

In the shadow of Auschwitz ...

Jews before Special Courts of the ‘Third Reich’ 1933–1945

Summary: This article offers a qualitative and quantitative analysis of the presence of Jews before Special Courts of the ‘Third Reich’. The research shows that the participation of Jews as defendants before Special Courts in the so-called Old Reich was marginal. The situation was different in Polish areas incorporated into the Reich. Attention is here paid to the numbers of defendants and other penalty statistics, to some types of imputed acts, and to attempts to use courts and court sentencing to take the lives of Jews.

Key Words: Jews, Special Courts, Third Reich, criminal law, Holocaust

Zusammenfassung: Der Artikel analysiert – in qualitativer und quantitativer Dimension – die Anwesenheit von jüdischen Angeklagten vor Sondergerichten des ‚Dritten Reiches‘. Die Recherchen zeigen, dass die Beteiligung von Juden als Angeklagte vor Sondergerichten im sogenannten Altreich marginal war. Anders verhielt es sich dagegen in den sogenannten eingegliederten Ostgebieten. Dabei wurde nicht nur auf Angeklagtenzahlen und Strafstatistiken geachtet, sondern auch auf die Art der unterstellten Taten und Versuche der Nutzung von Sondergerichten mit dem Ziel der Tötung von Juden.

I. Introduction:

The purpose of this article¹⁾ has been to analyse – both qualitatively and quantitatively – the presence of Jews before Special Courts of the ‘Third Reich’²⁾, mostly as defendants and convicts. Such matters do not seem to have aroused major interest among researchers so far, except in some relevant literature³⁾, which has actually been circulated to only a limited extent. If there were to be a partial explanation for this state of affairs, there are probably two: On the one hand, the subject requires knowledge of the criminal law of the ‘Third Reich’ and German-language court files; and on the other hand, perhaps paradoxically, this issue represents ostensibly only a minor aspect within the overall tragic fate of huge proportions that befell Jews during World War II.

The source basis of this study consists predominantly of cases dealt with by particular Special Courts in Germany in the years 1933–1945. Work was thus based around results of archival research in which judicial decisions were examined, while detailed statistics in respect of defendants and penalties and other matters are seen to present specific situations in which Jewish defendants were held criminally liable. In the overwhelming majority of cases (notwithstanding marked deviation), the data proved adequate, in that they may be collected using a statistical method, and by reference to the examination of complete source material (not merely a research sample). For this purpose, statistical data on the presence of Jews standing accused before individual Special Courts, as established in the literature, were made subject

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²⁾ Joachim Rückert s.v. “Drittes Reich (1933–1945)”, in: Albrecht Cordes/Heiner Lück/Dieter Werkmüller/Ruth Schmidt-Wiegand (ed.), *Handwörterbuch zur deutschen Rechtsgeschichte*, vol. 1 Berlin 2008, 1152–1160.

³⁾ Ernst Noam/Wolf-Arno Kropat (ed.), *Juden vor Gericht 1933–1945*, Wiesbaden 1975, 19.

to analysis, with these data also set against the general population of defendants, as well as being set against the situation pertaining in other Special Courts. Beyond that, an overview of the literature on particular Special Courts of the 'Third Reich' allowed for the formulation of a hypothesis regarding the minor (even marginal) involvement of Jews among defendants and persons convicted by Special Courts in the area of the so-called Old Reich.

Equally, the matter looks different at least in a part of the 'eingegliederte Ostgebiete' (territories incorporated into the Reich), i.e. western areas of the Republic of Poland annexed in 1939: Wielkopolska (Greater Poland), Małopolska (Lesser Poland), Pomerania, Silesia with a part of Western Lesser Poland and northern Masovia. Although also here the proportion of Jewish defendants remains low, the absolute figures involved does probably reach out beyond the purely marginal. The inquiries of relevance here will not include the area of Poland incorporated into "the General Government". The jurisprudence of Special Courts in this latter area has not so far been studied; the desirability of such research must be postulated.

Also in the interests of clarity, it must be recalled how Special Courts in the 'Third Reich' were developed by Germany's National Socialists as early as in March 1933, with a view to their serving as typical political courts, in line with the so-called 'Dolchstoßlegende'. This was a legend assuming that the German Army of World War I was not overcome by the armies of the Entente countries but rather treacherously 'stabbed in the back' from inside by anti-patriotic forces. In this context, joint responsibility for the collapse of Germany might be attributed to the judicial system, which had clearly been pursuing those internal enemies with insufficient effect. The enemies of the state under consideration here were considered to include social democrats, pacifists, liberals, certain Catholics, deserters and common offenders⁴).

The newly established Special Courts and People's Tribunal were assigned their roles in the belief that a repetition of 1914–1918 events must be averted. However, as the years went by, the jurisdiction *ratione materiae* of Special Courts was extended to cover political, criminal and economic matters. A significant, distinguishing factor of these Special Courts is a simplified procedure which foresaw no preliminary judicial investigation, and just one instance. This allowed the Prosecutor's Offices to obtain more rapid judgments⁵).

According to statistical data gathered as a part of the population census of 16th June 1933, approximately 500.000 people of Jewish faith lived at that time in Germany. These people therefore amounted to a mere 0.8% or so within an overall population of 65 million⁶). 144.000 of them lived in Berlin, giving a share in the population equal to 4%. In other major cities (Hamburg, Cologne, Leipzig and Breslau), the percentage

⁴) Franciszek Ryszka, *Państwo stanu wyjątkowego, Rzec o systemie państwa i prawa Trzeciej Rzeszy*, Wrocław 1985, 489.

⁵) Peter Kalmbach, *Das System der NS-Sondergerichtsbarkeiten*, in: *Kritische Justiz* 50 no. 2 (2017) 226–235; Can Bozyakali, *Das Sondergericht am Hanseatischen Oberlandesgericht, Eine Untersuchung der NS-Sondergerichte unter besonderer Berücksichtigung der Anwendung der Verordnung gegen Volksschädlinge*, Frankfurt am Main 2005, 55–65; Konrad Graczyk, *Sądy specjalne III Rzeszy jako "sądy doraźne frontu wewnętrznego" (1933–1945)*, in: *Miscellanea Historico-Iuridica [MHI]* 18 No. 2 (2019) 179, 187, 194.

⁶) *Volkszählung: Die Bevölkerung des Deutschen Reichs nach den Ergebnis-*

of Jews was approximately 1 %. 15.5 % of the Jewish population lived in villages and small towns of less than 10.000 residents, while 13.6 % lived in towns and cities of between 10.000 and 100.000 residents. Most of them classified as urban middle class. There had been a downward demographic trend in the number of German Jews, as reveals a comparison with the General Census of 1925. By the time of the following Census of 17th May 1939 (admittedly rather close to the War), the reported number had shrunk to 328.000 Jews, and was still falling, although it by now included what had been and would later be Austria). Factors contributing to that decline include the growing fear of Jews to acknowledge their belief formally, after anti-Semitic actions of authorities, e.g. legislation preventing mixed marriages, the Jewish community suffered major outflows of people, and of course emigration⁷⁾.

The first measures of recognisably anti-Semitic and discriminatory legislation characteristic for National Socialism prohibited, for example, Jews from going into swimming pools, market places or even certain villages as a whole⁸⁾. These were local initiatives. State-level legislation, an important step in excluding Jews from German society, came with the notorious (and unanimously adopted) two Nuremberg Laws of 1935, but had already appeared in the 'Law for the Restoration of the Professional Civil Service' of 1933⁹⁾.

In one of the aforesaid Nuremberg Laws, i.e. the 'Law for the Protection of German Blood and German Honour'¹⁰⁾, a ban was introduced on marriages between Jews and Germans (on pain of imprisonment in harsh conditions), as well as on sexual contacts outside marriage (with alternative sanctions again involving prison sentences or time in prison in harsh circumstances). In the initial period under Adolf Hitler, Jews were most frequently found guilty of the offence of race defilement, also for disseminating alleged or true hearsay gossip – especially in the context of the political persecution of the Jewish minority – or telling political jokes or for foreign-currency misdemeanours in connection with emigration. In the thirties, Nazi rule saw Jews indicted before courts more often than it had been the case before, although there were not many new anti-Semitic provisions in place. Relevant criminal procedures were often initiated with the involvement of informants¹¹⁾.

II. Special Courts in the so-called Old Reich:

Let us now follow the judicial practice of Special Courts in the so-called Old Reich from the moment the National Socialists first came to power in 1933. As mentioned

sen der Volkszählung 1933, Heft 5: Die Glaubensjuden im Deutschen Reich, Berlin 1936, 9.

⁷⁾ Wolf Gruner (ed.), *Die Verfolgung und Ermordung der europäischen Juden durch das nationalsozialistische Deutschland 1933–1945*, I: *Deutsches Reich 1933–1937*, München 2008, 29–30; Franz Neumann, *Behemoth, The Structure and Practice of National Socialism 1933–1944*, Chicago 2009, 112–113.

⁸⁾ Gruner (n. 7) 40.

⁹⁾ See the following note as well as the Reichsbürgergesetz vom 15. September 1935 [Reich Citizenship Law], RGBl. 1935, p. 1146, and Gesetz zur Wiederherstellung des Berufsbeamtentums vom 7. April 1933, RGBl. 1933, p. 175.

¹⁰⁾ Gesetz zum Schutze des deutschen Blutes und der deutschen Ehre vom 15. September 1935, RGBl. 1935, p. 1146.

¹¹⁾ Noam/Kropat (n. 3) 16–18; Gruner (n. 7) 45–47; Gerd Weckbecker, *Zwischen Freispruch und Todesstrafe, Die Rechtsprechung der nationalsozialistischen Sondergerichte Frankfurt/Main und Bromberg, Baden-Baden 1998*, 121.

above, the years 1933–1939 saw almost half of the entire Jewish population emigrate out of Germany. In 1933 there were 38.000 emigrants, followed by 22.000 in 1934; 21.000 in 1935; 24.500 in 1936; 23.500 in 1937; 14.000 in 1938; and 78.000 up to 1st September 1939¹²).

Berlin: The largest Special Court in Germany (the nine-chamber Sondergericht Berlin) has a monograph devoted to the preserved source materials¹³). There we find that the approximate total number of defendants appearing before it was 16.500. In only a couple of judgments was it made clear that an openly anti-Semitic attitude on the part of judges had influenced the severity of punishment. In most situations, Jewish defendants were treated on equal terms with others, as can be demonstrated especially in the question if pre-trial or protective detention should be credited towards the imposed penalty.

It is, however, noteworthy that, from 1936, the Berlin Prosecutor's Office brought minor cases before the Special Court purely and simply for the reason that suspects were Jews. However, there were actually strange situations in which cases Jews were acquitted before the Berlin Special Court: in one case of anti-state speech, the reason for acquittal is 'unreliability of a witness'. Once war broken out, fewer judgments at the Berlin Special Court relate to Jews. This was naturally due to a drastic decline in the number of Jewish residents as a consequence of persecution and deportations. Among all cases preserved, 8 files concerning Jews can be connected with the 'Resolution on Extraordinary Radio Measures'¹⁴).

In the years from 1941 on, the judicial practice was not uniform. The Special Court had to deal with nine cases of race defilement. Death penalty was imposed in three out of nine cases, while the remaining complaints were concluded with less severe sentences. One Jew was sentenced, on 23rd October 1939, for a crime against decency in conjunction with race defilement, to the penalty of 6 years of severe imprisonment, but was actually shot two days later on the clear orders of Adolf Hitler¹⁵).

Among the more severe sentences in that group is the example of a 31-year-old migratory Jewish worker who was said to have committed race defilement three times. In the bill of indictment, the Prosecutor invoked § 4 of the 'Regulation against national parasites' of 5th September 1939¹⁶), since the defendant, on one of the three occasions, had taken advantage of a war-dictated situation of absence of the husband of a German woman. While that certainly opened the way for the

¹²) Martin Tarrab- Maslaton, *Rechtliche Strukturen der Diskriminierung der Juden im Dritten Reich*, Berlin 1993, 245–246.

¹³) Alfons Schwarz, *Rechtsprechung durch Sondergerichte, Zur Theorie und Praxis im Nationalsozialismus am Beispiel des Sondergerichts Berlin*, Aachen 1992, 59, 155–174. Unfortunately, the subchapter on Jews before the Court fails to supply a figure for Jewish defendants. The author focuses on qualitative rather than quantitative questions in spite of the fact that minutes of trials before Special Courts are usually of quite laconic brevity. Schwarz comes to the conclusion that the Jewish defendants did not suffer from limited possibilities to be defended.

¹⁴) Verordnung über außerordentliche Rundfunkmaßnahmen vom 1. September 1939, RGBl. 1939, p. 1683.

¹⁵) Lothar Gruchmann, *Justiz im Dritten Reich 1933–1940, Anpassung und Unterwerfung in der Ära Gürtner*, München 2001, 683.

¹⁶) Verordnung gegen Volksschädlinge vom 5. September 1939, RGBl. 1939, p. 1679.

death penalty to be imposed, the Sondergericht Berlin passed a sentence involving 'just' seven years of imprisonment in harsh circumstances. Following a *Nichtigkeitsbeschwerde* (action for annulment) by the Public Prosecutor, that judgment was quashed. The case was remanded to the Berlin Special Court for re-examination together with a suggestion that the defendant be checked for a possible status as a *gefährlicher Gewohnheitsverbrecher* (dangerously notorious offender). This qualification imposed death penalty, which was issued on 9th April 1943. Justifying the sentence, the Court referred not only to the particular reprehensibility of the act and abuse of the hospitality offered by German society, but also to the fact that the act was committed while the German nation was fighting for a future that World Jewry had threatened¹⁷).

Frankfurt am Main: The Sondergericht (Special Court) in Frankfurt am Main was the one with the second-highest number of potential Jewish defendants. However, the statistical data available on the years 1933–1936¹⁸) show no overrepresentation of Jews among defendants; rates range from 6.7% in 1933 to 6% in 1935, which is in line with the percentage of Jews in the Frankfurt population (6.3% as of 1934). While the total number of defendants during 1933–1945 was 2,338, it should be noted that only 40 of them were Jews. Out of that total – and despite many police actions organised to oppress the Jewish population – as many as seven defendants were brought before that Special Court still in 1941. The statistics for 1942 are unknown. In the years 1943 to 1945, no Jews at all appeared before the Sondergericht Frankfurt. While that undoubtedly reflects the ongoing process of extermination of Jews, it was also a consequence of court jurisdiction being precluded for all Jews under the '13th Regulation to the Law on the Citizenship of the Reich' of 1st July 1943¹⁹) (of which more further down in this study, ch. III). Most Jewish defendants (77.5%) were accused of political offences: 24 of enunciation offences (e.g. anti-state speech) and seven of unauthorised wearing of an NSDAP Party badge. Six persons were accused of economic delicts, two of non-material delicts, and one of a radio-related delict.

While anti-state utterances could be motivated by discrimination, the accusations were mainly non-political. One offence, for example, was to say that a *Gauleiter* (a regional leader of the NSDAP) had previously been a postman and now earned enough money to support 50 families, under the 'Law Against Underground Attacks on the State and the Party and on the Protection of Party Uniforms'²⁰). Although the President of the Frankfurt Sondergericht released the Jew who had to defend himself because of his *Gauleiter* message from pre-trial detention upon security of 5,000 Marks being lodged, the Police intervened and put him back into protective detention. One another Jew acquitted by the Special Court was handed

¹⁷) Gesetz gegen gefährliche Gewohnheitsverbrecher und über Maßregeln der Sicherung und Besserung vom 24. November 1933, RGBl. 1933, p. 995; Schwarz (n. 13) 155–174; Michael Hensle, "Rundfunkverbrechen" vor nationalsozialistischen Sondergerichten, Eine vergleichende Untersuchung der Urteilspraxis in der Reichshauptstadt Berlin und der südbadischen Provinz, Berlin 2001, 398.

¹⁸) Weckbecker (n. 11) 79.

¹⁹) Dreizehnte Verordnung zum Reichsbürgergesetz vom 1. Juli 1943, RGBl. 1943, p. 372; for the Reichsbürgergesetz of 1935, see n. 9.

²⁰) Gesetz gegen heimtückische Angriffe auf Staat und Partei und zum Schutz der Parteiuniformen vom 20. Dezember 1934, RGBl. 1934, p. 1269.

over to the 'Gestapo' (Geheime Staatspolizei, Secret State Police) and then sent to a Concentration Camp²¹).

Jewish defendants in Frankfurt were not particularly discriminated in terms of their formal right to a defence. They were represented by Konsulenten (consultants) analogous to the level relating to defendants of German nationality, at over 60 %.

Statistical research on the penalties imposed does not lead to any obvious unveiling of discrimination against Jews in comparison with other defendants, either. As an aggravating circumstance, several sentences mention that a Jewish person had seriously abused someone's hospitality rights – but penalties made no huge difference in comparison with non-Jewish defendants.

A case to be mentioned involved the Sondergericht Frankfurt refraining from death penalty for race defilement in 1941, despite a respective request being brought forward during the trial by the Public Prosecutor. Under the provision in § 14 of the '1st Regulation to the Law for the Protection of German Blood and German Honour'²²), race defilement fell under the jurisdiction of Regional Courts. This defendant, however, was accused at the same time of acts qualified under the 'Law Against Underground Attacks on the State and the Party and on the Protection of Party Uniforms' (cf. n. 19). He had worn a Party badge during a couple of visits to a bawdy house. That justified the allocation at the Sondergericht. An attenuating circumstance was the fact that the intercourse took place with prostitutes, so the threat of German blood being bastardised was relatively low. The sentence stated an overall penalty of 12 years of severe prison. The archival materials of the Sondergericht Frankfurt show that Jewish convicts serving long-term severe prison sentences were regularly transferred to a Concentration Camp upon completion of the penalty.

Düsseldorf: Similar statistical data has been established for the Special Court in Düsseldorf. In the years 1933–1941, 35 proceedings involving 36 Jewish defendants were pending before that Court. In 1942 none were accused, while the total number of defendants in 1933–1945 was 4.361. These small overall numbers follow from the fact that in the discussed period most Jewish defendants were held liable before the Regional Court. Among the preserved cases, there were 12 acquittals, two discontinuations, and one sentence to a 500 Mark fine. 19 persons were sentenced to the penalty of imprisonment for between three weeks and one and a half years. Two were sentenced to severe prison, and one Sicherungsverwahrung (retention order) was delivered for security purposes.

The most frequent verdict for political delicts of Jews at the Special Court in Düsseldorf referred to the 'Law Against Underground Attacks on the State and the Party and on the Protection of Party Uniforms' (n. 19). The harshest judgment issued against a Jew, a penalty of eight years of severe imprisonment, was imposed in 1941 for race defilement: A 34-year-old cobbler had engaged in intercourse outside marriage with three women of 'German blood'. The Public Prosecutor responded by qualifying the act under § 4 of the 'Regulation Against National Parasites' (n. 16) and

²¹) Weckbecker (n. 11) 64, 79, 84, 100, 116, 139, 146, 219, 280–281, 415–416, 418.

²²) Erste Verordnung zur Ausführung des Gesetzes zum Schutze des deutschen Blutes und der deutschen Ehre vom 14. November 1935, RGBl. 1935, p. 1334; cf. n. 10.

taking advantage of extraordinary wartime conditions to commit the act. The bill of indictment sought the death penalty. However, the request made by the Prosecutor at the trial was more lenient: He suggested 8 years of severe prison as well as 10 years of loss of civil rights (although Jews generally lost those anyway under the Nuremberg Laws, a Special Court stated that Jews also had certain honorary rights) and detention for security purposes. The Special Court ruled as per that request²³).

Race defilement: Let us leave aside for a moment the analysis of the judicial practice in particular Special Courts of the Old Reich and discuss the practice of court adjudication in race-defilement matters. The judicial choice of penalties imposed in that context was as specified in the provision of § 5 of the ‘Law for the Protection of German Blood and German Honour’ (n. 10), i.e. imprisonment from one day to five years or severe imprisonment from one year to 15 years. However, only men could come before the Court on this basis²⁴). In the initial period through to October 1936, when jurisdiction was generally with Regional Courts, 266 judgments were registered in the entire German Reich²⁵). In a vast majority of cases, the verdicts foresaw one year or less of imprisonment. Every fifth Jewish convict was sentenced to severe prison; the same happened to every 15th “German” convict.

In the period from March 1936 on, only the Regional Court in Frankfurt am Main imposed penalties of severe prison in race-defilement matters. The excessively lenient sentencing in those matters was complained about by the Gestapo which encouraged Public Prosecutors to ask only for severe prison penalties – even though the law offered an alternative. In a circular letter of September 1936, a Secretary of State at the Reichsjustizministerium (Ministry of Justice of the Reich) – Roland Freisler – suggested that Presidents of higher regional courts should influence Judges to impose more-severe penalties. Freisler also recommended that only one designated court chamber should deal with race-defilement matters²⁶). The Courts most often complied with the respective requests from Public Prosecutors, and, several times, reduced the degree of severity of requested penalties – most explicitly in Hamburg, Cologne and Frankfurt am Main²⁷).

A famous case known in the literature is that of Lehmann Katzenberger who was sentenced to death by the Special Court in Nuremberg in 1942. The 69-year-old Jew was accused of a sexual relationship with a 32-year-old married woman. Although both of those allegedly involved denied that accusation, the Special Court considered the guilt proven by the finding that Katzenberger would visit the woman’s apartment, invite her to his place and give her presents. The severity of the penalty was affected by the fact that their meetings took place during Verdunkelung (blackout times), im-

²³) Herbert Schmidt, “Beabsichtige ich, die Todesstrafe zu beantragen”, Die nationalsozialistische Sondergerichtsbarkeit im Oberlandesgerichtsbezirk Düsseldorf 1933–1945, Essen 1998, 110–115, 152.

²⁴) Maximilian Becker, Mitstreiter im Volkstumskampf, Deutsche Justiz in den eingegliederten Ostgebieten 1939–1945, München 2014, 43.

²⁵) Noam/Kropat (n. 3) 111.

²⁶) Noam/Kropat (n. 3) 111–112, 115.

²⁷) Diemut Majer, ‘Narodowo obcy’ w Trzeciej Rzeszy, Przyczynek do narodowo-socjalistycznego ustawodawstwa i praktyki prawniczej w administracji i wymiarze sprawiedliwości ze szczególnym uwzględnieniem ziem wcielonych do Rzeszy i Generalnego Gubernatorstwa, Warsaw 1989, 207–208.

plying advantage taken of extraordinary wartime conditions. The sentence relied on § 2 and § 4 of the 'Regulation Against National Parasites' (n. 16) which lead clearly the way to death penalty. It is noteworthy that the case came before the Nuremberg Special Court as a result of the personal intervention of the President thereof, Oswald Rothaug. According to one opinion, Rothaug procured the transfer of the case from an ordinary court simply because he did not want to miss an opportunity to sentence a Jew to death²⁸).

The judgment in the Katzenberger case was not the only one imposing capital punishment for race defilement. Such sentences were imposed by individual Special Courts that considered perpetrators 'gefährliche Gewohnheitsverbrecher' (dangerous notorious offenders) (n. 17) or 'Volksschädlinge' (national parasites) (n. 16). For example, in April 1943, Sondergericht Kassel sentenced to death a 29-year-old engineer, who was a Hungarian citizen, after classifying him a gefährlicher Gewohnheitsverbrecher. An aggravating circumstance was the fact that the defendant had had sex with several German women even after he had learned about his Jewish origins²⁹). However, it is highly probable that the penalty in this specific case was also motivated by a factor of a non-legal nature. After the War, legal proceedings for bending of the law were initiated against two members of that very chamber in Kassel that had sentenced the Hungarian. In the course of this process it became clear that the defendant had had a sexual relationship with a daughter of a certain president of the Kassel Regional Court; she was married at the time to a soldier at the Front. The relationship was not mentioned during the original trial; however, in the words of one of the respondents in 1950, it had influenced "die Bewertung des Charakters des Angeklagten" (the assessment of the defendant's character)³⁰). It may be assumed that criminal sentences passed in wartime did not merely reflect the severe nature of the legal system. In that Kassel case, the level of penalty was in line to please the highly-placed colleague³¹).

In July 1942, a Jewish waiter was sentenced to death, for race defilement by the Special Court in Cologne. The severity of the verdict was raised because the convict was again considered a dangerous notorious offender. One more similarly severe judgment is known from the Court in Breslau as well as two others from Hamburg (1941)³²). These specific judgments reveal a progressive radicalisation in anti-Jewish

²⁸) Raul Hilberg, *The Destruction of the European Jews*, New Haven 2003, vol. I, 161–162; Ryszka (n. 4) 495; Gruchmann (n. 15) 909.

²⁹) According to the case-law of the Reich Court, a perpetrator was labelled a Jew soon as he realised or should have realised that he or she was a member of the Jewish religious community, cf. Majer (n. 27) 207.

³⁰) Noam/Kropat (n. 3) 118, 168–173.

³¹) Both living members of the adjudicating panel in that case had to respond on the charge of murder and bending the law in 1950. But their case was dropped by the Regional Court in Kassel. The justification assumed not proven that they had directly intended to bend the law. Only the judgment was found defect – the special court's finding, that the Jewish defendant is a "dangerous, notorious offender", was not well-enough documented. Bundesarchiv in Ludwigsburg, B 162/14696, Urteil in der Strafsache gegen Fritz Hassencamp und Edmund Kessler vom 28. Juni 1950 (Judgment in the criminal case against Fritz Hassencamp and Edmund Kessler of 28 June 1950), no page.

³²) Majer (n. 27) 208.

decisions, which corresponds to the Wannsee Conference, the deteriorating military situation faced by Germany, and the impact of the People's Tribunal under the leadership of Roland Freisler. Equally, the kind of severity displayed in the category of cases under discussion is not evident at the Special Courts in Aurich³³), Bremen³⁴), Hannover³⁵), Kiel³⁶), Oldenburg³⁷) and Osnabrück³⁸).

Requests for more severe punishment were a subject of concern not only for the Gestapo, but also for the authorities at the Ministry of Justice in Berlin. There was a dedicated Sonderreferat für Sondergerichtssachen (Department for Special Courts) which collated rulings for analysis. Thus, for example, Sondergericht Feldkirch (the Special Court in the Vorarlberg region) sentenced a Jew to six years of severe prison for committing, in blackout conditions, a burglary and theft of several cameras. This verdict was considered unsatisfactory (as too lenient) by the Ministry: "Ein Jude, der deutsche Kriegsnot und Kriegsmaßnahmen für verbrecherische Tätigkeit ausnutzt, verdient eine wirklich abschreckende Strafe" (a Jew taking advantage of German wartime shortages and of wartime measures to engage in criminal activities deserves a truly dissuasive punishment)³⁹).

Other Special Courts in the Old Reich: Let us now return to the analysis of judicial practice in cases against Jews before the remaining Special Courts of the so-called Old Reich. Before Sondergericht Mannheim ten Jewish people can be identified among 632 defendants in total⁴⁰). The Sondergericht München seems to have sentenced only one Jewish person: for anti-state speech (and thus to 5 months of imprisonment⁴¹). At the Special Court in Freiburg, among 109 'radio cases' with 165 defendants only two were Jews⁴²). At the Special Court in Duisburg, only one Jew was accused of race defilement, in whose case a penalty of six years of severe prison was imposed. The respective Duisburg judgment notes: "Er hat in typisch jüdischer Weise nie regelmäßig gearbeitet" (he, in a typically Jewish way has never had a regular job)⁴³).

³³) Jens Luge, Die Rechtsstaatlichkeit der Strafrechtspflege im Oldenburger Land 1932–1945, Hannover 1993, 201–203.

³⁴) Hans Wrobel (ed.), Strafjustiz im totalen Krieg, Aus den Akten des Sondergerichts Bremen 1940 bis 1945, vol. 3 Bremen 1994, 332–333.

³⁵) Wolf-Dieter Mechler, Kriegsalltag an der 'Heimatfront', Das Sondergericht Hannover im Einsatz gegen 'Rundfunkverbrecher', 'Schwarzschlächter', 'Volksschädlinge' und andere 'Straftäter' 1939 bis 1945, Hannover 1997, 46.

³⁶) Klaus Bästlein, Zur 'Rechts'-Praxis des Schleswig-Holsteinischen Sondergerichts 1937–1945, in: Heribert Ostendorf (ed.), Strafverfolgung und Strafverzicht, Festschrift zum 125-jährigen Bestehen der Staatsanwaltschaft Schleswig-Holstein, Kassel 1992, 146.

³⁷) Luge (n. 33) 207–218.

³⁸) Luge (n. 33) 203–207.

³⁹) Gruchmann (n. 15) 1104.

⁴⁰) Christiane Oehler, Die Rechtsprechung des Sondergerichts Mannheim 1933–1945, Berlin 1997, 178.

⁴¹) It must be noted that the source basis for the Munich findings was a research sample extending to just 5% of preserved cases, involving 330 defendants, Christian Bentz, Die Rechtsprechungspraxis des Sondergerichts München von 1939–1945, München 2003, 66, 72, 111.

⁴²) Hensle (n. 17) 201, 398 In Freiburg/Br., other categories than the radio offence (n. 14 above) have not been examined so far.

⁴³) Karl-Heinz Keldungs, Das Duisburger Sondergericht 1942–1945, Baden-

Aachen: Only five Jews were accused before the Special Court in Aachen (1941–1945), which heard a total of 680 cases. A Jewish woman was sentenced under the ‘Regulation on Extraordinary Radio Measures’ (n. 14) to severe prison. In the case of that Court, several examples of judicial practice are noteworthy. Two Jews were acquitted, but handed over to the Gestapo which meant death at a Concentration Camp. A 56-year-old master butcher, Jew, was released from a charge of illegal slaughter in 1942 – he was pronounced dead by court when the War was over; a 40-year-old Jew was released from a charge of listening to American radio programs, but died in 1942 in Auschwitz just the same. In another case, an unemployed Jewish man living on welfare payments was sentenced to one year of imprisonment for accessory to illegal slaughter. However, instead of being transferred to prison, he was transported to the Concentration Camp at Auschwitz, where he died in 1943. A Jewish widow, accused of failing to report the cash she held, was charged and convicted before the Sondergericht Aachen and fined 1000 Mark, though the Public Prosecutor had asked for six months in prison as well as a fine.

In Aachen proceedings, we find situations in which Jewish members of the public in court were sent out of the room, or Jewish defendants were separated from the so-called Aryans by way of split proceedings⁴⁴). This is, needless to say, discriminatory.

Brunswick: The Special Court in Braunschweig (Brunswick), which heard 5930 cases against 7422 defendants between 1933 and 1945, initiated only a couple of processes against Jews. Most of the imputed acts were political and qualified under the ‘Law Against Underground Attacks on the State and the Party and on the Protection of Party Uniforms’ (n. 19). We know of a certain traveller who, while at a tavern in Wolfenbüttel, had explained in a mocking way that BDM meant or ought to mean ‘benutzte deutsche Mädel’ (denoting used or availed of girls) as opposed to Bund Deutscher Mädel (German girls’ association). The man also mocked the ‘Hour for the Nation’, a radio audition introduced on all German radio programs. For these jokes, a several-month penalty would have been typical, but the man received the rather severe punishment of two and a half years in prison. In the justification of this judgment passed on the man, the Judges drew attention to the abuse of the right of hospitality, whereby a Jew had dared to defame state institutions and state authorities. After the sentence, he was handed over to the Gestapo, and thence to further fate unknown⁴⁵).

Alongside the one described, two untypical criminal procedures against Jews were pursued in Brunswick in a foreign-currency matter and one apparently involving child molestation. The foreign-currency case, of 1937–1938, took the shareholders and Directors of the limited partnership A.J. Rothschild Sons Underwear Factory in Stadtoldendorf to court, with three of them being Jewish. The case file speaks of ‘truly Jewish untruthfulness’, ‘truly Jewish impudence’ and abuse of hospitality rights. The Jewish defendants were charged four years of imprisonment as well as a

Baden 1998, 45–46, 49. The Duisburg statistics are influenced by the fact that this Special Court was founded no sooner than 1942, by which time many Jews had already been transported further east or left Germany.

⁴⁴) Helmut Irmen, *Das Sondergericht Aachen 1941–1945*, Berlin 2018, 49, 65–69.

⁴⁵) Hans-Ulrich Ludewig/Dietrich Kuessner, ‘Es sei also jeder gewarnt’, *Das Sondergericht Braunschweig 1933–1945*, Braunschweig 2000, 79–83.

200.000-Mark fine, one year and eight months of severe prison and a 300.000-Mark fine, and one year and five months of severe prison and a 100.000-Mark fine respectively. At the same time, one of the 'Aryan' defendants in the case received 2 years of severe prison and a 75-Mark fine, while the other was acquitted. The Special Court's judgment in that case was delivered in the climax period of a campaign addressed against owners of Jewish enterprises, intention was to induce, clearly, such entrepreneurs to sell their businesses⁴⁶⁾.

As far as the other proceedings are concerned, the Sondergericht Braunschweig voted for a 1942 death sentence handed down to a Jewish worker for sexual abuse of two children aged 8 and 9. The legal bases for the adjudication were § 176 StGB (Strafgesetzbuch, the German Criminal Code), the 'Law for the Protection of German Blood and German Honour' (n. 10) and the 'Law amending the Criminal Code' of 4th September 1941⁴⁷⁾ which imposed death penalty on sexual offenders if this be required for the protection of the national community or by the need for fair punishment. Eventually, this case became the subject of a post-War criminal process initiated against the members of the adjudicating panel for a crime against humanity and bending of the law on ground of Kontrollratsgesetz Nr. 10 (Control Council Law No. 10)⁴⁸⁾ and § 339 StGB (for Rechtsbeugung). In their testimony of 1948 at the Prosecutor's Office, these Brunswick judges denied firmly the accusation that their imposition of the penalty had been driven by anti-Jewish attitudes. At this stage the case was closed by way of discontinuation, for fear of violating the secrecy of judicial deliberations. It was never found out which of the judges had voted for the death penalty. The correctness of that discontinuation was confirmed by a decision of the Regional Court in Brunswick in 1951, thus dismissing the Public Prosecutor's request that court proceedings be reopened. Also efforts before the Higher Regional Court in Brunswick proved ineffective, or even attempts to initiate disciplinary proceedings⁴⁹⁾.

Summary: It can be concluded that in Special Courts in the so-called Old Reich several dozens of Jews were indicted in Frankfurt am Main and Düsseldorf – and

⁴⁶⁾ Ludewig/Kuessner *ibid.* 32–35, 81–84.

⁴⁷⁾ Gesetz zur Änderung des Reichsstrafgesetzbuchs vom 4. September 1941, RGBl. 1941, p. 549.

⁴⁸⁾ Kontrollratsgesetz Nr. 10 – Bestrafung von Personen, die sich Kriegsverbrechen, Verbrechen gegen den Frieden oder gegen die Menschlichkeit schuldig gemacht haben vom 20. Dezember 1945. Amtsblatt des Kontrollrats in Deutschland 1945, p. 50.

⁴⁹⁾ Niedersächsisches Staatsarchiv in Wolfenbüttel, 62 Nds 2 Staatsanwaltschaft beim Landgericht Braunschweig, Nr. 757. On the above judgment the opinion of the legendary Generalstaatsanwalt (Attorney-General) Fritz Bauer in Hesse is interesting. He reasoned, first, that secrecy of judicial deliberations must give way to higher-rank legal interests, which he saw, without doubt, in a crime against humanity. Bauer was aware that the protection of judicial independence should not favour punishable lawlessness. Second, in Bauer's opinion Sondergerichte were no independent 'special courts', but dependent and partial bodies. Third, in Bauer's opinion, the Judges who imposed death sentences against Jews simply joined in with their political agenda. Finally, Bauer clearly assessed any penalty of severe imprisonment between 10 and 15 years as cruel and inhuman when in a fair trial the adequate punishment would have been 18 months. In the light of aggravating circumstances and in the context of the ongoing War, Bauer would accept up to 5 years of severe prison maximum; see Stellungnahmen Bauers vom 27.3. und 23.10.1951 (Bauer's opinions, 27.3 and 23.10.1951) cited from Ludewig/Kuessner (n. 45) 243–244.

perhaps also Berlin (although statistical research stands out). Other Special Courts in Aachen, Brunswick, Duisburg, Freiburg, Mannheim and Munich tried only a few Jews each⁵⁰). In most cases, the indictment was imprisonment. Only a smaller number of judgments of Special Courts were death penalties based on wartime criminal law, and with types of offenders identified for the first time as 'national parasite' (n. 16) or 'dangerous notorious offender' (n. 17).

It can further be concluded that these statistics show the impact of two phases of change in Germany's criminal law over the years 1933–1945. Prior to legal provisions set out in the wartime criminal law Jews were sentenced to imprisonment of the so-called heavy or severe kinds. Later, however, due to the radicalisation of anti-Jewish policy and a worsening of the War situation, judicial decisions were of further-increased severity, with death sentences also imposed.

III. Special Courts in the Polish territories incorporated into the Reich:

Special Courts were established by Germany in the so-called eingegliederte Ostgebiete (Polish territories incorporated into the Reich) during and following the September 1939 campaign. As a result, western areas of the Republic of Poland, i.e. Wielkopolska (Greater Poland), Pomerania and Silesia with a part of Małopolska (Lesser Poland) and northern Mazovia were incorporated into the 'Third Reich'⁵¹). The remaining Polish territories occupied by the Reich understood the so-called Generalne Gubernatorstwo (General Government). In this latter area worked a dual system of Polish and German courts in operation which involved the General Government's Special Courts⁵²).

An overarching goal of German policy in the territories incorporated into the Reich was to achieve unification of the new areas in national, social and economic terms. An integral element of that policy was the extermination of approximately 600.000 Jews who lived in the incorporated territories, among which no fewer than 200.000 were residents of Łódź (Łódź), and between 100.000 and 120.000 in the province of Silesia⁵³). In these areas persecution of the Jewish population started

⁵⁰) It seems that the statistics of the Special Court practice were similar in the Sudetenland where the percentage of Jews among defendants was also small. The Sondergericht Eger sentenced Jews to quite severe penalties, cf. Freia Anders-Baudisch, Aus der 'Rechts'-Praxis nationalsozialistischer Sondergerichte im 'Reichsgau Sudetenland' 1940–1945, in: *Bohemia* 40 (1999) 335, 339, 348. One judgment of Sondergericht Leitmeritz sentenced a Jewish woman to 7 months in prison under the 'Law Against Underground Attacks on the State and the Party and on the Protection of Party Uniforms' (as in n. 20), cf. Andrea Löw (ed.), *Die Verfolgung und Ermordung der europäischen Juden durch das nationalsozialistische Deutschland 1933–1945*, 3: Deutsches Reich und Protektorat Böhmen und Mähren, September 1939–September 1941, München 2012, 206.

⁵¹) Czesław Madajczyk, *Die Okkupationspolitik Nazideutschlands in Polen 1939–1945*, Berlin 1987, 24.

⁵²) Andrzej Wrzyszczyk, *Okupacyjne sądownictwo niemieckie w Generalnym Gubernatorstwie 1939–1945, Organizacja i funkcjonowanie*, Lublin 2008, 15, 64–65, 83; Hubert Mielnik, *Sądownictwo polskie (nieniemieckie) w dystrykcie lubelskim Generalnego Gubernatorstwa w latach 1939–1944*, Lublin 2020, 54, 56, 58.

⁵³) Aleksandra Namysło, *Wiedereindeutschung, Aussiedlung, Endlösung*,

from the very beginning of military operations. The first steps of were decrees demanding Jews to give away their radio receivers, dogs and bicycles, or to step down from the pavement whenever a German passed by. Jewish shops were shut and Jewish employees dismissed⁵⁴). Jewish fugitives were not allowed to return home once hostilities ended⁵⁵), as Jewish property, businesses and bank accounts were subject to sequestration. An obligation was introduced for Judensterne (Jewish badges) to be worn. Jews were denied shopping from non-Jews as well as public transport, entering offices or attending concerts⁵⁶). For an illegal crossing of the border, Jews were threatened with draconian punishments including death penalty⁵⁷). They were even killed while attending synagogues – as at Będzin (Bendsburg) on 9th September 1939⁵⁸). So-called ‘Aryans’, motivated by the chance to take over Jewish property, denounced their neighbours readily enough⁵⁹).

Two normative acts proved especially important for the judicial practice of Special Courts in matters against Jews. The first of these was the ‘Regulation on the Criminal Law for Poles and Jews in the Eastern Incorporated Areas’ of 4th December 1941⁶⁰) which envisaged the exclusive jurisdiction of Special Courts or a Circuit Judge (Circuit Court). Its vague prerequisites allowed for ‘unlimited interpretation’⁶¹) and imposition of the death penalty for practically any behaviour ‘violating the majesty of the Reich and authority of the German nation’. New penalty types were introduced, i.e. penal camps and maximum security penal camps. A Public Prosecutor was to bring a case before a Special Court if he anticipated a sentence of more than five years in a penal camp or a maximum of three years in a security penal camp.

The second normative act referred to was preceded by an agreement from September 1942 between Reichsführer SS Heinrich Himmler and the Minister of Justice of the Reich Otto Thierack, which allowed the transfer of the judicature in criminal matters against Jews, Russians, Poles, Sinti and Roma to the Police. This agreement paved the way for a complete exclusion of Jews from court jurisdiction in § 1 of the ‘13th Regulation to the Law on the citizenship of the Reich’ of 1 July 1943⁶²). Thus, without court proceedings, the Police could shoot Jews in an uncontrolled manner⁶³).

Zagłada Żydów na polskich terenach wcielonych do III Rzeszy, in: Biuletyn IPN 139 nr. 6 (2017) 31, 35.

⁵⁴) Jürgen Zarusky, *Ghettorenten, Entschädigungspolitik, Rechtsprechung und historische Forschung*, München 2010, 79.

⁵⁵) Klaus-Peter Friedrich (ed.), *Die Verfolgung und Ermordung der europäischen Juden durch das nationalsozialistische Deutschland 1933–1945*, 4: Polen, September 1939–Juli 1941, München 2011, 87.

⁵⁶) Sybille Steinbacher, ‘Musterstadt Auschwitz’, *Germanisierungspolitik und Judenmord in Ostoberschlesien*, München 2000, 289–301.

⁵⁷) Becker (n. 24) 25.

⁵⁸) Friedrich (n. 55) 27.

⁵⁹) Mirosław Węcki, *Kwestia żydowska w aktach górnośląskiej NSDAP (1933–1945)*, in: Barbara Kalinowska-Wójcik/Dawid Keller (ed.), *Żydzi na Górnym Śląsku w XIX i XX wieku*, Rybnik 2012, 305, 310.

⁶⁰) *Verordnung über die Strafrechtspflege gegen Polen und Juden in den eingegliederten Ostgebieten vom 4. Dezember 1941*, RGBl. 1941, p. 759.

⁶¹) Majer (n. 27) 209.

⁶²) *Dreizehnte Verordnung* (n. 19) p. 372.

⁶³) Peter Oestmann, *Wege zur Rechtsgeschichte: Gerichtsbarkeit und Verfahren*, Köln 2021, 267.

Poles had at least a guarantee of a trial, whereas Jews were subject to arbitrary treatment at the hands of the Police⁶⁴).

It must be noted that, even before these two Regulations were introduced, there was a practice initially relating only to persons convicted for race defilement (but extended during the War to all Jewish convicts) whereby the justice system sent reports to the Gestapo regarding prisoners 2–4 weeks before they should be released. That meant straightforwardly that completion of a sentence did not lead to restoration of liberty. At the prison gates, those released would be picked up and transported to Concentration Camps.

Such transfers did also take place earlier, prior to full serving of time, if a request to this effect was made by the Gestapo. It must be concluded that such rendition of prisoners to the Gestapo by the justice system had nothing to do with the law but was rather a contribution to the effective implementation of Nazi extermination policy⁶⁵).

Not every Special Court operating in the incorporated territories has had any monographic study devoted to it. In fact, researchers have so far paid little attention to existing archival materials⁶⁶). On the other hand – as in the case of the Special Court in Bielsko (Bielitz) – no files at all have been preserved⁶⁷). An especially acute desiderat is a study on the Special Court in Poznań (Posen) since, at the beginning of the German occupation, Wartheland was home to approximately 400.000 Jews⁶⁸).

In the literature it is easy enough to find the opinion, hard to contest or object to, that despite the high share of Jews in the overall populations of areas incorporated into the Reich, not many Jewish defendants were brought before Special Courts. This is true, but due to – first of all – that a significant share of all cases was straightforwardly taken over by the Police; and it reflects – second – the configuration of the judicial system in the Occupied Territories. Cases involving Jewish defendants were presumably examined most often by Circuit Courts. These facts certainly demand for research to also now examine more closely the relevant judicial practice of Circuit Courts⁶⁹). Moreover, the percentage of Jewish defendants before particular Special Courts in the territories incorporated into the Reich is seen to vary. It may reasonably be assumed that also external conditions led to differences, leaving aside specific policies when it came to the filing of bills of indictment, from one particular Oberstaatsanwalt (Over-Prosecutor) to another; as well as differing relations between the Police and Prosecutor's Offices, above all as regards the scale and methods of repression pursued against Jews, up to and usually including the establishment of Ghetto areas.

⁶⁴) Hans-Christian Jasch, *Staatssekretär Wilhelm Stuckart und die Judenpolitik*, München 2012, 314.

⁶⁵) Gruchmann (n. 15) 622–623; Becker (n. 24) 153, 159.

⁶⁶) Ingo Loose, *Special Courts in the Annexed Polish Regions (1939–1945): Occupation Period Instruments of Terror and Social History Source*, in: Magnus Brechtken/Władysław Bułhak/Jürgen Zarusky (ed.), *Political and Transitional Justice in Germany, Poland and the Soviet Union from the 1930s to the 1950s*, Göttingen 2019, 94.

⁶⁷) Konrad Graczyk, *Ein anderes Gericht in Oberschlesien, Sondergericht Kattowitz 1939–1945*, Tübingen 2021, 14.

⁶⁸) Namysło (n. 53) 35.

⁶⁹) Becker (n. 24) 178.

The Ghettoisation of Jews in fact had the effect of allowing the justice system, the Police and the administration to exclude Jews from the operation and enforcement of German law as Ghettos basically became lawless areas⁷⁰). The unwillingness of the authorities to take any interest in the situations arising in Ghettos was reinforced by arguments relating to ‘plagues’. It was as early as July 1940 that the Over-Prosecutor for Łódź withdrew completely from any prosecution of ‘Jewish crime’ inside the Łódź Ghetto. This led to a decline in number of court cases when comparing 1941 to 1940. From 1942 on the number of Jews before Sondergerichte was further reduced, not least as, from autumn 1941 on, Jews increasingly became victims of murder⁷¹).

A further factor may well have been that, in the face of such persecution, the Jewish population lost faith in the legal system and tried to avoid further repressive contacts with it. Moreover, bearing in mind the standard practice resorted to in dealing with Jews, it may be doubted if all relevant matters were brought before Special Courts⁷²).

The question of judicial practice in the Sondergericht Bromberg (Bydgoszcz) looks quite simple as there were just two Jews among a total of 1782 defendants that actually came to be indicted before the Court. It can be assumed that the Jewish population had fled the exterminatory activities of Einsatzkommando der Sicherheitspolizei (Special Task Groups of the Nazi Security Police) in the first days of the War. Indeed, we learn that – as early as November 1939 – the land and municipal district of Bromberg was already almost ‘free of Jews’⁷³). The same is confirmed by statistical data of the Higher Regional Court in Gdańsk (Danzig) relating to the first semester of 1941, with just six Jews being punished in court.

With such limited numbers of Jewish defendants it is difficult to arrive at much of an appraisal of unequal treatment. Still, two Bromberg Special Court judgments have explicitly anti-Semitic threads, with there being references to abuse of hospitality rights, “sich unberechtigt in die Angelegenheiten seines Wirtsvolkes ein[mischen]” (unauthorised meddling in matters of the host nation), or calling somebody a “typisch jüdische[r] Betrüger” (typical Jewish swindler)⁷⁴).

The only relevant study on the Sondergericht Kalisch (Kalisz) points to a complete absence of Jewish people⁷⁵).

The situation was different at the “Sondergericht Lods/Litzmannstadt” (Special Court in Łódź). Admittedly, Jan Waszczyński, a researcher of that Court’s case-law concluded that the number of defendants of Jewish origin (as compared with total numbers of Jews living in the area of Łódź) was low. The criminal repression of that population group was in fact in the hands of non-judicial agents from the beginning of the Occupation period⁷⁶). It is doubtful if the Police even brought to the attention of the justice system all of the matters in their hands involving Jewish suspects. In

⁷⁰) Becker (n. 24) 178.

⁷¹) Becker (n. 24) 178–180.

⁷²) Loose (n. 66) 91–92.

⁷³) “Judenfrei”, Weckbecker (n. 11) 446, 456.

⁷⁴) Weckbecker (n. 11) 456, 805.

⁷⁵) Götz Hütt, Urteile des Sondergerichts Kalisch und der Richter Ferdinand Trümper aus Duderstadt, Norderstedt 2015, 36. Unfortunately, only some of the archived cases of Kalisz have been studied.

⁷⁶) Jan Waszczyński, Z działalności hitlerowskiego Sądu Specjalnego w

any case, the figures are not so marginal in absolute terms, given a total of 131 Jewish defendants (out of 6547 defendants overall), with 106 Jews sentenced (among 4223 sentences passed). Within that total, the offences imputed to Jewish defendants included: 14 political, 84 economic, and 33 criminal matters. Among the political charges, the dominant thread was anti-state speech, while among economic offences it is black market trading and smuggling that feature. Criminal cases in turn revolved around robbery and extortion⁷⁷). In Łódź, adherence to the Jewish faith was obviously a circumstance increasing severity of penalisation and some penalties indeed look drastic. It can be noted, however, that this local Sondergericht actually sentenced only one Jew to death⁷⁸).

The participation of Jewish defendants among the judgments of Sondergericht Łódź/Litzmannstadt certainly changed over time. While they accounted for 2.6% of the total overall, the figures for 1940, 1941 and 1942 respectively were 5.3%, 4% and 4%. As compared with other Special Courts, this one looks to have a noticeably high level. The prevalence of economic offences is probably due to the dire economic situation faced by Jews. Even their chances to obtain food were being limited drastically⁷⁹). Still, the Ministry of Justice recommended imposition of the most severe penalties over economic matters involving Jews, because of nothing more or less than their 'impudent and arrogant behaviour'⁸⁰). In fact, other (non-Jewish) Poles in the region also faced food shortages; procurement of something to eat was indeed challenging; everyone tried to evade the prices set officially, and to trade on the black market⁸¹).

It must be added here that Judges of the Special Court in Łódź did do work relating to the operation of the Ghetto – something that may be seen as exceptional in the context of other Special Courts in the territories incorporated into the Reich. Legislation applicable in the incorporated areas, as in the Old Reich, did not expressly prohibit entry into the Ghetto, but authorities applied the general provision of § 327 StGB on the introduction or spreading of a contagious disease. In one case a Jew living in the Ghetto was indicted under that provision after he had been visited by an Aryan friend who, on several other occasions, threw food to him over the Ghetto wall. Eventually, the Jew of spreading disease was acquitted on the basis that the man had himself not crossed beyond the boundaries of the Ghetto; his friend, however, was sentenced to seven months in prison. In another case, in which a Jewish defendant was given food over the wall and threw money back over in exchange, the said defendant was convicted and sentenced to a penalty of two years in prison, i.e. the maximum provided by § 327 StGB.⁸²).

Łódź (1939–1945), Biuletyn Głównej Komisji Badania Zbrodni Hitlerowskich w Polsce 24 (1972) 68–70, 74.

⁷⁷) *Ibid.* 74, 80–81, 83–84, 93; Dorota Siepracka, Stosunki polsko-żydowskie w Łodzi podczas okupacji niemieckiej, in: Andrzej Żbikowski (ed.), Polacy i Żydzi pod okupacją niemiecką 1939–1945, Studia i materiały, Warsaw 2006, 700–701.

⁷⁸) Becker (n. 24) 179.

⁷⁹) Holger Schlüter, "... für die Menschlichkeit im Strafmaß bekannt ...", Das Sondergericht Litzmannstadt und sein Vorsitzender Richter, Düsseldorf 2006, 64–67.

⁸⁰) Majer (n. 27) 212.

⁸¹) Loose (n. 66) 89.

⁸²) Schlüter (n. 79) 66–67.

What can be said about the judicial practice of *Sondergericht Kattowitz* when it came to cases involving Jewish defendants? According to the study by Alfred Konieczny⁸³), among the total of 3786 defendants indicted before that *Sondergericht*, 149 were Jews. Among these, 77 were tried in 1942. The percentage of defendants of Jewish origin in the total of indicted persons was thus 3.9%. Considering the relatively low number of defendant Jews, Konieczny drew attention to the displacement of the Jewish population beyond the limits of Katowice District at the turn of 1939 and in 1940, and the attendant concentration of Jews in Ghettos and forced Labour Camps – which facilitated permanent Police supervision and a general unwillingness on the part of the Nazi security police to refer Jewish cases to ordinary judicial bodies. In cases coming before the *Sondergericht*, issues arising most frequently involved economic offences (79.9%), with these therefore far beyond cases involving race defilement (4%), radio offences (2.7%), and other types of act (20 cases – 13.4%). Only 111 Jews (74.5%) were convicted, and this figure is actually lower than for defendants overall (85.4%). Since most of these Jews were indicted in 1942, this can be considered a result of the ‘Regulation on Criminal Law for Poles and Jews in the Eastern Incorporated Areas’ of 4th December 1941 (n. 60). Statistics on the imposition of the penalty of severe prison (severe penal camp) show 2 Jews in 1939, in 1940: 12, in 1941: 8, in 1942: as many as 41, and in 1943: 5. The Regulation obviously generated a certain number of additional cases in the judicial practice of the Special Court. A similar generational impact of that Regulation of 4th December 1941 can also be observed with regard to Polish defendants⁸⁴).

Being sentenced by the *Sondergericht Kattowitz* to a less-severe punishment did not guarantee survival. In that regard an exemplary case is that of Markus Luftglass, who was sentenced to two and a half years of imprisonment for an economic offence entailing the concealment of a large number of eggs (65,000 in fact). The *Sondergericht Kattowitz* considered the facts that the person involved was of good reputation and advanced years (born in 1867). This explains the Court’s refraining from imposition of the penalty of severe prison. Unfortunately, the noticeably large number of eggs hit the headlines⁸⁵), with a press release on Luftglass’s conviction reaching Hitler, whose express wish it then was that the death penalty be imposed. Luftglass was therefore handed over to the Gestapo for execution purposes⁸⁶). Preserved documents state that he in fact died at the Auschwitz Concentration Camp in early November 1941⁸⁷).

⁸³) Alfred Konieczny, *Pod rządami wojennego prawa karnego Trzeciej Rzeszy, Górny Śląsk 1939–1945*, Warsaw 1972, 199, 239–240.

⁸⁴) Graczyk, *Ein anderes Gericht* (n. 67) 273.

⁸⁵) The State Archive in Katowice [hereafter referred to as APK], *Sondergericht Kattowitz*, file reference 2319, 99–102, *Urteil in der Strafsache gegen Markus Luftglass vom 14. Oktober 1941* (Judgment in the criminal case against Markus Luftglass of 14th October 1941).

⁸⁶) Martin Broszat, *Zur Perversion der Strafjustiz im Dritten Reich*, *Vierteljahreshefte für Zeitgeschichte* 6 (1958) H. 4, 422–423; Gruchmann (n. 15) 688.

⁸⁷) APK, *Sondergericht Kattowitz*, file reference 2319, 125: *Schreiben der Geheimen Staatspolizei vom 16. März 1942* [Letter from the Secret State Police of 16th March 1942].

A further preserved case brought before the Sondergericht Kattowitz in 1943 seems representative for proceedings pending at the time of the (9th July 1943) entry into force of the '13th Regulation to the Law on the Citizenship of the Reich' of 1st July (n. 18). A bill of indictment against a 40-year-old Jewish merchant from Sosnowiec (for a wartime economic crime) dated 21st May 1943 was filed with the Special Court on 9th June 1943⁸⁸). A standard procedure entailed the issuing of an Order by the President of the Court, whereby *inter alia* pre-trial detention was prolonged, a trial date appointed, and the defendant and witnesses summoned⁸⁹). However, the trial scheduled for 14th July 1943 was annulled by Order of the President dated 8th July 1943, with explicit reference made to the '13th Regulation to the Law on the Citizenship of the Reich'⁹⁰). A final document preserved in that matter is a report by the Katowice Over-Prosecutor, in which that official notifies the Berlin authorities that he has handed over the case and the defendant to the Gestapo, given the person's status as Jewish⁹¹).

When it comes to discontinuations, these were motivated by either death prior to a trial⁹²), or the 'evacuation' of a Jewish defendant by the Gestapo. The latter situation confirms a disregard for the Special Court, its marginalisation, or even its relegation to the role of passive observer. One case for example saw the Over-Prosecutor file with the Sondergericht a bill of indictment against a 45-year-old Jewish woman resident in the Chrzanów area (Krenau) for the possession of a large amount of cash. Two weeks later that same Over-Prosecutor applied to the Circuit Court for a lifting of pre-trial detention and the handover of the woman to the Katowice Gestapo. The Circuit Court in Katowice delivered the relevant decision, and discontinuation of the case before the Sondergericht was then a mere formality. The defendant was sent to the Concentration Camp at Ravensbrück in mid-December 1941, only to die eleven months later, again at Auschwitz⁹³).

Another case features a remarkable letter written by an Over-Prosecutor to the Attorney-General, informing him that the Gestapo have 'evacuated' a defendant who was a Jewish salesman. The Over-Prosecutor consented to this having contacted the President of the Special Court, because 'imposition of the death penalty by the Sondergericht, in the face of evident difficulties, was not expected'⁹⁴). It would be hard

⁸⁸) APK, Sondergericht Kattowitz, file reference 828, 216, Anklageschrift vom 21. Mai 1943 [Bill of indictment of 21st May 1943].

⁸⁹) Graczyk, Ein anderes Gericht (n. 67) 172–173.

⁹⁰) APK, Sondergericht Kattowitz, file reference 828, 231, Verfügung vom 8. Juli 1943 [Order of 8th July 1943].

⁹¹) APK, Sondergericht Kattowitz, file reference 828, 304, Verfügung vom 21. August 1943 [Order of 21st August 1943].

⁹²) Graczyk, Ein anderes Gericht (n. 67) 289.

⁹³) APK, Sondergericht Kattowitz, file reference 2139, 48: Anklageschrift vom 27. Mai 1941 [Bill of indictment of 27th May 1941]; 63: Antrag vom 12. Juli 1941 [Application of 12nd July 1941]; 76: Schreiben der Kommandantur des Konzentrationslagers Auschwitz an den Oberstaatsanwalt in Kattowitz vom 3. November 1942 [Letter of the headquarters of the Concentration Camp in Auschwitz to the Over-Prosecutor in Katowice of 3rd November 1942].

⁹⁴) APK, Sondergericht Kattowitz, file reference 1283, 245–246, Schreiben des Oberstaatsanwalts in Kattowitz an den Generalstaatsanwalt in Kattowitz vom 7. November 1942 [Letter of the Over-Prosecutor in Katowice to the Attorney-General in Katowice of 7th November 1942].

to find a clearer example of perfidiousness than that attempt to make institutional use of the *Sondergericht* to achieve physical elimination of a Jew without legal imposition of the death penalty.

IV. Conclusions:

The tragedy that befell European Jews during World War II was unprecedented in history. The German judiciary did not directly participate in the Holocaust because, for obvious reasons, it could not. However, through their judicial practice, Special Courts nevertheless had (and availed of) the opportunity to participate in the Nazis' extermination policy. Acts in this category involved instances of the death penalty being imposed on Jews under wartime criminal law, by reference to vague and flexible prerequisites that sought more severe penalties for deeds not warranting them under normal conditions. The German system of justice during the War also facilitated circumstances in which Jewish prisoners, while serving sentences, or upon their completion, were handed over to the Gestapo or were simply transported to a Concentration Camp.

In situations of the latter kind it might be pondered whether the fault of the Special Courts themselves weighs heavier, or that of the Prosecutor's Offices, given their role as executive bodies that should exercise custody over convicts following the delivery of judgments. On the other hand, it is hard to believe that Judges remained entirely unaware of the fates befalling defendant Jews. In any case, such awareness is alluded to in the documentation of *Sondergericht Kattowitz*, as described above, with a Court's management certainly being notified as regards the withdrawal of a bill of indictment and the handing over of a defendant Jew to the Gestapo (in line with the given reason that the Special Court was unlikely to go so far as to impose the death penalty).

It may therefore be concluded that Judges in Special Courts contributed indirectly or directly to Jewish extermination policy: by staying silent in a situation where Jewish citizens were deprived of access to court. All that was taking place in the shadow of Auschwitz, in courts, and under the guise of legal provisions.

The analysis carried out reveals that Jews in the area of the so-called Old Reich were rarely indicted before Special Courts, and their marginal number in comparison with defendants overall decreased even further as the War went on. In practice, the last years in which Jews were indicted were generally 1941 or 1942. As a result, it can be concluded that the provisions of the '13th Regulation to the Law on the Citizenship of the Reich' (n. 18) was practically insignificant in the so-called Old Reich, since matters involving Jews had already ceased to be brought before courts. The situation looks different for certain Special Courts in the territories incorporated into the Reich. For various reasons, some of these have not been examined so far. As regards the Special Court in Bydgoszcz (Bromberg), the statistical data for the participation of Jewish defendants equal the standard for the Old Reich closely, while figures are clearly higher in Łódź and Katowice. In both of the Special Courts involved, indicted Jews accounted for between 3 and 4% of all defendants, even as Jews constituted a third or fourth ethnic group between them in those places.

Any consideration of the reasons for Jews to make more-frequent appearances in the incorporated territories must focus on several issues. First, it was only post-1939

that German authorities began to control these areas, which is why certain treatments of Jews and practices within the justice system only started to be pursued after some time-lag. Second, the Polish territories formed an area with an elevated Jewish population. Third, attention must be paid to the certain scope for discretion available to a Prosecutor's Office leadership, in terms of policy as regards the filing of bills of indictment. Regardless of any objective factor (size of the Jewish population, offences committed, need for a propaganda use of a judgment), this resulted in a certain rigidity or liberalism, and hence to observable statistical disparities. Fourth, it should not be forgotten that, in many places, notwithstanding Ghettoisation, Jews were not yet isolated from the remainder of the Polish population. This was especially manifest in certain proceedings pursued by *Sondergericht Kattowitz* in regard to economic offences. This in turn meant that parties involved in illegal slaughter or black-market trading might in fact be Jews and non-Jewish Poles, to the extent that a single criminal procedure might see them held jointly liable before a Special Court. This was the case as a division of criminal proceedings or a filing of a bill of indictment with the Special Court against Poles combined with the way that application of 'Police measures' to Jews ensured additional complications in the life of a Prosecutor.

Researchers should be encouraged to reach for court files, and to use them in investigating the tragic fates of Jews during World War II. There are two further areas for such postulated archival research, involving the output of Circuit Courts, or else the Special Courts in the General Government area. The alternative that this denotes was made available by the 'Regulation on Criminal Law for Poles and Jews in the Eastern Incorporated Areas' dated 4th December 1941 (n. 60). Regarding Circuit Courts, more significant effects can be expected from materials kept in Germany, since in Polish Archives the extensively preserved documents of Circuit Courts were disposed of many years ago, with only individual example cases retained for each category of matters. The possible research field is narrow as a consequence of this.

On the other hand, the output of Special Courts in the General Government is made use of by Holocaust historians. However, they have done this solely to establish facts, rather than to engage in legal analyses of proceedings. Such research must be conducted with caution, keeping in mind the dissimilarity of the legal framework in the case of the Reich. In the law of the General Government many new acts were introduced to carry a penalty of capital punishment, not least provisions of assistance to Jews or departures from a Jewish District achieved or attempted by Jewish people.

A further proposal to be advanced would see the arrangements for Special Courts in the Reich compared with those concerning the Special Courts in the General Government, albeit not solely in relation to cases involving Jews.

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