



## Regional Court of Lüneburg<sup>1</sup>

### In the Name of the People Judgment

27 Ks 1191 Js 98402/13 (9/14)

In the criminal matter

v.

Oskar **Gröning**,  
born on June 10, 1921 in Nienburg  
residing at Stutenstraat 23, 29640 Schneverdingen,  
widowed

for aiding and abetting murder

Department 4 of the Trial Court Division of the Regional Court of Lüneburg, Section for  
Capital Crimes did on July 15, 2015 **find** in a public trial, in which

Regional Court Judge Kompisch,  
sitting as presiding court judge

Regional Court Judge Subatzus,  
Regional Court Judge Kramer-Natho,  
sitting as puisne judges

Mr. Volkmar Ruland,  
Ms. Christa Stock,  
sitting as lay assessors

Dr. Lehmann, District Attorney  
Dr. Preusse, District Attorney  
representing the Office of the District Attorney

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<sup>1</sup> Translator's note: Landgericht Lüneburg

Hans Holtermann, Esq.  
as defense counsel

Ms. Frangenberg, Esq.  
as defense counsel

Thomas Walther, Esq.  
Prof. Dr. Nestler  
Mr. Mayer, Esq.  
Mr. Feld, Esq.  
Mr. Ebert, Esq.  
Mr. Rothmann, Esq.  
Mr. Schulz, Esq.  
Mr. Schlicht, Esq.  
Dr. Lode, Esq.  
Dr. Bessler, Esq.  
Mr. Goldbach, Esq.  
Mr. Freiherr von Münchhausen, Esq.  
Mr. Özata, Esq.  
Dr. Daimagüler, Esq.  
as legal counsel for the Injured Party Plaintiffs<sup>2</sup>

Ms. Brinkmann, Judicial Clerk  
serving as court clerk

did participate, that

the Defendant is guilty of aiding and abetting murder in three hundred thousand legally concurrent cases.

He is sentenced to a term of imprisonment of

**4 years.**

The Defendant shall bear the costs of the proceedings and the Injured Party Plaintiffs' necessary expenses.

**Applicable statutes: Sections 211, 27, 38(2), 49(1), and 52 of the German Criminal Code (StGB).**

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<sup>2</sup> Translator's note: Injured party plaintiff - (Nebenkläger) – In the German criminal justice system this is part of the "Nebenklage" or collateral prosecution by non-state participants. This kind of procedure does not exist in most Anglo-American countries. According to German criminal procedure certain individuals who have standing may join the indictment once this has been filed by the district attorney's office. Victims who have suffered capital crimes perpetrated against them as well as enumerated non-capital crimes have standing to bring a collateral prosecution. This also applies to the relatives of individuals who have been unlawfully killed. Criminal cases are cases brought by the state against the individual just as in Anglo-American countries and state prosecution offices still control the prosecution of the case, however, collateral prosecution gives injured party plaintiffs additional procedural rights like the right to present evidence and apply for legal aid as well as limited rights of appeal and in the event of a guilty verdict the reimbursement of reasonable expenses associated with the criminal case. This procedure serves to give the injured parties some quantum of satisfaction with respect to prosecution and works as an additional control for state prosecutorial offices. Sometimes the term "co-plaintiff" is used as a translation for Nebenkläger, this is inappropriate as this is a term of art used for civil cases particularly in Canada and the US.

Grounds:

I.

The Defendant, who was twenty-two years old at the time the crimes were committed, was born in Nienburg on the Weser. There he and his brother Gerhard grew up with his parents. His father was the owner of a retail shop, his mother a housewife. She died when the Defendant was four years old. The father of the Defendant was a member of the organization "Stahlhelm" ("Steel Helmet"), which thought of itself as a federation of former soldiers on the front in World War I loyal to the Kaiser. The Defendant himself was initially a member of their youth organization "Scharnhorstbund" ("Scharnhorst Federation") which, following the so-called "Machtergreifung" ("seizure of power") by the National Socialists in 1933, evolved into their youth organization "Hitler Youth". Following the completion of his secondary education he underwent a training program as a bank clerk with the Kreissparkasse (regional savings and loan bank) of Nienburg. He was – like his brother, who was a full-time leader with the Hitler Youth – an avid National Socialist ("At that time I cheered for everything there was to cheer for.")

The Defendant is a retiree, a widower and the father of two sons aged 65 and 70. He has never been punished for an offense.

II.

1.

After the "seizure of power" the National Socialists began to systematically persecute political opponents and other so-called "enemies of the state" or "enemies of the people" (among others, "bible students", "gypsies", "antisocial elements", prostitutes and homosexuals). The widespread arrest of alleged "enemies of the people" soon led to overfilling of state detention facilities, whereupon the NS authorities created so-called "concentration camps" (German: "Konzentrationslager", standard abbreviation at that time "K.L."), the management of which was transferred to the so-called "Guard Squadron" ("Schutzstaffel", hereafter "SS"). The SS originally served as the bodyguard for the "Führer"

("leader") Adolf Hitler, but over time was expanded and reconfigured into a paramilitary unit under the command of the "Reichsführers-SS" ("Director of the Reich Protection Squadron") Heinrich Himmler, which initially took on extensive police powers and after the beginning of the Second World War also sent combat troops (so-called "field units") to the front. Members of the SS considered themselves the National Socialist elite, who were to fight the enemy - whether it was an enemy based on political, racial, military or other considerations - with merciless relentlessness, and to personally demonstrate great willingness for sacrifice. Mottoes such as "My honor is called loyalty" and "Give death and accept death" represented this attitude.

## 2.

In the view of the Defendant, the SS was an "elite caste", a "snappy troop" which "always came home covered with glory". He was enthusiastic about German military successes in Poland ("Beat the Polacks in 18 days!") and France. In order to become part of what he considered the glorious SS, he reported to the SS as a volunteer in 1940. Because he had no intention of "accepting death" in the sense of the SS ideology, i.e. risking his life at the front, he declared at his physical examination that he wished to be a "paymaster". After his basic training he was - in keeping with his wishes - installed in the SS salaries offices in Ellwangen and Dachau, and given further training.

## 3.

During the war numerous concentration camps were established on German-occupied territories, including Poland, in which those considered "enemies of the state" and prisoners of war were incarcerated and delivered up to the whims of the SS. For the establishment of the concentration camp Auschwitz, a complex of former barracks buildings in a suburb of Auschwitz (Polish name: Oświęcim) was used, which was near the Kattowitz-Auschwitz-Krakau train line. The camp created on the former barracks property was called the "Stammlager" ("main camp") and also "Auschwitz I". The "main camp" consisted of the so-

called "Schutzhaftlager" ("Protective Custody Camp"), which was surrounded with barbed wire, strongly electrified at night, and of administrative buildings in which among other things the so-called "Prisoner Property Administration" ("Häftlingseigentumsverwaltung", HEV) and – a department of it – the "Prisoner Money Administration" ("Häftlingsgeldverwaltung", HGV) were located. Because the "main camp" quickly proved to be too small, planning began at the beginning of March 1941 for the construction of an additional, much larger camp in the nearby (about 3 kilometers from Camp Auschwitz) village of Birkenau. Construction of Camp Birkenau (or "Auschwitz II") began in October 1941.

4.

At some point in 1941 or, at the latest, early 1942 the National Socialist ruling powers (among others Adolf Hitler, Hermann Göring and Heinrich Himmler) decided upon the so-called "Final Solution to the Jewish Question", whereby the systematic killing of European Jewry within the German sphere of influence was meant. Under the chairmanship of the SS Obergruppenführer and Director of the Reichssicherheitshauptamt ("Main Office for Imperial Security") Reinhard Heydrich, the so-called Wannsee conference took place, in which high SS officers, State Secretaries and Ministry Directors participated, and at which in particular responsibilities and procedures of the planned mass killing were discussed. The protocol was conducted by SS Obersturmbannführer Adolf Eichmann, director of the so-called "Judenreferat" ("Jewish Department") in the Main Office for Imperial Security, later in charge of the execution of the "Final Solution". Under the code name "Operation Reinhard", named after Reinhard Heydrich, the deportation of Jews from occupied Poland and Ukraine began during the first half of 1942. These persons would, without exception, be killed, although some would first be exploited for a time as slaves at forced labor in agriculture, road construction, mining, industry and arms factories. This process was labeled "elimination through work", as the working- and living conditions (calorie intake, hygiene, medical care, clothing etc.) were deliberately planned such that the slave laborers died after a few weeks

or months from exhaustion or disease. Those not chosen for "elimination through work" were to be killed immediately. Because the mass shootings of Jews carried out up to that point appeared to be too cumbersome, ineffective and too burdensome for the troops, the SS instituted in Poland a number of extermination camps in which Jewish persons were killed in great numbers in gas chambers with carbon monoxide or exhaust gases from combustion motors. Among the initial extermination camps were Belzec, Treblinka and Sobibor. The existence of these extermination camps was kept a strictly-guarded secret by the SS, and persons active on location for the SS were sworn to absolute secrecy. The strict secrecy served primarily to keep those scheduled for elimination unaware of the fate that awaited them. Their guilelessness was, both in the view of those responsible for "Operation Reinhard" and seen objectively, crucial to the fast, smooth and efficient progression of the process, because only in this manner could it be ensured that they would not resist deportation or flee. In order to maintain this artlessness, rumors were deliberately spread to the effect that people were being resettled or deployed in agricultural operations.

5.

a.

Shortly after it began, the Defendant became part of "Operation Reinhard". Effective September 25th, 1942 he was transferred from his duties as an "SS-Sturmmann" at the "SS Main Office for Economic Administration" at Dachau to the "K.L. Administration Auschwitz for Operation Reinhard". There he was informed by a superior, in essence, that the assignments awaiting him were "not pleasant or glorious, but absolutely necessary to prevent the demise of the German people". Up to this point the Defendant had never heard the name "Auschwitz" and had no idea what was going on there – namely that, around the end of 1942 and the beginning of 1943, within the framework of "Operation Reinhard" the process of refitting Birkenau ("Auschwitz II") as an extermination camp was being completed. After provisional gas chambers were initially built in two former farmhouses, the construction of four large gas chambers was begun in 1942, to which crematoriums for the burning of the corpses were added. These were put into operation during 1943. When all

4

gas chambers and crematoriums were operating, 5,000 persons could be killed and cremated each day. Jews who were designated for extermination were transported by rail to Auschwitz in cattle cars. These journeys were extraordinarily grueling for the deported individuals. 80 or more persons were jammed into a single cattle car, so that they were forced to spend the entire journey, sometimes lasting for a number of days and nights, standing. There were neither sufficient drinking water nor toilets in the cattle cars, nor were the cars insulated against winter cold and summer heat. Many elderly and sick persons died underway in the cattle cars and their corpses remained in the cars until the arrival at Auschwitz. In order to unload the trains, a track was laid parallel to the Kattowitz-Auschwitz-Krakau line and was equipped with a wooden ramp at the end. The train cars ended their journey at this ramp. After the doors of the cattle cars were torn open by SS men, the thoroughly exhausted and demoralized deportees were driven out of them with loud shouts of "Out! Out! Fast! Fast!" On the ramp stood armed SS members, sometimes with guard dogs which behaved aggressively and barked loudly. When a transport train arrived at night at Auschwitz, the newly-arrived prisoners were blinded with bright spotlights. This entire scenario served – in case, contrary to expectations, any deportees were not so guileless after all – to crush any thoughts of resistance or escape, and in this manner to ensure a quick and smooth unloading of the train. To make the absconding of any individual person practically impossible, the SS men formed a so-called "postenkette" (cordon) around the ramp. The deportees were instructed to leave their luggage on the ramp. They were told, falsely, that the luggage would be brought to them later. This lie served to maintain ignorance of the true circumstances on the part of the deportees, who were meant to believe, in spite of the conditions in the transport trains and the situation on the ramp, that they would be put to work somewhere and given their possessions once again. So that the deportees would have no time to think and react, they were then separated by sex in great haste, made to line up in rows, and sent before an SS-camp-doctor – such as, for example, the well-known Dr. Mengele, feared in the camp – who carried out the so-called "selection" and, based on outward appearance and a short series of questions (in particular regarding

age and profession) decided who was "fit to work" and who was "not fit to work". Those considered fit were sent into the camp and later put to forced labor, some in Auschwitz but some in other concentration camps as well. All other persons – on average, some 80 to 90 percent of those from each transport train – were led directly to the gas chambers where they were falsely told that they were going to take showers. Immediately adjacent to the gas chambers was a room furnished as a (clothes) changing room. The deportees were told to undress completely. They were also told, once again in order to maintain their ignorance of the truth as long as possible, that they should take exact note of the place where they had left their clothes, so that they could find them again after the shower. Finally they were driven into the gas chambers. When all persons were inside, the doors were locked from the outside and the pesticide "Zyklon-B" (hydrogen cyanide or prussic acid) was thrown into the gas chamber through an opening in the ceiling. From the point at which it was thrown in, a highly poisonous gas spread, which was absorbed by the people through their skin and above all via the respiratory system, and led to a blockage of oxygen intake in the body cells. This "toxic cell suffocation" initially produced in the victims headaches, nausea, stabbing- and pressure sensations in the chest, abrasive irritation of the mucous membranes, dizziness, tinnitus and fear, followed quickly by strong cramps and difficulty in breathing, and finally unconsciousness and death. Because the poisonous gas was lighter than air and only spread throughout the gas chamber gradually over a certain time, the symptoms first appeared in taller persons near the location where the poison had been thrown in, while shorter persons and those farther from that location initially showed no, or only mild, symptoms but were forced to watch the death struggles of their fellow victims and hear their cries, recognizing that they were about to suffer the same fate themselves. In this manner a general fear of impending death quickly spread, they began to panic, to scream and to vainly attempt to protect themselves from the gas. In particular, mothers and children clung to one another so tightly that in some cases their corpses had to be violently forced apart. Not until 20 or 30 minutes had passed did the last cries subside and the last persons die. The gas chamber was subsequently opened and ventilated, and so-called "functionary

5

prisoners" had to pull the corpses from the gas chamber and get them to the cremation ovens in the crematoriums. Before the corpses were burned, any gold teeth were broken out to be used by the SS. Because the capacity of the crematoriums was at times insufficient to burn all of the accumulated corpses, additional cremation ditches were installed. Above these, the corpses were burned on lattices made from railway ties joined together. The deportees' luggage was loaded onto trucks by other functionary prisoners, the so-called "Canada work detail", in some cases during the "selection" but in any case before the arrival of the next transport train, and then taken to the "effects storage area" ("Canada Storeroom" in the camp jargon). In the "Canada Storeroom" it was opened by the functionary prisoners, searched for valuables (gold, jewelry etc.) and sorted by content, then stored in large barracks for further transport to Germany (e.g., to the SS clothing facility at Oranienburg). Money and valuables were brought to the "Prisoner Property Administration" ("Häftlingseigentumsverwaltung", HEV).

On the very day of his arrival at Auschwitz the Defendant learned in a general way about this process. Other SS members explained to him, in so many words: "Jews and others are incarcerated here, they have to work and those that cannot work are disposed of, that means gassed and then burned." The Defendant, who was "philosophically committed" in the National Socialist sense, came to terms with this. The "disposal", that is, the killing of people was, as he knew, forbidden: but it was in his view nonetheless necessary, as according to his conviction at that time it was being done to "enemies of the German people". His settling-in process at the Auschwitz Concentration Camp was made easier by the fact that the food supply for the SS members there was extraordinarily lavish. On the first evening there were bacon, sardines and "vodka, vodka, vodka" on the table, all things which the Defendant "had not seen for months". These things had come from the plundered luggage of the deportees, which did not disturb the Defendant, because those persons "no longer needed them".

**b.**

The next day the Defendant was assigned to a position in the "Prisoner Property Administration" ("Häftlingseigentumsverwaltung", HEV) of the concentration camp, specifically to one of its departments, the "Prisoner Money Administration" ("Häftlingsgeldverwaltung", HGV). This was located in the "Main Camp" ("Auschwitz I"). There the Defendant had various responsibilities.

**aa.**

As a member of the HGV he had to carry out "ramp duty" according to the service plan. During "ramp duty", which he carried out in uniform and armed with a pistol, his primary assignment was to guard luggage placed on the ramp during the unloading of the trains arriving at Auschwitz, and to prevent any theft. Because of the great number of deportees who had brought all valuables (not previously taken from them) with them to Auschwitz, theft by both SS members and "functionary prisoners" doing forced labor there was not unusual. In fact theft by SS members – although strictly prohibited – was not generally prosecuted or punished, because they were tacitly acknowledged to have a claim to part of the "booty", in order to maintain the morale of the troops. Only when corruption threatened to become endemic, and the camp leadership felt its authority to be in question, were measures against this practice taken. On the ramp, however, it was intended that under no circumstances should the luggage, before the deportees' eyes, be opened, searched, and plundered, in order to prevent any threat to that lack of awareness which was necessary for the continuation of the "selection" and the gassing process, and to avoid any unrest. Expressed in the words of the Defendant, it was all about preventing anything "which could lead to panic and open their eyes, everything was supposed to proceed as quietly as possible." In view of this goal he – armed and in uniform – was simultaneously part of the threatening surroundings intended to nip any thoughts of resistance or escape in the bud. While the guarding of the deportees was primarily the purview of the members of the so-called "Guard Team" ("SS-Totenkopf-Sturmabteilung", or "SS Skull and Crossbones Storm

6

Troop”), these persons were, as the Defendant knew, indistinguishable from the SS men of the HGV to the arriving deportees; the only difference was that the Guard Team was armed with rifles rather than pistols, a detail which was only noticed by those who knew their way around Auschwitz quite well. Throughout his time performing “ramp duty” the Defendant knowingly and willingly helped to maintain the unawareness of the deportees by guarding their luggage, and simultaneously - through his armed presence in uniform on the ramp - prevented any resistance or thoughts of escape from developing, thus enabling the quick and smooth execution of the actual killing process in the gas chambers.

**bb.**

In addition to the “ramp duty” his assignment was to sort the money taken from the persons incarcerated in Auschwitz according to currency, to enter it upon the books and to keep it in safe custody. This applied both to the money of prisoners who had been brought there for political or other reasons and who, in case of an - at least theoretically possible - release, would get it back; and it applied also to money which had been taken from Jews deported to be exterminated, or money found when searching their luggage in the “Canada Storeroom” which now - at least in the view of the Defendant - “belonged to the state”. The latter funds were delivered to the Defendant in a wooden box secured with a padlock. The Defendant was charged with sorting the contents of this box, recording them, and storing them in a safe for protection. At irregular intervals the money, together with other valuables from the possessions of the deportees, was taken to Berlin in trucks, and there delivered either to the “SS Main Office of Economic Administration” or directly to the Reichsbank. The Defendant accompanied these transports and was responsible for the money until its ultimate transfer. The money was booked to an SS account under an alias (“Max Heiliger”, or “Max Holy”) at the Reichsbank. In return, the SS received credit from so-called “Reinhard Funds” which it used for the establishment and expansion of its own economic enterprises. The Defendant was aware that he was supporting the SS and the death machinery it operated at Auschwitz by making available to it the money he administered.

cc.

Within a few weeks the Defendant learned, partly from discussions with other SS members, but primarily from his own observations, ever more details about the processes and the extent of the massive killing of persons. He carried out a number of "ramp duty" shifts, saw the mountains of luggage which lay on the ramp, and counted money in various currencies. He took part in the search for escapees, heard the people in the gas chambers scream, saw the smoke rise from the crematorium smokestacks by day and the flames from the crematory ditches by night. He saw how an SS guard took a baby left behind on the ramp by the feet and struck it dead against a truck. Although he continued to be of the conviction that the "disposal" of Jews "not fit to work" was necessary ("I considered the killing o.k. in principle!"), he went to his superior about what he saw as the needlessly brutal killing of the baby. The superior expressed his understanding for this view, but pointed out to him that he – the Defendant – was required to do his duty as an SS member. The Defendant then left it at that; although the thought occurred to him that he was "sitting in the wrong boat", he gave in to, as he put it, "the comfort of obedience" because he knew that his only chance to leave Auschwitz was to be transferred to the fighting SS units ("field units") on the front. Because he was considered "fit for military action" ("kriegsverwendungsfähig", "k.v.") and "available", this would have been possible for him without any complication, and without the need to fear any harm to his position. But this was not an option he considered seriously ("I was afraid of the front, I was not a stupid fourteen-year-old anymore!"). At the latest, upon learning at the end of 1942 that his brother Gerhard had been killed near Stalingrad, he no longer considered a voluntary move to the front, partly since he became engaged shortly thereafter to the woman who had previously been engaged to his brother. The Defendant now saw it as his duty to join her in "continuing the bloodline" in his brother's place, which he considered to preclude duty at the front. In his "Engagement and Marriage Proposal" which he directed to the "SS Main Office for Race and Settlement" on November 12th, 1943 he requested a priority processing of his application and justified this as follows:

7

"I am the last son, since my brother fell at Stalingrad on November 22nd, 1942. Since I am k.v. (fit for combat) and must expect a transfer to a field unit soon, I request a priority processing of my application and approval of my marriage permit by December 10th, 1943."

The Defendant received the requested approval, married, and came to terms with the situation at Auschwitz. He passed the time after office hours with athletics, and was glad that as a member of the Prisoner Money Administration he "had no direct involvement with these murders", though it was clear to him that through his activities he contributed to "the functioning of Camp Auschwitz" and that for the sake of his own security he tacitly accepted this fact.

6.

a.

In early March of 1944 the SS began to prepare the so-called "Operation Hungary", which referred to the extermination of Jews living in Hungary on the pattern of "Operation Reinhard". For this purpose a group of SS men called the "Eichmann Commando", who had been previously briefed at the KZ Mauthausen for this mission, traveled on March 10th, 1944 to Hungary, which at this point was still allied with the German Reich. Since the 1920s there had already been a number of laws by which Jews were ostracized from society and through which access to universities, certain professions etc. was made more difficult. Many young male Jews had also been sent to carry out forced labor, or drafted into service in the Hungarian army. There had, however, been no systematic persecution and extermination on the German model. This changed after German troops occupied Hungary on March 19th, 1944 in order to prevent its capitulation to the Red Army, which was pressing ever nearer. Within a few days the Hungarian police, under orders from German authorities, began to round up the Jewish population – a group which, due to the absence of many young men for forced labor or military service, consisted primarily of women, children and older persons – and put them in ghettos. In rural regions, factories and brickyards served as assembly points. There people were locked in for a number of weeks

in terrible conditions, including crowding, insufficient sanitary facilities, scarce water and food, to hold them ready for deportation to Auschwitz. Among the detainees rumors spread, including talk that the Germans had shot to death many Jews in Poland. But they had no notion of mass killing in gas chambers, particularly in view of the fact that widespread opinion held Germans for cultivated people and not barbarians. Postcards which appeared to come from family members, and had recognizably been sent from Poland, containing texts such as "We are all working together on a farm here and await your arrival!", also had a calming effect. In fact these "forest lake cards" had been circulated by the SS in order to maintain the ignorance of the Jews about the facts, as had been done since the beginning of "Operation Reinhard". Among the detained persons the opinion prevailed that what was ahead of them would be less odious than the conditions in the ghettos and factories, especially since they assumed that the war, and with it the German occupation, would soon be over anyway. After these people had spent some weeks in the ghettos and factories they were brought to trains. Because of the catastrophic conditions under which they had suffered, many were actually happy to finally be underway to what was thought to be a better location. The fact that they were allowed to take luggage with them led many of the detainees to the conclusion that, whatever awaited them, they would at least be allowed to live. Some of the Hungarian guards encouraged this illusion by saying that they were looking for volunteers to do agricultural work. Thus the people voluntarily climbed into the cattle cars, having no idea what horrors awaited them even on the transport trains to Auschwitz, not to mention what would happen to them upon arrival there.

**b.**

Meanwhile in Auschwitz the preparations for "Operation Hungary" had been made, according to which a greater number of Jews than had ever been previously received were expected to arrive within a few weeks. From a technical perspective, the most important new development was that a railway siding had been laid in the southern part of Camp Birkenau ("Auschwitz II") so that the trains bearing deportees could drive in and "unload"

there, only a few hundred meters from the gas chambers and crematoria. In this manner the killing process was to become faster and more effective, whereby personnel costs would be simultaneously reduced since, because of the strong securing of the camp with barbed wire, watchtowers and electric fences, a cordon around the entire train would no longer be necessary. The camp railway siding was divided into three tracks inside the camp, so that the very long trains which were expected could be broken up and spread among a number of sections of track. In the camp's jargon this area was known as the "new ramp". Restructuring had occurred with personnel as well, especially at the camp's leadership level. SS men had been brought together from various concentration camps, men who had demonstrated particular capabilities during "Operation Reinhard" and had acquired specific knowledge and skills having to do with the mass killing and burning of human beings. Thus SS-Obersturmbannführer Rudolf Höß returned as the person having spent the most time at the location, and his earlier aide-de-camp Josef Kramer became Commandant of Birkenau or "Auschwitz II". The new Director of all crematoria was SS Hauptscharführer Otto Moll, previously Commandant of a special commando for the burning of corpses in open ditches. The Defendant too, who had meanwhile been promoted to SS Unterscharführer (Corporal), knew that "Operation Hungary" was about to commence ("We already called it the 'Operation Hungary' at that time, there was no better way to express it!"), whereby this did not involve any major changes for him. He continued to serve his duty shifts in the HGV and on the "ramp" and enjoyed the catering, which by war standards was extremely posh.

c.

On May 16th, 1944 the first rail transport arrived at Camp Birkenau ("Auschwitz II") bearing Jewish persons from Hungary. The process on the "new ramp" was similar to that on what was now being called the "old ramp". The cattle cars were opened and the people, who had been crowded together largely without water or food for at least three days and nights, were driven out. Between the SS men whom they perceived as "soldiers" they saw people in

striped clothing which reminded them of pajamas. Some reacted to this sight with relief because they took it to mean that it actually was a work camp, and that the shootings they had heard rumors about would not take place. As the process continued, the arrivals were subjected to "selection" by SS doctors as described above in II. 5. a. They did not - in keeping with the intent of the SS regarding the maintenance of their ignorance - grasp the significance of the "selection", following which they were sent by a brief hand movement either in the direction of the gas chamber (the existence of which they were unaware of) or toward the camp. The main things that worried them were the separation from their relatives, and the question of when and where they would see each other again. Depending on whether they were considered fit to work or not, they were brought to the actual camp or directly to the gas chambers. Because the gas chambers could at times scarcely accommodate the large number of deportees, the persons marked for death often had to wait in the open air until, allegedly to finally receive a shower, they were brought to the gas chamber and there killed as represented above under II. 5. a.

**d.**

Those who were accepted into the camp were required to strip completely there as well. They were disinfected, had all of their hair cut off, and had prisoner numbers tattooed on their forearms. Subsequently they were put in prisoner clothing and usually brought to overfilled barracks crawling with vermin such as fleas and bedbugs, where they had to seek out a sleeping position, some of which were on thin straw mats and some on the bare floor. The question of when they would see their relatives, from whom they had been separated on the ramp, was often answered by those who had been imprisoned for some time by taking the questioner to a window, pointing to the smoke rising from the crematoria smokestacks and saying: "There is your family!" In spite of the circumstances of their ghettoization, transport, "selection" and the conditions in the camp, many of the new arrivals could not believe this for a long time.

e.

"Operation Hungary" lasted from May 16th, 1944 until July 11th, 1944. During this time the Defendant worked, on three days whose dates cannot be more accurately specified, at least three sessions of "ramp duty". Nor could the number of persons who arrived during his presence on the "new ramp" be ascertained. In addition he fulfilled his duties in the HGV, where he sorted, paid in, booked and supervised the deportees' money, in order to deliver it later in Berlin. His private attitude toward these duties had not changed. He was aware that the mass killing in the gas chambers took place deliberately, illegally and by means of the conscious exploitation of the victims' guilelessness and defenselessness, and that the victims were subjected to pain and torment based on the cold, merciless disposition of those committing these crimes, which went far beyond the amount of said torment required for killing; and that he continued to support these deeds both through his "ramp duty" and through the administration and delivery of the money taken from the prisoners. Over the duration of "Operation Hungary" a total of 141 trains with around 430,000 deportees from Hungary arrived at Auschwitz. Some 80% of these persons were killed in the gas chambers immediately after their arrival. Because the immediate killing of certain persons at Auschwitz was not registered, this number cannot be ascertained with absolute certainty. Under adoption of a reduction which appropriately takes into account the uncertainties endemic to the prevailing conditions, the chamber assumes - to the benefit of the Defendant - the number of 300,000 treacherously and gruesomely killed persons.

f.

Following the end of "Operation Hungary" - at this point the Allies had already landed in France and the Red Army had advanced far to the West - the Defendant recognized that Auschwitz was no longer a secure location for him. He knew that the Russian troops would reach Auschwitz sooner or later and he had no intention of becoming - there of all places - a prisoner of war as an SS member. Contrary to his original hope that he could wait out the war there, he saw himself as forced now to have himself transferred to an SS Field Unit on

the front after all, in light of the fact that there were plans at any rate to withdraw and send to the front all available and combat-capable ("k.v.") SS men, and he made an application to that effect. Within the framework of a "k.v. exchange action" in October 1944 he was, together with 500 other SS men from Auschwitz, removed from Auschwitz. He was, as a result, deployed and wounded in the Battle of the Bulge ("Ardennenoffensive").

**g.**

The survivors of "Operation Hungary" who were put to forced labor in various concentration camps, and who – in spite of the conditions represented above under II. 4. ("extermination through work") and in spite of the "death marches" carried out in the last months of the war in other concentration camps farther to the west – remained alive there, found after their liberation that their families had, by and large, been wiped out. Some of them returned to Hungary in the hope of finding relatives there. Instead they often found that they had lost not only their families but also their homes, because their apartments and houses had already been taken over by other people, and that they – the survivors – were not at all welcome there. Thus they were forced, after the loss of their family members and their homes, to scrape by somehow. Many of them emigrated to, among other places, the USA, Canada, Great Britain and Israel. The remainder of their lives was permanently stamped by "Operation Hungary" and its effects. Nightmares, fear, mistrust, feelings of guilt, sadness and shame were from then on – and are still today – part of their everyday lives.

**7.**

After his release from British war captivity, the Defendant returned to Nienburg/Weser in 1948 and worked there as a bookkeeper, and later a personnel director, in a glass factory. Not until 1978 did the Public Prosecutor's Office of Frankfurt am Main begin investigative proceedings against him and 61 other SS members who had also been deployed at Auschwitz. On January 5th, 1978, the Defendant was interrogated as a suspect, at which time the officiating Head Public Prosecutor explained that he – the Defendant – did not

10

need to worry, because no one wanted to prosecute him but rather to win him as a "witness for the prosecution", who could furnish particulars against an argument being entered by other suspects regarding allegedly "acting under orders". Thus the Defendant did not assume that he himself would be indicted, and for a time that proved to be correct. On March 6th, 1985 the investigative proceeding against him and others was closed according to § 170(2) StPO. Whether and when the Defendant learned of the closing of the investigation could not be established. He was not interested in the results of the process, because he did not consider himself to be charged in it, and did not make any inquiries either personally or through his defense attorney.

During the period which followed, the Defendant testified as a witness in other criminal trials against former SS members who had been assigned to the Auschwitz concentration camp. This reinforced his belief that he was innocent of any punishable offense, and need not fear prosecution. In the trial against the former SS Corporal Gottfried Weise in the Regional Court of Wuppertal conducted between October 28th, 1986 and January 28th, 1988, Weise was accused of shooting to death five persons imprisoned in Auschwitz. The Defendant declared that he did not remember Weise. Four other former SS men, also questioned as witnesses, gave similar answers. This led the jury court to the conclusion (ultimately insignificant in the sentencing) that Weise "certainly did not serve longer than a few days in the HGV". The findings which resulted in Weise being found guilty of murder in five cases were not based on testimony by the current Defendant, but rather "on the testimony of the Defendant, to the extent that it could be followed, and the testimony in particular of the witnesses Freimark, Lazar, van Rijk, Seweryn and Tahori".

In September 1991 the Defendant was questioned as a witness in the criminal trial against former SS Corporal Heinrich Kühnemann before the Regional Court of Duisburg. Kühnemann was also accused of five individual killings by, among other methods, shooting and beating. The Defendant declared that he had become acquainted with Kühnemann at the Auschwitz concentration camp and described him as a "relaxed, easygoing" type of person who was himself actually "a victim of Auschwitz". He made statements about his

own and Kühnemann's assignments and the situation at Auschwitz. Regarding the concrete charges, by contrast, he made no statements and declared that he knew nothing of them. The process was later closed when Kühnemann was declared permanently unfit to stand trial.

In 2005 the Defendant gave an interview to the news magazine "SPIEGEL" and made statements about his time and activities at the Auschwitz concentration camp. This led the Central Office of State Justice Administration for the Investigation of National Socialist Crimes ("Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung nationalsozialistischer Verbrechen") to urge the Frankfurt Public Prosecutor's Office to reopen the investigation against the Defendant, but that office refused to do so. After the Regional Court of Munich had sentenced John Demjanjuk to five years in prison for his activity as a guard in the extermination camp Sobibor on May 12th, 2011, the "Central Office" repeated its urging with reference to a potentially altered legal precedent. The Frankfurt/Main Public Prosecutor's Office once again refused to reopen the investigation. The Defendant knew nothing of any of this.

At the end of November 2013 the Hanover Public Prosecutor's Office finally took up the investigation against the Defendant, which eventually led to the current criminal trial against him. The Defendant learned of this through written notification from the Lower Saxony State Office of Criminal Investigation ("Landeskriminalamt Niedersachsen") dated December 19th, 2013, in which he was summoned for questioning as a suspect on January 17th, 2014.

### III.

The findings regarding the personal circumstances of the Defendant (supra. I.) are based on his testimony in the main proceeding. The fact that he has never been punished to date

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is derived from information from the Federal Office of Justice ("Bundesamt für Justiz") issued on January 28th, 2015, which was read in the main proceeding.

The findings on the matter in question (supra. II.) are based on the testimony of the Defendant and on the evidence introduced during the main proceeding. All photographs mentioned in the following text were examined during the main proceeding. As regards details, these photographs are referred to according to § 267(1) s. 3 StPO. To the extent that the findings are based on elaborations by experts, the chamber has attached these based on its own critical appraisal. On the specifics thereof:

1.

The findings on the development of the SS and the construction of the concentration camp (II. 1.) are based on the testimony of the expert Dr. Stefan Hördler, historian and Director of the KZ Memorial Mittelbau Dora, who described these processes in reference to the sentence from the Regional Court of Wuppertal of January 28th, 1988 (criminal trial against Gottfried Weise) which has been entered into the record.

2.

The fact that the Defendant registered voluntarily with the SS (II. 2.) because he wanted to be part of this "snappy force" as a "paymaster" is taken from his own testimony. The Defendant declared that in light of the early military successes he was worried that he might "come too late" and not be able to participate in the glory of the victory. He described his assignments at Ellwangen and Dachau as previously recounted.

3.

The findings on the construction of the Auschwitz concentration camp and the planning for its expansion through the construction of the concentration camp Birkenau or "Auschwitz II" (II. 3.) are based on testimony of the expert witness Dr. Stefan Hördler and on the findings

in the sentence from the Regional Court of Wuppertal of January 28th, 1988 which he referenced.

#### 4.

The findings on the planning of the so-called "final solution to the Jewish question" through "Operation Reinhard", and on the establishment of the extermination camps Belzec, Treblinka and Sobibor (II. 4.) are based on the testimony of the expert Dr. Frank Bajohr, historian and Director of the Center for Holocaust Studies at the Institut für Zeitgeschichte in Munich. It was complemented by the testimony of the expert witness Dr. Hördler who explained that an explicit so-called "order from the Führer" with regard to the "final solution" remains unknown to the present day. Whether such an order ever existed in written form is unclear. A decision without, or even against the will of the rulers at that time is, in the view of experts, out of the question at any rate. Conceivable, on the other hand, is an oral order, as the "final solution" in particular was characterized by secrecy, conspiracy and obfuscation. Numerous other documents are known, however, which referred to the "final solution" and to "Operation Reinhard", and in which the extermination process was labeled innocently as "evacuation" or "resettlement". This was done, the experts Dr. Bajohr and Dr. Hördler agree, because secrecy regarding "Operation Reinhard" was, in the view of the rulers at the time, a decisive factor in its smooth flow. This is clear from the "note of obligation" from former Corporal Kühnemann (Appendix X vol. II p. 73) which was viewed and read at the Main Proceeding, in which (among other things) it is stated that: "Regarding all measures to be executed during the Jewish evacuation, I am to maintain absolute silence with my comrades as well [...] I was shown a particularly crass case of the careless revelation of a state secret by a teletype sender, who was sentenced to death by the People's Court ("Volksgerichtshof"), and I was again thoroughly instructed about secrecy during service."

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5.

a.

The findings regarding the Defendant's transfer to Auschwitz (II. 5. a.) are based primarily on his own statements. In reference to the transfer order which can be found in the case files (Appendix II page 223), the expert witness Dr. Bajohr made the remark that the Defendant was sent to Auschwitz specifically for "Operation Reinhard" and remained formally a member of the SS Main Office for Economic Administration (WVHA). Among other things, the WVHA was responsible for the value estimation of Jewish possessions and, for this purpose, sent its own personnel to the extermination camp to securely take possession of and deliver valuables such as foreign currency, jewelry, gems etc. The delivery of 2.65 tons of gold and 20.3 million reichsmarks, among other items, is documented. Nonetheless the "final solution" was a "business loss" for the ruling powers, which they accepted for the sake of the actual goal, the extermination of European Jewry.

The findings regarding the deportation in cattle cars, the excruciating conditions during this transport, the "selection" and the subsequent gasification of those persons not categorized as fit to work, are based on findings confirmed by Dr. Hördler as accurate and by additional detailed findings from the sentence of the Regional Court of Wuppertal of January 28th, 1988. The Defendant declared about this that, shortly after his arrival, he took part in a search by night for detainees who had run away. While doing so, he observed a gassing in one of the former farmhouses refitted as a gas chamber. The later crematorium Director Otto Moll, with whom he was acquainted, had opened a valve cover, put on a gas mask, and shaken the contents of a can into it. After a short time loud cries could be heard from within the building, which did not subside until around 20 minutes later and after another 10 minutes stopped completely. The medical expert Dr. Sven Anders, forensic pathologist at the Hamburg-Eppendorf University Hospital, described this as the expected (from an expert point of view) effect of the type of hydrogen cyanide or "prussic acid" sold at that time under the name "Zyklon-B" on the human body. The effects of hydrogen cyanide have been

extensively researched based on accidents and suicides. The amount of time which passes before unconsciousness and death occur depends on the dosage. While a large dose leads to a quick death, a smaller dose and an unequal distribution of the resulting gas mixture can be assumed to lead to a long and agonizing struggle with death, which will first affect those who are most directly exposed to the gas mixture, that is, tall persons near the place where it was thrown in. Shortly after he observed the gassing, according to the Defendant, he also saw one of the cremation ditches, from which flames blazed up. The smell of burning flesh alone led him to refrain from watching the cremation at a closer distance.

**b.**

The findings on the assignment and responsibilities of the Defendant in the HEV and HGV, that is, the so-called "ramp duty" and money administration (II. 5. b.) are based on his own statements, which were confirmed and expanded upon through the testimony of the expert witnesses Dr. Bajohr and Dr. Hördler.

**aa.**

Regarding the "ramp duty" (II. 5.b. aa.) the Defendant declared that he did not guard the arriving persons, but rather their luggage, in order to prevent theft by SS members and functionary prisoners assigned to the ramp. In his exact words: "We were to watch out so that SS people and also the prisoners from the Canada Command did not steal valuables, money or food from the luggage of the arrivals." On the whole it was important on the ramp to prevent anything "that would lead to panic and open their eyes, everything was supposed to proceed as quietly as possible." This leads the chamber to the conclusion that the guarding of the luggage and the prevention of theft was not primarily to secure the "booty" on behalf of the WVHA, since no one there was interested in the arrivals' food. Rather, it served the actual purpose of "Operation Reinhard", namely the speedy and problem-free killing of the Jews who had been deliberately kept "in the dark". If the plundering of their luggage had taken place before their eyes, the development of

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unrest might have been expected. The people might have attempted to protect their luggage – the last possessions remaining to them – or might have developed suspicions about their impending killings. The avoidance of this was, as the Defendant knew, of crucial significance for the quick execution of the “selection” and the subsequent gassing. In comparison to this, the prevention of theft in order to obtain the complete “booty” was of secondary importance. The expert witness Dr. Bajohr has explained in this connection that theft took place at Auschwitz. Although substantial penalties extending to the death penalty would have been applicable for such actions, violations by SS members were either not punished at all or, at most, punished in a half-hearted manner. Only if theft and corruption in the storehouse had become rife would selective measures have been taken. Furthermore there was a consensus, based on a general “conspiracy of silence”, not to denounce each other. The SS members, with the knowledge and approval of their superiors, had “motivated themselves” in this manner through theft.

The conclusion that the “ramp duty” by the Defendant served not only to maintain the cluelessness of the arrivals, but also –at least – to nip any possible ideas about resistance or escape in the bud at this early stage, is evident to the Court from the fact that the Defendant carried this duty out while armed and in uniform, and thus in the view of the deportees was just as much of a “guard” as the members of the actual SS guard teams (“SS Skull and Bones Storm Troop”). There are no objective reasons, and none from the perspective of the Defendant, to think that the arrivals could have recognized that he was “only” responsible for the luggage and not for overseeing the arriving persons based on the different weapons: that is, pistols (HGV members) or rifles (guards). That he nonetheless invoked this means of differentiation, which did not exist for the arrivals, is considered by the Court to be an expression of his wish to “have had nothing directly to do with these murders”. The fact that the Defendant was to also oversee the deportees, even if this was not his main responsibility, can be concluded from the testimony of the expert witness Dr. Hördler, according to which all SS men at Auschwitz, including HGV members, were

obligated to prevent resistance or attempted escape, with force of arms if necessary. This is confirmed by the account which the Defendant himself gave of a search by night for escapees, in which he took part, and upon which occasion he saw the gassing and the open cremation ditches (see above).

The injured party plaintiff Irene Weiss, who was questioned as a witness, related that her father was required to transfer the corpses from the gas chambers to the cremation ovens as a functionary prisoner at the crematoria of Birkenau ("Auschwitz II").

**bb.**

The findings on the Defendant's other activities in the HGV - the sorting, booking and supervision of money and its delivery to the WWA or the Reichsbank (II. 5. b. bb) - are based on statements by the Defendant, which the expert witness Dr. Bajohr also confirmed and elaborated upon as noted, regarding the account under the name "Max Heiliger" and the extension of credit from so-called "Reinhard Funds".

**cc.**

The findings given under II. 5. b. cc. are based on the testimony of the Defendant, which was complemented through elaboration by the expert witness Dr. Bajohr on the marriage application of the Defendant (3rd annex to the protocol).

**6.**

**a.**

The findings regarding the preparation for "Operation Hungary" by the so-called "Eichmann Command" (II. 6. a.) are based on the explanations of the expert witness Dr. Hördler. They were confirmed and expanded upon by the credible testimony of the injured party plaintiffs (questioned as witnesses) Max Eisen, Ivor Pearl, Dr. Imre Lebovits, Susan Pollack, Eva Pusztai-Fahidi, Hedy Bohm, Tibor Bolgar, Eugene Lebovits, Kathleen Zahavi and Irene

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Weiss, who unanimously stated that they were taken from their houses and locked in ghettos (in the case of the witnesses Pollack, Puztai-Fahidi, Bohm, Zahavi and Bolgar) or brickyards no longer in use as such (the witnesses Eisen, Pearl, Dr. Imre Lebovits, Eugen Lebovits and Weiss). The living conditions in those locations, too, were described by the witnesses in a largely consistent manner as noted. The witness Puztai-Fahidi stated that for 51 days she was locked in a ghetto in which 10 persons were housed in a space of 40 square meters. The witness Bolgar also stated that he spent some weeks in a ghetto: 12,500 Jews were forcibly housed in apartments in which 2,500 persons had previously dwelled, and which had been appropriated by the Hungarian authorities. The witness Hedy Bohm told of 30,000 Jews who "were crammed into two housing blocks". Most of the Jewish men had been previously removed to labor camps. As a result it was assumed that the others would also be put in a labor camp until the end of the war. The witness Dr. Imre Lebovits reported torture by Hungarian police officers with the goal of extorting money and valuables from Jews thought to be rich. The witness Puztai-Fahidi also stated that her uncle was "nearly beaten to death". The witness Eugene Lebowits stated that, out of fear of theft, people had sewn money and jewelry into their clothing. One day volunteers were allegedly sought for deployment as agricultural workers. The witness Max Eisen said that his family had received one of the so-called "forest lake postcards" and was looking forward to soon seeing their relatives who were thought to have been assigned to work in agriculture. During their detainment in the brickyard, an SS officer had confirmed that they would be taken to work on a farm and that the family could stay together there. Similarly, the witness Ivor Pearl stated that after several days at Auschwitz, he had been asked by an SS officer whether he wished to write to his relatives in Hungary, and that he had given this man the corresponding addresses for what he thought was to be the preparation of a letter, but that he never again heard from this man. This leads the Court to the conclusion that the question regarding relatives and their addresses served to facilitate the sending of more "forest lake postcards", which confirms the significance of the deception, and thus the innocence, of the victims from the perspective of the perpetrators. The witness Pollack

reported that she had heard about an impending “resettlement” and had taken her sewing machine with her, in order to be able to sew clothing for herself and her family in the new location. Her brother had comforted her and had said, “Don’t be afraid of the Germans! Germany is a great country, civilized, cultivated and inventive. They can be trusted!” The witness Ivor Pearl also declared that in general it was hoped the deportees would be deployed in agriculture, because the Hungarian guards had circulated rumors to that effect, and he stated: “Anything seemed to us to be better than the ghetto!” The witness Pusztai-Fahidi summed up the mood among the deportees as follows: “No one is so deaf as someone who does not want to hear. We thought we would be put in a labor camp, the war would soon be over, we would get by, and then everything would be alright again. We never had any idea that families could be separated!”

As events unfolded, according to unanimous statements by the witnesses, they were each put into a cattle car with 80 to 90 other persons. There they found a bucket with water and an empty bucket to be used as a “toilet”. After the doors had been locked, they traveled for three days and nights. The hunger, thirst, heat and foul odors were unbearable. A few people at most were able to find space to sit down, the great majority were forced to stand for the entire time. The witness Eisen described this in these words: “We stood like sardines in a tin. My mother was stuck in a corner somewhere. At some point night fell. Some older persons cried out and wept, some were claustrophobic. We slept standing up. The train whistle blew, I woke up – it was real, not a nightmare. In the morning I was able to be more hopeful, but then came the following night. On the third day someone was able to read a sign at a train station – we were in Poland. Two people died in our car during the transport – the corpses stayed with us on the journey.” The witness Pollack asserted that in her car the bucket of water had fallen over during the train’s departure, so that there was no more drinking water at all. People died, and the corpses remained in the car.

15

b.

The findings on the preparation for "Operation Hungary" at Auschwitz (II. 6. b.) are based on the explanations of the expert witness Dr. Hördler, who described these events as reported, and on the testimony of the Defendant.

c.

The arrival of the deportees at Auschwitz and the events on the "ramp" (II. 6. c.) were described by the witness Glied as follows: "One morning the train stopped, the doors opened, it was a beautiful morning in June. I saw an empty ramp with soldiers and people in blue-gray pajamas and round caps, who shouted "Out! Out!" We were supposed to label our luggage, it would be brought to us later. Men and women were separated. I never saw my mother and my 8-year-old sister again, they simply disappeared from my life. My father and I stood in a long line. It was relatively quiet, here and there a few people were crying." The witness Eisen stated: "On the third night the train was sidetracked, there was a rumbling. The doors opened, it was pitch-dark. There was a man in striped clothes who called out "Out! Fast!" Everyone tried to find their things, the place was all full of excrement and urine. Suddenly floodlights came on. I smelled burned flesh. Somewhere big flames were blazing up, it reminded me of a big factory. We couldn't make out anything more. We were shocked and numb. My mother had my sister and my two little brothers in her arms. She was sent to the left. Later I learned that this was the way to the gas chamber. My father, my uncle and I were sent to the right. We were worried, but we assumed that we'd all be together again the next day." These accounts are confirmed by the photo which was inspected from the Appendix XIII, page 5. In this picture, which is taken from the so-called "Auschwitz Album" and was made by SS members, a "selection" during "Operation Hungary" is recorded. In the foreground of the photo one can see a group of SS officers who are carrying out the "selection" and – from the observer's perspective – sending the arrivals, who are lined up in rows of five, either to the right, i.e. over the wooden track

crossing seen in the lower right of the photo to the camp, or to the left toward the gas chambers. In the upper left of the photo one can see people who are walking toward the gas chamber. The witness Puztai-Fahidi declared that upon her arrival in Auschwitz she saw the so-called "gypsy camp" and – although the persons jammed into that space looked emaciated – that she thought with relief, "The families are together." Although the witnesses uniformly described the scenario on the ramp – functionary detainees in "pajamas", armed "soldiers" behaving "aggressively" and "disrespectfully", some with wildly barking dogs – as confusing and sometimes frightening, according to their statements none of them expected any substantial physical attack, much less to be killed. The witness Weiss stated that she was assigned to forced labor in the so-called "Canada Camp", which was in the immediate vicinity of the gas chambers. There she was made to sort "mountains of clothing, shoes, eyeglasses, baby carriages, pots etc." She said, "We lived beside the gas chambers. Day and night, lines of people moved past us in the direction of the gas chambers. The people had no idea what awaited them!" The witness Ivor Pearl summed up his impressions of the arrival at the ramp as follows: "We sensed that something was up, but the deception was perfect." This leads the Court to the conclusion that in spite of the shocking conditions under which they were carried off to Auschwitz and the conditions upon arrival, they still expected "only" to be assigned to forced labor. This was absolutely consistent with the plan of action, which involved keeping them completely in the dark until the last moment, and exploiting their resulting defenselessness in order to kill them.

**d.**

The findings regarding the circumstances under which the deportees selected for forced labor were admitted to the Birkenau camp and housed there (II. 6. d.) are based on the statements of the witnesses Eisen, Glied, Puztai-Fahidi, Eugen Lebovitz, Tibor Bolgar, Zahavi, Dr. Imre Lebovitz, Ivor Pearl, Susan Pollack, Irene Weiss and Hedy Bohm, which on this subject are consistent in their principal elements. The witness Weiss stated that she asked a woman who had been imprisoned in Auschwitz for some time when she would see

her family again. This woman pointed at the smoke and said, "There is your family!" She – the witness Weiss – did not understand at first, and asked herself why anyone would say such an awful thing. Similar experiences were recounted by the witnesses Zahavi, Bolgar and Glied. The witness Glied stated that he asked another detainee about the whereabouts of his 8-year-old sister. He – the witness – then went to his father and told him about the answer, upon which his father responded, "I don't believe it! These are civilized people! They don't kill little girls!" According to the witness, it took his father days to realize what had happened. These reactions, too, indicate that the deportees absolutely did not expect that they or their relatives would be killed.

e.

The findings on the duration of "Operation Hungary" and the number of persons killed in the gas chambers of Birkenau ("Auschwitz II") during that time (II. 6. e.) are derived from the testimony of the expert witness Dr. Hördler, who explained that based on various sources, the total number of Hungarian Jews deported to Birkenau can be estimated to have been at least 430,000. Among other items, telegrams have been preserved in which the "Imperial Representative for Hungary" ("Reichsbevollmächtigter für Ungarn") at the time, Edmund Veessenmayer, informed the Foreign Ministry in Berlin about the "progress" of the deportations, and also a secret listing maintained by rail employees and known among historians as the "Kassa List" of the number of transports and the persons sent away in them, as well as the so-called "Glaser Report" in which the number of persons designated in the "selections" on the ramp as "fit to work" is recorded. According to this source, some 20% of the deportees were admitted into the camp, the remaining 80% being killed immediately upon arrival. During the period of time in question for the indictment, one may assume, based on certain deviations in the reports, that at least 320,000 persons were gassed directly following their arrival.

That the Defendant knew the circumstances under which these persons died can be deduced from his testimony. This applies both to their guilelessness ("The people who arrived there were completely clueless!") and to their consciously-conducted exploitation for the purpose of killing them ("prevent anything which [...] could open their eyes"). At the beginning of "Operation Hungary" the Defendant had already served for more than 1.5 years at Auschwitz and had observed numerous "selections" during his ramp duty. Furthermore he was extremely well informed about the events in Auschwitz through discussions with other SS men. The fact that these persons, after they had been sent to the gas chambers – allegedly for a shower – suffered a long and excruciating death struggle there was known to him through the observation of a gassing and hearing the long-lasting cries of the victims. The Defendant was agreeable to the mass killing ("I considered the killing basically okay!") and knew that he continued to support it. On this subject he declared: "Even if I did not have anything directly to do with these murders, through my activities I contributed to the functioning of the Auschwitz camp. I am aware of this today." The Court rules out any suggestion that the Defendant did not recognize this at the time these acts were committed. It is true that the Defendant has referred to a "repression which he cannot explain today" and accounted for this by citing the "habit of accepting facts as they emerged" and the "convenience of obedience". In the final analysis, this simply indicates that for his own convenience and – with a view to possible assignment to the front – his own security, he came to terms with, as he himself labeled it, making himself complicit.

**f.**

The fact that the Defendant was transferred, following "Operation Hungary", to a military training area and subsequently to the front (II. 6. f.) is known from his testimony, the accuracy of which is confirmed by the notification of change of October 31st, 1944 which was read in the main proceeding. This had been preceded by a transfer application dated September 22nd, 1944. This follows from the written transcription of a radio message of

17

September 25th, 1944 (Appendix II, p. 198), upon which the expert witness Dr. Bajohr commented. The content states: "A total kv. ('fit for military action') exchange of 500 "Unterf." (non-commissioned officers) and men will be carried out by the concentration camp AU.-commander. Contact the camp commander of concentration camp AU. I. and make Unterscharf. (Corporal) Oskar Gröning, born June 10th 1921, as a kv. Mann ('person fit for military action') available. There you will be given a corresponding replacement. The transfer application of September 22nd made there will not be forwarded from here." The Defendant claims to have submitted yet two further applications for transfer, one of them shortly after his arrival at Auschwitz. No concrete evidence of the accuracy of this assertion has been found to date; rather, while it is not a decisive point, there is substantial doubt regarding this assertion. It is not clear to the Court, in the first place, why despite his "fear of the front" he – on the one hand – would have brought himself to submit these transfer applications and thus incur the displeasure of his superior officers, but on the other hand, would not have followed up on these applications with the necessary diligence. The Defendant was considered "fit for combat" ("kriegsverwendungsfähig" or "k.v.") and available, as the expert witness Dr. Bajohr explained with reference to the examined list of members of the SS Auschwitz local administration (Appendix II p. 218). Under these circumstances, according to the expert witness Dr. Hördler, a transfer application – if it had actually been submitted – would very probably have resulted in a prompt transfer. The Defendant would not have needed to fear resulting negative effects on his service status; at the most he would have – as he indicated – incurred the personal displeasure of his superior officers. There can be, from an expert point of view, no question of acting under orders, and the Defendant did not refer to any. The SS leadership, when they inspected the concentration camp, had already asked repeatedly starting in 1941 for men fit for combat ("k.v." men), in order to make up for losses in the field units. As the war went on, a growing number of former soldiers on the front, no longer "k.v." due to being wounded, was assigned to concentration camps in exchange for "k.v." men. But there was no voluntary reporting to field units by those serving at Auschwitz, until it became clear that due to the

ending of "Operation Hungary" and the precarious military situation, there would be transfers ("k.v. exchanges", see above) anyway. Thus we are really dealing with a request which only appeared voluntary, as was often virtually demanded in the military and the SS ("Step forward and volunteer!"). This leads the court to the conclusion that the Defendant only reported "voluntarily" when it became clear to him that, in view both of the steadily advancing Red Army and the transfers about to take place anyway, this was unavoidable.

**g.**

The findings on the ultimate fate of the "Operation Hungary" survivors are based on the credible testimony of the witnesses, whose statements are summarized as follows:

The witness Weiss asserted that shortly before the liberation of Auschwitz she was taken on a "death march" to another camp. Her parents Mayer and Leah Fogel and her brothers Moshe, Reuven and Gershon, as well as ten cousins, were killed at Auschwitz. After her liberation she emigrated to the USA. The witness Orosz-Richt stated that she was actually born at Auschwitz. Her father, Dr. Tibor Bein, was killed there, her mother moved to Canada after being liberated. The holocaust survivors who lived there have mourned their murdered family members to this day ("We all still cry for those whom they took from us, Mr. Gröning!"). Her mother died at the age of 71. Shortly before her death, Auschwitz came back to her in the form of nightmares. She even thought that the camp doctor Dr. Mengele was standing in the doorway and had come to get her. The witness Eugene Lebovitz declared that his entire family of around 50 persons was killed in Auschwitz with the exception of one brother and one sister. He himself emigrated to the USA after his liberation. The witnesses now living in Canada, Judith Kalman and Ilona Kalman, stated that their father had been taken for forced labor even before "Operation Hungary" and thus escaped deportation to Auschwitz. His wife and his daughter Eva Edith Weinberger and 32 other family relations were taken to Auschwitz, and only two of them survived. This loss was always present not only with their father, but also with the new family he started after

18

the holocaust ("It was as if the holocaust was a visitor who shared our food with us"). Similar testimony was given by the witness Beck who stated that her father was deported to Auschwitz with his wife and his five-year-old daughter Eva. Eva and her mother were killed there in June 1944. October 6th, Eva's birthday, was always a "memorial day" for her father, she testified, on which occasion he lit candles and cried. In this manner she grew up with a "shadow family" and always asked herself whether Eva had been a better person than she herself was. The witness Bolgar stated that after his liberation it took him a number of months to make his way back to Hungary. There he found that his family's house was already the residence of other people. He then went to Germany and lived for a while in a "reception camp". Later he traveled to Hungary once again and saw his father there, but learned at the same time that, of the 1,150 Jews who had lived in his home village, only 155 were still alive. His mother Adele and his sister Vera had not survived Auschwitz. He himself returned again to Germany ("In the American Zone they had the best food, that was still important!") and "tried desperately to get a visa for a country outside of Europe". After two years he was finally able to emigrate to Canada. The witness Bohm asserted that her parents Ignac and Erzsebet Klein were killed in Auschwitz. The witness Pusztai-Fahidi stated that a total of 49 of her family members were killed in Auschwitz, including her parents Dezsö and Irma Fahidi and her sister Giliki. The witness Zahavi said that she had lost over 100 family members in the holocaust, her mother Rosa Politzer was killed directly upon arrival at Auschwitz. She herself survived Auschwitz and Bergen-Belsen and finally emigrated to Canada. The witness Pollack declared that her mother was killed immediately upon her arrival at Auschwitz, her father probably later as well. Her brother reported to her that as a "functionary prisoner" in a "special commando" he had "carried corpses from the gas chambers to the cremation chambers". She herself was initially forced to work in Guben and came to the KZ Bergen-Belsen on a "death march". There the conditions were, even for someone who had survived Auschwitz, "indescribable". "Mountains of corpses, everything filthy, contamination – it was worse than death!" She suffered from spotted fever and tuberculosis, could only move by crawling, and wanted to die. After being liberated she was

taken to a provisional hospital ("my re-entry into life") and was finally nursed back to health in Sweden. She went to Canada and finally moved to Great Britain. She said that as holocaust survivors, she and her husband, a survivor of the KZ Mauthausen, "lived in isolation". She described her current attitudes with the words: "Today we live in a different world, I am convinced of that – but I must still convince my psyche that it's true!"

The Court has no misgivings about making the testimony of the witnesses the basis of its findings. They are consistent with the testimony of the Defendant and with the elaborations of the expert witnesses Dr. Bajohr and Dr. Hördler, and there were no recognizable neurotic tendencies. None of the witnesses claimed to recognize the witness after more than 70 years or to remember his name. Most witnesses emphasized explicitly that they were most interested in resolution through a German court proceeding of the murders committed at Auschwitz, and on commemorating the victims, not on punishing the elderly Defendant.

7.

The findings on the life of the Defendant after 1945 (II. 7.) are based primarily on his own testimony. The fact that the investigative proceeding conducted against him by the Public Prosecutor's Office of Frankfurt am Main was suspended on March 6th, 1985 was a consequence of the prosecution withdrawal order (Appendix X vol. 1 p. 9-11), excerpts of which were read in the main proceeding. The substance of his witness testimony in the proceeding before the Regional Court of Wuppertal – ultimately insignificant as regards the damning of the Defendant Weise – is taken from the verdict entered into the record. Regarding the content of his witness testimony in the proceeding against Heinrich Kühnemann, the Court questioned the retired presiding Regional Court Judge Dirk Struß, the former member judge in the case. He asserted that the Defendant made the statements about Kühnemann as given. He indicated that on the whole the Defendant made an "astonishingly unemotional" impression, but that this was also the case with other former SS men. He said that the Defendant had reported on his ramp duty ("The main thing was to make sure there was no panic!") and on his service in the HGV. He stated that "in the end

13

his testimony produced no major new findings", because Kühnemann was accused of five individual killings, about which the Defendant claimed to know nothing.

#### IV.

Upon these findings the Defendant is guilty of aiding and abetting murder in 300,000 legally concurrent cases. The subject matter of the indictment and the conviction is solely the killing of the Jews deported from Hungary during the so-called "Hungary Operation" between May 16, 1944 and July 11, 1944 (*supra*. II 6.) in the gas chambers at the concentration camp in Birkenau ("Auschwitz II") directly after their arrival. The Defendant aided and abetted in these cases.

##### 1.

The premeditated killing of people in the gas chambers satisfies the elements of the crime for murder. Section 211 of the German Criminal Code (StGB) as currently amended is applicable when taking the punishment into account (a term of life imprisonment) as opposed to the punishment applicable for § 211 StGB at the time when the crime was committed (death penalty), because the amended statute is less severe within the meaning of § 2(3) StGB. The elements of the crime for murder, perfidious malice aforethought and cruelty, have been satisfied.

##### a.

A persona acts with perfidious malice aforethought if this person knowingly kills another while willfully and deliberately taking advantage of the victim's guilelessness and defenselessness. Material is that the murderer surprises the helpless victim, who is not expecting an attack and is thus unsuspecting, and thus prevents the victim from defending him or herself or at a minimum from impeding the attack. Decisive for the assessment are the circumstances when the attack, which is intended to kill, is initiated, whereby it is -

especially with crimes prepared and planned well in advance - sufficient where the perpetrator methodically lures the victim into an ambush with an intent to kill in order to precipitate a favorable opportunity to kill, and the corresponding arrangements and measures in the execution of the crime still continue to have an effect. In order to consciously exploit a victim's guilelessness and defenselessness it is necessary that the perpetrator appreciate the meaning of this within the context of the situation to which the victim is exposed and in the execution of the crime that the perpetrator is aware of surprising a defenseless person, because this person is ignorant of any attack. Based on the findings these elements have been satisfied. The victims were methodically lured into an ambush with intent to kill - the gas chambers - by leading them to believe that they were going to shower. The guilelessness of victims was not only known by the perpetrators, but literally decisive for the effective execution of the crime. Subsequently, the doors were bolted from outside so that the victims were in the truest sense of the word trapped. Consequently, it is immaterial whether some may have become suspicious and began to fear for their lives either because the doors were locked or upon commencement of the actual act of killing, namely the injection of "Zyklon B". (cf. BGH<sup>3</sup> Nov. 6, 2014, 4 StR 416/14, cited as per juris). Rather, decisive is the guilelessness of the victims upon entering the gas chamber. The fact that some victims may have no longer been unsuspecting upon entering the gas chamber despite all of the perpetrators' contrary efforts has been considered in favor of the Defendant in that this Court "only" takes into account 300,000 murdered individuals (*supra*. II. 6. e.).

**b.**

A person kills with "cruelty" if this person callously or ruthlessly inflicts physical or psychological pain or torment upon the victim, which exceeds the magnitude or duration required for the killing. Cruelty does not only apply to the actual execution of the act in a narrow sense and the suffering caused by the act, but it may also lie in the circumstances

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<sup>3</sup> Translator's note: German Federal Court of Justice

under which the act of killing is initiated and consummated. Cruelty must occur before the act resulting in death and encompass the intent to kill. Here the perpetrators, members of the SS, who felt nothing short of obligated to show callousness and ruthlessness towards the Jews, which they regarded as "enemies", inflicted physical as well as psychological pain and torment upon the victims. The fact that individuals were forced to helplessly watch others subject to the same fate, commonly their own children and/or parents, prior to or during their own throes with death speaks to the psychological aspect. It is obvious that the slow protracted struggle with death over the course of 20 to 30 minutes commencing with respiratory distress as a symptom of poisoning and ending in massive convulsive seizures was also associated with physical pain that was well in excess of that required to kill.

2.

a.

The Defendant is guilty of aiding and abetting murder, because pursuant to § 49 StGB at the time the crime was committed he "knowingly assisted the perpetrator in word and deed to commit the felony or misdemeanor," by continuously aiding the concentration camp system at Birkenau ("Auschwitz II"), which was by and large established to kill people. The "perpetrators" of the principal crime are not only those instigators that ordered the "Hungary Operation" (*inter alia* Hitler, Göring and Himmler), but also those that committed the act of killing in Birkenau (injection of "Zyklon B"), e.g. SS-Hauptscharführer<sup>4</sup> Otto Moll (as to the GDR Border Troops BGH, July 26, 1994, 5 StR 98/94, cited as per juris). According to established case law, aiding and abetting is generally interpreted to mean any act that objectively promotes or facilitates the successful commission of the crime by the principal with no causal link of any act of assistance needing to be specifically established for the crime committed. (cf. BGH, Nov. 16, 2006, 3 StR 139/06 – "Motassadeq Case"). These premises apply to the Defendant's contributions to further the crime. Within the context of his "ramp duty," the Defendant contributed to the efficient and fluid "selection" process by

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<sup>4</sup> Translator's note: Equivalent to a master sergeant in the ranks of the SS.

maintaining the victims' guilelessness in that luggage was prevented from being looted while at the same time being part of the menacing backdrop, which was intended to quash any thoughts of resistance or flight and thus also facilitating and expediting the subsequent killing process in the gas chambers. Moreover, he also aided the perpetrators by managing the money that was taken off of the victims or that was discovered by "prisoner assistants" in clothing and in luggage in "Camp Canada" and tendered this money to them – the perpetrators - in Berlin. Whether and the extent of which the money was subsequently utilized is not significant (cf. BGH *supra*). In doing this, he deliberately acted not only with respect to the killing process and the circumstances, which satisfy the elements of perfidious malice aforethought and cruelty, but also with respect to his own contribution of assistance and the advancement of the principal crime.

**b.**

By contrast a conviction as an accomplice is out of the question. An accomplice is a person who does not only abet someone else's actions, but rather also contributes his own act to a common criminal enterprise so that his contribution is viewed as part of the activities of the other and conversely the other's actions as an endorsement of his own criminal contribution. Whether or not a participant had a close nexus to the crime must be judged upon taking into account the overall circumstances from his subjective point of view. Material for an assessment could be the degree to which a person has an interest in seeing the crime committed, the scope of participation in the crime, and control over the commission of the crime or at least a desire to control the commission of the crime. Accordingly, the following applies here: Admittedly the Defendant was sympathetic to bringing about the commission of the crime, i.e. killing. This in-and-of-itself does not make him an accomplice. He himself had no interest in the commission of the crime. His emoluments from serving in the SS were not dependent on the number of people murdered or on the value of their property, he did not proportionately participate in a share of the "loot," and he did not otherwise personally benefit from their deaths. His motivation lay in

21

avoiding being sent to the front and not in any participation in the “final solution” within the meaning of National Socialist ideology – at least during the “Hungary Operation” as he had already for sometime had the feeling that he was “sitting in the wrong boat”. Furthermore, the deportation and subsequent internment would have been sufficient in order to maintain the service requirements in the HGV<sup>5</sup> - killing was not required. The Defendant also had no control over the crime, because he had absolutely no influence over the decisions taken during the selection process or over the process of the actual killing in the gas chambers. He also had no notion, intent or desire to do this, but rather made it a point to “not have anything directly to do with these murders.” Thus, his entire demeanor was characterized by subordination to the orders of his superiors including the Führer, Adolf Hitler – corresponding to his identity as a non-commissioned officer in the SS. Lastly, his contributions were ultimately of minor significance.

3.

Legally, the “Hungary Operation” is – at least for the Defendant – a single offense. It is irrelevant whether the entire operation of a concentration or extermination camp or the clearly delineated “Hungary Operation” is to be generally regarded as a single offense (so for the “Hungary Operation” BGH, March 22, 1967, 2 StR 279/66, cited as per juris) or whether this is a whole series of homicides that were concurrently ordered and planned, but executed at various times by various perpetrators at locations distinct from each other – the gas chambers at the Birkenau Concentration Camp. That is to say it is irrelevant whether the perpetrators committed the (principal) crimes consecutively. Rather the issue is whether the individual criminal acts coincide or are independent, which must be reviewed and decided for each participant. If a person renders individual assistance for all or specific criminal acts and each contribution separately promotes the criminal acts, then these contributory acts shall be considered as separately committed offenses, provided that there is no natural unity of action. If however there is no such separate support for the individual

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<sup>5</sup> *Translator's note: Prisoner Money Administration*

crimes, yet the person providing assistance renders assistance for crimes during the course of the series of offenses through which all or several individual criminal acts are supported simultaneously, then the simultaneous assistance for the individual criminal acts shall be considered as committed concurrently as they are linked to one act through the concurrent contributory act of the person within the meaning of § 52(1) StGB (BGH, Nov. 19, 2014, 4 StR 284/14; BGH, Dec. 7, 2010, 3 StR 434/10; cited as per juris). The latter is the case here. All of the Defendant's activities in Auschwitz were characterized by the fact that they promoted a multitude of murders without being directed towards the support of any particular individual criminal act. This is particularly applicable to the administration and delivery of money. The fact that "ramp duty," which he performed during the "Hungary Operation," had some bearing on the gassing, which took place immediately thereafter, does not change the result, because a differentiation on this fact alone seems arbitrary and artificial and would also not do justice to the Defendant's own understanding, who viewed the "Hungary Operation" as a homogeneous event.

## V.

### 1.

The punishment is governed by § 211 StGB as currently amended, which must be mitigated pursuant to § 27(2), sentence 2 StGB, § 49(1) 1 StGB and § 38(2) StGB opening up a sentencing range of three to fifteen years of imprisonment. The aforementioned statutes are "less severe" within the meaning of § 2(3) StGB, because § 49(2) StGB, § 44(2) StGB and § 14(2) StGB as amended at the time the crime was committed did not provide for a term of imprisonment (at that time termed "prison sentence"), but rather "penal servitude" for three to fifteen years.

### 2.

The Court reviewed whether special mitigating circumstances are applicable pursuant to § 46b StGB, however, came to the conclusion that this was not the case. The information

provided by the Defendant in the criminal investigation proceedings conducted by the Frankfurt/Main District Attorney's Office did not lead to an indictment or even a conviction, rather the proceedings were officially discontinued on March 6, 1985 pursuant to § 170(2) of the German Code of Criminal Procedure (StPO). The information provided by the Defendant between the time these proceedings were discontinued and the investigation commenced by the Hanover District Attorney's Office did not represent any "assistance in discovery" as set forth in § 46b StGB, because the Defendant was not under investigation during this time. A condition of "assistance in discovery" requires that the "perpetrator" assisting in discovery be a suspect in criminal investigation proceedings when he makes his disclosures - this is true for the law up until July 31, 2013 and as currently amended - i.e. he is under official investigation in formalized criminal investigation proceedings (Fischer, StGB, 62nd. Edition, § 46b, margin note 2 with further cites). Moreover, the information he provided in the criminal proceedings against Weise and Kühnemann did not lead to any kind of material discovery. The Defendant testified about the procedures in Auschwitz and about his activities and in Kühnemann's case Kühnemann's activities there. Nevertheless he did not provide any material evidence to establish Weise's or Kühnemann's guilt, because he had no information with respect to the crimes they were accused of committing. The findings of the Court in Wuppertal, Section for Capital Crimes, with respect to his testimony was that Weise worked at most a few days in the HGV, which was not material for his conviction. Ultimately it was the testimony of other witnesses that was decisive (*supra*. II. 7.). A mere attempt to assist in the fact-finding process is insufficient (Fischer *supra*. margin note 14a) considering the fact that the relationships and procedures in Auschwitz have generally been well established for some time now through the testimony of survivors and the work of historians.

### 3.

Weighing in favor of the Defendant is the fact that he was never convicted of a crime and admitted guilt and that he admitted and confessed to his activities and the procedures in

Auschwitz for many years and publicly did so ever since the interview in the "SPIEGEL" in 2005. His testimony during the trial was characterized by great and to a certain extent brutal candor. His repeated use of the SS jargon used at that time enabled the Court to gain important insight about his attitude during the commission of the crime. This significantly distinguishes him from all of the other SS men who during their lives have either remained silent, disputed or sugarcoated the crimes they committed. Furthermore weighing in his favor is the fact that even under physical and mental strain he endured through the proceedings and it was clear that he was particularly impacted by the testimony of the Injured Party Plaintiffs. He expressly admitted his responsibility right from the outset – albeit assuming only moral guilt and not criminal guilt – and stated later during the trial that he "stands humbly and full of remorse before the victims." "He has no right to ask" for forgiveness, he can only "pray to God" for absolution. Furthermore, consideration had to be given to the fact that the crimes were committed more than 70 years ago and based on the Defendant's advanced age there is no need to consider a special preventive effect in his case. Ultimately consideration had to be given to his particular vulnerability in confinement – separate and apart from the issue of whether he is even able serve out his punishment of imprisonment, which is outside this Court's scope of authority – and lastly consideration given to the rights of human dignity anchored in Article 1 of the German Constitution<sup>6</sup> that he must at least have the opportunity - not the assurance - to be released from prison during his lifetime (BGH, April 27, 2006, 4 StR 572/05, cited as per juris).

Weighing against the Defendant are the great number of victims, the satisfaction of the two elements for the crime of murder and the subsequent effects the crime had on the survivors who throughout their lives suffered and still suffer to this day from the violent loss of their family members.

A four-year term of imprisonment is appropriate for the Defendant's crime and culpability after taking into consideration all of the facts and circumstances for and against him.

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<sup>6</sup> *Translator's note: Grundgesetz*

4.

Further, the Court reviewed whether a portion of the sentence should be declared as time served on account of an improper delay of proceedings by the state (violation of Art. 6 of the Convention on Human Rights), however, came to the conclusion that this is not applicable. Established case law specifies that such a decision requires that for a determination of whether criminal proceedings have been improperly delayed the extent of such a delay must be examined more closely with respect to the state's assertion of its right to exact punishment (German Federal Court of Justice Enlarged Panel for Criminal Matters<sup>7</sup>, Jan 17, 2008, GSSt 1/07, cited as per juris). Any delays in the criminal investigation proceedings conducted by the Frankfurt/Main District Attorney's Office between 1978 and 1985 do not warrant any compensation, because they did not expose the Defendant to any palpable stress or burden, which in its effect would have been equivalent to any sanctions, which as a result, must be taken into account. According to testimony the Defendant did not presume that he would ever be indicted since the senior district attorney in charge reportedly stated that he was only interested in him as a witness - even though he was questioned as a suspect under investigation. Accordingly despite the criminal investigation proceedings, he did not find himself in a stressful situation, but rather based on the statements from the senior district attorney felt honestly reinforced in his position to be likewise morally responsible, however, legally blameless and consequently need not worry about any criminal proceedings and punishment. The fact that the Defendant was not under investigation within the scope of formalized criminal investigation proceedings between 1985 and 2013, because the Frankfurt/Main District Attorney's Office did not believe there was probable cause to pursue an indictment and discontinued the proceedings against him pursuant to § 170( )<sup>8</sup> StPO also does not justify an improper delay of proceedings, because non-existent proceedings cannot be delayed and an investigation, which is not conducted, cannot result in any palpable stress or burden for the perpetrator. It

<sup>7</sup> Translator's note: BGH Großer Senat für Strafsachen

<sup>8</sup> Translator's note: The Court erroneously failed to specify subsection 2 in this cite - a typographical error.

was also not within the purview of the Frankfurt/Main District Attorney's Office to bring an indictment against the Defendant in order to obtain an acquittal, *res judicata*, beneficial for the Defendant, as such a course of action is not provided for in the code of criminal procedure. Finding insufficient probable cause to bring an indictment mandates discontinuing an investigation pursuant to § 170(2) StPO and thus occurs in the Defendant's interest so that he is not exposed to, at that time, a frivolous trial. Therefore, this does not constitute an improper delay of proceedings by the state (cf. BGH, April 18, 2002, 3 StR 79/02, cited as per juris) independent of the issue of whether the underlying considerations therefor were appropriate at the time. Indications of an improper delay of proceedings by the state in the current case initiated by the Hanover District Attorney's Office in November 2013 against the Defendant have neither been pled nor are apparent.

V.

The decision on costs and expenses is based on § 465(1) StPO and § 472(1) StPO.

Kompisch

Kramer-Natho

Subatzus

I hereby certify the correctness and completeness of the above translation. I was appointed a certified translator by the Higher Regional Court of Hamm (Oberlandesgericht Hamm) and by the Regional Court of Hannover (Landgericht Hannover).

Neuenkirchen, 26.10.2015



Eszter Bobory-Küwen (Dipl.-Phil.)

