

CASE NO. 41

TRIAL OF JEAN-PIERRE LEX

PERMANENT MILITARY TRIBUNAL AT NANCY

CONCLUDED 13TH MAY, 1946

Injury to the external security of the State and the Laws and Customs of war.

A. OUTLINE OF THE PROCEEDINGS

The accused, Jean-Pierre Lex, a German citizen residing in Peltre, was charged with having instigated, during the occupation of France, between July, 1940, and April, 1944, the deportation of 17 French families, and to have looted their property.

It was shown that the accused had resided in Peltre since 1932. During the war of 1939-1945, he had worked as assistant to Ulrich, another German who had served as secretary of the Town Hall at Peltre. Due to his long residence, Lex had an intimate knowledge of the local inhabitants. He reported to the German authorities names of those using the French language, and accused many others of conducting anti-German propaganda. As a result, 17 families were deported to Germany. The accused was entrusted with arranging their departures from Peltre.

The charge of pillage of the property of the deportees was dismissed on account of lack of evidence.

The Tribunal found the accused guilty of having "in time of war and being a German, exposed Frenchmen to reprisals by means of acts not authorized by the (French) Government, namely by denouncing them to the German authorities." The accused was convicted to solitary confinement for five years, and to the confiscation of all his property.

B. NOTES ON THE NATURE OF THE OFFENCE

The accused was found guilty of the above offence under the terms of Art. 79 para. 2 of the French Penal Code.

The Article deals with the crime of "injury to the external security of the State" (*atteinte à la sûreté extérieure de l'Etat*). The following five types of cases fall within this notion :

- (1) Hostile acts, not approved by the French Government, by which France is exposed to a declaration of war ;
- (2) Acts not approved by the French Government, by which French citizens are exposed to endure reprisals ;
- (3) Enlisting soldiers in time of peace on behalf of a foreign Power, in French territory ;⁽¹⁾

⁽¹⁾ On this subject see, in Vol. III of this series, the *Trial of Robert Wagner and Six Others*.

- (4) Maintaining in time of war, without permission of the French Government, correspondence or relations with subjects or agents of an enemy Power ;
- (5) Undertaking in time of war, in disregard of prohibitions, acts or commerce with subjects or agents of an enemy Power.⁽¹⁾

Both French citizens and foreigners are made liable to punishment.

The accused was found guilty under item (2) above, in that he denounced French citizens, caused their deportation, and thereby "exposed" them to "reprisals".

It should be observed that the term "reprisals" in Art. 79 of the French Penal Code, is not used in the sense of international law, and consequently does not refer to acts permissible under the laws and customs of war. It refers, on the contrary, to persecutions of the inhabitants of occupied territory, whether or not these are conducted as reprisals in the proper sense.⁽²⁾

It would thus appear that, by convicting the accused for "injury to the external security of the State", in that French citizens were "exposed to endure reprisals", the Tribunal passed judgment purely on the basis of French national law. Evidence to this effect can be found in that, unlike other French trials already reported upon in this Series, the Court did not make reference to the Ordinance of 28th August, 1944, dealing with the punishment of war crimes.

It should, however, be stressed that the acts for which the accused was condemned are also punishable under the laws and customs of war. The accused took part in the deportation of inhabitants of an occupied territory, and such deportations are recognized as a war crime. They are expressly included in the definition of war crimes in Art. 6 (b) of the Nuremberg Charter, as well as in Art. II, 1 (b) of Law No. 10 of the Allied Control Council for Germany. They were also recognized as such by the United Nations War Crimes Commission in connection with numerous cases reported to it by member governments, in dealing with which the Commission had in mind the Preamble of the 4th Hague Convention concerning the Laws and Customs of War on Land, which covers violations not explicitly prohibited in the various provisions of the Convention.⁽³⁾

In the circumstances of the case, the accused's complicity in deportations was at the same time the result of the fact that he had committed acts of denunciation. As has already been reported in connection with another trial,⁽⁴⁾ denunciation can either be regarded as an offence in itself, or else treated in conjunction with the concept of complicity.

It thus appears that, in either case, the accused was in fact guilty of a war crime, in addition to having violated a provision of French municipal law.

(1) Several other acts are also regarded as "injury to the external security of the State". They are dealt with in Arts. 81-82 of the Penal Code.

(2) The problem of reprisals is to receive further treatment in a later volume of this series.

(3) See also pp. 53-58.

(4) See *Trial of Gustav Becker, et al*, on pp. 71-72 above.