

CASE NO. 37

TRIAL OF HAUPTSTURMFÜHRER AMON LEOPOLD GOETH

COMMANDANT OF THE FORCED LABOUR CAMP NEAR CRACOW,
SUPREME NATIONAL TRIBUNAL OF POLAND, CRACOW
27TH-31ST AUGUST AND 2ND-5TH SEPTEMBER, 1946

Criminal Organizations. Genocide. The Defences of Superior Orders, Military Necessity and Non-applicability of the Law.

A. OUTLINE OF THE PROCEEDINGS

I. THE INDICTMENT

It was charged that the accused Amon Leopold Goeth, an Austrian subject, as a member of the NSDAP and of the "Waffen SS" took part in the activities of the criminal organizations. The former was described as an organization which under the leadership of Adolf Hitler, through aggressive wars, violence and other crimes, aimed at world domination and establishment of the national-socialist régime. The accused personally issued orders to deprive of freedom, ill-treat and exterminate individuals and whole groups of people, and himself murdered, injured and ill-treated Jews and Poles as well as people of other nationalities. In particular it was charged that :

(1) The accused as commandant of the forced labour camp at Plaszow (Cracow) from 11th February, 1943, till 13th September, 1944, caused the death of about 8,000 inmates by ordering a large number of them to be exterminated.

(2) As a SS-Sturmführer the accused carried out on behalf of SS-Sturmbannführer Willi Haase the final closing down of the Cracow ghetto. This liquidation action which began on 13th March, 1943, deprived of freedom about 10,000 people who had been interned in the camp of Plaszow, and caused the death of about 2,000.

(3) As a SS-Hauptsturmführer the accused carried out on 3rd September, 1943, the closing down of the Tarnow ghetto. As a result of this action an unknown number of people perished, having been killed on the spot in Tarnow ; others died through asphyxiation during transport by rail or were exterminated in other camps, in particular at Auschwitz.

(4) Between September, 1943, and 3rd February, 1944, the accused closed down the forced labour camp at Szebnie near Jaslo by ordering the inmates to be murdered on the spot or deported to other camps, thus causing the death of several thousand persons.

(5) Simultaneously with the activities described under (1) to (4) the accused deprived the inmates of valuables, gold and money deposited by them, and appropriated those things. He also stole clothing, furniture and other movable property belonging to displaced or interned people, and sent them to Germany. The value of stolen goods and in particular of valuables reached many million zloties at the rate of exchange in force at the time. For those acts the accused was arrested by the German authorities on 13th September, 1944, but he was not brought before any German court. He was later extradited to Poland by the Allied authorities in Germany.

2. THE GENERAL BACKGROUND OF THE CASE

The case and evidence for the Prosecution can be summarized as follows.

The criminal activities of the accused Amon Goeth in the Cracow district were but a fragment of a wide action which aimed at the extermination of the Jewish population in Europe. This action was to be carried out by stages. In the first stage the personal and economic freedom of the Jews was only partly restricted ; then they were completely deprived of personal freedom and confined in so-called ghettos. From there they were gradually transferred to concentration camps and eventually murdered in a wholesale manner by shooting and in gas-chambers. Large numbers of Jews perished in each stage of this action also through inhuman treatment and torture or were individually murdered by German and Ukrainian henchmen.

In the Cracow district, the best known were the ghettos in Cracow and Tarnow, both of which had been liquidated in an inhumane way by the accused.

The Cracow ghetto was set up on 21st March, 1941, and contained at the outset over 68,000 inmates. Its setting up was preceded by a long series of regulations progressively limiting the rights of the Jewish population. Already on 8th September, 1939, the German authorities ordered all Jewish enterprises to be marked with a star of David. This exposed the owners to robberies and persecutions. On 10th October, 1939, Municipal Registration Offices were ordered to register the Jewish population on special registration forms marked with a yellow band.

On 26th October, 1939, the Governor-General, Dr. Hans Frank, issued a proclamation stating in no uncertain terms that there would be no room for the " Jewish exploiters " in the territories under German administration.

On 26th October, 1939, Dr. Hans Frank introduced compulsory labour for the Jewish population and ordered the setting up of special Jewish labour battalions. The carrying out of this order was entrusted to his deputy for security affairs (der Höhere SS und Polizeiführer).

The registration of Jews began on the orders of the German Secret Police, the Gestapo, in November, 1939, first in Cracow and later on in other localities. In the same month all Jewish banking accounts had been frozen and the order as to the marking of Jewish shops and enterprises repeated. In order to facilitate German plans, Jewish Councils were set up.

From 1st December, 1939, Jews were allowed to appear in the streets only with a star of David on their right arm. Ten days later they had been prohibited from appearing in streets and public roads between 9 p.m. and 5 a.m., without special individual permits ; and from 1st January, 1940, they had been prohibited from changing their residence without such permits. On 20th January, 1940, they had been prohibited from travelling by rail. At the same time all Jewish schools were closed down.

In December, 1939, the German authorities began to cut off Jewish districts in Cracow and other towns from the rest of the population at the same time making use of house searches to carry out wholesale robberies of gold, silver and other valuables. Street raids were becoming more and

more frequent and under various pretences all kinds of heavy fines were being imposed upon the Jews. They had to be paid at short notice under threat of executing of the Jewish Council's members or specially designated hostages.

In June, 1941, special yellow identity cards were issued to the Jews. From 15th October, 1941, they had been prohibited under the penalty of death from leaving residential districts allotted to them. From 1st December, 1941, the German post would not accept Jewish parcels and in the same month the Jews were ordered to surrender all furs in their possession. The same applied to ski-ing equipment. From 1st February, 1942, they had been prohibited from using cabs and sleighs.

Already in December, 1939, the systematic deportation of Jews from the Polish territories forcibly annexed to the German Reich and from Germany itself, and Austria, to the General Gouvernement had begun. Simultaneously Jews were being systematically concentrated in a small number of towns in order to achieve complete control over them and to facilitate their removal to death camps.

In February, 1942, the wholesale removal of Jews to death camps was initiated, combined with wholesale murdering of Jews on the spot. In that month a large scale action affecting 12,000 Jews took place in Lublin. Since then these actions became more and more frequent and drastic. The peak was reached in July and August, 1942.

During the last week of June, 1942, in the course of the liquidation of the Tarnow ghetto about 6,000 Jews were removed to Belzec death camp and nearly the same number murdered on the spot. At the beginning of September, 1943, the ghetto was completely liquidated in this way. It was then, for instance, that the accused Amon Goeth himself shot between thirty and ninety women and children and sent about 10,000 Jews to Auschwitz by rail, organizing the transport in such a way that only 400 Jews arrived there alive, the remainder having perished on the way.

In compliance with the wishes of Dr. Frank who wanted Cracow, the capital of the General Gouvernement, to be "purged" of Jews, the German authorities started in July, 1940, their forcible removal from the town. In June, 1942, a large scale action took place in the Cracow ghetto, in the course of which many murders were committed and about 5,000 Jews sent to the death camps on orders issued by Rudolf Pavlu, Stadthauptmann of Cracow. On 28th October, 1942, the barbarous evacuation of the Cracow ghetto and a further reduction of its area took place again. About 7,000 Jews were sent to the death camps and many others murdered on the spot. Of the 68,000 in summer 1940, only 14,000 Jews remained in the ghetto.

On 13th March, 1943, the final liquidation of the Cracow ghetto took place, personally supervised by SS Sturmbannführer Willi Haase and carried out by the accused Amon Goeth with the assistance of Kunde, Heinrich and Neumann, the Security Police experts on Jewish affairs. Wholesale murders were then committed on the spot. The total number of Jews murdered on this occasion reached about 4,000, among which were many women and children. Amon Goeth himself shot many people. The rest,

over 10,000 able-bodied people, were accommodated in the Plaszow forced labour camp.

Similar events had simultaneously taken place all over the General Gouvernement. At the end of 1942 the whole remaining Jewish population of the General Gouvernement found itself concentrated in the forced labour camps and in no more than 40 towns.

All these measures were accompanied by regulations threatening with the death penalty all who shelter the Jews or keep their belongings. They were followed by wholesale and organized robberies of the Jewish property.

Against this background appeared the person of the accused Amon Goeth, whose life career from the early years was inseparably bound with the Nazi movement, and who was responsible for the atrocities committed as part of a general pattern of the German policy aiming at complete extermination of the Jewish population in Europe.

The Indictment proceeded to enumerate and describe in great detail all criminal acts preferred against the accused under the charges summarized in Section 1 above.

Apart from statements given by numerous witnesses, the great majority of whom were former inmates of the ghettos and camps already named, the case for the Prosecution was supported by evidence of the Director of the Jewish Historical Commission in Cracow, who in the capacity of an expert described to the Tribunal at great length and much detail the general policy and system of exterminating Jews, and the organization of concentration and other camps set up by the German authorities for that purpose. The Tribunal heard also as an expert Dr. L. Ehrlich, Professor of International Law in the University of Cracow, on the recent developments in the sphere of international criminal law concerning trials of war criminals.

3. THE VERDICT

The accused, who was defended by two counsel appointed by the Tribunal, pleaded not guilty and submitted some defences which will be referred to later.

The Tribunal found the accused guilty of the alleged crimes and sentenced him to death. In addition, the Tribunal pronounced the loss of public and civic rights, and forfeiture of all property of the accused.

The accused appealed for mercy to the President of the State National Council. After the President had decided not to avail himself of his prerogative of pardon, the sentence was carried out on 13th September, 1944, by hanging.

B. NOTES ON THE CASE

1. THE COURT AND THE LEGAL BASIS OF THE TRIAL

The Court was the Supreme National Tribunal for trials of war criminals, the jurisdiction and powers of which have been defined in the Decrees of

22nd January and 17th October, 1946, and in the Decree of 11th April, 1947.⁽¹⁾ The case was tried in Cracow.

The trial found its legal basis in the Decree of 31st August, 1944, *concerning the punishment of Fascist-Hitlerite criminals guilty of murder and ill-treatment of the civilian population and of prisoners of war, and the punishment of traitors to the Polish Nation*, as amended by the Decree of 16th February, 1945.⁽²⁾

2. THE NATURE OF THE OFFENCES

The acts committed by the accused were crimes in violation of Article 1 para. 1 (a) and (b) of the Decree mentioned above, the text of which is given in subsection (ii). These acts were also in violation of the corresponding provisions of the Polish Civil Criminal Code of 1932, concerning murder, grievous bodily harm, torture and ill-treatment, infringement of personal liberty, appropriation of property (Articles 225, 235, 236, 246, 248, 257 and 262, para. 1). The Prosecution also submitted that these crimes violated the laws and customs of war (Article 46 of the Hague Regulations) and constituted crimes against humanity.

Apart from Article 1 of the above Decree, the Tribunal based its sentence on Articles 3-5 of the said Decree concerning superior orders and duress, and additional penalties (now Articles 5 and 7 of the consolidated text of the Decree).⁽³⁾ The Tribunal also applied the relevant provisions of the Criminal Code dealing with the basic principles of responsibility for criminal acts.

The nature of the offences for which the accused was sentenced raises questions on two specific points, which will be discussed in the following sections.

(i) *Criminal Organizations*

In the general part of the Indictment the accused was charged with membership in the Nazi Party and the Waffen SS, which according to this Indictment were criminal organizations, and of which he was a member until 13th September, 1944.

It is to be noted that the Indictment against Amon Goeth was lodged with the Tribunal on 30th July, 1946, that is before the pronouncement of the Nuremberg Judgment (30th September and 1st October, 1946), and at the time when the Polish war crimes legislation did not contain provisions concerning the membership of criminal organizations. These were promulgated in the Decree of 10th December, 1946.⁽⁴⁾

From the text of the Indictment it will also be observed that the Prosecution put a much wider interpretation upon the notion of the criminal character of the Nazi Party than it has been accepted by the Nuremberg Tribunal. Thus, the Indictment against Amon Goeth described the criminal activities of the Nazi Party as aiming, "through violence, aggres-

(1) See the Annex, Part II, Section 1, pp. 91-92 of this volume.

(2) *Ibid*, Part I, pp. 82-91.

(3) *Ibid*, Part I, Sections 2, 4 and 5.

(4) See the Annex, Part I, Section 3, pp. 86-87, of this volume.

sive wars and other crimes, at world domination and establishment of the national-socialist régime". On the other hand, the Nuremberg Tribunal in declaring the Nazi Party and the Waffen SS to be criminal within the meaning of the Nuremberg Charter, based its finding on the fact of the participation of these organizations "in war crimes and crimes against humanity connected with the war".⁽¹⁾ It is, of course, clear that this restricted finding and the omission in this connection of crimes against peace have been based only on the evidence submitted to the Tribunal, as according to the law of the Charter, all three categories of crimes as defined in its Article 6 have a bearing on the criminality of the organizations in question.

When dealing with this particular charge, the Supreme National Tribunal accepted the fact that the accused was member of "a criminal organization" and stated that his activities were closely bound up with the activities of the organization, which acting as a criminal association set as one of its aims the annihilation of whole groups of people.

As it will be shown in more detail later the Tribunal in establishing the facts of the accused's participation in "a criminal organization" and in expressing the opinion that the Nazi Party was a criminal organization, although including some references to its purely political aims, legally connected the criminal activities of the Nazi Party with the commission of war crimes and crimes against humanity. Thus the National Tribunal based its declaration on a finding of much the same general nature as did the Nuremberg Tribunal in its Judgment delivered a few weeks later.

The sentence of the Supreme National Tribunal was pronounced on 5th September, 1946. Therefore this Tribunal had no formal legal basis either in municipal or international law on which it could base a penalty for the membership in a criminal organization. Nevertheless, it seems that, taking into account the criminal facts already established at the time by the evidence submitted to the Nuremberg Tribunal and in the present trial, as well as in the case against Gauleiter Artur Greiser,⁽²⁾ the National Tribunal thought it justified to make the above declaration on the criminal character of the organizations in question. This declaration was in accordance with the trend of legal thought prevailing at that time and with the already tangible developments in the sphere of international criminal law.

Looking at the position from the point of view of the present state of international and Polish municipal law, there is no doubt that the accused's membership in the Waffen SS was definitely criminal. This is, however, not so in regard to his membership of the NSDAP as he held no party office of any kind, did not belong to the Leadership Corps of the Nazi Party which alone has been declared criminal by the Nuremberg Judgment,⁽³⁾ and was merely an ordinary member of the Party. His membership as such in this organization was therefore not criminal. Actually, the legal basis on which the Tribunal inflicted the punishment in the present case, was Article 1, para. 1 of the Decree of 31st August, 1944, within the scope of which came

⁽¹⁾ See the *Judgment of the International Military Tribunal for the Trial of German Major War Criminals*, Cmd. 6964, pp. 71 and 79.

⁽²⁾ This case, which was tried by the Supreme National Tribunal in June and July, 1946, will be reported upon in one of the subsequent volumes of this series.

⁽³⁾ See the *Nuremberg Judgment, op. cit.*, pp. 70-71.

the offences preferred against the accused in paragraphs (1) to (4) of the Indictment, and which did not deal with the membership of criminal organizations.

(ii) *Genocide*

The above-mentioned Article 1, para. 1 of the Decree of 31st August, 1944, as amended by the Decree of 16th February, 1945, concerning the punishment of Fascist-Hitlerite criminals guilty of murder and ill-treatment of civilian population, etc.⁽¹⁾ reads as follows :

“ Any person who, assisting the German authorities of occupation :

- (a) took part in committing acts of murder, ill-treatment or persecution against the civilian population or prisoners of war ;
- (b) acted to the detriment of persons wanted or persecuted by the authorities of occupation for whatever reason it may be (with the exception of prosecution for common law crimes), by sentencing, detaining or deporting them—is liable to the death penalty.”

It will be noted that this provision was in substance very similar (though not quite sufficiently developed), to that of Article 1, in its final form as contained in the consolidated text of the Decree of 1944 and promulgated on 11th December, 1946, which has already been analysed elsewhere.⁽²⁾ It has been submitted there that the offences which come within the scope of this Decree are, *inter alia*, war crimes and crimes against humanity as they are understood by the international enactments of 1945 and 1946.

There is no doubt that the offences preferred against the accused in the present case fall within these two notions. The Prosecution went, however, a step further on the road of the development of the international criminal law and described these offences also as the crime of *genocide*, claiming it to be a *crimen læsæ humanitatis*.

The word “ genocide ” is a new term coined by Professor Lemkin to denote a new conception, namely, the destruction of a nation or of an ethnic group. Genocide is directed against a national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group. According to Lemkin⁽³⁾ genocide does not necessarily mean the immediate destruction of a nation or of a national group, except when accomplished by mass killings of all its members. It is intended to signify also a co-ordinated plan of different actions aiming at the destruction of the essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide has two phases : one, the destruction of the national pattern of the oppressed group, for which the word “ denationalization ” was used

⁽¹⁾ See the Annex, Part I, Section 1, of this volume.

⁽²⁾ *Ibid*, Part I, Section 2, p. 84.

⁽³⁾ See R. Lemkin, *Axis Rule in Occupied Europe*, Carnegie Endowment for International Peace, Division of International Law, Washington, 1944, pp. 79-95.

in the past ; the other, the imposition of the national pattern of the oppressor. Lemkin believes, however, that the conception of denationalization is inadequate because : (a) it does not connote the destruction of the biological structure ; (b) in connoting the destruction of one national pattern, it does not connote the imposition of the national pattern of the oppressor ; and (c) denationalization is often used to mean only deprivation of citizenship.

To introduce and establish this new type of crime was for the first time attempted in the Nuremberg Indictment against the German Major War Criminals. The Prosecution stated therein that the defendants " conducted deliberate and systematic genocide, viz., the extermination of racial and national groups, against the civilian populations of certain occupied territories in order to destroy particular races and classes of people and national, racial or religious groups, particularly Jews, Poles and Gipsies, and others."⁽¹⁾

It will be observed that the Prosecution at Nuremberg, when preferring against the defendants the charge of genocide, adopted this term and conception in a restricted sense only, namely, in their physical and biological connotations. This is evident not only from the definition of genocide as stated in the Indictment and from the inclusion of this charge under the general count of murder and ill-treatment, but also from the fact that all other aspect and elements of the defendants' activities aiming at the denationalization of the inhabitants of occupied territories were made the subject of a separate charge which was described as germanization of occupied countries.

The Nuremberg Tribunal, although it dealt in great length with the substance of the charge of genocide,⁽²⁾ did not use this term or make any reference to the conception of genocide. It left it to the future developments, which were soon to come, and to the subsequent labours of international bodies and jurists to define the notion of this new, and already generally recognized, crime under international law.⁽³⁾

In the present Polish trial, which was the first of the war crime cases of this kind, the Prosecution endeavoured to do much more than establish only the physical and biological aspects and elements of the crime of genocide that were involved in the criminal acts actually committed by the accused. By providing the Tribunal with ample evidence as to the general background of the accused's activities, which was summarized in the preceding part,⁽⁴⁾ and by fully setting out the general policy and system, and the machinery set in operation by the German authorities, for the gradual elimination and final extermination of the Jewish nation, they succeeded in establishing before the Supreme National Tribunal also other components of this new type of crime, such as its economic, social and cultural connotations. The Prosecution submitted that the notion of the crime of genocide is within the scope of the Decree of 31st August, 1944, as it provides punishment of murder and ill-treatment not only of individual persons, but moreover of large groups of people persecuted on specific grounds.

⁽¹⁾ See the Indictment, Cmd. 6696, p. 14.

⁽²⁾ See the *Nuremberg Judgment*, Cmd. 6964, pp. 50-52 and 60-64.

⁽³⁾ Reference is made here to the *Resolution on Genocide* adopted by the General Assembly of the United Nations on 11th December, 1946.

⁽⁴⁾ See pp. 2-4.

The Tribunal accepted these contentions and in its Judgment against Amon Goeth stated the following :

“ His criminal activities originated from general directives that guided the criminal Fascist-Hitlerite organization, which under the leadership of Adolf Hitler aimed at the conquest of the world and at the extermination of those nations, which stood in the way of the consolidation of its power.

“ The policy of extermination was in the first place directed against the Jewish and Polish nations.

“ This criminal organization did not reject any means of furthering their aim at destroying the Jewish nation. The wholesale extermination of Jews and also of Poles had all the characteristics of genocide in the biological meaning of this term, and embraced in addition the destruction of the cultural life of these nations.

“ The letter of the Head of the Security Police in Berlin dated 21st September, 1939, and addressed to all the ‘ Einsatzgruppen der Polizei ’ and called ‘ Schnellbrief ’, which contained instructions how to deal with the Jews, constitutes one of the proofs in respect of the extermination campaign. The letter established as the final goal (‘ Endziel ’) which was to be kept secret, the complete extermination of the Jews. This end was to be achieved by stages.”

The Tribunal established further that in order to achieve that aim a whole series of special orders and regulations had been issued by the German authorities in the General Gouvernement. All these measures restricted the personal and economic freedom of the Jews, and their liberty of movement and cut them off from the outside world by confining them to a continuously declining number of ghettos. Simultaneously with the liquidation of these ghettos the number of labour camps, gas chambers and crematoria were increased. These camps also afforded an excellent opportunity as instruments used for extermination of Poles. They included the so-called penal camps for Poles who were considered guilty of various administrative offences and were politically suspected, e.g., of taking part in the resistance movement.

The evidence submitted to the Supreme National Tribunal greatly exceeded the requirements of establishing the case against the accused himself. The prosecution aimed at proving not only that the accused was guilty of a number of crimes committed either personally, or on his orders, or with his explicit or tacit consent against numerous individuals of Jewish and Polish nationality, and against whole groups of people on political, racial or religious grounds. The Prosecution also aimed at putting on record the general German policy and system of large scale persecutions and wholesale extermination of people, of which the activities of the accused were part and parcel.

3. THE DEFENCES OF SUPERIOR ORDERS, MILITARY NECESSITY AND ALLEGED NON-APPLICABILITY OF THE DECREE

Apart from denying certain facts and trying to throw the blame upon others or diminish the extent and gravity of the crimes alleged, the accused pleaded that he was only carrying out orders and instructions received from

his superiors, which he had to obey as a military person. He also contended that the penalties he was inflicting upon the inmates, including putting them to death, were within his disciplinary jurisdiction as commandant of the camp, and were in accordance with the German regulations in force.

The Tribunal rejected this plea and based its verdict on Article 4 of the Decree of 31st August, 1944, in its former text, which read as follows :

“ The fact that any of the crimes envisaged in Articles 1 and 2 of the Decree was committed while in service of the enemy authority of occupation or on its orders, or under duress, does not exempt from criminal responsibility.”⁽¹⁾

In addition, the Tribunal established that a large number of crimes had been committed on the accused's own initiative.

The accused raised also the defence that his acts were legal because they were based on military necessity. The Tribunal, however, disregarded this plea. The accused, in this case had committed acts without any military justification and in flagrant violation of the rights of the inhabitants of the occupied territory as protected by the laws and customs of war and, therefore, the defence of military necessity was neither applicable nor admissible.

Finally, one of the defending Counsel submitted that the Decree of 31st August, 1944, was not applicable to the accused in view of his German nationality, as it provided only for punishment of Polish subjects who committed offences against their own co-nationals. This plea could not, however, be upheld in view of the fact that, according to Article 3 para. 1, of the Polish Criminal Code, the Polish Criminal law is applicable to all persons, irrespective of their nationality, who committed a crime on the territory of the Polish State.⁽²⁾ The plea was in fact disregarded by the Tribunal.

⁽¹⁾ This provision has been later amended and replaced by Article 5 of the consolidated text of this Decree, the text of which is given in the Annex, Part I, Section 4, p. 88, of this volume.

⁽²⁾ See also The Annex, Part I, Section 2, p. 84, of this volume.