

CASE NO. 38

TRIAL OF OBERSTURMBANNFÜHRER  
RUDOLF FRANZ FERDINAND HOESS  
COMMANDANT OF THE AUSCHWITZ CAMP

SUPREME NATIONAL TRIBUNAL OF POLAND

11TH-29TH MARCH, 1947

*Membership of the Nazi Party. Concentration Camp as a  
Criminal Organization. Genocide.*

A. OUTLINE OF THE PROCEEDINGS

1. THE INDICTMENT

The accused Rudolf Franz Ferdinand Hoess, a German subject, was charged with the following crimes :

(1) That from 1st September, 1939, till May, 1945, in the German Reich, and from 1st May, 1940, till September, 1944, on the occupied territory of the Polish State he was a member of the German National Socialist Workers' Party (NSDAP), a criminal organization, which aimed at the subjugation of other nations through planning, organizing and perpetrating crimes against peace, war crimes and crimes against humanity, and also was a member of the SS, a further criminal organization ;

(2) That from 1st May, 1940, till the end of October, 1943, as Commandant of the Auschwitz concentration camp set up by him, and thereafter from December, 1943, till May, 1945, as Head of the D.I. Department of the S.S. Central Economic and Administrative Office, as well as in June, July and August, 1944, as commander of the SS garrison at Auschwitz, in execution of the Nazi system of persecution and extermination of nations in concentration and death camps organized for the purpose, he supervised the application of that system in the Auschwitz concentration camp against the Polish and Jewish civilian population and against other nationals of the territories occupied by Germany, as well as to Soviet prisoners of war, and thereby acting either himself or through the subordinate camp personnel, he deliberately :

- (i) deprived of life : (a) about 300,000 camp registered inmates, (b) about 4,000,000 people mainly Jews brought to the camp from different European countries to be killed upon their arrival, and therefore not included in the register of the camp inmates, (c) about 12,000 Soviet prisoners of war confined in the camp in violation of the Geneva Convention on the treatment of Prisoners of War ; all this by asphyxiation in gas-chambers, shooting, hanging, lethal injections of phenol or by medical experiments causing death, systematic starvation, by creating special conditions in the camp which were causing a high rate of mortality, by excessive work of the inmates, and by other methods;
- (ii) ill-treated and tortured the inmates physically and morally by various means ;

- (iii) supervised wholesale robbery of property, mostly jewels, clothes and other valuable articles taken from people on their arrival to the camp, and of gold teeth and fillings extracted from dead bodies of the victims.

## 2. THE CASE AND EVIDENCE FOR THE PROSECUTION

The Auschwitz camp occupied the most prominent position among the nine greatest concentration camps established by Nazi Germany. The most inhuman rule prevailed in the camp which caused the loss of life of nearly all inmates. Over four million people from all countries occupied by Germany met with death in the gas-chambers and crematoria installed in the camp. Soviet prisoners of war were the first victims of this extermination campaign. They were followed by Jews who perished in even larger numbers. Poles constituted the largest group of murdered from among the registered inmates of the camp. Among the victims of other nationalities there were: a few Americans and British, and large numbers of Austrian, Belgian, Bulgarian, Chinese, Czechoslovak, French, Greek, Dutch, Spanish, Yugoslav, Lithuanian, Latvian, German, Norwegian, Persian, Rumanian, Swiss, Turkish, Hungarian and Egyptian, and of other nationalities.

The camp was devised as a central concentration camp and was equipped with the largest and most efficient technical installations for the extermination of people. The highest capacity of its gas-chambers amounted to killing of 60,000 people per 24 hours and that of the crematoria to burning of 24,000 bodies per 24 hours.

The Auschwitz concentration camp was also used as a place of confinement of people considered as dangerous to the occupation authorities. Statistical sheets listing the causes of death in the camp contained nine different categories of "criminals" such as "political", "professional", etc., and among them one described "Poles". Thus the latter were considered criminals, merely because of their nationality. This explains why Poles arrested by accident during street raids and not connected with any political activities were nevertheless sent to concentration camps. Soviet prisoners of war constituted a separate group in the camp. They were eliminated from the general prisoners of war camps and brought as "criminals" to the Auschwitz camp.

In the camp, the kind of living quarters, of food and clothing, unsanitary conditions, excessive work, ill-treatment and penalties which prevailed contributed to the death-rate. Medical treatment was completely lacking and illness was the ground on which people were selected for extermination. Simultaneously various means aiming at breaking the moral resistance of the inmates were applied. Their personal dignity was abused. Only a small number of individuals survived owing to exceptional powers of endurance or to fortunate accidents.

The exploitation of the inmates as forced labour took place either in branch camps or in the branches of I.G. Farben Industrie producing synthetic petrol and of Krupp's works active under the firm "Weichsel-Union", and in other factories which had been built in the neighbourhood of Auschwitz by the inmates themselves.

The system applied to the inmates was built on patterns established in other concentration camps, but was perfected by the accused Hoess. He underwent special training in camp duties and practised in this respect in the Dachau and Sachsenhausen concentration camps, before he took over the commandant's duties at Auschwitz.

The accused continued to be in control of all these activities even after he left the post of the camp's commandant. He fulfilled then the functions of Himmler's special plenipotentiary for extermination of Jews and in that capacity he either sent people to Auschwitz or supervised the extermination on the spot.

For his activities in the Auschwitz camp the accused was awarded the German Military Cross, first-class with Swords, and was promoted from the rank of Hauptsturmführer to that of SS Obersturmbannführer. The same decoration was also conferred on SS Hauptscharführer Otto Mohl, who was in charge of the Auschwitz crematoria.

The Indictment enumerated and described in great detail the activities of the accused in the camp and the criminal acts committed therein. It dealt, *inter alia*, with the following subjects: the establishment of the camp and its constant enlargement, its organization, various categories of the inmates, the living conditions, accommodation and food, insufficient medical treatment, exploitation of forced labour, generally inhuman treatment, heavy arbitrary punishment and medical experiments; and further with the methods of extermination, e.g., such as shooting, hanging, the so-called "*Sonderbehandlung*" (special treatment) and "*Sonderaktion*" (gassing and cremating), finally with the gas-chambers and crematoria, and the final "liquidation" of the camp. The Indictment also described in some detail the wholesale robbery of the inmates' possessions and valuables, the value of which amounted to many thousand millions of Reichsmarks at their rate of exchange at the time.

As already stated the people who fell victim of the Nazi extermination system carried out in the camp were Poles, Jews of various nationalities and Soviet prisoners of war. The extermination system applied against the latter was based on a special secret order of the *Amstgruppe D* dated 15th January, 1941, and issued upon directives given by the *Reichsführer S.S. und Chef der Deutschen Polizei*, Heinrich Himmler. According to these directives all Soviet prisoners were to be transferred to concentration camps for extermination, except those who were sufficiently strong to be used as forced labour in the quarries.

Apart from statements given by a large number of witnesses of Polish and other nationalities, former inmates of the camps, and other documentary evidence, the case for the Prosecution rested also on evidence submitted to the Tribunal by the following experts: Mr. Blumenthal Nahman, Director of the Central Jewish Historical Commission in Warsaw, who described the general Nazi policy and system of extermination of Jews and the organization of the concentration and death camps set up for the purpose by the German authorities in the occupied territories; Dr. J. Olbrycht, Professor in the University of Cracow, who described the general conditions in the

Auschwitz camp and in particular as regards health, food, hygienics and the system of treatment ; Dr. R. Dawidowski, Professor of the Mining Academy in Cracow, who submitted a detailed report on the organization and work of the gas-chambers and crematoria ; Dr. E. Kowalski, Assistant-Professor at the University of Cracow, who gave evidence on the medical experiments performed by German doctors on the camp's inmates. Finally, the Tribunal took note of the reports submitted by Professor Robel, expert in toxicology and Professor Romer, expert in geography.

As part of the evidence also a documentary film was projected in the court, showing the camp buildings and establishments.

### 3. MEDICAL WAR CRIMES

The evidence submitted by Professor Kowalski and other witnesses showed that numerous medical experiments were performed on men and women of non-German origin, mostly Jews, at the Auschwitz concentration camp. They were carried out on orders from the supreme German authorities. The experiments fall into the following groups :

- (a) castration experiments ;
- (b) experiments intended to produce sterilization ;
- (c) experiments causing premature termination of pregnancy and carried out on pregnant and child-bearing women ;
- (d) experiments of artificial semination ;
- (e) experiments aimed at cancer research ;
- (f) other experiments.

(A) *Castration experiments.* They were performed on healthy, normal individuals of both sexes, and of different ages and nationalities, mostly Jews, without their voluntary consent.

X-ray treatment was applied to male and female genital organs and in particular to ovaries and testes. Before or after the X-ray application both or only one of the ovaries and testes were removed. Different dosages, usually very large, of X-rays were applied. The results were checked by the histopathological method. This aimed at establishing the fertility or sterility of the persons subjected to the experiments. Also experiments in which small or minimal doses of X-rays were applied took place. These experiments brought about a temporary loss of fertility.

These experiments were carried out by Professor Schumann instructed to this purpose by Himmler. They caused undue suffering, permanent injuries or even death of the individuals concerned. The large dosage of X-rays caused not only complete castration, but also burns and necrosis of parts of the body subjected to X-rays.

Men who were subjected to intensive X-ray treatment and had severe burns of the scrotum and thighs often died. Even if they survived, they were in constant danger of death. They were temporarily or permanently deprived of their fertility and even of their potency. Women subjected to intense X-rays were showing climacteric symptoms related to the atrophy of the ovaries. They soon showed senile changes and died. Even if they survived a temporary or permanent loss of fertility followed. Burns and

necroses, the aftermath of X-ray treatment, made the use of genitalia impossible. Castration of women was also carried out by short waves, causing coagulation of the deeper layers of the tissue, severe burns and even death.

German personnel performing experiments often observed from hiding the behaviour of castrated Jewish men and women, who were especially accommodated in common. Thus they wanted to ascertain changes which may have occurred in their libido.

(B) *Experiments intended to produce sterilization.* Sterilization of women was carried out by the pumping of a thick white test fluid, consisting of contrast medium and some unknown chemical agents, into the uterus and tubes. Also sterilizing operations were performed, the uterus, tubes and even sometimes breasts being removed. Women experienced great suffering during test fluid experiments and after them. Usually salpingitis or peritonitis followed which often proved fatal.

These experiments were performed on young and healthy Jewish women of 20-30 years of age, who had regular periods, a not too narrow cervix and who had borne at least one child. After the experiments they often lost their periods. Experiments were repeated from two to six times at intervals of from three to four weeks. In their course an X-ray control was carried on by screening and an X-ray was taken afterwards. The experiments aimed at the obliteration of the tubes. This was to be achieved through the inflammation of the mucous membrane of the uterus and of the tubes. This, in conjunction with the inflammation of the internal genital organs and often of the peritoneum, caused widespread adhesions and fibrotic changes. Men were also sterilized through suture of the vas deferense.

The total number of sterilization experiments was estimated by witnesses at about 3,000 and of the test fluid experiments at about 1,000.

Test fluid sterilization experiments were performed by Professor Clauberg or under his control. He was an eminent German gynaecologist and acted under Himmler's orders. According to one of the witnesses Professor Clauberg admitted that his experiments were of no scientific value. Identical results were previously obtained on animals and were well known to the medical profession. Thus the experiments on women in the Auschwitz camp could not serve any scientific end. In addition they were performed in terrible conditions which often led to chronic illness, permanent injury or even death. Neither the doctors nor the assistant personnel were properly trained for the purpose. Unsterilized instruments and dressings were often used.

(C) *Premature termination of pregnancy and other experiments on pregnant or child-bearing women.* Premature termination of pregnancy was carried out by the emptying of the uterus, injections of Abortus Bangserum or by laparotomy and extirpation of the uterus. Women were ill several weeks after those experiments.

Delivery was provoked by artificially causing contracture of the uterus musculature or by the use of a balloon. About 50 pregnant women were subjected to those experiments. Frequently blood of people suffering from typhus was injected before labour.

(D) *Experiments of artificial insemination.* These were also carried out without the voluntary consent of the subjects concerned. Sperm obtained from Jewish men in the camp was used. In addition to the vaginal method, sperm was directly introduced in the uterus. Such a method was dangerous and caused infection of the female genital organs as sperm obtained through artificial ejaculation cannot be aseptic.

These experiments aimed in certain cases at the checking of results of X-ray castrations, in others on the effects of test fluid injections into the uterus and tubes.

Men and women previously subjected to castration and sterilization experiments were accommodated together. Four hundred men and 250 women were thus put into the same place and results of natural insemination were observed, while in other cases artificial insemination experiments were performed. Another camp for 3,500 of such human "guinea pigs" was also built.

(E) *Experiments aimed at cancer research.* These consisted in excising parts of the uterine body, and the wound was sutured and frozen sections with the excised material made. These experiments aimed at examining early stages of cancer. They were performed not only on older and sick women, but also on young girls. Excisions were also made on completely healthy persons with no suspicion of cancer of the genital organs. Incisions were in fact amputations of the cervical part of the uterus and in each case damage of the submucous layer of the uterine body occurred.

Incisions were carried out on about 120-130 women over 30 years of age, and on many very young girls. Each day about four such experiments were performed and in this connection the uterus was illuminated and photos taken. The material obtained was sent to Dr. Wirths in Hamburg and also examined on the spot. These incisions often caused bleeding, exudative parametritis and peritonitis. This was due to the circumstance that German doctors performing the operation did not have necessary qualifications and that the experiments were carried out in unclean conditions.

Owing to the removal of an excessive portion of the submucous membrane sexual intercourse was impossible for a certain time. Also the fibratic and scarifying changes caused the obliteration of the cervical channel and thereby relative sterility.

Experiments of transplanting cancerous bodies to the uterus and cervical channel were also carried out. After a certain time the uterus was removed and results of the transplanting observed. As in most cases these experiments were successful, however, victims usually died within one-and-a-half years, or at least temporary illness followed.

(F) *Other experiments.* Fifteen to twenty-one young girls were deprived of their virginity in a brutal manner by SS men, no noxious consequences having been known to follow. Injections of hormones to women were also made and results observed.

#### 4. THE CASE FOR THE DEFENCE

During the preliminary investigation conducted by a *juge d'instruction* and during the trial the accused, who was defended by two counsels appointed by the Tribunal, admitted in substance all the facts preferred against him in the Indictment. In particular, he admitted that he was a member of the NSDAP and the SS, and that in his capacity as commandant of the concentration camp at Auschwitz and later as chief of D.I. Department of the Central Economic and Administrative Office of the SS he carried out and supervised the extermination of many million Jews and other people. He also admitted that in the course of this action the victims were robbed of all their possessions and valuables.

The accused denied, however, that he personally committed any acts of ill-treatment or cruelty, and questioned the accuracy of the total number of victims killed in the camp, which according to him was much lower than that of about four million submitted in the Indictment. All his questions put forward to witnesses were directed to this end in view. Neither he himself, nor his defence, introduced any evidence or witnesses on his behalf and he entirely relied on those put forward by the Prosecution. His whole defence rested solely on the submission that he was only carrying out orders received from his superiors, and he recognized his entire responsibility for everything that occurred in the camp whether he personally knew it at the time or not.

#### 5. THE JUDGMENT OF THE TRIBUNAL

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.

There are, however, some important differences between the Indictment and the Judgment, which should be noted. Apart from those which concern the findings of the Tribunal in regard to the accused's membership in the criminal organizations, and which will be described later, these differences are the following:

The Indictment charged the accused with "depriving of life", while the Tribunal described the corresponding offences as "participation in the murder of . . .". In the passage relating to the number of people exterminated in the Auschwitz camp, the Tribunal stated that "an undetermined number of people, at least 2,500,000, mainly Jews" were murdered.

The Indictment contained in para. (2) the charge accusing Hoess personally of "ill-treating inmates . . . physically by . . . and morally by . . .". The wording of the corresponding section of the sentence establishes that the accused "acted to the detriment of civilians, members of the armed forces and prisoners of war by maintaining them in a state of slavery, combined with their confinement in an enclosed camp and with various physical and moral ill-treatment and tortures such as . . ."

Para. (iii) of the Indictment alleged that the accused "supervised wholesale robbery of property", etc. The Tribunal stated in its Judgment that the accused acted to the detriment of persons mentioned above also "by taking part in the wholesale robbery of . . ."

Thus it appears that the Tribunal did not express any explicit view on the question whether the accused did personally ill-treat or tortured any of the inmates, a question which was highly controversial as far as the evidence given by witnesses is concerned, and in addition brought the corresponding charges within the wording of the relevant provisions in force at the time of the trial.

## B. NOTES ON THE CASE

### 1. THE COURT AND THE LEGAL BASIS OF THE TRIAL

The Court was the Supreme National Tribunal for trial 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.<sup>(1)</sup> The case was tried in Warsaw. The substantive law applied was that laid down 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 promulgated in the consolidated text of this Decree on 11th December, 1946.<sup>(2)</sup>

### 2. THE NATURE OF THE OFFENCES

The acts committed by the accused were crimes in violation of Article 1 para. 1, and Articles 2 and 4 of the Decree mentioned above, the text of which is given in the Annex to this volume.<sup>(3)</sup> 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 and appropriation of property (Articles 225, 235, 236, 246, 259 and 278). The Prosecution submitted that the crimes committed against the Soviet prisoners of war were also in violation of the Geneva Convention relative to prisoners of war.

Apart from the provisions of the above Decree already indicated, the Tribunal based its Judgment on Article 5 para. 1 of the said Decree concerning superior orders and duress, the plea of which the Tribunal rejected, and on Article 7 concerning additional penalties. The Tribunal also applied the relevant provisions of the Criminal Code dealing with the basic principles of responsibility for criminal acts.

### 3. CRIMINAL ORGANIZATIONS

#### (i) *Membership in the NSDAP*

1. The Indictment which, it is presumed, was drafted before the Polish law on membership of criminal organizations had been enacted, charged the accused Hoess with the membership of the German National Socialist Worker's Party (NSDAP) and of the SS, and described both these organizations as criminal, putting forward specified allegations against the NSDAP alone. The latter was described as an organization which was "planning,

(1) See The Annex Part II, Section 1, p. 82, of this volume.

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

(3) *Ibid.*



organizing and perpetrating crimes against peace, war crimes and crimes against humanity " as means leading to " the subjugation of other nations " .

The logical and legal construction of the corresponding passage of the Sentence pronounced by the Tribunal is different. It is stated therein that Hoess was a member of both organizations, but the SS is mentioned first and it alone is explicitly defined as a criminal organization. The activities of both organizations are, however, closely interlinked in the Sentence, and the SS is considered a tool of the NSDAP used for committing war crimes and crimes against humanity. Crimes against peace have thus been omitted in the Sentence but the NSDAP is considered as having had criminal aims of subjugating other nations, which are described as a crime in violation of Polish municipal law (Article 4 of the Decree of 31st August, 1944, as amended by the Decree of 11th December, 1946).<sup>(1)</sup>

Thus the Tribunal has shifted the main emphasis from the NSDAP and put the emphasis on the accused's membership in the SS which alone was also mentioned in the closing speeches of the Prosecution. This was evidently done because the Tribunal could not consider the accused's membership in the NSDAP as criminal in view of the fact that Article 4, para. 3 of the Decree of 1944 lays down the rule that membership of this organization is considered criminal only as regards the leading positions, and the accused did not hold such a position in the Nazi Party.

The question of which leading positions in the NSDAP should be considered as criminal became for some time controversial in Polish legal literature and among the Polish judges. This was in consequence of a general wording of Article 4, para. 3 of the said Decree which says that membership of the NSDAP is considered criminal " as regards *all* leading positions " .<sup>(2)</sup> Thus, for instance, the question arose whether or not the position of an *Ortsgruppenkassenleiter* (Chief Cashier of the NSDAP District Organization) should be considered criminal in the meaning of the above provision. However, the view finally prevailed that only such leading ranks and positions of the NSDAP should be considered as criminal as are enumerated in the Nuremberg Judgment, i.e., the Reichsleitung of the Party, the Gauleiters, the Kreisleiters, and the Ortsgruppenleiters, as well as the Amtsleiters who were heads of offices on the staffs of the Reichsleitung, Gauleitung and Kreisleitung.<sup>(3)</sup>

This view has been authoritatively upheld by a ruling of the Polish Supreme Court of 28th February, 1948. The Supreme Court gave the following reasons on which it based its decision, namely, that (a) the Polish legislation, by enacting the law concerning the membership of criminal organizations, wanted to bring Polish municipal law into line with the developments which have already taken place in international criminal law, in particular, in connection with the Judgment of the Nuremberg Tribunal which was pronounced prior to the Polish enactment in question; and therefore, (b) while formulating the provision dealing with the criminality of membership in the NSDAP, the Polish legislator had in view only such positions in that

(1) See the Annex, Part I, Section 3, p. 86 of this volume.

(2) Italics introduced.

(3) See the *Nuremberg Judgment*, British Command Paper 6964, pp. 70-71.

organization as have been recognized as leading by the International Military Tribunal.

(ii) *Concentration Camp as a Criminal Organization*

It will be of some interest, it is thought, to devote some space in this report to another Polish case concerning the Auschwitz concentration camp, in which a number of lesser members of its personnel was tried by the same Tribunal, and to discuss the problem indicated in the above heading.

When discussing the Polish law relating to the membership of criminal organizations,<sup>(1)</sup> it has been pointed out that from the law as laid down in Article 4, paras. 2 and 3 of the Decree of 1944 (the consolidated text of 11th December, 1946), it is clear that Polish courts are not bound by the fact that certain groups or organizations have not been indicted and adjudicated by the Nuremberg Tribunal as criminal within the meaning of the London Charter. It has also been stated there that consequently in such cases the Polish court may declare such groups or organizations to be criminal within the Polish jurisdiction. Such, for instance, was the case in regard to members of the concentration camp staff at Auschwitz.

In this second Auschwitz case, in which forty officials of that camp including Artur Liebehenschel, a successor of Hoess, were tried by the Supreme National Tribunal in Cracow separately and subsequently to the Hoess trial, the Tribunal declared the authorities, the administration and members of the garrison of the Auschwitz camp to be a criminal group, irrespective of whether or not the members of these administrative or military units were at the same time members of the SS or any other organization pronounced criminal by the Nuremberg Tribunal.

In its judgment of 22nd December, 1947, the Supreme National Tribunal gave a number of reasons that served as the basis for its declaration. The most important of them can be summarized as follows :

(1) The Nuremberg Judgment does not limit the right of the Polish legislator to decide those acts which were not a subject of the findings of the Nuremberg Tribunal and can be considered as liable to punishment within the Polish jurisdiction, unless they have been explicitly declared as not criminal, as, for instance, the acts of the organization of the SA.

(2) The provisions of the Polish law now in force are not in contradiction to the Nuremberg Judgment. The interpretation of the Polish law cannot be contrary to the explicit text of this Judgment, but on the other hand there is no legal obstacle in the way of supplementing the legal principles established in this Judgment by further principles, if in substance they are not in contradiction with the former.

(3) There is no doubt that the organization of the German concentration camps is a criminal group in the meaning both of the Nuremberg Judgment and of Article 4 of the Decree of 1944, as these camps had been set up with the aim of unlawfully depriving of freedom and health, property and life of individuals and groups of people because of their race (Jews and Gipsies), nationality (Poles and Czechs), religion (Jews) or political convictions

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

(socialists, communists and anti-Nazis). The organization of the German concentration camps thus aimed at committing crimes against humanity, which at the same time were crimes in violation of the penal law of all civilized nations, and also war crimes as regards the acts committed against the Soviet prisoners of war.

(4) By the description "organization of a concentration camp" should be understood the authorities, the administration and the personnel of a camp, with the exception of the inmates who under compulsion were performing various administrative functions. The latter can only be responsible for their personal deeds as they were not members of the criminal organization as it is understood by the Nuremberg Judgment, namely, they were not bound together by a common aim which was the commission of crimes against humanity. Those people had no ideological ties with the organization of the concentration camps, but had been simply used as tools for the perpetration of certain crimes. This does not protect them from punishment for their personal acts, but they cannot be declared guilty of membership of a criminal organization as of a separate offence.

(5) Article 9 of the Nuremberg Charter states that the International Military Tribunal has the power to declare at the trial of any individual member of any group or organization (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization. Thus, Article 9 gave to the Tribunal the power to declare criminal *any* group or organization, the members of which committed any of the crimes enumerated in Article 6 of the Charter, i.e. crimes against peace, war crimes and crimes against humanity.

(6) The law laid down in Article 9, according to which an international Tribunal may at any time at its discretion increase the number of organizations considered as criminal, has its application in international jurisdiction. As far as the municipal jurisdiction is concerned, the municipal law has priority, and international law is to be applied only subsidiarily. International law is based not only on codifications like the Charter, but also on the judgments of courts like the Nuremberg Judgment.

(7) If therefore, the Charter and the Nuremberg Judgment are both a source of law, of which the former permits any organization to be declared a criminal one, and the latter does not prevent this, there is no legal obstacle for declaring, in accordance with Article 4, para. 2, of the Decree of 1944, as criminal the organization of the concentration camps.

(8) As the Polish legislation and judgments of Polish courts are, of course, not binding outside the Polish territory, the recognition by a Polish court of the Central Administration of the Concentration Camps as a criminal organization in general could raise objections. There is, however, no objection for declaring as criminal the organizations of the concentration camps in Poland, and foremost the organization of the concentration camp at Auschwitz.

In connection with the above declaration of the Supreme National Tribunal, and especially with its paragraphs (3) and (7), it should be pointed out that the Nuremberg Judgment did not include the organization of the concentration camps as such among the organizations declared as criminal,

primarily because the Nuremberg Indictment did not ask the Tribunal to make such a declaration in this respect.<sup>(1)</sup> Nevertheless, the Tribunal did make in its Judgment many references to the concentration camps which it described as a means for systematic commission of war crimes and crimes against humanity.<sup>(2)</sup> Moreover, the Tribunal expressly stated that "in the administration of the occupied territories the concentration camps were used to destroy all opposition groups".<sup>(3)</sup> With specific reference to one of the ill-famed concentration camps the Tribunal, quoting the report of the War Crimes Branch of the Judge Advocate's Section of the 3rd U.S. Army, established, for instance, that:

"Flossenburg concentration camp can be described as a factory dealing in death. Although this camp had in view the primary object of putting to work the mass slave labour, another of its primary objects was the elimination of human lives by the methods employed in handling the prisoners. Hunger and starvation rations, sadism, inadequate clothing, medical neglect, disease, beatings, hangings, freezing, forced suicides, shooting, etc., all played a major role in obtaining their object. Prisoners were murdered at random; spite killings against Jews were common, injections of poison and shooting in the neck were everyday occurrences; epidemics of typhus and spotted fever were permitted to run rampant as a means of eliminating prisoners; life in this camp meant nothing. Killing became a common thing, so common that a quick death was welcomed by the unfortunate ones."<sup>(4)</sup>

One more passage may be quoted from the Nuremberg Judgment. It reads:

"A certain number of the concentration camps were equipped with gas-chambers for the wholesale destruction of the inmates, and with furnaces for the burning of the bodies. Some of them were in fact used for the *extermination of Jews* as part of the "final solution" of the Jewish problem. Most of the non-Jewish inmates were used for labour, although the conditions under which they worked made labour and death almost synonymous terms. Those inmates who became ill and were unable to work were either destroyed in the gas-chambers or sent to special infirmaries, where they were given entirely inadequate medical treatment, worse food if possible than the working inmates, and left to die".<sup>(5)</sup>

When dealing with the criminal aims of the SS, the Nuremberg Tribunal described in detail the activities of the RSHA (Reichsicherheit Haupt-Amt) and the WVHA (Wirtschafts Verwaltungs HauptAmt). The Tribunal then stated that already since 1934 the SS through the medium of the RSHA was responsible for the central administration of concentration camps, and from 1942, when this administration was taken over under the control of the WVHA, the concentration camps were used as a source of

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(1) See the *Nuremberg Judgment*, Cmd. 6964, p. 67, para. 3.

(2) *Ibid.*, Judgments against Kaltenbrunner, p. 93; against Funk, p. 103; and general parts of the Judgment, pp. 7 and 49.

(3) *Ibid.*, p. 50.

(4) *Ibid.*, p. 50.

(5) *Ibid.*, p. 50. Italics introduced.

slave labour, for the extermination of " anti-social elements ", experiments on human beings and extermination of Jews.<sup>(1)</sup>

In this way the Nuremberg Judgment established that the concentration camps were an important part of the machinery for the criminal activities of the SS as a whole, and of the WVHA in particular, which was one of the central offices of the SS declared by the Tribunal as a criminal organization. If, in addition, we take into account that the concentration camps were in fact the constituent executive units of the WHVA and were serving its criminal aims in general, and the realization of the plan of exterminating other nations in particular, it may well be said that the Supreme National Tribunal was on strong ground in declaring the concentration camp as a criminal group.

In making the above declaration the Supreme National Tribunal not only based itself on Article 9 of the Nuremberg Charter, but also applied *per analogiam* the statement of principle made in this connection by the Nuremberg Tribunal which stated that according to Article 9 " the Tribunal is vested with discretion as to whether it will declare any organization criminal. This discretion is a judicial one and does not permit arbitrary action, but should be exercised in accordance with well settled legal principles . . . If satisfied of the criminal guilt of *any* organization or group, this Tribunal should not hesitate to declare it to be criminal because the theory of " group criminality " is new . . ." <sup>(2)</sup>

The Supreme National Tribunal evidently considered that in regard to the concentration camps it is not sufficient, as did the Nuremberg Judgment, to have declared as criminal the three or four principal Nazi organizations, as in point of fact there were many Nazis employed in the administration of every single concentration camp, and responsible in a general sense for the mass criminality committed therein, sometimes in a higher degree than the actual perpetrators, and who were not members of any of the organizations declared as criminal by the Nuremberg Tribunal. Therefore, the Supreme National Tribunal declared the members of the authorities, of the administration and of the garrison of the German concentration camps in occupied Poland as criminal groups in the meaning of Article 4 of the Decree of 1944 (1946). It declared these members to be a criminal *group* and not *organization*, in view of the fact that the above Decree as well as the international enactments use both these descriptions, and the expression " group " is in this case more appropriate from the technical point of view, and because of the etymological character of the word " organization ".

It appears that a few words should finally be said as regards criminal knowledge on the part of the members of the concentration camps personnel. It should be recalled that the Nuremberg Tribunal declared criminal the membership of the four organizations (the Leadership Corps of the Nazi Party, the Gestapo, the SD and the SS) on the condition that the members " became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6

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(1) See the *Nuremberg Judgment*, pp. 76-77.

(2) *Ibid*, pp. 66-67. Italics introduced.

of the Charter, or who were personally implicated as members of the organization in the commission of such crimes".<sup>(1)</sup>

Although the Supreme National Tribunal did not mention in its declaration this particular question, it must be presumed that this Tribunal, having based the declaration on the analysis of the Nuremberg Charter and Judgment, took this requirement as self-evident and did not see the necessity of pointing it out. It would also seem self-explanatory that the first part of the Nuremberg Tribunal's *proviso* is hardly of much importance in the case of concentration camps, as every member of their personnel must have known that these camps were being used for the commission of acts which any ordinary sensible person must have acknowledged as criminal.

#### 4. GENOCIDE

As it is apparent from the outline of the proceedings the trial of Hoess was another case in which the crimes perpetrated in the Auschwitz camp come within the notion of the crime of genocide. We have already described briefly the concept of this notion in connection with the case of Amon Goeth.<sup>(2)</sup> As regards the present case it may be mentioned that the Prosecution, after describing the German policy aiming at the extermination of Jews, pointed out that the mass crimes committed in concentration camps were part of the Nazi scheme of exterminating whole nations. In this connection the Prosecution recalled among others that General von dem Bach of the German Police, who was a witness in the trial against Governor Fisher, sentenced previously by the Supreme National Tribunal, had testified that during a conference held by Himmler some time before the outbreak of war, the latter explained a plan which aimed at the extermination of some thirty million of the Slav population.

The Supreme National Tribunal dealt in its Judgment only very generally with this type of the Nazi criminality. It stated that the Nazi Party had as one of its aims the biological and cultural extermination of subjugated nations, especially of the Jewish and Slav nations, in order to establish finally the German *Lebensraum* and the domination of the German race. This programme and practice of extermination of entire groups of people and of nations on specific grounds, described as the crime of genocide, the Tribunal defined as an attempt on the most organic bases of the human relationship such as the right to live and the right to existence.

One of the aspects and elements of the German system of extermination put into preliminary execution in the Auschwitz camp were the medical experiments described in some detail in the preceding part of this report.

Even if it could be assumed that the medical experiments carried out at Auschwitz concentration camp were not expected to serve any definite political aims, their criminal character is beyond any doubt. They violated all rules which must be observed when medical experiments are performed on human beings.<sup>(3)</sup> Special circumstances in which they were performed

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<sup>(1)</sup> See the *Nuremberg Judgment, op cit.*, pp. 71, 75 and 79.

<sup>(2)</sup> See Case No. 37, pp. 7-9, of this volume.

<sup>(3)</sup> Compare pages 48-53, of this volume.

constitute in addition elements which allow them to be classified as violations of the laws and customs of war and of laws of humanity.

Experiments were always carried out under compulsion and in many cases physical violence was used. They were often performed by unqualified doctors and in appalling conditions. They did not serve any scientific purpose. They were performed with unnecessary suffering and injury and without proper protection against the risks of disability or death. The subjects experienced extreme pain and torture, and permanent injury or death followed in many cases. The doctors and the personnel performing experiments did not show any care or give any assistance to persons frequently seriously ill in consequence of the experiments.

Thus all these experiments violated general principles of criminal law as derived from the criminal laws of all civilized nations.

But paramount importance should be attached to the political aspect of the crime. The general scheme of the wholesale experiments points out clearly to the real aim. They were obviously devised at finding the most appropriate means with which to lower or destroy the reproductive power of the Jews, Poles, Czechs and other non-German nations which were considered by the Nazi as standing in the way of the fulfilment of German plans of world domination. Thus, they were preparatory to the carrying out of the crime of genocide.

These conclusions seem justified not only by the experiments themselves. They were corroborated by the statements of the accused Hoess himself. He confirmed the existence of plans of wholesale destruction of the Slav nations, and of Poles and Czechs in particular. It is also known that Himmler entrusted Professor Clauberg with experiments which were nothing else but the application in reverse of his successes in the domain of the treatment of sterility. Clauberg himself recognized that his experiments could contribute very little to the progress of science.

The defendant Hoess declared that the experiments of wholesale castration and sterilization were carried out in accordance with Himmler's plans and orders. These aimed at the biological destruction of the Slav nations in such a way that outside appearance of a natural extinction would have been preserved.

The X-ray experiments, particularly in cases when small or minimal dosage of rays was applied, and the setting up of a special mixed camp for about 3,500 men and women in this connection seem to be particularly characteristic. Thus a special breeding place for individuals carrying supposedly hereditary "lethal" genes, which it was hoped could be artificially cultivated among the subjugated nations, seems to have been created. This contention seems, according to Professor Kowalski who gave expert evidence in this trial, to be justified by experiments on animals. It was known from them, said this witness, that X-rays applied in a certain dosage to germinative cells caused hereditary injuries to the latter. Progeny born from such cells either could not survive or would carry congenital anomalies. Also X-ray treatment of female genital organs and in particular of the uterus caused injuries, owing to which pregnancy ended in about 42 per cent of cases in miscarriage or premature delivery.

Thus it seems probable that the X-ray experiments aimed at checking on the results obtained on animals and at providing necessary statistical data. These experiments could have determined the X-ray dosage necessary for injuring human hereditary genes. They also aimed at creating conditions in which the injured genes could be multiplied and degenerated progeny observed, so that in the end those observations could have been used for political purposes.

Still more typical were Clauberg's sterilization experiments. They all aimed at causing sterility of non-German women. In the opinion of Professor Kowalski, they were of great importance because all other well-known methods of sterilization are difficult, require much time, complicated technique and skilled doctors, and because they could be easily noticed by the persons concerned. The aim of the German doctors of sterilizing in a wholesale manner non-German women could have been achieved by the discovery of a drug which would easily and surely obliterate the relatively narrow lumen of the tubes, without injuring the mucous membrane of the uterus. Thus periods would continue, internal female genital organs would remain healthy and damage inflicted to the reproductive power of women concerned would remain unobserved. The wholesale application of such a drug, the discovery of which cannot be ruled out, would have paved a way to a demographic policy aiming at a total extinction of nations.

Thus in view of the political directives, issued by the Supreme German authorities, and the character of the experiments performed in Auschwitz on their orders, it seems obvious that they constituted the preparatory stage of one of the forms of the crime of genocide, which was intended to be perpetrated by scientific means.