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GERMAN MILITARY GOVERNMENT OVER EUROPE: MILITARY AND POLICE TRIBUNALS IN OCCUPIED EUROPE

Description

This report describes the system of courts, for the most part military, police, and other special courts, set up by the Germans in the various parts of occupied Europe; it also analyzes the decrees and other regulations dealing with the prosecution of acts directed against military security or otherwise of political character.

22 December 1944

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This study is Part Two, III, of the series

GERMAN MILITARY GOVERNMENT OVER EUROPE

the outline of which is as follows:

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Part Two. German Controls in Occupied Europe

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MILITARY AND POLICE TRIBUNALS IN OCCUPIED EUROPE

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A. MILITARY JURISDICTION AND MILITARY TRIBUNALS IN GERMANY IN WARTIME

Jurisdiction for offences against military law, together with such related matters as special courts, special procedures, and a special set of legal rules (Militärgerichtsbarkeit), was defined and regulated by the Reich Code of Military Courts and Procedure (Militärstrafgerichtsordnung -- MStGO) of 1898. Under the Weimar Republic special military jurisdiction was abolished, and offences against military law were put under the jurisdiction of the ordinary courts. Military jurisdiction was re-established by a law of 12 May 1933 and was regulated largely on the basis of the old MStGO in its new version of 29 September 1936. Under this legislation military jurisdiction was still conceived in a rather "liberal" fashion. As a comprehensive code it created legal guarantees for the protection of the rights and interests of the accused by an elaborate system of tribunals and detailed rules of procedure, such as evidence, legal remedies, etc. There were courts of first instance (Kriegsgerichte), courts of appeal (Oberkriegsgerichte), and a Supreme Court Martial (Reichskriegsgericht), whose composition and competence were all regulated in minute detail.

After the outbreak of World War II this system was replaced by one which largely substituted military convenience and free discretion for legal security. Detailed rules of competence and procedure were dropped in order to

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1/ This study includes not only military and police tribunals, but all special courts established by the Germans in occupied Europe.

enable the military authorities to deal with military crimes in summary fashion.

1. General Organization

The new rules on procedure and organization are embodied in the Decree concerning Military Jurisdiction during War and in Special Operations (Verordnung über das militärische Strafverfahren im Kriege und bei besonderem Einsatz or Kriegsstrafverfahrensordnung -- KStVO) of 17 August 1938. In force since 26 August 1939, it has been amended and supplemented by eight executive decrees (Durchführungsverordnungen), most of which increase the discretionary character of the law.

The aim of the new law is indicated by the first paragraph of its first Article: "In order to protect the armed forces and the prosecution of the war, a simplified procedure, the war procedure, is herewith established." It then went on to enumerate certain rules which "must be observed under all circumstances" ("folgende Vorschriften müssen unter allen Umständen beachtet werden"). The most important among these rules requires that a trial be held before three judges, that the accused be heard if present, that the decision be in writing, accompanied with a written opinion, that conviction rest on agreement of a majority, and that the sentence be confirmed by a competent commander (Art. 1, par. II). This provision implies that any other procedural rule contained in the remainder of the KStVO need only be observed at the discretion of the authorities.

Article 1 further stipulates that, in the absence of a rule, authorities shall regulate the procedure according to due discretion ("nach pflichtgemässem Ermessen"). This stipulation also adds to the sphere of arbitrary discretion (Art. 1, par. III). Moreover, it was deemed necessary to

state expressly that even foreigners should not be punished without judicial procedure (Art. 1, par. IV). In order to safeguard reciprocity, a reservation was made to the effect that in the trial of an enemy national whose country does not offer "similar legal guarantees" even these minimum guarantees could be disregarded (Art. 1, par. V).

2. Jurisdiction

Subject to military jurisdiction are soldiers, other members of the armed forces, prisoners of war, and "all other persons," whether Germans or foreigners, military or civilians, in the cases of Articles 2-4 KSSVO (see below). These Articles cover the following cases: espionage, Freischärlerei (partisan activity), and all offences against decrees issued by commanders of occupied territories. "All other persons" are further subject to military jurisdiction in cases of treason, damage done to military establishments, and acts committed in military establishments (Art. 2).

All those who commit any offence in a zone of military operations (Art. 3) are also placed under military jurisdiction. The original text of Article 3 also provided for military jurisdiction in a zone immediately in the rear of the operations zone (rückwärtiges Heeresgebiet). For this zone the commanders in chief of the armies determined when and to what extent military jurisdiction ceased and that of the ordinary courts began. The Eighth Executive Decree of 4 July 1942 abolished the special status of this zone and assimilated it to that of occupied territory in general. To the already large extensions of military jurisdiction this decree added the important one of cases which involve acts committed abroad against members of the armed forces prior to the occupation. This implied the retroactive force of these laws.

3. Courts and Procedures

Military jurisdiction rests with Gerichtsherren (those who have the power to inaugurate, supervise, and execute the procedures) and is exercised by Gerichte (tribunals). The Führer has "supreme military jurisdiction" as oberster Gerichtsherr. The president of the Supreme Court Martial and certain high commanders of the armed forces are Gerichtsherren.

Tribunals are courts in the field or on board ship (Feld- und Bordkriegsgerichte). They are composed of one judicial and two lay members of the armed forces, although in certain cases the trained jurist can be replaced by an officer. There is, in addition, the Supreme Court Martial in Berlin. Under certain circumstances, particularly in cases of civilians, ordinarily competent Gerichtsherren and tribunals can be replaced by an emergency jurisdiction (Notgerichtsstand) inaugurated by the nearest available commander. According to the Fourth Executive Decree of 1 November 1939 this official can establish summary tribunals (Standgerichte) in the event cogent reasons permit no delay and witnesses or other evidence are available on the spot.

Prosecution in absentia, is not only permitted, as in ordinary trials, but is facilitated by the omission of certain protective regulations (Art. 59). Verdicts rendered are subject to no appeal. They must be executed after confirmation (Bestätigung) by the Gerichtsherr or certain other commanders (by the Führer in case of a death penalty against a German officer). Death penalties must be executed immediately after confirmation -- in the case of men, by shooting; in the case of women, by decapitation. In cases of sentences rendered for partisan activity, espionage, or sabotage the

Fourth and Tenth Executive Decrees permit the omission even of confirmation if the competent commander cannot be reached immediately and cogent military reasons stand against delay.

According to a decree by Hitler of 12 June 1944, and regulations issued by Keitel on the same day, political offences by members of the army (in the field as well as in training) can be taken out of the jurisdiction of the ordinarily competent Gerichtsherren and transferred for trial to a new Army Central Court (Zentralgericht des Heeres) in Berlin, established by decree of 11 April 1944. This move reflected a tendency to hand over politically important cases of military crime to the jurisdiction of a hand-picked authority.

4. Substantive Law

Acts for which military jurisdiction may be exercised were defined in a comprehensive Military Penal Code (Militärstrafgesetzbuch -- MStGB) of 1872. This law remained valid in its new version of 10 October 1940, although many important additions were made by the Decree concerning Special Military Crimes during War (Kriegssonderstrafrechtsverordnung -- KSSVO) of 17 August 1938, in force since 26 August 1939.

a. Crimes Peculiar to Members of the Armed Forces

Most delinquencies defined in the Penal Code are those which might be committed by the military personnel of the armed forces in the performance of their duties. One group of regulations defines military subordination and corresponding crimes -- mutiny, military riot, bodily assault upon a superior, etc. Another group penalizes abuses of military authority, such as incitement of subordinates to commit a crime, offending or maltreatment of inferiors, etc. A number of articles concern illegal

acts against property (military embezzlement, etc.), the violation of certain special military duties (delivery of wrong messages, damaging by negligence ships or planes, etc.), or such special offences as marriage without permission. A more important group deals with desertion and violation of duties because of cowardice. According to decrees of 31 March 1943 and 5 May 1944, penalties for infractions of military discipline or for failure of courage may, in excess of the ordinary penalty, be raised to the death penalty, if this is in the interest of military discipline or military security, or if particularly heavy damage to the Reich or the conduct of the war has occurred, and the ordinary penalty seems insufficient according to "sound popular sentiment." This stipulation has been made applicable to cases which occurred before the decree was issued.

While all these offences can be committed in peace as well as in war, others are specific war crimes, some of them referring to acts which can be committed only "in the field." War treason (Kriegsverrat) is treason committed in the field. It is punishable by death, as is capitulation (Übergabe an den Feind) on the part of a commander who has not exhausted all means of defense. Another group of "field crimes" concerns acts against persons or property -- pillage, devastation, and robbing of wounded or corpses.

b. Other Crimes

To the foregoing groups of crimes, the KSSVO has added others which concern principally civilians and foreigners in wartime. Article 2 deals with espionage. Article 3 stipulates the death penalty for Freischärlerei -- the commission of hostile military acts without being a regular member of organized armed forces; the definition here takes over the corresponding stipulations of the Hague Convention respecting the Laws and Customs of War on Land.

Procedure in cases of Freischärlerei is especially summary. Article 4 fixes severe penalties for acts committed against any decree issued by commanders of occupied foreign territory. Article 5 concerns the undermining of German defense power (Zersetzung der Wehrkraft), which is defined as the attempt to paralyze or undermine the will of the German or an allied people to defend itself against enemies. This last regulation includes certain crimes which were formerly embodied in the MStGB, such as incitement of a soldier to disobedience or desertion, or the attempt to evade military service. This article, of course, punishes all anti-militarist and pacifist activities. In cases arising from Article 5, civil courts (usually a Sondergericht or Volksgericht) are competent.

The MStGB extends the validity of German criminal law to occupied foreign territory by stipulating that any act committed by a German or a foreigner on such territory against German troops or authorities which is punishable according to German law shall be considered as committed in German territory.

B. MILITARY TRIBUNALS AND OTHER GERMAN SPECIAL COURTS IN OCCUPIED EUROPE 1/

With the KSSVO and the KStVO, German military authorities had sharp weapons to enforce military security in any territories occupied by German armed forces. But, although an effective instrument providing quick and summary treatment of offences against military law, this legislation was still modelled after traditional concepts of military occupation. It did not provide any non-military apparatus of repression and terror for conquered regions corresponding to the machinery set up within the Reich proper. The attempt to incorporate occupied territories into a "New Order" -- not only to occupy them for the duration of the war -- as well as to establish a new pattern of society wherever German arms prepared the way for Nazi penetration soon made it necessary to go far beyond the usual military security measures.

The "coordination" of life and institutions in the conquered regions, and the resultant resistance among the inhabitants, called for devising institutions and measures of political repression, e.g., for the protection of "collaborationists." Thus, military courts and military jurisdiction proper constituted only a small part of the machinery for the repression of political crimes in German-occupied Europe. Ways and procedures of handling these problems varied according to the regions, and there was comparatively little common to all territories under Nazi rule.

1/ The term "special courts" as used above embraces all types of tribunals outside the regular civil courts and is thus broader than the Sondergerichte mentioned below.

1. Uniform Elements

Common to all occupied territories were certain rules which maintained the minimum of genuine military jurisdiction traditionally conferred upon military courts as a safeguard of military security and order. Certain SS formations, with quasi-military functions and organization, had a corresponding SS jurisdiction, likewise established on a general pattern.

a. Military Jurisdiction

Whatever may have been their more far reaching jurisdiction in certain regions or under special circumstances (during actual operations, for instance, all attacks by civilians upon the armed forces were dealt with by summary courts martial), military tribunals always had exclusive jurisdiction over certain acts. These embraced, on the one hand, acts committed by members of the armed forces. They included also exclusive jurisdiction over two groups of acts committed by civilians: acts directed against the German armed forces, its members and followers; and acts committed in buildings, localities, or installations which served the German armed forces. Court or Gerichtsherr could in these cases refer the prosecution of the acts to ordinary or special civil courts. Without such action, no other court could exercise jurisdiction over acts committed against military security.1/

1/ See for France: Decree concerning Judicial Organization in the Occupied Territory (Verordnung über die Rechtspflege im besetzten Gebiet) of 23 July 1940 (Verordnungsblatt für die besetzten französischen Gebiete, p. 59), Art. 1.

Netherlands: Decree of 8 June 1940 (Verordnungsblatt für die besetzten niederländischen Gebiete, p. 26).

Norway: Decree concerning the Protection of the Occupied Norwegian Territories (Verordnung zum Schutze der besetzten norwegischen Gebiete) of 12 October 1943; cf. also Second Decree for the Extension of the Jurisdiction of the SS and Police Court Nord (Zweite Verordnung über die Erweiterung der Zuständigkeit des SS und Polizeigerichts

(Footnote continued on page 10)

In these cases, the procedure was that of the KStVO and the right of pardon was usually especially reserved for the military commanders. In addition to the rules contained in the KStVO, a decree of the Führer (Führerverordnung) of 6 January 1942 1/ provided that, in view of the abolition of appeal, the commanders in chief of the army corps or the Chief of the High Command of the Armed Forces might quash sentences and refer the case to the Supreme Court Martial.

b. Special SS Jurisdiction

According to the Decree concerning Special Jurisdiction in Criminal Cases for Members of the SS and Members of Police Forces in Special Operations, 17 October 1939, and the two executive decrees of 1 November 1939 and 17 April 1940, crimes committed by members of the Reichsführung SS, of the higher SS staffs, of the SS Verfügungstruppe, the SS Totenkopfverbände, the SS

(Footnote continued from page 9)

Nord) of 21 January 1942 (Verordnungsblatt für die besetzten norwegischen Gebiete, 1942, No. 2), Art. 2.

Serbia: Decree concerning Military Jurisdiction over the Civil Population (Bekanntmachung über die Zuständigkeit der deutschen Wehrmachtgerichte zur Aburteilung der Zivilbevölkerung) of 27 June 1941 (Bekanntmachungen und Veröffentlichungen der deutschen Behörden in Serbien, p. 2).

General Government: Decree concerning Military Jurisdiction over Civilians in the General Government (Verordnung über die Wehrmachtsgerichtsbarkeit gegen Zivilpersonen im Generalgouvernement), 26 January 1940 (Verordnungsblatt für das Generalgouvernement, p. 41).

Protectorate of Bohemia-Moravia: Decree concerning Criminal Jurisdiction (Strafgerichtsverordnung) of 14 April 1939 (RGBl., I, 754), as amended by decree of 5 May 1941 (RGBl., I, 248), and Decree concerning the Exercise of Military Jurisdiction in the Protectorate of Bohemia-Moravia (Verordnung über die Militärgerichtsbarkeit im Protektorat Böhmen und Mähren), 8 May 1939 (RGBl., I, 903).

1/ Heeresverordnungsblatt, 1942, Part B, 27 January.

Junkerschulen, and police forces in special operations were put under the special jurisdiction of SS courts which, in organization and procedure, corresponded closely to military tribunals. The Gerichtsherr was Himmler.

It could be assumed that, as a consequence of the exemption of SS and police formations from the jurisdiction of military courts, attacks on the security of the SS and police would also have come under the jurisdiction of the SS courts. However, as far as is known, there was, with two exceptions, no express provision for a special SS jurisdiction in cases of acts of civilians directed against SS security. In the Protectorate, in case of a direct attack by a non-German against the SS on the police, the Reich Leader SS and Chief of the German Police could refer the case to an SS court. If the same act also affected the interests of the armed forces, the Reich Leader SS and the Chief of the High Command of the Armed Forces had to decide whether to refer it to an SS court or to a military tribunal (decree of 15 July 1942). In the occupied Dutch territories the Reich Commissioner could refer cases of acts directed against the SS, the police, or members thereof during or with reference to their service, or cases of acts directed against members of the Dutch police, to SS and police courts (Art. 12, Decree concerning German Criminal Jurisdiction, of 6 July 1942, and Decree of 14 May 1943).

Individual members of the SS or police were under military jurisdiction if they had been inducted into the armed forces as active soldiers. For whole formations of the SS or police in the field, special police field courts were established (Decree of the High Command of the Armed Forces, 28 May 1940).

2. Diversified Elements

Over and above measures for the security of the armed forces and the protection of military order, measures for political security and coordination were taken in almost all countries and territories invaded by the Germans. But the application of these policies varied according to the general political set-up created by, or under the auspices of, the occupying power. A system of military jurisdiction for all kinds of political crimes in territories under military administration contrasted with one of extensive jurisdictions of various non-military German courts, frequently whole court systems, in territories having a German civil administration.

This "civil" jurisdiction, for the repression of acts and attitudes inimical to the Nazis, was also diversified. While in certain instances or for certain periods it was conferred upon the more usual type of legal establishments warranting the name of "courts," it often became a matter with which the Gestapo, through the establishment of police courts, was mainly concerned. In four different regions, four patterns could be distinguished, organized according to the degree of deviation from the traditional system of military occupation.

a. Denmark

Until 29 August 1943, with the introduction of martial law, this country had the least deviation from the traditional pattern. German military jurisdiction was limited to the protection of military security on the basis of the KStVO. A decree of the High Command of the Armed Forces, 1 August 1940, empowered the commander of the German forces in Denmark to make the decisions as to whether cases of civilians should be tried by military tribunals or be handed

over to Danish authorities. Political crimes not directly affecting military security were handled by the Danish courts.

Following the disturbances of summer 1943, German military courts more or less secretly began taking over cases of sabotage by giving the concept of "military security" a very broad interpretation. This development, however, led to increasing difficulties with the Danish prosecuting authorities, particularly the Danish police. In August 1944 the Germans officially demanded that Danes accused of sabotage and similar acts be handed over to and tried by German military courts. During the ensuing disturbances a "police state of siege" was proclaimed and the Danish police was dissolved. Thenceforth actions directed against public order and security (sabotage, etc.) were apparently handled by summary jurisdiction of SS and police courts, if anti-Nazis were not killed by the Gestapo without even the formality of a police court procedure. No legalization by decree was ever given this policy.

b. France, Belgium, Serbia, Greece

These were territories under exclusively military administration 1/ where, however, attempts at coordination were made -- partly by setting up puppet regimes and even dismembering the country and reorganizing its political boundaries, as in Yugoslavia. Since these efforts frequently met with strong opposition, military jurisdiction was here extended to include political repression.

(1) Organization and Procedure

Military tribunals were usually set up at the Oberfeldkommandanturen, the Feldkommandanturen, and the

1/ In Belgium military administration was replaced by a German civil administration in summer 1944. This, however, apparently did not affect the jurisdiction and organization of the German military courts.

Ortskommandanturen. Information about details of their organization, their location, etc., is not available, except for occasional references in news dispatches to tribunals which acted in specific cases. Only with reference to the regulation of the competence of certain commanders to issue limited penal orders (Strafverfügungen) in cases of minor offences,1/ has information been published about the specific authorities who possessed these powers. A decree for occupied France, 1 August 1942, assigned Strafverfügung-jurisdiction to Kreiskommandanten, Feldkommandanten, the Kommandant of Greater Paris, and, in deviation from the exclusively military pattern, to the commanders of the security police operating in the sphere of the military commander in France. A decree for Belgium of 14 November 1942 assigned this jurisdiction to Oberfeldkommandanten, Feldkommandanten, Kreiskommandanten, and Ortskommandanten. In Serbia -- the rump Yugoslavia remaining after the cutting off of Croatia and other parts of the Kingdom -- a similar decree conferred this jurisdiction upon Ortskommandanten.

(2) Extent of Jurisdiction

Besides acts committed against military security proper, the jurisdiction of military tribunals here extended to all imaginable acts allegedly damaging or endangering the political order established by, or under the auspices of, the occupying power.

Thus the Decree of 23 July 1940 concerning Judicial Organization in Occupied France, besides establishing the usual military jurisdiction, made military courts competent

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1/ Strafverfügungen are judicial verdicts inflicting usually minor punishments in a summary procedure without a hearing. Against them, the accused can appeal for a regular trial.

in all cases of contravention of ordinances issued in the territory "for the safeguard of the purpose of the occupation" (zur Sicherung des Besetzungszweckes). They had further jurisdiction in all cases where a German or Italian national was accused (Second Decree concerning Judicial Organization, 12 November 1940) and even retroactive jurisdiction in cases of acts committed by such nationals in the occupied territory prior to its occupation (decree of 16 January 1941). This measure was obviously directed against anti-Nazi and anti-Fascist exiles.

In Belgium, a decree of 28 April 1943 (Verordnung zum Schutze des inneren Friedens und der Besatzungsmacht) codified the substantive law concerning political offences in the broadest sense. It penalized all acts of sabotage and violence against Germans or collaborationists, attempts to "disturb the industrial peace" by strikes, forgery of food coupons, "unauthorized hunting," assistance given escaped prisoners and other enemy nationals, furthering "Communist" plots, making or possessing or distributing anti-German propaganda material. It also punished adherence to unauthorized political groups, participation in unauthorized demonstrations or meetings, listening to foreign broadcasts, spreading of false rumors, plunder, and unauthorized dispensing of medical treatment to members of the German Army or administration. This decree repealed and replaced twenty-five ordinances issued between 10 May 1940 and 10 December 1942.

In Serbia, the jurisdiction of military courts in non-military matters was similarly broad. As in Belgium, the substantive law in regard to political offences was codified by a comprehensive decree. This decree of 28 June 1943 (Verordnung über die Anwendung deutschen

Strafrechts und zum Schutz des inneren Friedens und der Besatzungsmacht) repealed prior decrees dealing with the subject matter and penalized, usually with the death penalty, all acts with the slightest motivation of political opposition or resistance in a way similar to the Belgian decree. The decree subjected to military jurisdiction, among other things, acts directed against the security or interests of the Reich or the German Volk or against the life, health, honor, or property of German nationals or Racial Germans (Volkszugehörige).1/ Moreover, it placed at the discretion of the military tribunals all cases whatsoever where military necessities or the purpose of the occupation rendered it advisable. Also under exclusive military jurisdiction were acts committed by Germans or German Volkszugehörige and, again retroactively, acts committed prior to the invasion of Yugoslavia.

Little information is available on German-occupied Greece, although it is known that military tribunals were in charge of the repression of sabotage and similar political acts of resistance.

c. Holland, Norway, the Protectorate

In these territories German civil administrations were set up side by side with military authorities and the native civil administration. Special jurisdiction, sometimes native but in most cases German, for the repression of political and similar crimes was established immediately following the occupation. It was usually on a pattern similar to or, in the case of the Protectorate, identical with, the system prevailing in the Reich proper. Under the impact of resistance to Nazi oppression, this system was later changed by the introduction of police terror.

1/ This term has the same meaning as the more commonly used Volksdeutsche.

The patterns prevailing in the three territories during these two stages of development will be described in some detail.

(1) System Prior to the Establishment of Police Jurisdiction

During this period, special German jurisdiction was introduced for political crimes committed by the inhabitants of the occupied territories. This system still bore some features reminiscent of what may be called civilized legal institutions. In details, the system varied in the three regions.

(a) The Netherlands. In the occupied Dutch territories, besides the jurisdiction of military courts and SS courts, a German jurisdiction for criminal acts committed by non-Germans was introduced by decree of the Reich Commissioner (17 July 1940). For this purpose, a German Landesgericht and a German Obergericht were created. The organization and jurisdiction of these courts were regulated by the Decree (version of 6 July 1942) concerning German Jurisdiction in Penal Cases (Verordnung über die deutsche Gerichtsbarkeit in Strafsachen). Besides German nationals, all other persons were subject to their jurisdiction if acts were directed against the German Reich, Volk, or Nazi Party and its affiliations, or any members of these; further, if acts were committed by officials in localities serving German authorities or purposes, and if they were committed during air raids or otherwise constituted a "socially dangerous" crime (Art. 2).

By decree of 5 January 1943, cases of "sabotage," in a very broad sense, came also under the jurisdiction of the German courts -- in this case under exclusive jurisdiction of the Obergericht (Art. 1, 55). The seat of the courts

was at The Hague. Judges were appointed revocably (auf Widerruf) and might be members of some Reich court. The Landesgericht was court of first instance, if prosecution was not instituted directly before the Obergericht. It tried cases by a single judge (Einzelrichter). Appeal might be made to the Obergericht. This court tried the cases before a panel of three judges and applied the special and summary procedure established in the Reich for the so-called "Special Courts" (Sondergerichte). There was no further legal recourse after its sentences.

Trials before the German courts could be referred to Dutch courts. Even after the decree of 19 March 1941 had introduced the possibility of establishing a civil state of siege in regions where public order was disturbed, courts competent to treat cases under such state of siege were not police courts but the German Obergericht, sitting as Sondergericht. It was only in January 1943 that the exercise of judicial functions was handed over to the police.

(b) Norway. In Norway the original intention of the German administration to avoid extraordinary measures and not to interfere with Norwegian jurisdiction except where absolutely necessary was even more apparent. It seems that they hoped for a long period, by making use of the collaborationist groups and authorities, to combat Norwegian resistance. Only for special and well-defined cases were special courts established from time to time. A decree (27 August 1940) concerning procedure before the German Court, in connection with a decree (17 August 1940) concerning enemy property, created a German Court at Oslo, which was apparently given jurisdiction only in the case of acts coming under the enemy property decree. This court applied German penal law and German criminal procedure. Not much was said about its composition, except that the

president and the two assistant judges (Beisitzer) were under the direct supervision of the Reich Commissioner. It was disestablished by decree of 30 July 1942, when its jurisdiction was transferred to the SS and Police Court Nord.

Certain other acts against political security were handed over to a Norwegian tribunal by a decree (5 November 1940) of the Reich Commissioner concerning establishment of a Norwegian Special Court. These were offences against the decree prohibiting political parties, of 25 September 1940, and offences against the decree forbidding activities in favor of the Norwegian dynasty, of 7 October 1940. It was composed of Norwegian judges appointed by the Commissioner for Justice (kommissarischer Staatsrat für das Justizwesen), who was authorized to regulate its procedure.

In addition, by decree of the Reich Commissioner of 21 December 1940, a Norwegian "People's Court" was established, modelled after the German Volksgerichtshof, which had jurisdiction in matters of treason. In all other political cases, during this first period, German military tribunals were given jurisdiction in well-defined cases of contravention of definite decrees -- such as the Decree concerning Defense against British Espionage, 21 February 1941, the Decree concerning Unauthorized Wireless Establishments (1 March 1941), etc. Throughout this period, there was nothing comparable to the broad and vaguely defined criminal jurisdiction of military tribunals in France or Belgium or even the broad general jurisdiction of the German Landesgericht and Obergericht in the Netherlands.

(c) The Protectorate. In the Protectorate the situation differed from the regions already dealt with inasmuch as it was occupied before the outbreak of the war

and incorporated into the boundaries of the Greater German Reich. Shortly after the occupation of the post-Munich Czechoslovakian remnant, the organization of courts and legal systems was regulated on the basis of Reich laws and decrees. These as a general feature provided for two distinct systems of law and courts. One, in principle, applied to German Volkszugehörige, who were made full citizens of the Reich. The other applied to all those outside this citizenship.

Coexistent with the "autonomous" (formerly Czech) courts, which continued to function with restricted jurisdiction, a system of German courts on the exact pattern of the Reich was introduced into the Protectorate. The German courts had jurisdiction over German nationals; the other courts, over non-citizens. However, German criminal jurisdiction, with respect to the applicable law, as well as courts competent to try cases, was extended to non-Germans in cases of crimes which in any way affected German interests or had a political connotation. Thus, under the exclusive jurisdiction of the German courts came high treason, sabotage, acts directed against German state or Party officials or members of affiliated organizations for political motives, or committed in locations serving these authorities or organizations, as well as some special categories of crimes deemed especially dangerous, concerning Volksschädlinge, Gewaltverbrecher, etc. The courts applied German penal law (Art. 6 of the Decree concerning the Organization of German Jurisdiction (Organisationsverordnung) in the Protectorate -- (14 April 1939); also Arts. 15 and 16 of the Decree concerning Criminal Jurisdiction (Strafgerichtsverordnung) of the same date).

The organization of the courts corresponded to that prevailing in the Reich. There were, besides the

usual Amts-, Land-, and Oberlandesgerichte, the Sondergerichte (Special Courts) which were really special chambers organized at the various Landgerichte in order to deal with political and similar crimes in a special procedure (Art. 3, Strafgerichtsverordnung). Moreover, the jurisdiction of the German Supreme Court (Reichsgericht) and the German People's Court (Volksgerichtshof) was extended to the Protectorate. At the discretion of the Reich Protector, (later the German Minister of State), certain cases for which German courts were competent could be referred to "autonomous" courts. By a decree of January 1942, the jurisdiction of the military courts, which until that time had extended to certain political crimes, was restricted to military matters in the usual sense.

(2) Police Jurisdiction under a State of Siege

The foregoing devices for the repression of resistance and the protection of the new regime in the areas under scrutiny proved insufficient at one time or another. Under the impact of serious unrest, the Nazis in all three regions had recourse to the most violent and summary measures by handing over the situation to the SS.

The reason why the SS, and not military authorities, were used to repress unrest was probably twofold. First, there existed in all these cases a German civil administration in which the influence of the police was, of course, immeasurably greater than under military control. Second, the Army probably wished to avoid being involved in an activity which was more political than military and appeared to belong more properly to Party than to military authorities.

As in other organizational patterns, the details of measures and regulations differ in the three cases.

(a) The Netherlands. On 5 January 1943 the state of siege was regulated, and special SS and police jurisdiction created, by the Decree concerning the Protection of Order. While this decree was partly modelled after a previous decree of 19 March 1941, and in its first part contained an extensive codification of the substantive law concerning political crimes, it went far beyond earlier decrees by providing for summary jurisdiction of special police courts.

According to its Articles 58 and 62-71, a police state of siege (Polizeistandrecht) could be proclaimed by the Reich Commissioner either for parts or the whole of the territory to repress serious danger or disturbance of public order. In this case, the Higher SS and Police Chief was authorized to adopt any measures necessary, regardless of the law in force, and to issue ordinances in execution of his special powers. With the proclamation of the state of siege, everyone was enjoined to abstain from activities likely to disturb public order and security and to abide by orders issued with special reference to the Standrecht. Any contravention of this stipulation was punishable by death. For dealing with these cases, special tribunals (Polizeistandgerichte) were established.

The summary police courts consisted of one legally trained SS leader and two SS leaders or police officers. The court shaped its procedure according to its own "due discretion," with the reservation that the Higher SS and Police Chief could give directives and that certain extremely flimsy minimum requirements had to be observed. These comprised: hearing of the accused, appointment of an SS leader or police officer as legal counsel, and the keeping of minutes containing the names of judges and

accused, the evidence, the crime, the reasoned verdict, place, and date of the trial. Death was the only penalty, except in case of extenuating circumstances. The death sentence was subject to review by the Higher SS and Police Chief.

Outside the state of siege, summary police courts could judge cases in which the Reich Commissioner, by decree, would refer to them all or certain crimes, for a definite or indefinite period, and for part or the whole of the occupied territory. He could do so even for a single case.

On the basis of this decree, SS courts started to function when Polizeistandrecht was proclaimed on 30 April 1943 for four Dutch provinces and on 1 May 1943 for the whole country. Courts were established for various SS and Police Security Districts (SS und Polizeisicherungsbereiche), and death sentences were handed down throughout the period of state of siege.

Subsequently a decree published on 13 May 1944 contained regulations for a state of siege to be proclaimed in the event that military developments in Western Europe should render it necessary. Among other stipulations, this decree provided for penalties for new crimes but left the enforcement to the existing authorities, i.e., the German civil courts (Landesgericht and Obergericht) established in the Netherlands, military courts, SS and police courts, and, according to one source,1/ "possibly military courts of summary jurisdiction." Following the Allied invasion, a state of siege was proclaimed on the basis of this decree on 4 September 1944.

1/ Algemeen Handelsblad, 13 May 1944 (News Digest, No. 1450).

(b) Norway. While in Holland the special police courts were mainly created to function during a state of siege, they were institutionalized in Norway. On 31 July 1941, the Decree concerning Civil State of Siege authorized the Reich Commissioner to proclaim a state of siege for the territory in whole or in part and to give the Higher SS and Police Chief full powers to deal with the situation. It provided for summary treatment of acts coming under state of siege but did not define the respective courts.

On 17 September 1941, the Reich Commissioner issued a decree establishing the SS Police Court Nord. By executive decree of 21 January 1942, this court was given, over and above its jurisdiction during actual state of siege, jurisdiction in most cases where hitherto other courts (military tribunals) had had jurisdiction over political crimes. New decrees containing penalties for political crimes always referred them to SS and police court jurisdiction. The Decree (12 October 1942) concerning Protection of the Occupied Norwegian Territories (Verordnung zum Schutz der besetzten norwegischen Gebiete), contained a veritable catalog of political crimes, such as treason, sabotage, and violence against German authorities and collaborationists. The SS and Police Court Nord had jurisdiction in all these cases. Thus SS jurisdiction in Norway became part of the general legal set-up for the repression of political crimes.

Besides German police jurisdiction, a Norwegian (quisling) police jurisdiction was established. A Temporary Law on Measures for the Maintenance of Law and Order, issued by the Norwegian quisling government on 14 August 1943, created special Norwegian police courts to try offences against the Norwegian Military Penal Code of 1902.

A police court was established for at least one province and consisted of three judges appointed by the regional police departments.

(c) The Protectorate. Here, the situation corresponded largely to that which prevailed in the Netherlands. During the unrest in the fall of 1941, a decree of 27 September 1941, on the Declaration of a Civil State of Emergency, gave the Reich Protector powers corresponding to those of the Reich Commissioner in the Netherlands under similar circumstances. Provision was made for the establishment of summary police courts which could order capital punishment, acquittal, or handing over of the accused to the Gestapo. There was no appeal and sentences were carried out immediately. The Protector could refer cases to the People's Court.

d. The General Government and the Occupied Eastern Territories

These territories were also in a different category. While native governments were entirely abolished, these regions were not incorporated into the Reich and were not even given the status of a "protectorate," but were treated as a kind of dependency or colony without rights of their own. As in the case of the Netherlands, Norway, and the Protectorate, a German civil administration with its own court system was established; but in contrast to these territories, first special military courts and then special SS and police courts were introduced parallel to the ordinary German jurisdiction. The best way to describe the rather complicated system which came into existence in these territories is to give a chronological survey of its development in the General Government.

(1) The General Government

Summary courts martial (Standgerichte) were set up by the military as early as 12 September 1939, to deal in more summary fashion than ordinary military tribunals with those who had arms, ammunition, etc., in their possession or had committed acts of violence against members of the army in regions occupied by the German Army behind the actual battle zones (rückwärtiges Heeresgebiet).

These summary courts were composed of a commander of a regiment and two soldiers. Trial and execution of death sentences were to take place on the spot (decree of the Supreme Commander of the Army, von Brauchitsch, 12 September 1939). By decree of 6 October 1939, the decree was extended to "all the formerly Polish territories occupied by German troops." About the same time the Commander in Chief of the Army decreed that German military tribunals could try crimes committed in Poland prior to 1 September, the day of the invasion. This decree, as in the case of Serbia, was aimed not only at acts of German refugees but also at alleged crimes of Poles against German Volkszugehörige.

A few days after the establishment of the General Government on 26 October 1939, the Governor General issued a decree attaching the death penalty to all kinds of "acts of violence" directed against the German Reich or "the sovereignty exercised by Germany in the General Government." All acts coming under this decree were to be tried by summary police courts composed of a police officer and two police officials, or a leader of the SS Totenkopfstandarten or SS Totenkopfsturmbanne and two members of these formations. The procedure was extremely informal and summary (decree of 31 October 1939 against acts of violence).

The summary courts martial continued to function for a brief period in cases coming under the decree of 12 September 1939. However, the Decree concerning Military Jurisdiction over Civilians in the General Government (26 January 1940) transferred their jurisdiction to the summary police courts when the acts were not immediately directed against military security. For military crimes in the narrower sense, the ordinary military tribunals remained competent. But all acts against political security or with political motives were now under non-military jurisdiction. Correspondingly the right of pardon, except in cases of military or SS jurisdiction, was given to the Governor General. A decree of the Governor General, of 8 March 1940, stipulated that death sentences by ordinary, special, or police courts should not be executed before the Governor had made a decision concerning his right of pardon.

Besides the summary courts martial, the Commander in Chief of the Army, as early as the first days of the invasion, had created Special Courts (Sondergerichte) by decree of 5 September 1939. Again, immediately after the establishment of the civil administration these military Special Courts were disestablished and civil Sondergerichte, under the supervision of the Governor General, were created as special courts for the trial of acts with political significance (decree of 15 November 1939).

The Sondergerichte were set up in each district of the General Government. These courts applied German penal law according to the procedure prescribed for Sondergerichte in the Reich proper. Cases were tried by a bench of three judges, in minor cases by but one judge. Besides having jurisdiction in cases where decrees expressly referred to them, they could try all cases where, because of the

gravity or reprehensibility of the act or public excitement caused by it, trial by special court appeared necessary. These courts, established prior to the creation of the general system of German courts in the General Government, were afterwards integrated into that system.

Somewhat later than these Special Courts, a general system of German courts and German jurisdiction in criminal as well as civil law cases was introduced into the General Government. As in the Protectorate, this system had as its main purpose the provision of Racial Germans with a legal system of their own, and led to the same parallel arrangement of German and native courts and jurisdictions as in Bohemia and Moravia. In contrast to the Protectorate, however, and more like the pattern established in the Netherlands, the German courts were not set up as an integral part of the Reich system but as an independent system.

As in all cases of occupied territories with a non-military German court system, these courts were established not only in order to have German nationals and Volkszugehörige tried by German courts, but also to bring non-Germans under German jurisdiction in cases of political significance. An early decree, announcing the creation of a German jurisdiction in the General Government side by side with the Polish jurisdiction (26 October 1939), declared it to be the task of the German courts to punish attacks against the safety and reputation of Reich and Volk, or the life, integrity, and property of German Volkszugehörige.

Actually, German courts were created on the basis of the Decree concerning German Jurisdiction in the General Government (Verordnung über die deutsche Gerichtsbarkeit in Generalgouvernement), of 19 February 1940, and started functioning on 9 April 1940.

The decree provided for German Courts and German Superior Courts, defined their districts, and conferred upon them jurisdiction in criminal and civil law cases. In criminal cases the German Court was a court of first instance, and the Superior Court decided on appeals. Its verdict was final. The German courts had jurisdiction not only over German nationals and German Volkszugehörige but also over non-Germans in the usual cases of acts committed against German interests (for details see Art. 7 of the decree). The courts, of course, applied German procedural law.

The Decree concerning Polish Jurisdiction (19 February 1940) provided that Polish jurisdiction was permitted insofar as no German court had jurisdiction. However, even this sphere was restricted in criminal cases. Polish courts could try a criminal case only after it had been referred to it by a German prosecuting authority. Moreover, each sentence rendered by a Polish tribunal was subject to review by German authorities. The leader of the justice department in the office of the respective district chief could submit an application for review to the Obergericht if there was "a public interest in a review." The Obergericht might confirm the Polish sentence, decide the case itself, or refer it to a Sondergericht.

In contrast to the situation in the Protectorate, there was no jurisdiction of the German Reichsgericht or Volksgerichtshof over cases originating in the General Government. Besides the jurisdiction of military and SS tribunals for the protection of military or SS security, there existed the jurisdiction of the police courts, the Sondergerichte, and the German Courts and German Superior Courts. It seems that major political crimes were usually handled by the Sondergerichte.

In autumn 1942, summary courts were created for the duration of an Ernteausnahmeszustand (state of siege for the duration of the harvest season), with capital punishment prescribed for sabotage of agricultural production. The time fixed for this state of siege was from 1 August to 30 November 1942. Nothing is known about the composition of the courts thus established. Again, in 1943 an Ernteausnahmezustand was created, this time for the period of 15 July to 20 December.

(2) The Occupied Eastern Territories

As far as can be judged from rather scanty information, the situation in the Occupied Eastern Territories closely resembled that in the General Government. Summary police courts of the General Government type were introduced into these territories under a decree of 12 January 1942. Other German courts seem to have been set up separately in the two main sections into which the Occupied Eastern Territories are divided, the Ostland and Ukraine, and seem to have been more under the authority of the respective Reich Commissioners than under the Reich Minister for the Occupied Eastern Territories.

The Decree concerning the Creation and Organization of German Jurisdiction in the Occupied Eastern Territories, 19 December 1941, and the Decree concerning the Application of German Criminal Law in the Occupied Eastern Territories, of the same date, provided for the establishment of German Courts. Provision was made for Deutsche Obergerichte, sitting with benches of three judges, at the seat of each of the two Reichskommissare; for Deutsche Gerichte, with single judges, at the seat of each Generalkommissar; and for Special Courts (Sondergerichte), attached to the Deutsche Gerichte. The Sondergerichte consisted of three judges,

of whom two were lay members selected from the ranks of Reich or Volk Germans for one year. These courts applied German criminal law exclusively. They had criminal jurisdiction in all cases except those in which military or police courts had jurisdiction. This means that not even in minor cases was any jurisdiction left to native courts. Moreover, in minor cases the Gebietskommissare were allowed to act as criminal courts; the Decree concerning the Criminal Jurisdiction of District Commissioners (20 February 1943) gave them power to punish any person with up to two years' imprisonment. Legal remedies against sentences of all these authorities were limited. There were none at all available to Jews or other racial groups, if the Reichskommissar so decreed, or against sentences by the Gebietskommissare if the penalty was six weeks' imprisonment or less.

Substantive criminal law was codified by a decree of 17 February 1942, containing a catalog of political crimes for persons not Reich or Volk Germans. Most of these were punishable with death. A stipulation unique even in German legislation is that of Article 3, which provided that the death penalty could be inflicted for any act not coming under the catalog of the decree or any other German law or decree if the action proved to be the expression of an "especially malignant attitude" or was deemed "especially serious" for other reasons. In these cases juveniles could also be punished by death. A rather unique jurisdiction of German military tribunals concerned the "care of children of German soldiers in the occupied territories." A decree provided that, "in order to preserve and promote racially valuable Germanic heredity," children of German soldiers and Norwegian or Dutch girls would be

granted special care on the part of the authorities established under the Reich Commissioners in Norway and the Netherlands.

In these cases, any legal question arising, such as one concerning the determination of paternity or alimony claims, belonged to the jurisdiction of German military tribunals, which applied German law. Access to ordinary courts was denied to child and mother thus "taken care of."

The Reich Commissioners were authorized to extend this regulation to children of other Germans in Norway and the Netherlands. Moreover, the Chief of the High Command of the Armed Forces had the power to extend it to the whole or parts of other occupied territories. This clause was obviously added in consideration of the Flemish part of the Belgian population. Whether such extensions actually took place is not known.

Appendix. TYPES OF CRIME AND THE JURISDICTION OF GERMAN COURTS IN OCCUPIED EUROPE

The following chart presents in the first column the different acts defined as crimes and in the three other columns the various types of courts established to handle these crimes in the several occupied territories, in the rückwärtiges Heeresgebiet, and in the remaining territory under ordinary conditions or "state of siege."

CRIMES	COURTS			
	In the rückwärtiges Heeresgebiet (immediately following military operations)		During occupation	
		In general		During state of siege
1) Attack on security of armed forces	Poland: Summary courts martial Russia: courts martial In all other countries probably courts martial	Denmark:		Courts martial
		France:		Courts martial
		Belgium:		Courts martial
		Serbia:		Courts martial
		Greece:		Courts martial
		Netherlands:		Courts martial
		Norway:		Courts martial
		Protectorate:		Courts martial
		General Government:		Courts martial
		Occupied Eastern Territories:		Courts martial
2) Attack on security of SS and police formations or on high SS leaders		Denmark:	Probably courts martial	
		France:	Probably courts martial	
		Belgium:	Probably courts martial	
		Serbia:	Courts martial	
		Greece:	Probably courts martial	
		Netherlands:	SS courts (also for members of Dutch police)	
		Norway:	Probably SS and Police Court Nord	
		Protectorate:	SS courts	
		General Government:	Probably courts martial	
		East:	Probably courts martial	
3) Political crimes (treason, sabotage, formation of political parties, etc.)		Denmark:	Danish courts, later German courts martial or SS and police courts	
		France:	Courts martial	
		Belgium:	Courts martial	
		Serbia:	Courts martial	

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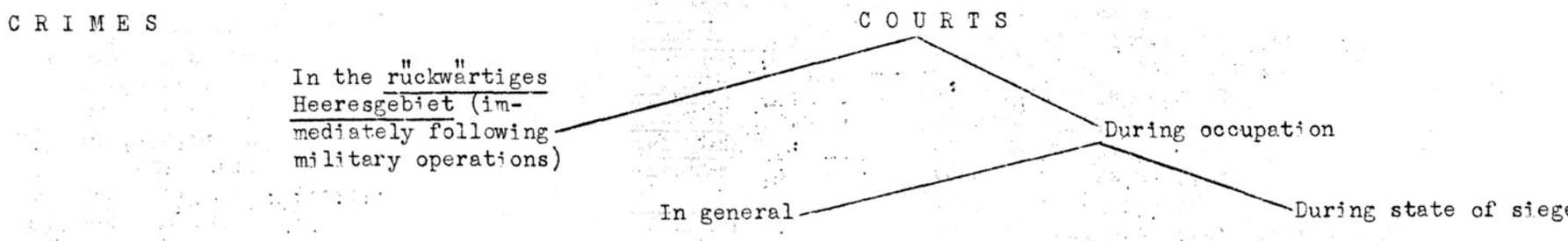

CRIMES	COURTS			
3) continued		Greece:	Courts martial	
		Netherlands:	German Landesgericht, German Obergericht (First, in special cases, courts martial, Deutsches Gerichtshof; later,) Norwegian Special Court, Norwegian People's Court, SS and Police Court Nord, Norwegian police courts	Netherlands: Summary police courts
		Norway:		Norway: SS and Police Court Nord
		Protectorate:	German court system (in particular Sondergerichte, Volksgerichtshof)	Protectorate: Summary police courts
		General Government:	Summary police courts Sondergerichte, Deutsche Gerichte, Deutsche Obergerichte	General Government: Summary courts during "Ernte-ausnahmezustand" of 1942 and 1943
		East:	Summary police courts, Sondergerichte, Deutsche Gerichte, Deutsche Obergerichte	

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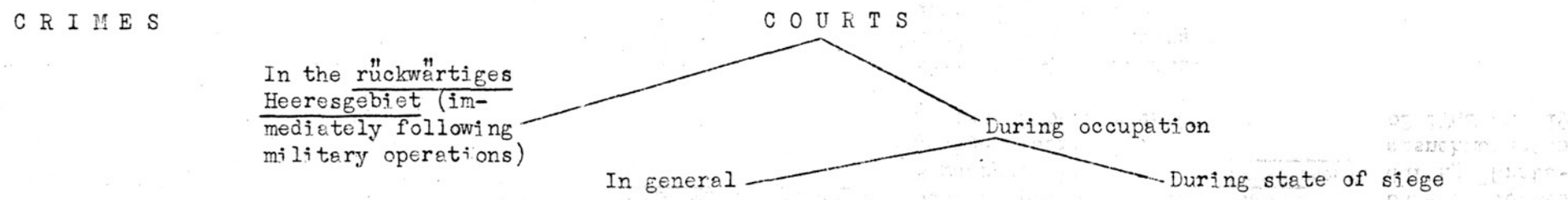

4)	Crimes committed in establishments serving German state authorities or the Nazi Party	Denmark:	Probably courts martial
		France:	Probably courts martial
		Belgium:	Probably courts martial
		Serbia:	Courts martial
		Greece:	Probably courts martial
		Netherlands:	Landesgericht, Obergericht (only crimes committed by Dutch officials)
		Norway:	Probably SS and Police Court Nord
		Protectorate:	German court system
		General Government:	Deutsche Gerichte, Deutsche Obergerichte
		East:	Probably Deutsche Gerichte, Deutsche Obergerichte
5)	Attacks on German state or Nazi Party officials, or on members of Party affiliations for political reasons	Denmark:	Probably Danish courts, later courts martial or SS courts
		France:	Probably courts martial
		Belgium:	Probably courts martial
		Serbia:	Courts martial
		Greece:	Probably courts martial
		Netherlands:	Landesgericht, Obergericht
		Norway:	SS and Police Court Nord
		Protectorate:	German court system
		General Government:	Probably courts mentioned sub 3
		East:	Probably courts mentioned sub 3

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CRIMES	COURTS		
	In the "rückwärtiges Heeresgebiet (immediately following military operations)	In general	During occupation
			During state of siege
6) Acts directed against German nationals or Racial Germans	Poland: Courts martial (for acts committed prior to occupation)		
		Denmark:	Probably Danish courts, later courts martial or SS courts
		France:	Not known
		Belgium:	Not known
		Serbia:	Courts martial (also for acts committed prior to occupation)
		Greece:	Not known
		Netherlands:	Landesgericht, Obergericht (only concerning German nationals)
		Norway:	Not known
		Protectorate:	German court system
		General Government:	Deutsche Gerichte, Deutsche Obergerichte, summary police courts, Sondergerichte
		East:	Not known
7) Crimes committed by German nationals or Racial Germans		Denmark:	Not known
		France:	Courts martial (including acts committed by German or Italian nationals prior to occupation)
		Belgium:	Not known
		Serbia:	Courts martial
		Greece:	Not known
		Netherlands:	Deutsches Landesgericht, Deutsches Obergericht (crimes committed by German nationals)

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CRIMES	COURTS	
	In the "rückwärtiges Heeresgebiet" (immediately following military operations)	
	During occupation	In general
		During state of siege
7) continued	Norway:	Not known
	Protectorate:	German court system
	General Government:	Deutsche Gerichte, Deutsche Obergerichte (possibly also Sondergerichte, summary police courts)
	East:	Deutsche Gerichte, Deutsche Obergerichte (possibly also Sondergerichte, summary police courts)

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