

of the Ordinance of 28th August, 1944, the penalty being a short term of imprisonment as provided in the Penal Code (six months).⁽¹⁾

In a similar case,⁽²⁾ the accused, Elisa Kesar, wife of a German settler in France, removed to Germany the furniture of the French family whose dwelling she occupied with her husband. She was convicted for abuse of confidence and sentenced to imprisonment for four months.

In another case the accused was a German engineer who rented a French enterprise. He was convicted for abusing the owner's confidence by selling a horse belonging to the enterprise and "dissipating" the money received from the sale. Here again the conviction was made under Article 408 of the Penal Code and Article 2, paragraph 8, of the Ordinance of 28th August, 1944, the sentence being, as in the previous case, set out in the Penal Code (six months' imprisonment).⁽³⁾

CASE No. 53

TRIAL OF PHILIPPE RUST

PERMANENT MILITARY TRIBUNAL AT METZ
JUDGMENT DELIVERED ON 5TH MARCH, 1948

Illegal and Abusive Requisitioning

A. OUTLINE OF THE PROCEEDINGS

The accused, Philippe Rust, an S.S. Obersturmfuehrer serving in occupied France, district of Moselle, was charged with "abusive and illegal requisitioning" of French property and with "employing French subjects on military works".

It was alleged by the Prosecution that in September, 1944, a local inhabitant, Marcel Schmitt, was ordered and forced by the accused to supply horses and vehicles with which he had to carry German ammunition, and that he was compelled to repair German military bicycles, motor-cycles and electrical installations. It was also alleged that several other French civilians had been subjected to the same treatment, and that the acts of requisitioning were illegally effected in that no receipts were delivered to the owners of horses and vehicles.

The accused pleaded not guilty. He claimed to have acted under superior orders and to have omitted to deliver receipts because the requisitions were in conformity with "usages".

(1) Judgment of the Permanent Military Tribunal at Metz, delivered on 21st August, 1947.

(2) Judgment of the Permanent Military Tribunal at Metz, delivered on 6th April, 1948.

(3) Judgment of the Permanent Military Tribunal at Metz, delivered on the 25th November, 1947.

The accused was found guilty of "abusing powers conferred upon him to requisition men and vehicles by refusing to deliver receipts". He was condemned to imprisonment for one year.

B. NOTES ON THE NATURE OF THE OFFENCE

The Prosecution had charged the accused on two Counts. The first Count of "abusive and illegal requisitioning" of property was regarded as a case of pillage in time of war, as covered by Article 221 of the French Code of Military Justice and Article 2 of the Ordinance of 28th August, 1944. This was done in accordance with the latter provision which, in its paragraph 8, explicitly says that "abusive or illegal requisitioning" is treated as pillage, within the terms of Article 221 of the Code of Military Justice. This in turn deals generally with pillage committed by military personnel. The second Count of "using French subjects on military works" of the enemy was treated by the Prosecution as falling under Article 334 of the Penal Code and being a case of "illegal restraint of persons". This was done in accordance with Article 2, paragraph 6, of the Ordinance of 28th August, 1944, which expressly includes under the notion of "illegal restraint" the use of civilians or prisoners of war on military works.

When dealing with these charges the Court made alterations in respect of the offences and the relevant provisions of substantive law. No specific reasons for these alternatives were given in the judgment, but from the questions put by the President to the members of the Tribunal and their answers, it appears that, in view of the evidence, the Court found the accused not guilty of the charges as submitted by the Prosecution. It dismissed the charge that the accused had committed requisitions of property amounting to pillage, and also the charge that civilians were used on military works. Instead, the Court found the accused guilty in respect of both property and civilian labour, of the following offence:

"Abusing powers conferred upon him for the purpose of requisitioning men and vehicles by refusing to deliver receipts for such requisitions."

In this respect the Court applied Article 214 of the Code of Military Justice. This punishes "any military person who abuses powers conferred upon him" in regard to requisitioning or "who refuses to deliver receipts" for such requisitions. These alterations affected the penalty to be imposed. Whereas the offence of illegal requisitioning amounting to pillage under Article 2, paragraph 8, of the Ordinance of 28th August, 1944, and Article 221 of the Code of Military Justice, and the offence of "restraining" civilians by forcing them to perform military work as provided in Article 2, paragraph 6 of the Ordinance and Article 344 of the Penal Code, both entail hard labour, as a rule for life, the punishment for an offence under Article 214 of the Code of Military Justice is limited to imprisonment for from two months to two years.

It should be noted that in the findings of the Court as quoted above, the objects requisitioned were specifically stated to comprise not only property but also manpower or labour. It equally follows from the same findings that the abuse for which the accused was found guilty consisted in the requisition being made without due delivery of receipts concerning the property and labour requisitioned.

The alteration of relevant provisions of substantive law was effected by the Court in accordance with a rule of procedure contained in Article 88 of the Code of Military Justice. Under this provision the findings of the Military Tribunal are reached by means of questions put by the President to the Judges, in which he sums up the issues at stake as deriving from the indictment. In this connection whenever the President finds that the main offence may be regarded as an act entailing a different punishment or representing an offence against common penal law, he is entitled to submit to the Court subsidiary questions to this effect and obtain a decision on the alternatives. It is on the basis of this rule that the Tribunal rejected the charges and provisions invoked by the Prosecution and replaced them by findings of its own.

The charges of the Prosecution and the decision of the Court were centred around the concept of illegal or abusive requisitioning of property and labour. The issue is dealt with in Article 52 of the Hague Regulations, 1907, respecting the Laws and Customs of War on Land, which reads:

“ Requisitions in kind and services shall not be demanded from local authorities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

“ Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

“ Contributions in kind shall as far as possible be paid for in ready money; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.”

Violations of this rule were included by the 1919 Commission on Responsibilities in its list of war crimes under Item XV and described therein as “ exaction of illegitimate or of exorbitant contributions and requisitions ”. It will be noted that the phraseology used in the previously quoted provision of the French Ordinance of 28th August, 1944, concerning the Suppression of War Crimes, Article 2, paragraph 8, which used the terms “ illegal or abusive contributions ”, is in full accord with both Article 52 of the Hague Regulations and with the 1919 list of war crimes. So also is Article 214 of the French Code of Military Justice, under which the accused was found guilty and convicted. It speaks of “ abusive requisitioning ”, which term is similar to that of “ exorbitant ” requisitions mentioned in the 1919 list, and treats as “ illegal ” and criminal the fact of omitting or refusing proper receipt, as required by the Hague Regulations.

In this manner, the offence of the accused appears to be a clear case of a war crime covered by the laws and customs of war as prescribed both in international and French municipal law. The French law referred to by the Prosecution and the Court is an illustration of how rules of international law, such as the one now contained in Article 52 of the Hague Regulations, have found their way into municipal penal law, and how they complemented each other. Provisions of the Ordinance of 28th August, 1944, and of French penal law speak of "illegal" or "abusive" requisitioning without defining either concept. Elements for a definition are to be found in Article 52 of the Hague Regulations. This provides that requisitionings are to be limited to the "needs of the army of occupation" and that they must, at the same time, "be in proportion to the resources of the country". The objects requisitioned are defined so as to include property on the one hand (requisitions "in kind") and manpower or labour on the other (requisitions "in services"). A further legal limitation on acts of requisitioning is that such acts relating to manpower must "not involve the inhabitants in the obligation of taking part in military operations against their own country". Any violation of these limitations amounts to illegal or abusive requisitioning, or both, and constitutes a war crime.

The offence for which the accused was found guilty eventually amounted to a case of "illegal" requisitioning, that of violating the requirements according to which, unless payment is made "in ready money", a receipt is to be given in respect of the objects requisitioned. As already stressed, the Court was not satisfied that any other offence had been committed by the accused. It therefore freed him from the charge that civilians were used on "military works" and that, by requisitioning their labour as well as their horses and vehicles, the accused had gone beyond the limitations imposed by Article 52 of the Hague Regulations. Although no reason for this can be found in the judgment, it is safe to assume that such a decision was reached on the merits of the facts and evidence which were made available to the Court. This probably includes the conclusion that the civilians concerned in the trial and their property were used "for the needs of the army of occupation" and were "in proportion to the resources" of the occupied territory. It may well include also the conclusion that repairs of military bicycles, motor-cycles and electrical installations, as charged by the Prosecution, did not involve the inhabitants in taking part in "military operations against their own country" and consequently did not amount to "military works" in the sense required by the laws and customs of war.

In the circumstances of the trial, the question whether and to what extent, generally speaking, the use of civilians on military work, as distinct from prisoners of war, is forbidden, is not answered in the judgment under review. No light is thrown upon the issue as to whether and if so what kind of "military works" amount to "taking part in military operations" against one's own country.⁽¹⁾ This question, however, occurs in other trials which are reported upon in these volumes.⁽²⁾

(1) On the issue at stake, see *History of the United Nations War Crimes Commission and the Development of the Laws of War*, H.M. Stationery Office, London, 1948, Chapter IX, B.

(2) See especially Vol. VII, pp. 53-58.