

18. KEHRL—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 10 May 1949 defendant Hans Kehrl through his counsel filed a memorandum calling attention to alleged errors in the judgment of the Tribunal wherein defendant Kehrl was convicted under counts five, six, seven, and eight of the indictment, and praying that the convictions be quashed and that the sentence imposed be reduced. It appears also that, prior to the filing of the above memorandum, Kehrl also joined in a petition for plenary session of the Tribunals for the therein expressed purpose of examining "the judgment passed on 14 April 1949 by Military Tribunal IV in Case 11." It appears that on 16 June 1949 the prosecution filed an answer to the memorandum or motion of the defendant herein, and that on 30 June 1949 the defendant filed a rejoinder to said prosecution answer.

The Tribunal having considered said memorandum and motion of the defendant, and the arguments contained in defendant's petition for plenary session as aforesaid, the answering brief of the prosecution and the defendant's rejoinder thereto, and being advised in the premises,

IT IS ORDERED that the prayer of defendant as contained in his memorandum and motion of 10 May 1949, as aforesaid, be, and the same is, hereby in all respects denied.

Memorandum hereto attached is hereby made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE

Judge

MEMORANDUM

Reference is hereinbefore made to the petition for plenary session joined in by this defendant. The Tribunal again wishes to indicate that it could not grant request for such plenary session, or in fact give consideration thereto, but the arguments against the convictions of this Tribunal as contained in said request for plenary session have been considered in connection with the arguments advanced in support of this defendant's memorandum and motion of 10 May 1949, hereinbefore referred to.

We will now consider the memorandum of defendant.

We have considered defendant's motion respecting his conviction under count five and have again considered the evidence regarding this charge. We find no error and the record discloses without contradiction the position and responsibility which he bore with respect thereto. His motion to set aside his conviction under count five should be, and hereby is, denied.

With respect to counts six and seven, counsel for the defendant in a large measure by his memorandum reargues with great earnestness the evidence and the law here involved, which were exhaustively and at great length argued in briefs before the Tribunal's preparation and rendition of the judgment in this matter. We have again considered the arguments. We have noted the claimed errors and the contention that the judgment as to these two counts is not adequately supported by the evidence. That there is difference of opinion as to the interpretation and value to be placed on the vast number of items of evidence received by the Tribunal, both oral and documentary, is not strange.

The fact that defendant's counsel believes and argues that a different interpretation should have been given various items of evidence received by the Tribunal does not in the opinion of the Tribunal constitute grounds for amendment or modification of the Tribunal's findings under counts six and seven. Counsel in the course of giving what he considers to be a more correct and proper interpretation of the evidence than that arrived at by the Tribunal apparently strives to minimize the effect of the evidence as a whole as to these counts. Illustrative thereof is the reference to pages 19 and 20 of defendant's memorandum with respect to the Tribunal's finding that Kehrl was a participant in the initiation and carrying out of the Reich program of Aryanization in Czechoslovakia, the memorandum stating "The one and only intimation regarding any participation on Kehrl's part in the so-called Aryanization program is to be found in the passage of the documentary evidence: 'Tonight a meeting of the German banks will take place at Kehr's office, where directives for Aryanization in this territory will be discussed.' Prosecution Exhibit 3093 [NID-13365], Document Book 144 B, English, page 362."

This does not, however, accurately represent the true situation. Kehrl's extensive authority and participation in the "Germanizing" of Czechoslovakian banking and business, after the invasion of Bohemia-Moravia, is clearly established, despite counsel's contentions to the contrary, and Aryanization, according to the evidence, was one of the most potent and widely employed instrumentalities in such Germanizing process. Under such proof, even

if there were no other, it seems impossible for defendant to divorce himself from "Aryanization" in Czechoslovakia.

The vast amount of evidence adduced as to these two counts, six and seven, in the Tribunal's opinion amply sustains the convictions thereunder. No errors of sufficient materiality or consequence appear, certainly none that would reasonably require from the Tribunal a change in the result reached in the judgment, or in the sentence imposed. This, of course, is not to be construed as a suggestion to the reviewing authority that it should not exercise clemency in this case, if it is deemed proper.

A reexamination of the evidence and the conclusions which we drew therefrom in view of the defendant's motion to set aside his conviction under count eight discloses no error. Defendant's motion to set aside his conviction under this count should be, and hereby is, denied.

E. Separate Memorandum Opinion of Judge Powers Concerning Various Motions, 24 December 1949

MEMORANDUM OF JUDGE POWERS

As a member of the Tribunal which tried Case 11, I have considered the various motions which have been filed since the entry of the judgment in the case and have examined the orders disposing of said motion and the memoranda attached to said orders, all of which were prepared by other members of the Tribunal.

I have signed the orders relating to the motions of Steengracht von Moyland, Woermann, and Von Weizsaecker which reduces the sentences of those defendants. I concur in the orders sustaining a part of the motion to which the order is directed in each case. This, however, does not mean that I concur in the part of the order which denies further relief, and it does not mean that I concur in the memoranda opinions which accompany the orders.

As to the other orders, I have withheld my signature because I am of the opinion that some portions of the motions to which these orders are directed should be sustained, and I do not approve of many of the statements in the memoranda opinions which accompany the orders.

There is no desire on my part to extend unnecessarily an already long record, but it does seem to me that my position should be made clear, especially since I have heretofore dissented from parts of the original judgment. The opinions I then expressed I still hold, and I have no purpose or intention of joining in or approving any decisions which are inconsistent with them. It seemed to me that the absence of my signature on some of these