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Einsatzgruppen Case: Opening Statement for Defense - Dr. Mandry for Martin Sandberger

International Military Tribunal

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to Law oneself to ask for justice.

Therefore I have made the following arrangements for the defense of the Defendant NOSSKE: He will confine himself exclusively to what he can state out of his own personal experience.

He will describe the situation, in which he received the order and what were his reactions to it.

He will describe to the Tribunal his activity and his conduct afterwards till the end of the war.

He will do all this frankly and without legal euphemisms.

This will assist the Tribunal in finding a just verdict, taking into consideration the personal fate of the Defendant NOSSKE.

DR. MANDRY: Dr. Mandry for the defendant Martin Sandberger.

May it please the Court.

The Prosecution charges my client, Martin SANDBERGER with being responsible for measures of persecution taken against Jews and Communists, at the Sonderkommando Ia respectively during the period when he was commander of the Security Police and the SD for Estonia.

Several documents were submitted as evidence, containing action reports, reports on activities and the situation. These reports are a compilation of individual reports not available in the original of several Kommandos subordinate to the Einsatzgruppe. From these general reports the clear and unobjectionable proof for criminal actions of certain persons can be deducted. For this reason the prosecution, taking three affidavits given by my client as a supplement in connection with these reports, drew the conclusion that SANDBERGER is guilty in the sense of the indictment.

I am going to state the following against the statements of the prosecution.

1)

SANDBERGER's assignment in the East was effected upon order of his superior authority and constituted a war assignment in enemy territory. He was subject to the laws of war like any soldier. It

had become impossible for him to shun the carrying out of the orders given to him.

The verdict of the IMT (Page 16514 of the German transcript) takes this into consideration. The reasons on which the sentence is based with regard to this point are as follows:

"During the war a member of the Security Police and SD did not have a free choice of assignments within that organization and the refusal to accept a particular position, especially when serving in occupied territory might have led to serious punishment."

All actions with which the Sonderkommando Ia is charged were committed under the compulsion of the laws of war in enemy territory and under the compulsion of orders and control measures issued by the superiors HIMMLER and HEYDRICH, the Amtschefs STRECKENBACH and MUELLER at the RSHA, as well as by the higher SS and Police leaders for Northern Russia (the SS Obergruppenfuhrer and generals of the Waffen SS PRUETZ-MANN and JECKELN) and also especially by the chief of the Einsatzgruppe STAHLMEYER, SANDBERGER's immediate superior. I shall prove that in carrying out the orders he received STAHLMEYER developed a great amount of energy and that JECKELN was just as hard and unpredictable a superior, who would have broken the slightest resistance with all means of the power at his disposal.

II)

HITLER and his co-workers, the Wehrmacht, and the entire German propaganda declared time and again before the beginning of the Russian campaign and during it that, in keeping with the ideology of bolshevism, the Soviet Union was on principle aggressively inclined, that it represented an acute danger for the life of the German people and the entire Western world, that it had planned an attack on the German people and that that was a matter of life and death for Germany. The Defendant who had been a National Socialist since his 20th year believed in these statements.

Furthermore the German official authorities stated again and again when the campaign in the East started: The Soviet Union had not joined the Hague Rules of Land Warfare and the Geneva Convention: neither did they feel bound themselves by other customs of war. For that reason the general international rules of war would not apply for the Germans either in their war against Russia.

III)

In accordance with the agreements of Einsatzgruppenfuehrer STAHLMEYER with the High Command of the Army Group North my client was destined for an assignment in Estonia. He was attached to the 18th Army. When he arrived at the territory of the assignment given to him, he was told the following: During the time of the occupation of Estonia by Soviet Russia in 1940/41 many Estonian citizens had been killed by Soviet authorities without any justification and without any proceedings; several tens of thousands had been arrested and had been removed from Estonia against their will. The entire property in real estate as well as the greater part of commerce and industry had been expropriated and the former liberty of the Estonian population had been destroyed.

At the same time he was told by informed Estonian citizens that for years the republic of Estonia had prohibited communism by a law and that any communistic activities had been liable to serious punishment. He furthermore learned that the government of the Soviet Union had instituted an organization in Estonia, which had orders to carry out sabotage and espionage after the Red Army had withdrawn from Estonia and the country was occupied by German troops. The entering German troops were especially impressed when they learned that before evacuating the city of Derpat in the middle of July the Soviet authorities had shot all political prisoners of the Derpat prison, 250 of them, in the court of the prison.

The Estonian furthermore told him that the Jewish group of the population, numbering approximately 4,500 persons, in general had gone

over to the Soviet side during the time of the bolshevist occupation. They were holding important offices in key-position of the Soviet state and party machine, especially in the secret police, the NKVD.

All these findings concerning the activity of communism and of the Jews in Estonia confirmed to the defendant all that he had been told at the beginning of the campaign in the East by the Fuehrer order and by the motivation for that order given him by his superiors. Especially in Estonia it was more evident than any where else that the Soviet Union had violated international law, the national laws of Estonia and the laws of humanity in general.

IV)

The measures taken by the Sonderkommando 1a in its territory of assignment seemed necessary for the protection of the territory assigned to that Kommando. Upon request of the Army High Command and upon order of chief of the Einsatzgruppen STAHLER its foremost task during the first weeks was to attach itself with Teilkommandos to the fighting troops and mostly to take care of tasks of the intelligence. In addition to that the field of activities of the Sonderkommando included the prevention of sabotage and espionage, which was carried out especially by Jews and communists.

My client never received any training in the police and previously had never been active in the service of the police. He therefore had no experience in this field and personally was not especially eager to do that kind of work. His former activities in the SD never included any police work, but during his membership in the SD he was occupied with making reports about German spheres of life.

Attorney ASCHENAUER already made some detailed and pertinent statements about the contents of these reports, to which I refer herewith.

It is therefore essential that the previous activities and experience of my client were in the field of political intelligence and in exploiting that for politics and administration. I will prove

in detail that the authorities of the Wehrmacht as well as the official authorities of the new German civil administration and the Estonian authorities of the re-instituted sovereign administration claimed a great deal of the time of my client for their purposes and tasks. He received especially trained, and indepently working specialists for the special departments IV and V, i.e. the Secret State Police and the Criminal Police. They were given special independence in their work. SANDBERGER's activity in connection with them was limited to inspecting their work.

Furthermore, I will prove that the leaders of the assigned Teilkommandos were given full independence and responsibility of their own. The superior authorities, especially the chief of the Einsatzgruppen STAHLCKER had ordered that expressly. My client was anxious to respect at all times this responsibility and independence of his subordinates.

V)

The police measures taken for the sake of security consisted in arrests and trasfers to camps and in a number of special cases in executions. In accordance with the above-mentioned orders of the chief of the Einsatzgruppen, the leaders of the Teilkommandos were responsible for the decisions in each individual case, and later on, after everything was centralized in Reval, the leaders of the departments State and Criminal Police were responsible.

While the fighting in Estonia was still in progress my client's own proper activity in this sphere consisted mainly of drawing up regulations in the frame work of the existing orders on the special jurisdiction in the Barbarossa territory according to the following principles?

a) Individual statement of guilt and legal hearing:

No execution can be effected sithout any thorough investigation into the actual facts and statement of the guilt and without the accused having been given the opportunity to defend himself.

b). Problem of collectivity.

No collective measures.

c). Executions were only permissible if the person concerned had been convicted of and had confessed to have perpetrated sabotage or espionage or if during the years 1940/41 of the Russian occupation he had committed crimes against the life of any Estonian citizen.

d). The execution of all measures against the population and connected with the Security Police was effected by the Estonian police and under the control of a member of the Sonderkommando. In doing so any harshness not necessary for the purpose of the measure should be avoided in its execution.

My client has supervised the adherence to these principles.

VI)

As far as executions of Jews were effected by Sonderkommando 1a in 1941, this did not happen under the responsibility of my client, but under the exclusive responsibility of STAHLCKER.

In order to be able to report as executed STAHLCKER's order, to free Estonia of the Jews immediately, however, without personally having to order the executions of Jews, finally my client in November 1941 had all remaining Jews in Estonia brought

from the internment camp at Reval to a camp near Pleskau. Pleskau is situated outside Esthonia on Russian territory, but at that time it belonged into the office district of my client.

The execution of Esthonian Jews which took place in the beginning of 1942 in Pleskau, does not come under the responsibility of my client, because it had been personally ordered by the Higher SS- and Police Leader Jeckeln, who was the competent legal magistrate at the same time, and to the execution of which a subordinate of my client had been forced, without my client having been present or having been informed of its execution.

The previous internment of the Jews in Esthonia had been ordered by my client under the pressure of the orders given, but he had them retarded far beyond the time given already for the execution of the Jews.

I hope I will be able to prove that this internment was not inadmissible according to principles of international law, analogous to the internationally approved measures of interning enemy aliens.

Therefore my client wants to stress it, that he for his part did not take actively part in the extermination of Judaism. As to the criminal responsibility concerning the internment of the Jews as caused by my client, it has to be considered that Sandberger as a National Socialist official had sworn an oath of allegiance to Adolf Hitler and to his superiors as appointed by him. Furthermore, he felt bound to his military duty of obedience and he had to decide either to contribute to the ordered extermination of the Jews or on his own initiative to alter and to interpret the measures ordered which at least for the time being saved the Jews from immediate death. There was no other possibility for my client in this terrible state of coercion. In this connection I shall extensively enter on the problem whether or not an open refusal to obey orders and the consequences this would entail could be expected.

VII

My client cannot deny to have had knowledge of the events concerning the Einsatzgruppen in general and, with certain exceptions, in his Kommando. But there was no possibility for him to prevent these events, for they had been ordered by his superiors. If he would have taken any stand against these orders of his superiors and measures to prevent their execution, the consequences would have been that his superiors would have ordered his death, without anything having been altered in the events.

Same as the military apparatus the organization of the Einsatzgruppen in the East, respectively the Security Police and the SD, were so mechanical, that if one leader was lost, automatically a replacement took his place, who then had to see that the order was being immediately executed. My client was of the opinion that his successor would have executed these orders without any reservations.

On the other hand, the total attitude of my client earned him several times the disapproval of his superiors in the Security Police, which I will prove.

VIII

As to point No. 3 of the indictment (membership in criminal organizations) I will show, that according to the IMT Verdict the prerequisites for sentencing my client are not given. Though Sandberger was with the SD after 1 September 1939, first of all he was only active in Department I of the RSHA. When later on in 1941 my client joined the Osteinsatz, he was ordered to do so, and it was not possible for him to get out. The same applies for his assignment in Offices III and VI of the RSHA.

For the whole of the actual evidence for the exoneration of my client I shall bring evidence by submitting documents, witnesses and statements of the defendant himself, whom I intend to call to the witness box.

THE PRESIDENT: counsel for the Defendant Seibert.