

Misc. No. 116.
9th December, 1947.

UNITED NATIONS WAR CRIMES COMMISSION.

PROVISIONS REGARDING CRIMES AGAINST HUMANITY.

IN THE UNITED STATES ZONE OF CONTROL IN GERMANY.

The text of Ordinance No. 47 enacted for the British Zone of Control in Germany by which the German Ordinary Courts were authorized to exercise jurisdiction in cases of crimes against humanity committed by persons of German nationality against other persons of German nationality or Stateless persons has been circulated in Doc. Misc. No. 56.

The jurisdiction of the German courts in the United States Zone over the same offences has been the subject matter of a letter from Office of Military Government for Germany (U.S.) dated 23rd August 1947 to Office of Military Government for Württemberg-Baden.

The Secretariat is obliged to the Office of Military Government for Bavaria, Legal Division, for placing at its disposal the letter from this office dated 15th September 1947, to the Minister President of Bavaria which contains a quotation of the relevant parts of the letter of the Office of Military Government for Germany (U.S.), quoted above.

The letter of the Legal Division in Munich is being circulated for the information of the Commission.

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OFFICE OF MILITARY GOVERNMENT FOR BAVARIA
MUNICH, GERMANY APO 407 US ARMY

JS/AAB/lm

AG 014.1-MGELGC

15 September 1947.

SUBJECT: Trial of German Courts of Crimes against Humanity.

TO : Minister President of Bavaria
7, Prinzregentenstrasse, Munich,
(Attention: Minister of Justice).

1. It has been observed that considerable doubts exist in the minds of German authorities as to the jurisdiction of German courts in cases of crimes against humanity.

2. The following is a quotation of the pertinent parts of a letter from Office of Military Government for Germany (U.S.), dated 25 August 1947 to Office of Military Government for Württemberg-Baden, which reflects Military Government policy in this connection, and which has been authorized to be communicated to you for your information and guidance:

" 2. It appears that in all cases referred to the alleged crimes are offences against German law committed by Germans against German victims. Consequently the German courts have jurisdiction in these cases in accordance with letter HQ, USFET, dated 12 January 1946, AG 014.1 GEO-AGO, subject: Amendment to Directive "Administration of Military Government in the U.S. Zone in Germany, 7 July 1945", which provides that German courts will "perform the duty of bringing to justice

Germans or other non-United Nations nationals, other than major war criminals, accused of crimes against humanity, where such crimes are offences against the local law and where the victims of the crimes are of German or other non-United Nations nationality".

3. To enable the German courts to perform that duty effectively, the Land Government of Wuertemberg-Baden has on 31 May 1946 enacted Law No.28 for "the prosecution of national socialist crimes" which in substance restates the provisions of Art.II, Sections 1(c), 4 and 5 of Control Council Law No.10. Identical laws were enacted by Bavaria⁽¹⁾ and Hesse and later by Bremen. The enactment of these laws was necessitated by the fact that the German courts were prevented at that time to apply Control Council Law No.10 in view of the provisions of Article VI, Section 10(d) of Military Government Law No.2 which prohibited the German courts to try cases involving the construction of an enactment of Military Government. This prohibition has been removed by Amendment No.2 to Military Government Law No.2, effective 15 October 1946, and from this date the German courts are empowered to apply the provisions of Control Council Law No.10 in all cases which have been properly brought before them, i.e. where the alleged crime against humanity is likewise an offence against German law and was committed by a German or non- United Nations national against Germans or persons of non-United Nations nationality.

4. It results from the above that where no United Nations nationals are involved a specific authorisation to German courts is necessary only in cases where an alleged crime against humanity is not likewise an offence against German law, for example in certain cases of persecutions or denunciations. However, since it is the present policy of Military Government to let the denazification tribunals deal with those types of offences, no authorisation to the German Ordinary Courts should be given in such cases without prior notification and consent of this office. "

FOR THE DIRECTOR:

JUAN SEDILLO
US Civilian
Chief Legal Officer. "

(1) The text of the "Law concerning the Punishment of National-Socialist Crimes" enacted by the Land Government of Bavaria on 1st May 1946, has been circulated in Document Series No.50.