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Einsatzgruppen Case: Opening Statement for Defense - Dr. Ratz for von Radetsky

International Military Tribunal

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THE PRESIDENT: Counsel for defendant von Radetzky?

DR. RITZ (for the defendant von Radetzky):

May it please the Tribunal:

In their opening speech The Prosecution announced that in some cases they may not show that the defendants gave explicit orders for the crimes committed by their Kommandos or that they directly participated in the same; however, the Prosecution maintains their guilt to be just as great.

With this remark the Prosecution certainly also referred to the case of the defendant v. Radetzky, who was into the proceedings only subsequently included and of whom the Prosecution will not be able to prove that he gave orders for the crimes perpetrated by his Kommando, nor that he participated in them directly. However, I am not only convinced that the defendant's guilt is not equally great, but that the defendant's criminal guilt does not exist at all, as shall be proven by full evidence in the course of these proceedings.

I trust that already the first sketch of the case v. Radetzky, which I want to outline now to the Tribunal, will make the defendant's non-guilt already sufficiently clear.

When in 1939 Hitler's insane policy bore its first evil fruit, the defendant v. Radetzky was one of the first unfortunate ones who had to taste that fruit. On 15 October 1939 a treaty was concluded between Germany and Latvia, according to which the Baltic Germans were to be uprooted from their native land and to be resettle in the Reich. From his hometown Riga, where he worked as Prokurist of an export firm, Radetzky came to Posen, together with numerous compatriots and fellow-sufferers; there he was active at the Advice Bureau for Baltic German Immigrants and helped to ease the lot of many a resettler who felt already disappointed in some respects. Already in 1939 he received a second blow. On the occasion of a visit to Posen, Himmler at that time expressed his great displeasure at the independent existence of a representation of the Baltics in the form of their Immigrants Advice Bureau

and ordered the transfer of that bureau to the Bureau for the resettlement of ethnic Germans, an SS outfit. The staff of the immigrants' bureau, for their part, accordingly were incorporated into the SS; obviously this transfer was not effected for political or ideological reasons, it was not even voluntary; it was a purely organizational measure, due to Himmler's mania for unification. Yet another mania played a part in this, the uniform; it was thought that the staff of the Immigrants' Advice Bureau would gain in prestige and it would raise their morale all round, if they were dressed up in SS uniforms. The truth of these facts is proven by the following: Contrary to all tradition and regulations, these men did not have to produce proof of their Aryan descent; the very day Radetzky was received into the SS, he was promoted to SS-Untersturmfuehrer, equivalent to the rank of a Lieutenant, without any examination as to his personal and professional qualifications. Radetzky subsequently wore the SS-uniform, sometimes with and sometimes without the insignia of his rank, as the occasion demanded. Thus Radetzky belonged to that special category of "wearers of the SS-uniform", that could justly be termed the Quasi-SS.

It would have been a strange oversight indeed if, in the course of the preparations for the campaign against Russia in 1941, Radetzky had not been called upon - he who not only hailed from the East and had command of the Russian and other Slav languages, but also was an expert on conditions in Russia. Pursuant to the Decree No. 3 for the securing of labor for tasks of special political importance dated 15 October 1938, he was conscripted in May 1941 for service with the Reich Main Security Office.

This was an order to report for service as a civilian in the public interest; hereby, the following points were essential, in general, and also concerned Radetzky: 1) this was a compulsory conscription, taking place without, and mostly against, the will of the person concerned, 2) no employment contract was concluded between the person concerned and the new employer, but his previous employment was maintained; this follows,

on the one hand, from the legal provisions which are explicit, but furthermore from the fact that the person in question, in our case the defendant v. Radetzky, did not get any salary at all from his new employer, the Reich Main Security Office, but merely a small "indemnity for personal expenses", 3) apart from the lack of voluntariness, a particularly typical feature of the liability for emergency service consisted in the usual transfer of the person liable for emergency service into a professional atmosphere which was quite unknown to him, so it was something quite common if, for instance, a manufacturer of picture frames or the professor at a girls' school became liable for emergency service as a police sergeant. So the export merchant from Riga and former Latvian citizen v Radetzky came to the Reich Main Security Office, without having contributed to this fact by his free will even a single time in the chain of the facts that had caused this effect.

v. Radetzky came first to the border police school Pretzsch and, already after some weeks, in July 1941, to the Sonderkommando 4a set up at Schmiedeberg. v. Radetzky was not a specialist in the field of the Security Police or the Secret State Police; he had, in this respect, as little notion as any other ordinary citizen, he had even less any notion because he had been a foreigner up to 1939; but v. Radetzky knew Russian and other Slavic languages, besides, and particularly, he was well informed about the Russian country and people; in addition, by virtue of his intelligent and distinguished objective manner, he was particularly gifted for initiating and cultivating relations, for observing correctly, investigating and penetrating human beings, circumstances and events. v. Radetzky became, therefore, with the Sk 4a, he went on with this task.

What is, then, meant by SD affairs?

The primary task of the Einsatzgruppen and their various units was: to safeguard the back of the fighting army, consequently to secure the rear area by police supervision, but, in addition, to improvise the war occupation of the areas from the standpoint of police and administra-

tion, until the occupying power could organize a proper administration. The fact that the Einsatzgruppen and their individual units had actually this task, follows without difficulty, from careful reading of those parts of the so-called reports of events that were omitted by the Prosecution in their document books. Accordingly, it was part of the tasks of the Einsatzgruppen, 1) to study the economic, social and political conditions of the country and to elucidate the structure of the state and the party machinery of the enemy from the archives and the files of the enemy; 2) to observe the state of mind and the attitude of the population and their readiness for collaboration with the occupying power, furthermore, to investigate the enemy propaganda activities and the activities of the resistance groups and partisans and to report about these points to the central authorities of the State; 3) to ward off and to fight partisans who were in well-organized units or acted individually.

It is probably not possible to blame the German Reich for neglecting all these points of view and tasks in a clumsy way as an occupying power. The section concerning observation and report according to what I just said, was "SD matter", and the field of the defendant v. Radetzky's activities was here. With Einsatzkommando 4a he followed the combat troops, the 6th Army, in their advance into Russia, but not as a commander or participant in the so-called executions, but as an expert SD-affairs. His special task was the safeguarding of important documents and files of administrative authorities and institutes, the compiling of reports concerning agriculture and industry, the food situation and the existing conditions in the self-administration of the communities. It would be absurd if one wanted to maintain that such an exceptional person as v. Radetzky, a man whose mother tongue was German and who at the same time was fully conversant with the Russian language and conditions, would not have been employed for these purposes, or that the German Army leadership would not have been interested in the economic conditions, the food conditions, and the conditions concerning administra-

tion in the occupied territories.

In another way too, the German Army leadership ascertained the expert qualifications of the defendant v. Radetzky. After he had proved his worth also in practical administrative work, such as organizing of the food distribution for the population, he was detailed as early as July 1941 to the AOK 6 as liaison officer, namely as liaison officer for the Sk 4a to the Army and liaison officer of the Einsatzgruppe C to the Army Group.

The presentation of evidence will show which detailed activity the defendant pursued. The Tribunal will surely be astonished to learn, among other things, that it was v. Radetzky, against whom such severe indictments are brought, who was mainly responsible for averting a famine from the town of Charkow which was only 12 kms behind the front lines. Furthermore, I hope it will be proven to the full satisfaction of the Tribunal that the defendant v. Radetzky never participated in the dreadful executions, and that he also never was deputy to the commander of the Kommande. The latter may already seem evident now.

If one considers that v. Radetzky never got any significant training and education as an officer of the police or even as an ordinary policeman; therefore, he was definitely not qualified in this respect.

The further employment of the Defendant v. Radetzky is along a straight line too, and as a fact it proves more than all the statements made by witnesses and in documents, what he was found to be qualified for, for what he was suitable and for what he could not be used. Since the summer of 1942 he was a liaison officer to the 2nd German Army and to the 2nd Hungarian army. In 1943 he was a liaison officer to the 8th Hungarian army corps and to the 2nd German army. On account of his knowledge of languages and his vast and profound knowledge of the whole conditions in the Russian territory v. Radetzky was transferred to Amt VI of the Reich Main Security Office by the end of 1943; up to that time, as has to be stressed expressly, he had not belonged to Amt VI of the Reich Main Security Office but to Amt I. As will have to be proven, the defendant had tried already numerous times to get a release from the straight-jacket of his national emergency service and to be transferred to the combat troops of the Army. He did not succeed, though he succeeded in repeatedly getting long leaves, and he furthermore succeeded in being less esteemed as an expert; ultimately he was released from the immediate service in the Reich Main Security Office and he was being employed for further tasks of an informative nature. Then he once again became a liaison officer, namely with the Russian volunteer army of General Wlassow, which was no longer to be taken seriously. There he prevented further follies and he caused General Turkal to surrender with his staff to the approaching American troops.

Your Honors, this is the fate of a man who, in a

legal way, was driven out of his Baltic country. Then, without his will, he passively drifted into the claws of National Socialism. His characterization will be completed by describing how he fought for the rescue of his companions who were endangered by the racial and other basic principles of Nazi ideology, opposing these very principles and thus endangering his own safety, and how he consequently gained grateful friends.

Your Honor, in concluding, I should like to come back once more to the "theory of individual responsibility," which the prosecution developed in the Opening Statement:

The prosecution holds that the mere knowledge of the activities of a Sonderkommando is sufficient a reason for the establishment of the criminal responsibility of a defendant, because each defendant had the authority to order executions or to prevent executions. But Defendant Radetzky never possessed such an authority. This could only be assumed if the defendant would have been the commander or deputy commander of Sonderkommando 4a at one time or another, which actually never was the case. It is common knowledge that in military affairs there is no such thing as an authority over one's superiors, but only an authority over subordinates. Of course, there is a limited possibility to offer resistance to orders from military superiors or to cause them to change or withdraw their orders. Everybody familiar with military affairs knows well that such possibility decreases rapidly in direct proportion to the grade in the military hierarchy on which such a controversy may occur. Whereas, for example, a general may well be at variance with orders from his superiors and may express his counter-proposals in a courteous and diplomatic manner and, if necessary, even plead illness in order to evade the execution of an unsavory order, this was completely

Impossible for a man of Defendant Radetzky's military rank. For him contradiction or opposition would have meant a certain danger to life and limb. Such considerations are, however, totally unnecessary in connection with Defendant v. Radetzky and there is no need to plead, perhaps, that the defendant incurred no criminal guilt because he could not be expected to oppose criminal orders given him. For Defendant v. Radetzky never received or carried out an order for execution nor did he ever assist in any way in the carrying out of such an order. This leaves a mere knowledge. I believe I am in a position to state that it is already an established principle of the American Military Tribunal that criminal responsibility cannot be based on a mere knowledge of crimes.

Accordingly, trusting the Tribunal's justice, I hope to invalidate the charge brought against the Defendant v. Radetzky.

THE PRESIDENT: Counsel for the defendant Graf. You may proceed.

DR. BELZER: (Attorney for the Defendant Graf)

May it please the Tribunal, the outside appearance of this case is marked by lack of space. The dock is terribly crowded and the seats of the counsels for the defense have grown, so to speak, into the tables of the judges. To whatever extent I feel personally honored to be seated at the table of the judges, so to speak, I must all the same say that at least this one place could have been saved if the prosecution had chosen the men whom it wanted to bring before the Tribunal in connection with the Einsatzgruppen from the same point of view which it maintained in the indictment and the opening statement. The inclusion of the Defendant Matthias Graf into the indictment of Case 9 is a serious mistake of the prosecution.