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CONVICTED NAZI PROSECUTOR: THE 1950 CASE OF JOSEF ABBOTT BEFORE THE COURT OF APPEALS IN GDAŃSK

INTRODUCTION

This study¹ forms part of a series of articles presenting the results of my investigations made within the framework of case studies on instances of holding lawyers of the Third Reich criminally liable before East German and Polish courts. I became interested in such cases during my research on the operation of one of the German special courts – Sondergericht Kattowitz (Special Court in Katowice), when I wanted to establish the post-war fate of the judges and prosecutors involved in the Court's operation.² So far, in English, I have published a text devoted to the case of Gerhard Pchalek, a prosecutor working in Upper Silesia in the years 1941–1944, who was sentenced in 1960 by the Regional Court in Gera to three years of heavy prison.³ In Polish, I authored an article devoted to the case of Albert Michel, a judge of Sondergericht Krakau (Special Court in Cracow) in the years 1941–1944, who was sentenced to two years of prison in Cracow in 1949.⁴ As a part of this series, I would hope to publish texts on Erwin Wester, the wartime president of Sondergericht Stanisław (Special Court in Stanisławów), who was

¹ This article was prepared as a part of a research project financed by the National Science Centre, Poland (2020/39/B/HS5/02111).

² K. Graczyk, *Sondergericht Kattowitz. Sąd Specjalny w Katowicach*, Warsaw 2020; amended and supplemented German language version: K. Graczyk, *Ein anderes Gericht in Oberschlesien. Sondergericht Kattowitz 1939–1945*, Tübingen 2021.

³ K. Graczyk, "Convicted Nazi lawyer. The case of Gerhard Pchalek in the Gera District Court in 1960", *Acta Iuris Stetinensis* 2020, no. 1, pp. 17–31.

⁴ K. Graczyk, "Skazany nazistowski sędzia. Sprawa Alberta Michela przed Sądem Okręgowym w Krakowie (1948–1949)" [in:] ed. by S. Karowicz-Bienias, R. Leśkiewicz, A. Pozorski, *Nazwać zbrodnie po imieniu. Ustalenia Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu w sprawie zbrodni z okresu II wojny światowej*, Warsaw 2021, pp. 206–249.

extradited to Poland after the war but died in prison before the judgment was delivered, on Johannes Beyer, judge of Sondergericht Posen (Special Court in Poznań), who was sentenced by the Circuit Court in Schwerin (Bezirksgericht Schwerin), in 1961, to a penalty of eight years of severe prison and on Hellmuth Holland, head of the German prosecutor's office in Piotrków (Petrikau, now Piotrków Trybunalski) and the prosecutor before the Special Court in Piotrków (Sondergericht Petrikau), who was twice convicted by Polish courts – in 1949 and 1954.

The purpose of the present article is to examine the criminal case of Josef Abbott, who, during World War II, worked in the Danzig-West Prussia Reich district (Reichsgau Danzig-Westpreußen) as a prosecutor and who appeared before German courts.⁵ This study should be approached not only from the perspective of the few decisions by Polish and East German courts mentioned above but, above all, in the context of the omissions of the West German judiciary in matters relating to the criminal liability of the Third Reich's lawyers. It must be explained that, beside the generally known trial of the major war criminals in Nuremberg, there were several other processes, including what was known as the Nuremberg lawyers' trial. As part of those proceedings, high officials in the Ministry of Justice of the Third Reich were tried, and thus including judges (including three justices from special courts – Sondergerichte)⁶ and prosecutors. The judgment delivered was of unprecedented significance. At that time, the defendants were found guilty of committing war crimes, as well as crimes against humanity. The American Military Court adjudicated exclusively under the Law of 20 December 1945 on the punishment of persons guilty of war crimes, crimes against peace and against humanity, adopted by the Allied Control Council of Germany.⁷ Delivering the judgment on such legal basis, the Court could refute the objections of the defence that the accused lawyers could not be found guilty since their activities were in conformity with then applicable German law. In relation to crimes against humanity, the Law provided for criminal liability regardless of whether or not a given act was in violation of the law of the country in which the crime took place. According to the Military Court's judgment, a crime of murder was committed by a Nazi judge handing down a death penalty because the defendant was Polish or Jewish, and the law which permitted such sentence was, in itself, a crime against humanity and a war crime.⁸

However, in the Federal Republic of Germany, no Nazi lawyer was ultimately convicted. Although a total of 22 proceedings were held in that country against judges

⁵ E. Kobińska-Motas, *Ekstradycja przestępców wojennych do Polski z czterech stref okupacyjnych Niemiec 1946–1950*, vol. 2, Warsaw 1992, pp. 28, 163, 241; M. Becker, *Sądownictwo niemieckie i jego rola w polityce okupacyjnej na ziemiach polskich wcielonych do Rzeszy 1939–1945*, Warsaw 2020, p. 317.

⁶ B. Diestelkamp, "Die Justiz nach 1945 und ihr Umgang mit der eigenen Vergangenheit" [in:] B. Diestelkamp, M. Stolleis, ed. by, *Justizalltag im Dritten Reich*, Frankfurt am Main 1988, p. 134.

⁷ *Kontrollratsgesetz Nr. 10 – Bestrafung von Personen, die sich Kriegsverbrechen, Verbrechen gegen den Frieden oder gegen die Menschlichkeit schuldig gemacht haben vom 20. Dezember 1945* [Law of the Control Council No. 10 – Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity of 20 December 1945]. *Amtsblatt des Kontrollrats in Deutschland* 1945, 50.

⁸ T. Cyprian, J. Sawicki, *Nieznana Norymberga. Dwanaście procesów norymberskich*, Warsaw 1965, pp. 87–132; W. Kulesza, *Crimen laesae iustitiae. Odpowiedzialność karna sędziów i prokuratorów za zbrodnie sądowe według prawa norymberskiego, niemieckiego, austriackiego i polskiego*, Łódź 2013, pp. 41, 503.

and prosecutors of the Third Reich, not a single legally valid convicting judgment was passed in relation to a judge sitting in a special court (Sondergericht) or in the People's Tribunal (Volksgerichtshof), or to a prosecutor appearing before those forums.⁹ This was a consequence of the fact that the West German judiciary adopted, as the basis for the criminal law trials of Nazi lawyers connected with death penalties imposed during the period of the Third Reich, a precept that 'what used to be the law may not be considered unlawful today'. Such was the case even though Gustav Radbruch, philosopher of law and Minister of Justice from the Weimar Republic period, established the terms of criminal liability of Nazi lawyers under German Criminal law as per § 336 of the German Criminal Code (Strafgesetzbuch, StGB), that is based on the construction of bending the law.¹⁰ Quite conversely, the judiciary – against Radbruch's conception – limited the scope of such application of bending the law for offences. The Federal Supreme Court ruled in 1956 that the said offence is committed only by a person bending the law with direct intent, and not merely with speculative intent. This gave rise to a need to always examine if Nazi jurists, when handing down sentences, intentionally bent the laws of the Third Reich. The bending of the law in the context of the delivery of a decision could assume the following forms: falsifying the essence of the matter subject that is to be resolved; legally ungrounded qualification of the factual situation, or abuse of judicial discretion when handing down a death penalty. In the court proceedings held, the defendant lawyers successfully protected themselves by asserting that they imposed death sentences convinced about the legality of their judgments delivered with an intention to serve the German nation in a situation of jeopardy from the ongoing war. In literature, the following are indicated as reasons for the failure of holding Nazi lawyers liable: high requirements established in case-law as to the subjective elements of the offence of bending the law (the need to prove direct intention), which is difficult to demonstrate without sufficient evidence. This was accompanied by an unwillingness to prosecute and punish the lawyers of the Third Reich by their colleagues working in the post-war judiciary of West Germany. In the end, they belonged to the same professional group and social class, and often had similar 'brown' life stories.¹¹

In this context, the few situations in which Nazi lawyers were actually convicted seem even more momentous. Against the background of Josef Abbott's case, there arise research questions in relation to the course of the process and the evidence gathered against the defendant, as well as the legal basis applied by the court. It may also be considered why such attempts proved unsuccessful with regard to other lawyers of the Third Reich.

⁹ W. Kulesza, *Crimen laesae iustitiae...*, p. 132. As concluded by W. Kulesza, legally valid convicting judgments were delivered in matters of defendants indicted of judicial crimes who had made decisions on the killing of persons prosecuted before summary courts. Therefore, involvement in the sentencing to the death penalty by summary courts was qualified as accomplice (participation) in murder. *Ibid.*, pp. 132–133.

¹⁰ J. Zajadło, *Radbruch*, Sopot 2016, p. 24; *idem*, *Formuła Radbrucha. Filozofia prawa na granicy pozytywizmu prawniczego i prawa natury*, Gdańsk 2001, *passim*.

¹¹ W. Kulesza, *Crimen laesae iustitiae...*, pp. 77–78, 85, 134–135, 503–505.

JOSEF ABBOTT'S PROFILE

Josef Alois Maria Abbott was born on 28 July 1913 in Aachen. His father was a teacher, who died during World War I. Abbott completed his legal studies at the Rhenish Frederick William University of Bonn in the years 1932–1935. In November 1936, in Cologne, he passed the first state legal exam with an acceptable result. From that time on, he held the title of referendary. He served his referendary practice in courts, a prosecutor's office and in law firms in the area of Bonn and Koblenz. In that period, he received favourable opinions from his supervisors. They considered his knowledge and skills to be well above average. On 1 May 1937, he became a member of the NSDAP, and in April 1938 he also enlisted in the National Socialist Union of Law Defenders. Among the many standard documents to be found in Abbott's personal dossier, the reader's attention is drawn to his letter of July 1939. At the final stage of his training, as a part of the referendary training, he expressed his intention to pursue a career as a prosecutor, and, as his speciality, he wished to deal with political matters. In January 1940, he entered into marriage. In October 1940, in Düsseldorf, he passed the second state legal exam with a satisfactory result and obtained the title of assessor. In November 1940, his daughter was born. Abbott was highly evaluated by his superiors in the prosecutor's office, and his political attitude raised no concerns.¹²

His personal dossier shows that Abbott was delegated to occupied Poland in March 1941. He substituted for Assessor Dr Kolping, who initially was to be sent to the prosecutor's office in Grudziądz (Graudenz), which, however, was prevented by health reasons. The decision about Abbott's delegation was made by the Public Prosecutor General in Cologne.¹³ Abbott joined about 50 prosecutors of the Danzig-West Prussia Reich district.¹⁴

Abbott made a three day journey to Grudziądz from 15 to 18 March 1941. He checked in with the local chief prosecutor (Oberstaatsanwalt). At the end of March 1941, he was formally allocated to the district of the Higher Regional Court in Gdańsk (Oberlandesgericht Danzig) as candidate for the position of a prosecutor or judge. At this point, an expectation was expressed that he become involved in the 'movement,' i.e.

¹² Archiwum Państwowe w Gdańsku [State Archive in Gdańsk, hereinafter: APG], Prosecutor's Office in Gdańsk [Staatsanwaltschaft Danzig], file reference 15, Personalakten Band 1, Personalbogen [Personal Survey], pp. 1–3; Meinung des Oberamtsrichters vom 9. Juni 1937 [Opinion of a senior circuit court counsellor of 9 June 1937], p. 55; Vorzeugnis vom 1. März 1939 [Certificate of 1 March 1939], p. 161; Schreiben an den Oberlandesgerichtspräsidenten in Köln vom 4. Juli 1939 [Letter to the president of the Higher Regional Court in Cologne of 4 July 1939], p. 185; Heiratsurkunde vom 13. Januar 1940 [Marriage certificate of 13 January 1939], p. 239; Schreiben des Oberstaatsanwalts in Koblenz an den Generalstaatsanwalt in Köln betr. Assessor Abbott vom 28. Februar 1941 [Letter of the chief prosecutor in Koblenz to the Public Prosecutor General in Cologne about assessor Abbott of 28 February 1941], p. 337.

¹³ APG, Prosecutor's Office in Gdańsk, file reference 15, Personalakten Band 1, Schreiben des Generalstaatsanwalts in Köln an den Oberstaatsanwalt in Trier betr. Gerichtsassessor Dr. Kolping vom 13. März 1941 [Letter of the Public Prosecutor General in Cologne to the chief prosecutor in Trier about court assessor Dr Kolping of 13 March 1941], p. 351.

¹⁴ D. Schenk, *Albert Forster – gdański namiestnik Hitlera. Zbrodnie hitlerowskie w Gdańsku i Prusach Zachodnich*, Gdańsk 2002, p. 293.

the Nazi party. From June 1941 on, Abbott was authorised by his superiors to sign procedural documents, except for motions concluding preparatory proceedings and decisions discontinuing proceedings, and in August 1941 that reservation was lifted. At that time, he was to be delegated to the prosecutor's office at the Regional Court in Gdańsk (Landgericht Danzig), but an already issued order was cancelled and, instead, Assessor Kochalsen, also from Grudziądz, was sent to fill that vacancy. Perhaps the change of the decision was motivated by Abbott's health problems. It follows from the preserved documentation that he tried to bring his wife and daughter permanently to Grudziądz, which was motivated, on one hand, by the Allied bombing raids on Rhineland and, on the other, by his health condition. From his childhood, he had to cope with an illness, which, over time, led to paresis of the left leg and gave rise to the need to put on a splint. Abbott stressed that he volunteered to work in the Eastern territories, Grudziądz, as a small town, was suitable for his condition, and the assistance of his wife was necessary to handle small matters of everyday life.¹⁵

Abbott worked in the prosecutor's office in Grudziądz from 18 March to 30 September 1941. An opinion summarising that period was positive. Also the chief prosecutor from Grudziądz considered Abbott above average, and as a friendly person, prepared to make sacrifices. He praised Abbott's political commitment as political leader for other officials. He had no doubt about Abbott's "genuine attachment to the National Socialist state." He drew attention to the fact that his subordinate made up for his reduced mobility with energy, and that he was even more fit than some of his healthy colleagues.¹⁶

Abbott's request for the relocation of his wife and daughter was resolved so that his new place of service was the prosecutor's office at the Regional Court in Bydgoszcz (Landgericht Bromberg), and his family members made the journey to that city in March 1942.¹⁷ At that time he became a member of the Hitlerjugend and, after a couple of months, was promoted in that organisation to petty officer's rank (Oberscharführer). This, beside the opinions at work, demonstrated Abbott's authentic and great commitment to national socialism. Abbott also took part in the training courses organised in

¹⁵ APG, Prosecutor's Office in Gdańsk, file reference 16, Personalakten Band 2, Schreiben des Oberstaatsanwalts in Graudenz an den Generalstaatsanwalt in Danzig betr. Assessor Abbott vom 19. März 1941 [Letter of the chief prosecutor in Grudziądz to the Public Prosecutor General in Gdańsk about assessor Abbott of 19 March 1941], p. 7; Schreiben des Reichsministers der Justiz an den Assessor Josef Abbott vom 30. März 1941 [Letter of the Minister of Justice of the Reich to assessor Josef Abbott of 30 March 1941], p. 33; Schreiben des Generalstaatsanwalts in Danzig an den Assessor Josef Abbott vom 29. Mai 1941 [Letter of the Prosecutor Public General in Gdańsk to assessor Josef Abbott of 29 May 1941], p. 59; Schreiben des Generalstaatsanwalts in Danzig an den Assessor Josef Abbott vom 16. Juli 1941 [Letter of the Public Prosecutor General in Gdańsk to assessor Josef Abbott of 16 July 1941], p. 65; Schreiben des Generalstaatsanwalts in Danzig an den Assessor Josef Abbott vom 1. August 1941 [Letter of the Public Prosecutor General in Gdańsk to assessor Josef Abbott of 1 August 1941], p. 73; Schreiben des Assessors Josef Abbott an den Generalstaatsanwalt in Danzig vom 14. August 1941 [Letter of assessor Josef Abbott to the Public Prosecutor General in Gdańsk of 14 August 1941], pp. 89–91.

¹⁶ APG, Prosecutor's Office in Gdańsk, file reference 16, Personalakten Band 2, Zeugnis des Oberstaatsanwalts in Graudenz vom 7. Oktober 1941 [Certificate of the chief prosecutor in Grudziądz of 7 October 1941], pp. 127–128.

¹⁷ APG, Prosecutor's Office in Gdańsk, file reference 16, Personalakten Band 2, Schreiben des Josefs Abbott an den Generalstaatsanwalt in Danzig vom 26. Februar 1942 [Letter of Josef Abbott to the Public Prosecutor General in Gdańsk of 26 February 1942].

the Danzig-West Prussia Reich district by the National Socialist Union of Law Defenders (Nationalsozialistischer Rechtswahrerbund). For example, during the weekend from 10 to 12 September 1943, a course took place in Janków Gdański (Jenkau bei Danzig) on the current problems of legal life.¹⁸ It can be assumed that, in his work, Abbott was under the influence of Nazi ideology and the appeals of party officials. Gauleiter Albert Forster, at one of the meetings, strongly encouraged all judges and prosecutors to remember that the law is only what serves the nation, and lawlessness is what proves detrimental to the nation.¹⁹

Although Abbott brought all his family to Bydgoszcz, he was soon delegated once again – this time to Gdańsk. In a request to exempt Abbott from military service, his superior, Gdańsk chief prosecutor Dr Koch, pointed out that Abbott's considerable workload, which was a result of an increasing amount of matters accruing under the Regulation on the wartime economy, had increased even further, and that Abbott's presence was necessary bearing in mind the difficult problem of resourcing personnel at the prosecutor's office unit as well as that office's scope of responsibilities. The request was answered positively in November 1942.²⁰

In the next couple of months, Abbott applied for prosecutor positions in Traunstein, Tübingen and Bayreuth. Eventually however, in September 1943, he was appointed as public prosecutor in his current district of the Higher Regional Court in Gdańsk. At that time, an opportunity for an additional source of income arose since Abbott was appointed deputy head of the Pharmacists Chamber Court in Gdańsk (Berufsgewerbe bei der Bezirks-Apothekerkammer Danzig-Westpreußen). In July 1944, he was assigned the function of clerk for political matters in the prosecutor's office attached to the Regional Court in Gdańsk, which also involved training on how to handle classified matters. Then, in light of Abbott's expected longer employment in Gdańsk, his relocation from Bydgoszcz was ordered.²¹

The preserved personal dossier does not explain what was happening to Abbott during the final phase of the war. He managed to survive the war and even resume work

¹⁸ APG, Prosecutor's Office in Gdańsk, file reference 16, Personalakten Band 2, Schreiben des Gauwalters des Nationalsozialistischen Rechtswahrer-Bund Gau Danzig-Westpreußen an den Gerichtsassessor Abbott vom 26. August 1943 [Letter of the President of the District National Socialist Union of Law Defenders of the Danzig-West Prussia district to court assessor Abbott of 26 August 1943], pp. 249–250.

¹⁹ D. Schenk, *Albert Forster...*, p. 269.

²⁰ APG, Prosecutor's Office in Gdańsk, file reference 16, Personalakten Band 2, Schreiben des Oberstaatsanwalts in Danzig an das Wehrbezirkskommando in Danzig vom 7. August 1942 [Letter of the chief prosecutor in Gdańsk to the Military District Headquarters in Gdańsk 7 August 1942], p. 223; Schreiben des Josefs Abbotts an den Oberstaatsanwalt in Danzig vom 28. November 1942 [Letter of Josef Abbott to the chief prosecutor in Gdańsk of 28 November 1942], p. 229.

²¹ APG, Prosecutor's Office in Gdańsk, file reference 16, Schreiben des Reichsministers der Justiz an den Staatsanwalt Josef Abbott vom 4. Oktober 1943 [Letter of the Minister of Justice of the Reich to prosecutor Josef Abbott of 4 October 1943], p. 255; Schreiben des Oberstaatsanwalts in Danzig an den Generalstaatsanwalt in Danzig vom 27. April 1944 [Letter of the chief prosecutor in Gdańsk to the Public Prosecutor General in Gdańsk of 27 April 1944], p. 287; Schreiben des Generalstaatsanwalts in Danzig an den Oberstaatsanwalt in Danzig vom 26. Juli 1944 [Letter of the Public Prosecutor General in Gdańsk to the chief prosecutor in Gdańsk of 26 July 1944], p. 293; Schreiben des Generalstaatsanwalts in Danzig an den Staatsanwalt Abbott vom 31. August 1944 [Letter of the Public Prosecutor General in Gdańsk to prosecutor Abbott of 31 August 1944], p. 297.

as a prosecutor in Andernach. There, in November 1947, Abbott was traced by Major Stanisław Pławski from the Polish Military Mission (Polska Misja Wojskowa) in Berlin. Pławski then requested the Main Commission for the Investigation of German Crimes in Warsaw to provide documents incriminating Abbott because it followed from the information he gathered that Abbott was a prosecutor at the special courts in Bydgoszcz, Gdańsk and Grudziądz, and took part in the prosecution of the Polish population during and in relation to the exercise of his office.²² As a result, a pursuit of relevant documents and witnesses began. Documents left by the Special Court in Bydgoszcz were examined, however, and no matters were identified in which Abbott was involved as prosecutor.²³ A search in Grudziądz concluded with similar effect. The results of efforts made by the investigators from Gdańsk, however, were different. They managed to gather evidence permitting Abbott's extradition to Poland and the commencement of a criminal process against him. However, before I move on to discuss the course of that process, I would like to focus on the fundamental issues relating to the operation of the Special Court in Gdańsk (Sondergericht Danzig) and to also to make mention of the Court's president, Dr Arno Beuermann. Those issues, in fact, provide a background for Abbott's case, since Abbott had served as public prosecutor before that court.

SPECIAL COURT IN GDAŃSK AND ITS PRESIDENT

There has not yet been an academic study of Sondergericht Danzig and its operation and case law. In large measure, the reason of this shortcoming is the scant preservation of source materials and their dispersion. It can be assumed that the court files were destroyed as part of the preparation of the evacuation of Gdańsk before the advance of the oncoming Red Army. The available sources are only enough to point to certain issues.

An outline of Sondergericht Danzig's operation was provided by an article written by a president of that Court, vice-president of the Higher Regional Court in Gdańsk, Arno Beuermann, that he published in the specialist journal 'Deutsches Recht' in April 1942.²⁴ According to that paper, the Court was created in December 1939 and had jurisdiction over the districts of the Regional Courts in Chojnice (Konitz) and Gdańsk. At that time, the neighbouring Sondergericht Elbing (Elbląg) and Sondergericht Bromberg already existed. The Court's jurisdiction changed in 1942, when a separate special court was established for the district of the Regional Court in Chojnice. However, in mid-1943,

²² Archiwum Instytutu Pamięci Narodowej w Warszawie [Archive of the Institute of National Remembrance in Warsaw, hereinafter: AIPN], GK 164/235, Pismo majora Stanisława Pławskiego do Głównej Komisji Badania Zbrodni Niemieckich w Warszawie z 27 XI 1947 r. [Letter of Major Stanisław Pławski to the Main Commission for the Investigation of German Crimes in Warsaw of 27 November 1947], p. 4.

²³ AIPN, GK 164/235, Pismo Dyrektora Głównej Komisji Badania Zbrodni Niemieckich w Warszawie do Polskiej Misji Wojskowej w Berlinie z 24 I 1948 r. [Letter of the Director of the Main Commission for the Investigation of German Crimes in Warsaw to the Polish Military Mission in Berlin of 24 January 1948], p. 8.

²⁴ A. Beuermann, "Das Sondergericht Danzig, ein Sondergericht des deutschen Ostens", *Deutsches Recht*, H. 7/8, 15. April 1942, pp. 77–82. The author would like to thank Dr Jan Daniluk, a historian from Gdańsk, for sharing this source.

that Court was abolished, half a year later the Special Court in Elbląg was also abolished. As a result, the scope of the territorial jurisdiction of the Special Court in Gdańsk was much expanded.²⁵

The statistics cited by Beuermann show that in 1940 six judgments were delivered under the Regulation against violent offenders of December 1939,²⁶ four under the Regulation against national parasites²⁷, three under the Regulation on wartime economy,²⁸ six under the Regulation on extraordinary radio measures,²⁹ two in relation to illegal possession of weapons, 44 under the Act against underground attacks on the state and the party and on the protection of party uniforms³⁰ and 18 in relation to other prohibited acts. On the whole, in 1940, Sondergericht Danzig delivered 83 judgments, under which 13 men were sentenced to death. The number of judgments delivered was clearly lower than in other special courts created by Germans in the occupied Polish territories: the nearby Sondergericht Bromberg, in the period from September to the end of December 1939, issued 133 judgments, imposing the death penalty on 100 persons; at the same time, Sondergericht Posen brought 75 cases to completion, sentencing 49 persons to death; and Sondergericht Kattowitz, out of 149 judgments, imposed the death penalty on only two persons. Comparative data for 1940 also point to a low workload of the Special Court in Gdańsk. In Katowice, in 1940, 432 cases were resolved, and in Bydgoszcz, 391.³¹

The year 1941 proved much more busy for the judges from Gdańsk. At that time, in the Special Court, a total of 171 judgments were delivered, under which 14 men were sentenced to the death penalty. In seven judgments, the basis of verdicts was the Regulation against violent offenders, in 11 the Regulation against national parasites, in 50 the Regulation on wartime economy, in five the Regulation on extraordinary radio measures, and in 38 the Act against underground attacks on the state and the party and on the protection of party uniforms. Five matters were decided in connection with the illegal possession of weapons, and 57 in connection with other acts (among others, four times in murder or manslaughter matters, three times in matters of the breach of public peace). In his commentary, Beuermann drew attention to an increase in the number of economic offences and the falsehood of the popular view that the Sondergericht imposed

²⁵ J. Daniluk, *Sąd niemieckiego Wschodu*, <https://historia.trojmiasto.pl/Sad-niemieckiego-Wschodu-n150952.html>, accessed 19 October 2021.

²⁶ *Verordnung gegen Gewaltverbrecher vom 5. Dezember 1939* [Regulation against violent offenders of 5 December 1939], *Reichsgesetzblatt* (hereinafter: RGBl.) 1939, 2378.

²⁷ *Verordnung gegen Volksschädlinge vom 5. September 1939* [Regulation against national parasites of 5 September 1939], RGBl., 1939, 1679.

²⁸ *Kriegswirtschaftsverordnung vom 4. September 1939* [Regulation on wartime economy of 4 September 1939], RGBl., 1939, 1609.

²⁹ *Verordnung über außerordentliche Rundfunkmaßnahmen vom 1. September 1939* [Regulation on extraordinary radio measures of 1 September 1939], RGBl., 1939, 1683.

³⁰ *Gesetz gegen heimtückische Angriffe auf Staat und Partei und zum Schutz der Parteiuniformen vom 20. Dezember 1934* [Act against underground attacks on the state and the party and on the protection of party uniforms of 20 December 1934], RGBl. 1934, 1269.

³¹ K. Graczyk, *Sondergericht Kattowitz...*, pp. 86–87, 273; G. Weckbecker, *Zwischen Freispruch und Todesstrafe. Die Rechtsprechung der nationalsozialistischen Sondergerichte Frankfurt/Main und Bromberg*, Baden-Baden 1998, p. 447.

exclusively or almost exclusively the death penalty. According to Beuermann's article, 254 sentences were passed in 1941–1942, including 27 death sentences. It is difficult to verify these figures today. They should be considered minimal.

In the article, Beuermann mentioned also the question of applying German law in the context of the former special status of the Free City of Danzig (Wolne Miasto Gdańsk) and the fact that a part of the court district previously belonged to Poland. He also described a practice of resuming certain proceedings against Poles concluded by Polish courts with acquittal before the war with a view to imposing a penalty on the defendant. On the other hand, however, Polish judgments were honoured as binding when this opened to the special court a way for imposing on a Polish repeat offender a more severe penalty or punitive measure. The president of Sondergericht Danzig also boasted about retroactive application of the Regulation on extraordinary radio measures to Poles and of the Regulation on criminal law for Poles and Jews in the eastern incorporated territories of 4 December 1941.³² It should be emphasized that in case of the Regulation of December 1941, Sondergericht Danzig acted completely without a legal basis, assuming the role of legislator and delivering a judgment sentencing a Pole to the death penalty on 26 January 1942. The Court's position was legalised several days later by the implementation of the Regulation of 31 January 1942.

In his text, Beuermann directly admitted that he had discriminated against Poles, writing that, in identical situations, Sondergericht Danzig imposed more severe penalties on offenders of Polish nationality than on Germans. He justified such practice by the fact that the Court owed that to the Volksdeutsche murdered in Bydgoszcz,³³ and by racial differences, which were apparent to him at first glance. At the end of his article, Beuermann pointed out that new tasks were faced by the 'courts of the German East' in relation to the application of the Regulation on criminal law for Poles and Jews in the eastern incorporated territories of 4 December 1941, and that the courts will perform those tasks as they fulfilled their previous responsibilities.

Research by Edmund Zarzycki indicates that Sondergericht Danzig sentenced four persons for acts committed before 1 September 1939, including two persons to the death penalty; while for so called 'September offences' (i.e. acts committed on national grounds by Poles against Germans in the first days following the attack of the Third Reich on

³² *Verordnung über die Strafrechtspflege gegen Polen und Juden in den eingegliederten Ostgebieten vom 4. Dezember 1941* [Regulation on criminal law for Poles and Jews in the eastern incorporated territories of 4 December 1941], RGBl. 1941, 759. The International Military Tribunal in Nuremberg found that Regulation unlawful as violating the Hague conventions, since its adoption and entry into force took place in the conditions of racial persecution and extermination in the annexed territories during a criminal aggressive war (W. Kulesza, *Crimen laesae iustitiae...*, p. 44).

³³ Beuermann referred at this point to so called bloody Sunday in Bydgoszcz and claims of Nazi propaganda that in Poland 58,000 Volksdeutsche were murdered. The literature on that subject is extensive, e.g., see: T. Chinciński, *Forpocztą Hitlera. Niemiecka dywersja w Polsce w 1939 roku*, Gdańsk–Warszawa 2010; E. Zarzycki, *Działalność hitlerowskiego Sądu Specjalnego w Bydgoszczy w latach 1939–1945*, Bydgoszcz 2000; M. Krzoska, "Der »Bromberger Blutsonntag« 1939. Kontroversen und Forschungsergebnisse", *Vierteljahrshefte für Zeitgeschichte* 2012, Band 60; J. Böhler, *Auftakt zum Vernichtungskrieg. Die Wehrmacht in Polen 1939*, Frankfurt am Main 2006; W. Jastrzębski, *Bydgoska krwawa niedziela 3–4 września 1939 roku*, Toruń 2022; *Wydarzenia bydgoskie 1939 roku*, ed. B. Kopka, Warsaw 2022.

Poland)³⁴ - eight persons (all of them to the death penalty); for political offences 73 persons were convicted (out of which the death penalty was imposed upon 16 Poles and not on a single German); for economic offences four Poles were sentenced to the death penalty; and for criminal offences 58 Poles and two Germans.³⁵

Sondergericht Danzig was presided over, in the years 1939–1942, by the above-mentioned Beuermann, and on 15 June 1942 he was replaced by Fritz Liermann,³⁶ who had previously presided over the Special Court in Ciechanów (Sondergericht Zichenau).³⁷ It is unknown how the adjudicating statistics of Sondergericht Danzig looked like in the following years. It can be indicated that defendants included both Polish officers with prisoner-of-war status, Jews, Wehrmacht deserters, and listeners of foreign radio programs. It must be emphasized that in those matters Sondergericht Danzig handed down death penalties,³⁸ although when those judgments are compared, only in terms of legal qualification, to judgments delivered by other special courts in the Polish territories, Sondergericht Danzig could impose less severe penalties. The situation looks similar with a number of judgments entered on a list prepared by the Main Commission for the Investigation of German Crimes in Warsaw, under which Sondergericht Danzig sentenced to the death penalty two persons for exceeding maximum prices (Höchstpreisüberschreitung; judgment of 11 September 1941), one person for theft (judgment of 19 May 1942), one person for having a ‘disintegrating influence’ on the armed forces (Wehrkraftzersetzung; judgment of 1 August 1944), four persons for the illegal possession of weapons (judgment of 5 August 1942), and one person for embezzlement (Unterschlagung; judgment of 30 November 1942).³⁹

Beuermann was born in Herzfelde, in Niederbarnim County, Brandenburg, in 1891. His father was a physician. In 1914, Beuermann was awarded a doctoral degree at the University of Greifswald. In 1913, in Berlin, he passed the first state legal exam, and in 1920 the second exam, both with acceptable results. He fought in World War I, for which he was decorated, among other honours, with the Iron Cross II degree. Between 1925 and 1933, he belonged to the German National People’s Party and from May 1933, he was a member of the NSDAP. From the beginning, Beuermann pursued his professional career in Gdańsk: from 1920 as an assessor, from 1921 as a rural judge, from 1922 as counsellor to the regional court, from 1926 as counsellor to the circuit court,

³⁴ K. Graczyk, “»Przestępstwa wrześnieowe« w orzecznictwie Sądu Specjalnego w Katowicach (Sondergericht Kattowitz)”, part I: “Przestępstwa przeciwko życiu”, *Studia z Dziejów Państwa i Prawa Polskiego* 2018, vol. XXI, p. 275.

³⁵ E. Zarzycki, *Eksterminacyjna i dyskryminacyjna działalność hitlerowskich sądów okręgu Gdańsk-Prusy Zachodnie w latach 1939–1945*, Bydgoszcz 1981, pp. 29, 47, 51, 74, 126, 156.

³⁶ J. Daniluk, *Sąd niemieckiego Wschodu...*, accessed 19 October 2021.

³⁷ APG, Higher Regional Court in Gdańsk, file reference 1849, Personal- und Befähigungsnachweisung betr. den Oberlandesgerichtsrat Liermann in Zichenau [Personal and qualification list relating to counsellor Liermann of the Higher Regional Court in Ciechanów], pp. 47–49.

³⁸ J. Daniluk, *Sąd niemieckiego Wschodu...*, accessed 19 October 2021.

³⁹ Archiwum Instytutu Pamięci Narodowej, Oddział w Poznaniu [Archive of the Institute of National Remembrance, Branch in Poznań], 3/358/6, Spisy sędziów i prokuratorów w procesach Polaków prowadzonych przez VGH i Sg. [Lists of judges and prosecutors in processes against Poles held by VGH and SG], pp. 27, 65.

from 1931 as counsellor to the circuit and regional courts, from 1933 as president of the regional court, from 1938 as chairman of the senate, and from 1942 as vice-president of the Higher Regional Court in Danzig. In an opinion from November 1944, his superior was delighted by Beuermann's professional skill. The superior called him a natural-born judge, tested in all areas of adjudication. In every aspect of his work, the superior considered him an excellent lawyer and leader, as well as a committed national socialist. He concluded that during his service in the criminal chamber of the regional court and in the special court, Beuermann had developed into a criminal law specialist of high esteem. In the conclusion of his opinion, Walter Wohler, president of the Higher Regional Court in Danzig, considered his subordinate the right person to preside over one of the senates of the People's Tribunal or of the Court of the Reich, or to preside over a large regional court.⁴⁰

Polish authorities sought Beuermann's extradition in 1947. At the time he resided in the British occupation zone. The evidence basis for the extradition request was a case in which Sondergericht Danzig, on 13 January 1942, handed down the death penalty to Tadeusz Szelągowski, Metody Smalko and Captain Antoni Kasztelan. The Polish authorities claimed that Beuermann, under the formal guise of a court decision, ordered the unlawful killing of Smalko, and prisoners-of-war Szelągowski and Kasztelan, by imposing upon them, having found them guilty of causing bodily injuries, which was threatened by a fine or imprisonment of up to five years, a death penalty on the basis of unlawful provisions that increased the sanctions for acts committed in the pre-war period on the territory of the Polish state. Those rules were applied against Poles, in violation of the essence of the system of justice, merely out of vengeance and on political grounds, for extermination purposes. Besides, it should be emphasized that the conviction of Szelągowski and Kasztelan took place in violation of the Geneva Convention of 1929 relative to the Treatment of Prisoners of War.⁴¹

Although the Polish authorities gathered evidence in the form of witness testimony, including from other justices from Gdańsk who considered Beuermann to be a blood-thirsty judge, especially in relation to Poles, and who felt that judgments delivered by the adjudicating panels presided over by Beuermann were barbarous,⁴² Beuermann was never extradited or indicted before a Polish court. The reasons behind the refusal of extradition, on the basis of which the British Extradition Tribunal in Hamburg made its negative decision,⁴³ remain unknown. As a result, the conclusion of Beuermann's case was completely different from Abbott's case even though, judging only by the position both lawyers held, Beuermann could be assigned a higher degree of guilt.

⁴⁰ APG, Higher Regional Court in Gdańsk, file reference 590, Doctoral Diploma, 9; Personal- und Befähigungsnachweisung betr. den Vizepräsidenten Dr. Arno Beuermann in Danzig [Personal and qualification list relating to Vice-President Dr Arno Beuermann in Gdańsk], 19–22.

⁴¹ AIPN, GK 164/89 vol. 1, Wniosek ekstradycyjny z 19 IX 1947 r. [Extradition request of 19 September 1947], pp. 3–4.

⁴² D. Schenk, *Albert Forster...*, p. 294.

⁴³ AIPN, GK 164/89 vol. 3, Pismo Szefa Teamu kpt. B. Bigdy do Konsulatu Rzeczypospolitej Polskiej w Hamburgu z 8 VII 1948 r. [Letter from the Team Leader Capt. B. Bigda to the Consulate of the Republic of Poland in Hamburg of 8 July 1948], p. 51.

CRIMINAL PROCEEDINGS AGAINST ABBOTT

Abbott was extradited to Poland towards the end of October 1948. He was handed over from the French occupation zone, which, to a certain degree, can account for the difference with the Beuermann extradition request, who lived in the British zone. As Bogdan Musiał wrote, the policy of the British over time evolved towards stopping extradition, while the French did not introduce restrictions.⁴⁴ Initially, Abbott was imprisoned in the Mokotów Prison in Warsaw and then handed over, according to territorial jurisdiction, to the prosecutor at the Circuit Court in Gdańsk (Sąd Okręgowy w Gdańsku).⁴⁵

The first acts in Abbott's case were performed earlier, as a part of the gathering of evidence which formed the basis for the extradition request. Several persons were questioned, out of which testimonies of a couple of witnesses proved essential to the case. At the end of May 1948, Rudolf Gamm was questioned in Gdańsk, a merchant who knew Abbott only from hearsay – from the stories of his friends employed in the Danzig judiciary. Gamm testified that public prosecutor Abbott was generally known for his severity in relation to Poles and, inasmuch as Beuermann was known for his anti-Polish attitude in Sondergericht, the same could be said in the prosecutor's office about Abbott. During the interrogation, Gamm indicated to the investigators a number of persons from the Danzig judiciary and Bar who could offer more detailed information.⁴⁶ Since they lived in the American and Soviet occupation zones, these witnesses were interviewed by means of foreign judicial assistance. A number of announcements were also published in the local press informing that Abbott's case was being examined and calling on persons, who might give testimony or possess documents on Abbott's criminal activities, to show up. It turned out that this method led to positive results.⁴⁷

It followed from the testimony of advocate Dr Norbert Sternfeld, that Abbott was a German prosecutor at the Special Court in Gdańsk. In general, his office was operated not by a substantive but an alphabetical key – according to the suspects' surnames. He was often additionally entrusted with various political matters. According to Sternfeld's testimony, Abbott also appeared before what was known as the 'Lesser People's Tribunal' (Kleiner Volksgerichtshof), i.e. one of the senates of the Higher Regional Court in Gdańsk, which held particularly important political processes falling under the jurisdiction of the

⁴⁴ B. Musiał, "NS-Kriegsverbrecher vor polnischen Gerichten", *Vierteljahreshefte für Zeitgeschichte* 1999, 47, pp. 30–35.

⁴⁵ AIPN, GK 351/364, Pismo p.o. Szefa Misji dla Spraw Zbrodni Wojennych do Ministerstwa Sprawiedliwości z 30 X 1948 r. [Letter of the acting Head of the Mission for War Crimes to the Ministry of Justice of 30 October 1948], p. 1; Pismo Pierwszego Prokuratora Najwyższego Trybunału Narodowego do Ministerstwa Bezpieczeństwa Publicznego z 16 XI 1948 r. [Letter of the First Prosecutor of the Supreme National Tribunal to the Minister of Public Security of 16 November 1948], p. 6.

⁴⁶ Archiwum Instytutu Pamięci Narodowej, Oddział w Gdańsku [Archive of the Institute of National Remembrance, Branch in Gdańsk, hereinafter: AIPN Gd], 605/9/1, Protokół przesłuchania świadka Rudolfa Gamma z 25 V 1948 r. [Protocol from the questioning of witness Rudolf Gamm of 25 May 1948], p. 16.

⁴⁷ AIPN Gd, 605/9/2, Newspaper clippings: *Ziemia Pomorska* of 27 May 1948, No. 144/1081; *Ilustrowany Kurier Polski* of 29 May 1948, No. 144; *Gazeta Zachodnia* of 27 May 1948, No. 143/254, 46.

People's Tribunal in Berlin but referred for examination to Gdańsk as matters of lesser importance. Sternfeld assessed that the vast majority of cases held before that senate were concluded with the imposition of the death penalty. He then testified that Abbott himself told him that he had volunteered to take part in executions and, in fact, he was often present and showed special interest on such occasions. The witness considered Abbott to be a bad, insensitive man who, for political reasons, requested the most severe penalties and then assisted at their execution of the condemned. In Sternfeld's opinion, Abbott even found satisfaction in such actions. The witness then stated that already during the war he considered Abbott to be a sadist because a number of prisoners told him that Abbott was beating them. He also remembered that Abbott's requests regarding the amount of punishment were often very unfair and exceptionally severe. In particular, this referred to Poles entered in the Volksliste, if they were not assigned to the first or second categories of that group.⁴⁸ Abbott considered such fact as an aggravating circumstance.⁴⁹

The reports of Abbott's sadism, the inhuman exercise of his function and his satisfaction drawn from executions were confirmed by the testimony of Dr Alfred Hülff, who was a prosecutor in Gdańsk prior to the war and retired after the national socialists came to power, but after the outbreak of war was again reinstated. He remembered that Abbott would almost always come to work in a Hitlerjugend uniform, that he sought to be delegated to executions and, allegedly, personally abused prisoners. He also mentioned a case of a certain woman whose matter was handled by Abbott. She was driven to such despair that she decided to commit suicide, and in the letter left she advised the same to her husband, encouraging him to previously take revenge on Abbott. Additionally, Hülff pointed to a specific procedure concluded by Sondergericht Danzig under Beuermann's presidency with a death sentence imposed on a Polish soldier, which procedure was assessed by the witness as classical judicial murder.⁵⁰

In March 1949, Gamm was heard from once again. He repeated what he heard about Abbott from his lawyer friends, according to whom Abbott was a 'beast' and had a hateful

⁴⁸ Construction of the Volksliste involved a division of the population of the areas incorporated into the Reich into four categories (groups, divisions) depending in their level of commitment to the German nationalist movement. The first one covered persons of German nationality who took part in the national struggle, so called active Germans; the second one – persons of German nationality who could not demonstrate such activeness but preserved their national distinctness – so called passive Germans; the third one – Polonised persons of German origin, whose attitude towards the German nation was not negative, and persons of foreign origin who married a person of German nationality and were under the latter's influence; the fourth one – Polonised persons of German nationality with pro-Polish political commitment – so called renegades (Z. Izdebski, *Niemiecka Lista Narodowa na Górnym Śląsku*, Katowice–Wrocław 1946, pp. 51–58; Z. Boda-Kreżel, *Sprawa volkslisty na Górnym Śląsku*, Opole 1978, pp. 13–15; R. Rak, "Die deutsche Volksliste (1941) und ihre sittliche Beurteilung", *Oberschlesisches Jahrbuch* 1991, vol. 7, pp. 223–224; J. Grabiec, "Sprawa volkslisty na Górnym Śląsku po II wojnie światowej", *Prace Historyczno-Archivalne* 2000, vol. 9, p. 202; R. Koehl, "The Deutsche Volksliste in Poland 1939–1945", *Journal of Central European Affairs* 1956, vol. 15, no. 4, pp. 360–361; H.-J. Bömelburg, B. Musial, "Die deutsche Besatzungspolitik in Polen 1939–1945" [in:] W. Borodziej, K. Ziemię, ed. by, *Deutsch-polnische Beziehungen 1939–1945–1949. Eine Einführung*, Osnabrück 2000, pp. 65–67.

⁴⁹ AIPN Gd, 605/9/1, Protokół przesłuchania świadka dr. Norberta Sternfelda z 7 VII 1948 r. [Protocol from the questioning of witness Norbert Sternfeld of 7 July 1948], pp. 25–26.

⁵⁰ AIPN Gd, 605/9/1, Vernehmungsprotokoll des Zeugen Dr. Alfred Hülff vom 6. Oktober 1948 [Protocol from the questioning of witness Dr Alfred Hülff of 6 October 1948], pp. 40–41.

attitude towards Poles, manifest in his willingness to destroy every Pole.⁵¹ The file also contained a written statement by Hülff dated January 1949, in which the witness in extremely negative terms evaluated the methods of Abbott's exercise of his position. It mentioned the joy Abbott felt from participation in executions, his boasting about the number of heads he ordered to cut on a given day, his brutal destruction of human lives, his complete absence of objectivism and his hate towards Poles.⁵²

Abbott was interrogated as a suspect on 4 February 1949 in Gdańsk, and on the same date a warrant was issued for his temporary arrest.⁵³ He pleaded not guilty. His explanations enabled the making of new findings only to a small degree. He pointed out that his office was located in the court building, that since 1943 he dealt with economic offences and worked on the matters of suspects whose surnames started with the letters A to K. However, he denied that he had made higher penalty requests against Poles entered in the Volksliste third group category as compared to the second group, and that he considered such classification as an aggravating circumstance. He also denied that he had beaten prisoners or taken part in executions. He was only an ordinary member of the NSDAP, and belonged to the Hitlerjugend from 1942 to mid-1944. He withdrew from that organisation because they wanted him to leave the church. The party had never exerted pressure on him. He also claimed that he came to Gdańsk against his will and constantly applied for return to the Reich.⁵⁴

The file contained also testimonies that were positive for Abbott, for example, a notarised statement made by Władysława Gajewska, who was Abbott's housemaid in the period from April 1942 until the end of 1944. Although she was Polish, her employer treated her well. He was kind, shared food with her and gave her food stamps. According to Gajewska, at home Abbott presented himself as a person with an attitude adverse to the Nazi rule. He had his Hitler painting taken off the wall and would not receive any German guests.⁵⁵ At the request of the suspect's family, a statement was made by Anna Schleiner, who lived after the war in the town of Heiligenhafen, in Schleswig-Holstein. Together with her husband during the war she ran a big department store in Gdańsk. She said that in November 1944 she and her husband were arrested on charges of an economic offence. She believed that, in fact, the Nazi regime wished to liquidate their firm as the last large private enterprise in the city. In her opinion, this was also motivated by the pro-church attitude and anti-Nazi stance of her husband. Public prosecutor Abbott was assigned to the case, however, upon reading the evidence, he allegedly refused to assume that function since he could not reconcile acting as prosecutor in an unfair case with his sense of

⁵¹ AIPN Gd, 605/9/1, Protokół przesłuchania świadka Rudolfa Gamma z 3 III 1949 r. [Protocol from the questioning of witness Rudolf Gamm of 3 March 1949], pp. 74–77.

⁵² AIPN Gd, 605/9/1, Erklärung des Dr. Alfred Hülffs vom 5. Januar 1949 [Statement of Dr Alfred Hülff of 5 January 1949], pp. 78–79.

⁵³ AIPN Gd, 605/9/1, Postanowienie o tymczasowym aresztowaniu Josefa Abbotta z 4 II 1949 r. [Warrant of temporary arrest of Josef Abbott of 4 February 1949], p. 70.

⁵⁴ AIPN Gd, 605/9/1, Protokół przesłuchania podejrzanego Josefa Abbotta z 4 II 1949 r. [Protocol from the questioning of suspect Josef Abbott of 4 February 1949], pp. 63–69.

⁵⁵ AIPN Gd, 605/9/1, Oświadczenie Władysławy Gajewskiej z 11 I 1949 r. [Statement of Władysława Gajewska of 11 January 1949], pp. 89–91.

justice. According to Schleiner, because of his attitude, Abbott faced much trouble with his superiors. The witness referred also to the charges of abusing prisoners. It seemed unthinkable to her that prosecutor Abbott might commit “any injustices”, considering in particular his health condition.⁵⁶ The file contained also a certificate issued by the Public Prosecutor General in Koblenz, with regard to the penitentiary in Bydgoszcz. The letter indicates that the penitentiary had its own director and, as an independent unit, was not subordinate to the local chief prosecutor. Instead, the penitentiary was supervised by the Public Prosecutor General for Gdańsk. It was then confirmed that Abbott worked in the Bydgoszcz prosecutor’s office from 15 March to 15 April 1942 and, at that time, he did not deal with penal executive proceedings and did not supervise that institution since the penitentiary was subordinate to the Public Prosecutor General in Gdańsk. At the end of the letter, it was stated that Abbott cannot be made responsible for the conditions in the penitentiary institution in Bydgoszcz.⁵⁷

In November 1949, the investigation was heading to an end. Abbott was interrogated again and presented with the evidence gathered. Once again he pled not guilty. He did not request any supplementation of the investigation. He only made a request to question as a witness a criminal police officer named Sarnowski, who at that time resided in Gdańsk and with whom he had often met to discuss official matters, as well as his maid Gajewska. The investigation was closed by a decision dated 8 November 1949.⁵⁸

In mid-November 1949, the bill of indictment against Abbott was ready. He was accused that “in the period from 1 October 1941 to 1945 in Gdańsk, in providing support to the authorities of the German state, as a NSDAP member and a prosecutor at ‘Landgericht’, appointed to handle economic matters, and then as prosecutor at ‘Sondergericht,’ he acted to the detriment of persons belonging to the civilian population by physically and morally abusing the suspects against whom he conducted investigations in relation to anti-Nazi activities.”⁵⁹

Abbott’s act was qualified in the bill of indictment as an offence under Art. 2 of the Decree of the Polish National Liberation Committee (Polski Komitet Wyzwolenia Narodowego) of 31 August 1944 “on the punishment of fascist-Hitlerian criminals guilty of murder and mistreating the civilian population and prisoners of war, and of traitors to the Polish Nation” (hereinafter referred to as the August Decree)⁶⁰ in the version of the decree established by the Decree of 10 December 1946 amending the original August Decree.⁶¹

In post-war Poland, the August Decree was the basic normative act serving as the basis for resolutions dealing with the period of the German occupation. It provided for

⁵⁶ AIPN Gd, 605/9/1, Tłumaczenie z niemieckiego oświadczenia Anny Schleiner z 15 VII 1948 r. [Translation from German of Anna Schleiner’s statement of 15 July 1948], p. 92.

⁵⁷ AIPN Gd, 605/9/1, Bestätigung vom 27. April 1949 [Decision of 27 April 1949], p. 93.

⁵⁸ AIPN Gd, 605/9/1, Postanowienie o zamknięciu śledztwa z 8 XI 1949 r. [Decision on closing the investigation of 8 November 1949], p. 101.

⁵⁹ AIPN Gd, 605/9/1, Akt oskarżenia z 16 XI 1949 r. [Bill of indictment of 16 November 1949], p. 108.

⁶⁰ Dz.U. [Journal of Laws] of 1944, no. 4, item 16. Consolidated text: Dz.U. [Journal of Laws] of 1946, no 69, item 377.

⁶¹ Dz.U. [Journal of Laws] of 1946, no. 69, item 376.

the death penalty for murders, abuse and any forms of persecution of the civilian population or prisoners of war, including for denunciation to the occupation authorities, and the penalty of imprisonment for blackmailing to extort ransom for refraining to undertake denunciation to the German authorities.⁶²

To understand the provision of Art. 2 of the August Decree, invoked in the bill of indictment, it is necessary to discuss also the provision of Art. 1 since both rules are mutually interconnected. The final wording of the rule under Art. 1 of the August Decree was established in December 1946: “Whoever, providing support to the authorities of the German state or any state allied with the German state: 1) took part in committing murders of persons belonging to the civilian population or military personnel or prisoners of war, or 2) by identifying or detaining, acted to the detriment of persons wanted or persecuted by the authorities on political, ethnic, religious or racial grounds, shall be subject to the death penalty.”⁶³

The expression ‘took part in committing murders’ as used in the final wording of the provision, was interpreted widely in judicial practice. This covered both instigating and aiding, as well as participating in police summary courts.⁶⁴ In addition, the expression was to be understood as “not only such active behaviour of the perpetrator which directly causes the death of the murdered victims, that is behaviour strictly causally linked to the physical act of murder, but also such acts that, while not contributing directly to the murder, constitute certain assistance and support to the direct perpetrator.”⁶⁵

On the other hand, Art. 2 of the August Decree, in the version cited in the bill of indictment, provided for a penalty of imprisonment for no shorter than three years to life imprisonment or the death penalty to whoever, in providing support to the authorities of the German state or any state allied with the German state, acted otherwise or under circumstances other than provided in Art. 1 of the August Decree to the detriment of the Polish state, a Polish legal person, persons belonging to the civilian population or military personnel or prisoners of war. Art. 2 was the legal basis for holding liable, e.g. a German policeman conveying prisoners of war or an activist of the so-called ‘Goralenvolk’.⁶⁶

The justification of the bill of indictment was short and included three typescript pages. Prosecutor Stanisław Szpotowicz first presented Abbott’s career path through Grudziądz and Bydgoszcz to Gdańsk. He indicated that the defendant was perceived in Gdańsk as staunch Nazi supporter belonging to the NSDAP and the Hitlerjugend, which is why he was entrusted with increasingly responsible tasks – in the beginning in relation to eco-

⁶² A. Lityński, *Historia prawa Polski Ludowej*, Warsaw 2013, p. 115; *idem*, *O prawie i sądach początków Polski Ludowej*, Białystok 1999, pp. 63–64; P. Kładoczny, *Prawo jako narzędzie represji w Polsce Ludowej (1944–1956). Prawna analiza kategorii przestępstw przeciwko państwu*, Warsaw 2004, pp. 176–180; L. Kubicki, “Zbrodnie z okresu II wojny światowej w świetle prawa polskiego” [in:] ed. by I. Andrejew, L. Kubicki, J. Waszczyński, *System prawa karnego. O przestępstwach w szczególności*, Wrocław–Warszawa–Kraków–Gdańsk–Łódź 1985, vol. IV, part 1, pp. 153–157; L. Kubicki, *Zbrodnie wojenne w świetle prawa polskiego*, Warsaw 1963, pp. 37, 63–67.

⁶³ A. Pasek, *Przestępstwa okupacyjne w polskim prawie karnym z lat 1944–1956*, Wrocław 2002, pp. 73–74.

⁶⁴ A. Lityński, *O prawie i sądach...*, p. 64.

⁶⁵ Judgment of the Supreme Court of 13 July 1965, file reference IV KR 98/65, OSNKW 1965/11/133, LEX No. 121217.

⁶⁶ A. Lityński, *O prawie i sądach...*, p. 65.

conomic crime, and then in the prosecutor's office at the Sondergericht. In this capacity, he appeared before the senate of the Higher Regional Court in Gdańsk, which mostly handed down death sentences. The author of the bill of indictment then invoked the incriminating testimonies of witnesses: Hülff, Sternfeld, and the former director of the Regional Court in Danzig, Fritz Zaehle. Their contents were clear and pointed to Abbott's anti-Polish and hateful attitude, the beating of prisoners by Abbot, and the driving of a certain woman to commit suicide. The author of the bill of indictment asserted that Abbott was generally known as a sadist, as evidenced by his participation in the execution of death sentences, which was a source of his pride in contacts with his acquaintances. At the end of the bill of indictment, prosecutor Szpotowicz cited Abbott's explanations: that he pled not guilty, that the feeling of hate towards Poles was strange to him since he was born in the western territories of the Reich, that he was never involved in political matters, that he was delegated to Sondergericht against his will, that his attitude towards Poles was characterised by objectivism, for which reason an investigation was conducted against him by the Gestapo, and that he never hit prisoners. As a part of the evidence to be taken at the trial, the prosecutor requested the hearing of Gamm and reading of the interrogation reports of Sternfeld, Zaehl and Hülff.⁶⁷

At the beginning of December 1949, the defendant, who was detained in the Gdańsk prison, was served with a bill of indictment. Several days later, he was appointed a public defender, Józef Quirini from Gdańsk. The main trial at the Court of Appeals in Gdańsk (Sąd Apelacyjny w Gdańsku), with the following adjudicating panel: Waław Pieńczykowski as presiding judge and Władysław Szuszkiewicz and Aleks Jarzębowski as lay judges, took place on 19 December 1949, with the assistance of an interpreter. The defendant's attorney requested the interrogation of seven witnesses, including five advocates residing in West Germany and the above-mentioned police officer Sarnowski, as well as his housemaid Gajewska. Those witnesses were to state circumstances relating to the defendant's behaviour during his service as a prosecutor in Gdańsk. The addresses of advocates were unknown and they were to be indicated by the defendant's wife residing in Andernach, Rhineland. The prosecutor opposed this request, on one hand, because of the unknown addresses and, on the other, bearing in mind its potentially dubious relevance to the matter, which is why the prosecutor requested that the court make a decision in this regard at the end of the proceedings. The court concurred.

The bill of indictment was then read and interpreted into German. The defendant pled not guilty and began to give explanations in respect of his life history. Generally speaking, his testimony repeated previous findings in the investigation. It is worth mentioning that Abbott provided new circumstances regarding his relationship with Hülff. In 1943, their relations allegedly deteriorated because Abbott handled economic matters against Hülff's wife, and from that time on both men would not shake hands. He also added that in 1944 Hülff and Sternfeld did not perform their official duties at all and could not have any information about him. He also denied the charge of beating prisoners, and did not know anything about the woman who committed suicide. He swore that he had treated

⁶⁷ AIPN Gd, 605/9/1, Akt oskarżenia... [Bill of indictment...], pp. 109–111.

both Germans and Poles without discrimination and also did not discriminate between Poles according to the Volksliste category granted. He did not know on what grounds the witnesses testified that he was a sadist. He also denied having requested severe penalties. He testified at the trial that he received an order transferring him from Berlin to Grudziądz without his application or request. It must be emphasized that, in the request mentioned above to bring his family to Grudziądz, he highlighted that he had volunteered for work in the Eastern territories. Abbott then explained that, as a prosecutor before the court, he did indict political persons but indicted only in economic matters, e.g. the mayor of Gdynia, the head of the housing office. To the defence attorney's question of how many times he requested the death penalty, he replied that not a single time.

Then, the witness Gamm was heard. His testimony coincided, in large measure, with what he said during the investigation. In addition, he pointed to examples from Sondergericht's case-law demonstrating discrimination, in which a Pole arrested together with his wife for the black-market purchase of several kilograms of meat was sentenced to death, and the president of the Labour Court in Gdańsk (Arbeitsgericht in Danzig), by the name of Gabriel, whose mother-in-law had butchered a pig and a bullock, was sentenced to a one thousand-mark fine. Gamm emphasized that he had only second-hand knowledge about Abbott, i.e. from his friends' stories. He added that he knew Beuermann, who referred to Abbott as sadist, and since he had the same character, he chose similar people as his collaborators. When the interrogation was completed, the prosecutor requested the testimony of witness Leon Stencel from Gdańsk in respect of the defendant's behaviour as a prosecutor, as Stencel was at the same time an official in the Gdańsk prosecutor's office. In connection with this, the prosecutor requested adjourning the trial, to which the defence did not oppose. The court decided to adjourn the trial to 17 January 1950, to summon Stencel, Gajewska and Sarnowski as witnesses, and not to summon as witnesses the persons living in Germany.⁶⁸

At the same time, private letters came from Germany, sent to Gamm by Hülff, Sternfeld and Zaehle, in which the senders referred to the testimony given by Abbott at the trial. They strongly denied the assertions made by the defendant, e.g. that they were adversely disposed towards him, or that NSDAP had no impact on the system of justice. That correspondence was translated into Polish and placed in the file.⁶⁹

On 17 January 1950, the main trial was resumed. It began with the prosecutor's request to hear a new witness, Antoni Michniewski, who at that time was present in the court's building, and whose testimony was to shed light on the defendant's attitude towards Poles, since in 1944 he took part in a process in which the defendant represented the prosecutor's office. The defence attorney made no objection, however, he repeated his request to

⁶⁸ AIPN Gd, 605/9/1, Protokół rozprawy głównej z 19 grudnia 1949 r. [Minutes from the main trial of 19 December 1949], pp. 146–162.

⁶⁹ AIPN Gd, 605/9/1, Tłumaczenie listu Zaehle z dnia 28 XII 1949 r. do Rudolfa Gamma [Translation of the letter from Zaehle of 28 December 1949 to Rudolf Gamm], pp. 182–183; Tłumaczenie listu dr. Sternfelda z dnia 27 XII 1949 r. do Rudolfa Gamma [Translation of the letter from Dr Sternfeld of 27 December 1949 to Rudolf Gamm], pp. 186–187; Tłumaczenie listu dr. Hülffa z dnia 30 XII 1949 r. do Rudolfa Gamma [Translation of the letter from Dr Hülff of 30 December 1949 to Rudolf Gamm], pp. 188–189.

question witness Gajewska, who was not served with a summons since, according to the information received from the post office, she was not found at the indicated address. The court decided to allow as evidence the hearing of Michniewski, and to make a decision concerning the defence attorney's request at the end of the proceedings.

The continuation of the evidential proceedings focused on the questioning of witnesses Stencel, Sarnowski and Michniewski. Stencel testified that professionally he had nothing to do with Abbott, and from his friends he heard that Abbott was a very severe prosecutor. He also heard opinions about Abbott's sadism. Sarnowski indicated that there was an order to indict Poles through the Gestapo, but that Abbott did not refer such cases to the secret police but would rather indict himself. It was not known to Sarnowski that Abbott treated Polish suspects worse than Germans. He was unable to answer questions about procuring death sentences and the treatment of prisoners. However, he was of the opinion that Abbott had pursued his prosecutorial position conscientiously and objectively.

It can be concluded that the testimony of witness Michniewski was of key importance to the resolution of the case. He remembered Abbott vividly from a trial taking place on 22 December 1944 in Gdańsk. In that case, a total of 23 defendants were indicted, among them Michniewski and his son. Abbott answered in the affirmative to the question of the presiding judge if he recalled that case. He said that the defendants in those proceedings were Polish and German. Michniewski then testified that the charges related to the theft of sugar or, strictly speaking, its illegal sale out of a warehouse. He remembered that Abbott, as prosecutor, requested the death penalty for almost every one and prosecuted with incredible fierceness, insulting the defendants. Having compared the behaviour of the accused to the sacrifice of thousands of Germans in the fronts, he concluded that they must die out. The judgment in the case was announced on Christmas Eve. Five men were sentenced to death, including the witness's son, out of which three were executed and the sentence of the other two was changed. The witness was sentenced to one year of imprisonment although Abbott requested two years. In response to the court's question, the witness said that he learned about the press announcement on Abbott's process from his friends. He added that he was detained in the Gdańsk prison, where he talked to other prisoners, and all of them shivered at the thought of the lame prosecutor. He pointed out that when Abbott indicted, every prisoner prepared for death and that he heard that Abbott spoke badly about Poles, saying that they must be neutralised since they were the greatest parasites of the German nation. Abbott answered the presiding judge's question by saying that in that case he did not request the death penalty on his own initiative but was ordered to do so by the Ministry of Justice, which circumstance he had stated in his closing arguments. Having heard this, Michniewski said that Abbott was lying because he knew German and understood the request made by the prosecutor, and categorically stated that in his speech the defendant did not mention the Ministry. Then, the question popped up of permissions to visit prisoners, which Abbott refused to Polish families.

The defence attorney requested to question the witnesses as requested in the letter of 11 January 1950, i.e. the German residents. The prosecutor opposed this, pointing out that the defendant could make such request within seven days of being served the bill of indictment. The court rejected the request, on the grounds of the expiry of the deadline

provided for in the legal provisions. Then, a notarised statement of Gajewska was read and protocols from the questioning of witnesses Sternfeld, Zaehle and Hülff were entered into the evidence.

As a part of his closing arguments, the public prosecutor requested to sentence the defendant to ten years of prison, the defence attorney requested acquittal, and in case of conviction the lowest possible penalty, and the defendant requested to consider, in meting out the sentence, his poor health condition.⁷⁰

The judgment in the discussed case was announced on the same date. The Court of Appeals in Gdańsk found Josef Abbott guilty as charged with the proviso that he did not act to the detriment of persons belonging to the civilian population by physically abusing suspects, and sentenced him to seven years of prison, loss of public and civic rights for five years and forfeiture of all property. The period of temporary arrest from 27 February 1948 to 17 January 1950 was credited towards the imposed sentence.⁷¹

Three days later, the defendant's attorney announced that the judgment of 17 January 1950 would be appealed by revision, which under the criminal procedure gave rise to the need to prepare its justification. After more than three weeks, an eight-page justification was ready. In its contents, the court invoked, in the first place, the testimony of witnesses Sternfeld, Zaehle, Hülff and Gamm and found that the defendant, by his behaviour, gained the opinion of a sadist, that he sought to assist at the execution of death penalties and that he enjoyed such assistance, and that his attitude towards Poles was characterised by hate. An important source of findings was also the testimony of Michniewski, whose contents were discussed in the judgment's justification.

When establishing the defendant's guilt, the court concluded that although witnesses Sternfeld, Zaehle, Stencel and Hülff were employed in the Danzig system of justice during the period of German occupation and although they did not work in *Sondergericht*, they became interested in the activities of Abbott, who was distinguished from other prosecutors by his aggressive behaviour, and many times talked about Abbott among themselves. They could not point to any specific facts relating to the defendant's abuse of prisoners, however, they testified with indignation about his conduct, expressly evaluating his requests for penalties as barbarous, and their author as sadist. The court emphasized that such opinion was formed among persons of German nationality.

The court found that the defendant's explanation, that in his activities as prosecutor he had been driven only by legal provisions without transgressing the law, did not deserve to be believed. The court cited the opinion of witness Hülff, who considered the Abbott's pursuance of his office as open lawlessness and claimed that he aspired to destroy the people he prosecuted. Then the court, based on the testimony of Hülff and Michniewski, established Abbott's relationship to Poles, noting that Abbott spoke about them with hate and contempt.

⁷⁰ AIPN Gd, 605/9/1, Protokół rozprawy głównej z 17 I 1950 r. [Protocol from the main trial of 17 January 1950], pp.203–216.

⁷¹ AIPN Gd, 605/9/1, Sentencja wyroku w imieniu Rzeczypospolitej Polskiej z 17 I 1950 r. [Operative part of the judgment in the name of the Republic of Poland of 17 January 1950], pp.217–218.

The court reached a conclusion that the defendant's explanations, in the light of the evidential proceedings, proved even deceitful. Against his assertions that he never requested death penalties, it turned out that in the case of the illegal sugar trade he procured delivery of death penalties, which were then executed. The court did not believe the explanation that, at that time, the defendant had made the request upon instruction from the Ministry of Justice and that he invoked that instruction in his accusatory speech, which must have been heard by witness Michniewski. Based on the case of the illegal sugar trade, the court held that the request in such conditions of a death penalty was proof of particularly hostile activity towards the civilian population and the violation of standards proper to a prosecutor performing his duties. In addition, the statement made by Abbott in the accusatory speech in relation to Poles that 'they are filth that should die out' was assessed by the court as an activity aimed at the extermination of Poles.

In its conclusion, the court held that the defendant, as a prosecutor of *Landgericht* (i.e. regional court) and *Sondergericht* (i.e. special court) in the period from 1 October 1941 to 1945, acted to the detriment of the civilian population by providing support to the authorities of the German state, however, in the defendant's acts the court did not identify the physical abuse of suspects, which met the definition of the offence under Art. 2 of the Decree of the Polish National Liberation Committee of 31 August 1944 "on the punishment of fascist-Hitlerian criminals guilty of murder and mistreating the civilian population and prisoners of war, and of traitors to the Polish Nation". The penalty level was influenced by the fact that the act was committed during the period of occupation, that is under particularly difficult circumstances for the civilian population, and especially to Poles left at the mercy of the occupier, and that the defendant abused his position to oppress Poles. On the other hand, the court took into consideration the defendant's handicap and poor health condition, finding as adequate the penalty of seven years imprisonment.⁷²

The revision appeal announced by the defence attorney was received in the Court of Appeals in Gdańsk in the middle of February 1950. It has not been preserved in court files, however, it follows from the appellate court judgment that it contained pleas alleging the abuse of procedural law by refusing to hear witnesses – the German advocates; the abuse of substantive law by assuming that the characteristics of Abbott or his service as prosecutor can be a proof of an intention to commit an offence or the consent to the consequences of such offence (in particular, this referred to the attribution of the intention to exterminate Poles based on a fragment of the accusatory speech relating to Poles cited by witness Michniewski); the incorrect assessment of the facts (the incorrect assessment of witness Michniewski's testimony by assuming that the witness knew the German language well and understood Abbott's accusatory speech; the omission to consider the credibility of the testimony of witnesses Hülff, Sternfeld, Sarnowski and of Gajewska's statement; negligence of the fact of the discontinuation of the investigations against Abbott by the prosecutors of the Circuit Court in Bydgoszcz and Grudziądz), and the disproportion of punishment. The revision appeal was then sent, together with the case file, to the Supreme

⁷² AIPN Gd, 605/9/1, Wyrok w imieniu Rzeczypospolitej Polskiej z 17 I 1950 r. [Judgment in the name of the Republic of Poland of 17 January 1950], pp. 225–232.

Court in Warsaw. Abbot's defence attorney changed. That function was now performed by Jerzy Heryng from Warsaw. In June, he sent to the Supreme Court the testimony of two advocates and a German clerk, residents of West Germany, which were positive for the defendant. They concluded that, in performance of his obligations in Gdańsk, Abbott was characterised by objectivity and impartiality in relation to defendants.⁷³

The revision proceedings before the Supreme Court, with the following adjudicating panel: Kazimierz Bzowski as presiding judge, and Zygmunt Kapitaniak and Dr Stanisław Gronowski as attendant judges, took place on 16 June 1950. The judgment of the Court of Appeals in Gdańsk of 17 January 1950 was upheld. In the justification of the revision judgment, the Supreme Court referred, one by one, to the specific pleas. The Court held that the request for evidence of hearing witnesses from West Germany was submitted after the deadline and that the Court of Appeals in Gdańsk did not violate procedural law when rejecting the request. With regard to the second plea, it was noted that the intention of the defendant to co-participate in the extermination of Poles in Gdańsk was substantiated by the facts, especially his consequent penal policy consisting of disproportional repressions, and that the court adequately established the defendant's personality as active Nazi. Also the following appellate pleas were considered groundless: discontinuation of investigations against Abbott in Grudziądz and Bydgoszcz related to his short-term activities in those cities and had no bearing on the evaluation of specific facts from the period of his later work in Gdańsk; the allegation of poor knowledge of the German language by witness Michniewski was considered arbitrary, as it was not supported by the minutes from the trial. The Supreme Court partly agreed with the opinion expressed in the revision appeal that the testimony of witnesses Gamm, Hülff, Zaehle and Sternfeld were a consequence of a struggle between two political camps in Germany at that time, but concluded from the above that the defendant so brutally pursued the exterminatory Nazi program that he had to be opposed by German democrats. The omission of discussing in the judgment the testimony of witness Sarnowski and Gajewska's statement was not relevant to the assessment of the defendant's guilt since Sarnowski did not present Abbott's activities in 1944, which was the most crucial year for the case, and the statement referred to circumstances which did not relate to the charge imputed in the bill of indictment. In reference to the last plea – disproportional punishment – the Supreme Court held that where legal provisions allow to impose the death penalty or life imprisonment, a seven-year sentence cannot be considered disproportionately severe.⁷⁴

Abbott served the imposed sentence in the Gdańsk and Sztum prisons. In April 1951, the convict's wife, Marta Abbott, sent to the President of the Republic of Poland a request for pardon, i.e. remission of the rest of the sentence or suspension of its execution. In the justification, she pointed out that he had already served a part of the sentence, that his

⁷³ AIPN Gd, 605/9/1, Zarządzenie przewodniczącego I Wydziału Karnego Sądu Apelacyjnego w Gdańsku z 17 II 1950 r. [Order of the president of the I Criminal Division of the Court of Appeals in Gdańsk of 17 February 1950], pp. 242–243; Podanie adwokata Jerzego Herynga do Sądu Najwyższego w Warszawie z 16 VI 1950 r. [Request of advocate Jerzy Heryng to the Supreme Court in Warsaw of 16 June 1950], p. 251.

⁷⁴ AIPN Gd, 605/9/1, Wyrok w imieniu Rzeczypospolitej Polskiej z 16 VI 1950 r. [Judgment in the name of the Republic of Poland of 16 June 1950], pp. 255–259.

health condition was poor, that his mother was advanced in age and would like to see her son before her death, that Abbott had a ten-year-old daughter, who was waiting for him, and that the family had problems with subsistence and needed a provider.⁷⁵ The request was referred, in accordance with its jurisdiction, to Gdańsk, where the court left it without further processing because the convict had, up to that point, served only a short part of the sentence, and the request contained no reasons justifying the exercise of the right of pardon.⁷⁶

In late August 1953, a request for pardon was submitted by the convict, who justified it by the need to take care of his lonesome mother and the fact of having served a considerable part of his sentence. The opinion of the prison management on Abbott was negative. According to that opinion, Abbott as a disabled person was not hired in the prison, however, he did not exhibit a willingness to work. Although he had no disciplinary history, he was not particularly disciplined as prisoner, he fulfilled instructions unwillingly and sluggishly, considered his sentence unfair and showed no remorse. On that basis, the prison authorities once again left the request for pardon without further processing, and concluded that the convict did not deserve mercy.⁷⁷ Having served the sentence, Abbott went to the Federal Republic of Germany, where, like many other Nazi lawyers, he started working in the system of justice. He became a prosecutor in Koblenz⁷⁸, where in 1974 he was promoted to chief prosecutor. The West German prosecutor's office conducted several proceedings against him in connection with his activities in Gdańsk during World War II, but all of them were discontinued. Abbott retired in 1977 and died in 1982.⁷⁹

CONCLUSIONS

The discussed case of the Nazi prosecutor Josef Abbott is an example of enforcing criminal liability after the war in respect of a lawyer of the Third Reich. This case is all the more noteworthy in that it related to a prosecutor, and not a judge, whereas in the context of the concept of judicial crime – as noted by Witold Kulesza – the judge, as perpetrator, is in the foreground, and the prosecutor indicting in the case appears, as though, in the background of the judgment under which, in violation of the elementary principles of justice, an inhuman penalty is imposed on the defendant.⁸⁰

⁷⁵ AIPN Gd, 605/9/1, Gnadengesuch vom 4. April 1951 [Request for pardon of 4 April 1951], pp. 271–274.

⁷⁶ AIPN Gd, 605/9/1, Postanowienie Sądu Wojewódzkiego w Gdańsku z 24 VII 1951 r. [Decision of the Voivodeship Court in Gdańsk of 24 July 1951], pp. 278–279.

⁷⁷ AIPN Gd, 605/9/1, Prośba o łaskę z 28 VIII 1953 r. [Request for pardon of 28 August 1953], pp. 284–285; Opinia o więźniu karnym Józefie Abbott z 2 XI 1953 r. [Opinion on prison inmate Józef Abbott of 2 November 1953], p. 288; Postanowienie Sądu Wojewódzkiego w Gdańsku z 20 XI 1953 r. [Decision of the Voivodeship Court in Gdańsk of 20 November 1953], p. 290.

⁷⁸ W. Koppel, *Ungesühnte Nazijustiz. Hundert Urteile klagen ihre Richter an*, Karlsruhe 1960, p. 68; *Wir klagen an. 800 Nazi-Blutrichter-Stützen des Adenauer-Regimes*, Berlin 1959, p. 9.

⁷⁹ <https://www.mahnmal-koblenz.de/index.php/die-taeter/773-006-erster-staatsanwalt-josef-abbott-1913-1982>, accessed 2 May 2023.

⁸⁰ W. Kulesza, "Odpowiedzialność karna za zbrodnie sądowe prokuratorów III Rzeszy w Niemczech Zachodnich i Wschodnich", *Czasopismo Prawno-Historyczne* 2021, vol. LXXIII, nb. 1, p. 59.

However, Abbott's case is not a model case since in the judgment he was not attributed with the commission of a judicial crime. This case does not fit the three normative models, as specified by Kulesza, according to which the terms of liability of prosecutors of the Third Reich were regulated. Under the first model, the legal basis for the qualification was participation in crimes against humanity – and so in the Nuremberg lawyers' trial, under Law No. 10 of the Allied Control Council of 20 December 1945 on the punishment of persons guilty of war crimes, crimes against peace and against humanity, prosecutor Ernst Lautz was convicted. The second model, adopted in the Federal Republic of Germany, was based on committing the crime of prosecuting innocent people by the prosecutor (or evading the law in case of judges) and involved the need to prove direct intention. The third model, adopted in the German Democratic Republic, was based on the imputation to the prosecutor of being an accomplice in a murder committed by judges based upon the prosecutor's procedural request. This model was used in the case against Gerhard Pchalek mentioned at the beginning.

The act attributed to Abbott consisted in acting to the detriment of persons belonging to the civilian population as a part of pursuing his prosecutorial position, as he appeared before the Gdańsk regional and special courts, and the legal basis for the conviction was the August Decree, forming a universal basis for settlements with the period of German occupation in Poland. This was not a piece of legislation which would relate specifically to offences committed by judges or prosecutors.

One should emphasize the fairness and lawfulness of Abbott's process. Although it took place in the period of the post-war reconstruction of the Polish state, when the trauma relating to the tragedy of war was alive in society, it was held in an objective and emotionless manner. The evidential proceedings were at a high level, allowing to refute many deceitful defensive statements of the accused. The testimony of witness Michniewski must be found particularly important in this regard. Practically speaking, Michniewski was one of prosecutor Abbott's victims. Abbott's case proves that the extradition and indictment of a Third Reich prosecutor was possible in Poland. One cannot but deplore that the same did not happen to the second of the prominent lawyers in Gdańsk in the World War II period – Arno Beuermann. In his case an even more severe penalty could have been expected than the one imposed on Abbott.

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Convicted Nazi prosecutor: The 1950 case of Josef Abbott Before the Court of Appeals in Gdańsk

This article is devoted to a case study of the Nazi prosecutor Josef Abbott held criminally liable before a Polish court for his activities in the Polish territories occupied by Germany during World War II. In the introduction, the problem of the criminal liability of the Third Reich's lawyers is outlined, drawing attention to the different approaches used by the German Federal Republic and in the German Democratic Republic. This is followed by a look into Abbott's life story, and an outline of the Special Court in Gdańsk (before which Abbott was the prosecutor) and of that Court's president, who, despite the best efforts of Polish authorities, was not extradited. The most important element of this study is the discussion of the process against Abbott, which took place in the years 1949–1950. Special attention has been paid to the evidence gathered and its evaluation by the Polish court, as a result of which the defendant's line of defence was rejected. The value of the case is that, against the background of the few examples of legally valid convictions of Third Reich lawyers, this one is distinguished by the provisions applied as the legal basis for the conviction and, consequently, by the adopted model of such lawyers' liability.

KEYWORDS

lawyers, criminal liability, Third Reich, special courts, judicial crime

Skazany nazistowski prokurator. Sprawa Josefa Abbotta z 1950 r. przed Sądem Apelacyjnym w Gdańsku

Opracowanie poświęcono tzw. *case study* – przypadkowi pociągnięcia do odpowiedzialności karnej przed sądem polskim nazistowskiego prokuratora Josefa Abbotta za jego działalność na ziemiach polskich okupowanych przez Niemcy podczas II wojny światowej. We wstępie zarysowano zagadnienie odpowiedzialności karnej prawników III Rzeszy, zwracając uwagę na odmienne podejście w Republice Federalnej Niemiec i Niemieckiej Republice Demokratycznej. Następnie przybliżono sylwetkę Abbotta, przedstawiono zarys Sądu Specjalnego w Gdańsku (przed którym Abbott oskarżał) i jego przewodniczącego, który mimo starań strony polskiej nie został ekstradowany. Najistotniejszy element opracowania stanowi omówienie tytułowego procesu Abbotta, który miał miejsce w latach 1949–1950. Szczególną uwagę zwrócono na treść zgromadzonych dowodów i ich ocenę przez sąd polski, w efekcie czego linia obrony oskarżonego została obalona. Wartość tytułowego przypadku polega na tym, że wśród niewielu przypadków prawomocnego skazania prawników III Rzeszy wyróżnia się on ze względu na zastosowane przepisy, stanowiące podstawę prawną skazania, a co za tym idzie zastosowany model odpowiedzialności tych prawników.

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prawnicy, odpowiedzialność karna, III Rzesza, sądy specjalne, zbrodnie sądowa

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