

CASE No. 51

TRIAL OF KARL LINGENFELDER

PERMANENT MILITARY TRIBUNAL AT METZ
JUDGMENT DELIVERED ON 11TH MARCH, 1947

Destruction of Monuments as a War Crime

A. OUTLINE OF THE PROCEEDINGS

The accused, Karl Lingenfelder, a German from Mussbach, came to France as a settler in the first days of occupation and took possession of a farm called "Bello" at Arry, Moselle, whose owners had been expelled by the German authorities. He was charged with destruction of public monuments and with pillage.

It was shown that, in May, 1941, the accused, acting upon the order of a German official, Buerkel, used four horses to pull down the monument erected by the inhabitants to fellow citizens who died during the war of 1914-1918, destroyed the marble slabs bearing the names of the dead, and broke the statue of Joan of Arc. It was also shown that in September, 1944, the accused left Arry for Germany, and removed with him four horses and two vehicles belonging to the French farm he had occupied during the war.

As alleged by the Prosecution, the accused confessed to the charges and admitted that the order given him by Buerkel was made without threats and that he was under no obligation to render account of its execution.

The Court passed a sentence of imprisonment for one year, while admitting extenuating circumstances.

B. NOTES ON THE CASE

The pulling down and partial destruction of the monument erected to the memory of the inhabitants who died during the 1914-1918 war and the destruction of the statue of Joan of Arc, are clear violations of the laws and customs of war, punishable as war crimes.

Under Article 56 of the Hague Regulations, 1907, the property of local authorities in occupied territory, as well as that of institutions dedicated to "public worship, charity, education and to science and art", even if owned by the State, is regarded as private property. The consequence is that, by virtue of Article 46 of the Hague Regulations, such property must be "respected" by the occupying authorities. Violations of this rule are dealt with in the following terms in Article 56:

“ Any seizure or destruction of, or wilful damage to, institutions of this character, historic monuments and works of science and art, is forbidden, and should be made the subject of legal proceedings.”

It is on the ground of this rule that the 1919 Commission on Responsibilities included the above offence in its list of war crimes, under Item XX, which it described as “ wanton destruction of religious, charitable, educational and historic buildings and monuments ”.

The accused was charged and convicted under the terms of Article 257 of the French Penal Code, which punishes the same type of offence, and thus covers in French municipal law the case dealt with in Article 56 of the Hague Regulations. It runs as follows:

“ He who destroys, pulls down, mutilates or damages monuments, statues or other objects dedicated to public utility or embellishment, and erected by public authority, or with their permission, shall be punished with imprisonment from one month to two years, and with a fine of 1,200 to 6,000 francs.”

In respect of the removal of horses and vehicles belonging to the owner of the farm “ Bello ”, the Court came to the conclusion that it did not amount to pillage, as provided against in Article 221 of the Code of Military Justice and Article 2, paragraph 2, of the Ordinance of 28th August, 1944, concerning the Suppression of War Crimes, but constituted a case of theft falling under the terms of Articles 379 and 401 of the Penal Code.⁽¹⁾ The punishment to be imposed was therefore limited to a term of imprisonment instead of hard labour. As is the case with all French judgments, no reasons were given for such findings in this case. It may well be that the decision was reached on the basis of the fact that no violence was used by the accused when removing the horses and vehicles. The fact that he did not belong to the category of military personnel, to whom Article 221 of the Code of Military Justice is restricted, may have also been relevant.⁽²⁾

CASE No. 52

TRIAL OF CHRISTIAN BAUS

PERMANENT MILITARY TRIBUNAL AT METZ
JUDGMENT DELIVERED ON 21ST AUGUST, 1947

Theft and “ Abuse of Confidence ” as War Crimes

A. OUTLINE OF THE PROCEEDINGS

The accused, Christian Baus, a German transport contractor from Neuenkirchen, the Saar, was, in 1940, appointed by the German authorities

⁽¹⁾ Regarding the distinction between theft and pillage in French law, see p. 63.

⁽²⁾ On the question how theft is or may be regarded as a war crime in addition to pillage, see p. 64.