiz (Ministry of Justice), Kart. 3402, Zl. 34417/1931 VI, Josef Hupka to Department Head (*Sektionschef*) Polzer, 16 June 1931.

<sup>124</sup> AStA, AVA, BM für Justiz (Ministry of Justice), Kart. 3402, Zl. 34417/1931 VI, Appeal Philipp Halsmann to the minister of Justice, 15 June 1931.

<sup>125</sup> AStA, AVA, BM für Justiz (Ministry of Justice), Kart. 3402, Zl. 34417/1931 VI, Josef Hupka to Department Head (*Sektionschef*) Polzer, 16 June 1931.

authorities in charge.<sup>126</sup> The prosecution, however, declined to take steps. On 20 June 1931, Pessler himself finally filed for a review of the judgement, basing his arguments on Ruzicka's account of Schneider's confession, which offered a plausible account of how the murder could have been committed in Philipp's presence but without his knowledge, and on Werkgartner's statements.

The prosecution appeared unimpressed: there was "nothing substantially new" in the conclusion that someone else could have committed the deed if one assumed – as the prosecution still did – that Philipp had stood in the exact spot in which his father had been attacked; moreover, Werkgartner had already been consulted and had upheld his original testimony.<sup>127</sup> The court, as so often, concurred with the assessment of the prosecution; three further appeals for revision failed likewise.<sup>128</sup>

Hupka took no further steps towards a review of the judgement; nevertheless, he retained an active interest in everything connected to it. In the summer of 1932, he invited the Karl Marbe, who was at that time writing an account of the trial and a critique of the expert psychiatric opinion, to stay with him in Vienna and profit from his detailed knowledge of the case and connections to other Halsmann supporters.<sup>129</sup> Hupka had high hopes of Marbe's publication,<sup>130</sup> but was again disappointed: the case remained closed, Philipp Halsmann unvindicated.

### The final curtain

After World War Two, the conviction that Halsmann had been wrongly accused gradually took hold; however, too much of the original file had been lost to allow for a review of the judgement. Philipp Halsmann himself took no further steps in this matter. Changing his name to Philippe Halsman and moving from France to the USA, he quickly established himself as one of the most sought-after photographers of his day, gaining fame for his pictures of celebrities like Marilyn Monroe, Richard Nixon, Salvador Dali, or Albert Einstein. A late reminder of the case came in 1943, when the US immigration authorities had evidently stumbled across his criminal record: It took a letter from Thomas Mann, which stressed that Halsmann had been

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<sup>126</sup> Hupka, 'Nichtigkeit', p. 5.

<sup>127</sup> TCA, St 3972/28, response of the prosecution to the appeal for reopening the case, 7 September 1931.

<sup>128</sup> TCA, St 3972/28, diary of the Halsmann case.

<sup>129</sup> Letter from Hermine Hupka to Elisabeth Kaefer, 18 September 1931.

<sup>130</sup> Marbe, *Der Strafprozess gegen Philipp Halsmann. Aktenmäßige Darstellung und kriminalpsychologische Würdigung* (Leipzig: C. Hirschfeld, 1932).



wrongly convicted, to set the record straight and ensure that Halsmann could remain in the USA.<sup>131</sup>

In 1973, Ernst Ruzicka's son Martin Ross enquired at the Austrian Chancellery whether Halsmann would be allowed to enter Austria and visit the grave of his father; this was answered in the affirmative. The letter states that the judgment could no longer be overturned, but that Halsmann's criminal record had been expunged.<sup>132</sup>

In the afterwar period, scholarly and journalistic interest in the case only rekindled sporadically. One such occasion was the burial of Morduch Halsmann's head following an initiative by Austrian journalist Hans Haider, which took place in 1991.<sup>133</sup> After having been cut off to serve as a gruesome piece of evidence in the trial, it had lain more or less forgotten at the medical department of the University of Innsbruck. The funeral triggered not only a brief revival of media interest in the case, but also a number of scholarly and journalistic publications of varying degrees of accuracy, two books<sup>134</sup> and a film.<sup>135</sup> None of them, however, focus on the aftermath of the trial, and the efforts of a group of courageous individuals, not least among them Josef Hupka of the Vienna law faculty, in their dauntless fight for justice in the increasingly antisemitic atmosphere of interwar Austria.

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<sup>131</sup> Haider, 'Fall Philipp Halsmann', p. 79; Hofinger, "'(...) man spricht nicht'", p. 33.

<sup>132</sup> Martin H. Ross, 'The Philippe Halsmann Affair' (unpublished manuscript, 1973) [http://digital.cjh.org/webclient/DeliveryManager?pid=512416&custom\\_att\\_2=simple\\_viewer](http://digital.cjh.org/webclient/DeliveryManager?pid=512416&custom_att_2=simple_viewer) (accessed 22 May 2020), p. 59; Pollack, *Anklage Vatermord*, p. 304.

<sup>133</sup> Hofinger, "'(...) man spricht nicht'", pp. 34-5.

<sup>134</sup> Pollack, *Anklage Vatermord* and Austin Ratner, *The Jump Artist* (London et al.: Penguin, 2012). The former is a highly accurate documentary account based on the scholarly literature and some of the archival material on the case; the latter is an exceedingly well-written postmodern version of the Halsmann affair, which deliberately re-interprets the events and departs from historical reality in several important particulars.

<sup>135</sup> Joshua Sinclair (dir.), *Jump!* (2006).

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