

Prosecution of Crimes in the KL Auschwitz-Birkenau Extermination Camp

As early as in December 1939, the Government of the Republic of Poland in Exile announced in its special resolution to *use retaliation measures against Germany and, specifically, its leadership, for committing crimes on innocent Polish victims*. In August 1944, on the Polish territory occupied by the Soviet Army, the Polish Committee of National Liberation [Polski Komitet Wyzwolenia Narodowego] issued a decree on *punishment for Nazi criminals guilty of murdering and maltreating civil population, prisoners-of-war and for traitors of Polish Nation*. Art. 1 section 1 of the decree, which has been in force until now, stipulates that *persons supporting Germany or the Axis Powers who committed murders on civil population, military, and/or prisoners-of-war shall be subject to capital punishment* (at present – a life sentence). Other provisions of this decree mentioned criminal liability also for other forms of persecuting the population in the occupied territory of Poland, collaboration with occupation authority, including surrendering and/or assisting in capturing the persecuted and wanted to occupation authorities, and – pursuant to the London Charter of the International Military Tribunal in Nurnberg – purely for being a member of an organisation deemed criminal. The following organisations were declared criminal: the Nazi Party (NSDAP), secret police (GESTAPO), Protection Squadrons (SS) and security service (SD).

The Military Prosecutor's Office of the 1st Ukrainian Front was the first institution to initiate investigation of the crimes committed in KL Auschwitz-Birkenau in February 1945. The Commission for the Investigation of German-Nazi Crimes in Oświęcim started its activity in April 1945 and, from November 1945, it was incorporated into the structures of the Central Commission for the Investigation of German Crimes in Poland. This Commission secured the evidence which had not been transported outside the territory of Poland by the Soviet law enforcement institutions organised hearings and medical examinations of former prisoners, as well as inspections the camp area. With involvement of the Polish Military Mission operating at the authorities of the occupational zones in Germany, requests were made for the extradition of captured and identified perpetrators. As a result of the effort made of the Commission, more than 700 former members of KL Auschwitz personnel were brought to Polish courts. The perpetrators of the gravest crimes were tried by special criminal court formed for the purpose, i.e. the Supreme National Court. In April 1947, the former commander of the KL Auschwitz-Birkenau, Rudolf Höss, was sentenced to death. In December 1947, judgment was given in Krakow-based trial of members of the camp personnel. One

of 40 defendants in the trial, the former camp commander, Arthur Libehenschel was tried. He and 22 other accused were sentenced to death in the trial. Note that representatives of the international press were allowed in the courtroom. They reported that the lawsuit respected the dignity of the accused and their right of defence. Subsequent lawsuits against the former members of KL Auschwitz-Birkenau staff followed before regional courts, mainly in Krakow and Wadowice. However, the Justice was gradually facing increasing difficulties, also as a result of growing distrust between then-communist Poland and the authorities of the Allied powers. The latter became increasingly reluctant to pass on the perpetrators of the crimes to the Polish authorities. Additionally, for reason of missing evidence, understandable in the circumstances, charges for committing specific crimes could not be pressed against a number of persons, including mainly the former guards of the camp whom the former prisoners did not know. These persons were only sentenced to serve few years in prison just because of their SS membership and their service in KL Auschwitz-Birkenau.

Lawsuits on the crimes committed by the KL Auschwitz-Birkenau personnel ended by 1950. After 1956, a significant number of the convicted Nazi criminals was released, including those serving life sentences. At the time, the penal policy was affected by the Law on the Abolishment of Crimes of 27 April. In sharp contrast to the international conventions ratified by Poland, it stipulated that no proceedings should be instigated and any instigated proceedings should be discontinued also in cases subject to prosecution pursuant to the decree on sentence for Nazi criminals who committed murder and maltreated civil population and prisoners-of-war, as well as traitors of the Polish Nation. Provisions of art. 1 section 1 of the decree were excluded from the Act; however, accordingly, crimes such as membership of German criminal organisation (e.g. SS) or handing over persons to the German authorities (among other by blackmailers, or so called "shmaltsownicks") were abolished.

The Law adopted in 1964 postponed the time limitations in the cases of the murders committed by the Third Reich operatives and/or officers as well as those doing favours to the German authorities. However, Polish criminal law continued as non-compliant with the international standards on prosecution of war crimes. The new Penal Code of 1969 failed to cover any war crimes, crimes against peace or humanity on the grounds that they should fall under a special piece of legislation that the authorities intended to adopt. However, it did not happen by the time the People's Republic of Poland collapsed

Next legal actions on the broadly understood operation of KL Auschwitz-Birkenau were initiated in

the second half of the 1960s and at the beginning of the 1970s by the Main Commission for the Investigation of Nazi Crimes and the District Commission of Investigation of Nazi Crimes in Krakow. Three investigations focused on the crimes committed while the camp had been in operation, that is manslaughter of prisoners evacuated from the camp and forced to march in the so-called Death March, medical or pseudo-medical tests carried out on camp prisoners. None of those investigations ended with a decision on the substance of the case. In the second half of 1970s and, subsequently, in the 1980s, they were closed with decisions to suspend the proceeding, presenting more or less detailed grounds for the decision. Those legal actions did not lead to any preparation of any decision on presenting charges of crimes such as murders and mistreatment of camp prisoners and the prosecution did not formally request any extraditions. A good example of how such proceedings would end may be the case on Dr Josef Mengele's activity. No charges were presented against him for committing specific offences, but the prosecution also abandoned publishing an international arrest warrant and organising an international search. The rationale of the decision to suspend the investigation concluded only that the *prospects to bring Josef Mengele to Polish courts are remote*. In the years shortly before the collapse of the People's Republic of Poland, the Commission for the Investigation of Nazi Crimes in Poland – the Institute of National Remembrance did not continue the preliminary investigations on the issues in question, and the Commission focused on research and history. Nevertheless, note that the Commission had limited investigative powers in view of the then-binding laws.

The findings of the former Commission for the Investigation of Nazi Crimes were shared with law enforcement bodies in the so-called countries of people's democracy, Federal Republic of Germany and Austria. The provided evidence, including testimonies of witnesses contributed to initiating the Frankfurt Auschwitz trials in the Federal Republic of Germany in the 1960s and 1970s which led to trying and judging dozens of the former camp personnel.

In 2010 and 2011, the reformed Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation Branch Office in Kraków reopened the formerly suspended investigations. A pending investigation with the case file reference r No S 78.2011.Zn encompasses the whole range of issues related to the operation of KL Auschwitz-Birkenau. It is assumed that it should result in achieving a number of complimentary objectives. The main (judicial) objectives focus is on establishing the facts about:

- organisation of KL Auschwitz-Birkenau extermination camp and how it was operated in the context of the system of concentration and extermination camps in the Third Reich;

- › personal data on camp prisoners;
- › circumstances in which camp prisoners were killed;
- › the number of victims of the camp (as the total number of the imprisoned and murdered there);
- › the system of forced labour imposed on the prisoners;
- › individual prohibited acts committed against the prisoners;
- › medical and pseudo-medical tests carried out on the prisoners;
- › liquidation of the camp and crimes committed in relation to its evacuation;;
- › Third Reich servicemen in the camp;
- › findings from many closed criminal proceedings (in Poland and abroad) related to the crimes committed in connection with to the operation of the camp.

Findings of the investigation conducted in collaboration with other divisions of the Institute of National Remembrance will lead to achieving other objectives, specifically as follows:

- › archivisation - by creating a collection of documents in the Institute of National Remembrance on the operation of KL Auschwitz-Birkenau,
- › scientific objectives through publishing documents, analyses, papers and other studies (including translations) in various languages, describing the structures of resistance underground movement in KL Auschwitz-Birkenau and help that was coming to prisoners from the local community in the camp impact area and during the Death March,
- › educational objectives through organisation of exhibitions, publication of books intended for popularising the history of the camp, setting up an easily accessible audio-visual collection (of SS operatives, films, notations, demonstrative materials) with reference to the history of the KL Auschwitz-Birkenau extermination camp.

During the investigation, an intensive collaboration was initiated with the State Museum and Memorial KL Auschwitz-Birkenau and other Polish and foreign institutions documenting and investigating Nazi crimes and, in particular, with Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung nationalsozialistischer Verbrechen Ludwigsburg. On request of German prosecution, the Institute secured documents for the purpose of pending preliminary judicial proceedings against the former camp personnel. Some of these investigations led to filing indictments against the personnel

with criminal courts.

The data obtained from the State Museum and Memorial of the KL Auschwitz-Birkenau allowed to hear more than 100 witnesses from among the former prisoners of the camp who are alive. Their testimonies supplement the previously collected evidence which contains 2,805 unique witness interview reports, reports on the inspections of the camp area and the Death March route, experts' opinions, also including opinions prepared by foreign experts, accounts, notes, press articles, photographs, copies of court rulings and decisions, copies of camp records, etc. Several exhibits of new trace evidence for the potential initiation of legal actions were revealed and they were specifically obtained from the testimony of a witness who had been a courier from the resistance movement who, in the name of the Polish Home Army and had been editing information received from camp prisoners about the number of camp victims.

Actions taken to establish the exact location of ash pits containing the remnants of murdered prisoners form an important investigative trace towards achieving the judicial objectives as well as to managing historical research and preserving other records. These locations are partially documented, however it is very likely that some may have not been properly marked and protected. A geological expertise was sought and obtained, indicating potential locations of the ash pits.

Acquisition of documents, including some archive documents from external sources should be continued. While, in case of Polish institutions and units, these activities have been essentially completed, they demand a considerable effort and funding with regard to foreign entities. Acquisition of documents from such sources requires some preliminary searches to be conducted in foreign archives.

Currently, the Institute is striving to establish whether any former KL Auschwitz-Birkenau operatives are still alive. If they are, it would still be possible to prosecute them. However, irrespective of the above, prosecutors will issue a decision closing the criminal proceedings in the case on the basis of the evidence collected in the investigation proceedings.

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Dokumentacja (pl)

Dokumentation (de)

Documentation (en)

Załoga SS KL Auschwitz / SS KL Auschwitz Garrison / SS-Mannschaft KL Auschwitz

Galeria zdjęć
