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Einsatzgruppen Case: Opening Statement for Defense - Dr. Gawlik for Siebert

International Military Tribunal

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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 IIT 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.

DR. KLINERT: Deputy for Dr. Gawlik for Seibert.

Your Honor, may it please the High Tribunal, also my argument in the case against the Defendant Seibert will be based on the legal principles laid down already by Tribunal II in its judgment in the Milch case and also by the Supreme Court in the Yamashita Case.

I am speaking of the following questions which were already explained by me in my Opening Statement for the Defendant Naumann:

1. Did the Defendant Seibert personally take part in executions?
2. Were these carried out under his direction or under his orders?
3. Did he have any knowledge of the executions before they were carried out?
4. If so, did he have the power or the opportunity to prevent them or to stop them?
5. If this is also the case, did he fail to act and did he in this manner become a particeps criminis and accessory to the act?

ad 1.)

The Defendant Seibert personally never carried out any execution. Seibert did not kill any of the persons mentioned in the Documents presented against him. While he belonged to Einsatzgruppe D he never served in an Einsatz- or Sonderkommando, which alone had to carry out the executions. But just as little did he supervise the executions or participate in them in any similar manner. Such tasks were never assigned to Seibert in his capacity as Deputy to the Chief of the Einsatzgruppe. This is already impossible for the simple reason, that he never was Ohlendorf's Deputy.

Seibert was only a member of the Staff of Einsatzgruppe D, whose task it was not to carry out executions. Therefore he also never received orders for the carrying out of such measures. Nor was his field of work connected in any way with such tasks. Seibert had been assigned to the Staff of the Einsatzgruppe only as Chief III (Leiter III).

In this capacity he had to make the reports. In all essential points this was the same kind of work that Seibert had to deal with, when he was in Amt III of the Reich Security Main Office in Berlin; this was also the reason, why he was assigned to the Einsatzgruppe. This task occupied Seibert's whole time, which is easily understandable in view of the enormous size of the area of the Einsatzgruppe.

In addition Seibert had only to deal with military tasks, which likewise had nothing to do with the executions he is charged with. These tasks included especially liaison with the Army. Owing to this activity Seibert, acting for Ohlendorf, signed the reports to the High Command of the 11th Army, dated 9 October 1941 and 16 April 1941, which have been submitted by the Prosecution as Documents NOKW-629 and 628, Exhibits 159 and 160. It cannot be understood, how the Prosecution wants to deduct from the text of these Documents Seibert's responsibility for the measures mentioned in the documents.

Ad 2.)

Likewise the Defendant Seibert never issued any instructions or orders for the carrying out of these executions. Nor did he ever transmit any orders to the Einsatz- and Sonderkommandos under his command for the carrying out of these executions. He could not do this for the simple reason, that Seibert was not a Chief of the Einsatzgruppe D, who was invested with the power of command; moreover, he himself never received such orders. I have already emphasized, that Seibert was merely specialist III in the Staff and entrusted with the writing of reports. Seibert had been assigned to the Einsatzgruppe only for this purpose. This follows from the mere fact, that, as I shall prove, Seibert never had anything to do with the executive, either before or after, not even as regards information.

Furthermore, Seibert was at no time the Deputy of the Chief of Einsatzgruppe D. To this extent the statement of the Prosecution is incorrect, as I shall demonstrate in detail in my Case in Chief. As far as any doubts on that point might be possible on the strength of the

documents submitted by the Prosecution , I shall clarify in my Case in Chief, that Seibert never was deputy of the Chief of Einsatzgruppe D and especially never commanded Einsatzgruppe D in Ohlendorf's absence.

Seibert had been officially appointed Deputy Chief of the Einsatzgruppe neither by Ohlendorf nor by any other superior agency nor had he ever been entrusted in practice with the functions of such a position. Seibert could not hold such a position for the simple reason, that he was not the senior Chief with the Einsatzgruppe. In Ohlendorf's absence the Einsatzgruppe was led by the individual Chiefs of Kommandos for their areas.

Ad 3.)

It is only admitted that Seibert knew that the Einsatz- and Sonderkommandos under Einsatzgruppe D carried out executions. However, this knowledge is not in itself sufficient to establish Seibert's criminal responsibility. To this extent I refer to my argument in my Opening Statement for Naumann.

First of all the Prosecution had to prove that Seibert received any previous knowledge of the executions he is charged with.

Even this proof, which has by no means been established, would not establish criminal responsibility. The Prosecution moreover had to prove that

Ad 4.)

the Defendant Seibert had the power or the opportunity to prevent the carrying out of these orders and to stop them, and

Ad 5.)

that he has guiltily failed to do so.

Already according to the Prosecution's own statement these conditions do not exist.

In his capacity as specialist III within the Staff of Einsatzgruppe D Seibert had neither the power nor the opportunity to prevent the

the executions carried out by the ~~Einsatz-~~ and Sonderkommandos under Einsatzgruppe D. Not even the Prosecution has asserted this and I therefore believe that the Prosecution will so far agree with me. In any case the Prosecution had to show what the Defendant Seibert could do and would have had to do to prevent the carrying out of the executions. The Prosecution has offered nothing to that effect.

Einsatzgruppe D was under the Defendant Ohlendorf's command. The execution orders, in virtue of which the ~~Einsatz-~~ and Sonderkommandos acted, were based on orders of Hitler, which were transmitted by Himmler and Heydrich and the execution of which was supervised by these persons.

The Defendant Seibert had a lower rank than the Defendant Ohlendorf and was subordinate to the latter.

Nor did Seibert have any power of command over the ~~Einsatz-~~ and Sonderkommandos under him, which were partly commanded by men with a higher military rank than Seibert's.

THE PRESIDENT: The Tribunal will now be in recess for fifteen minutes.

At the request of Sandberger's counsel the Defendant Sandberger will be excused from attendance in Court for the rest of the day.

(A recess was taken.)