

Pfirsch

Andersson

F i n a l P l e a

for

the Defendant Karl PFIRSCH
in case 10 (KRUPP)

presented by:

Dr. Bernd VORWERK

Attorney-at-Law

in Braunschweig

Nuernberg, June 1948.

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Your Honors,

Since Counts 1 and 4 of the indictment and the pertinent subjects allotted to me within the scope of the collective defense have been dropped by the well-known advance decision of this Tribunal, my presentation, with only one exception, is confined to the personal defense of my client PFIRSCH. For the sake of clarity I have divided the subject as follows:

In Section A the general subject represents comments on the question of the import of the IMT judgment in regard to this particular case.

Under B follows the specific plea for PFIRSCH.

I shall deal

- I. with the sphere of activity of my client during the period from 1938 until the collapse in 1945
- II. With the alleged individual participation of PFIRSCH in the so-called spoliation
- III. to the same extent, with the subject of the Prosecution in regard to slave labor
- IV. with the question of collective responsibility as far as my client is concerned and
- V. in conclusion, I propose to deal with his personality.

In general, I have used footnotes in referring to sources quoted so as not to hold up the plea.

A.

The question whether and to what extent this Tribunal is bound in its decision by the judgment of the IMT, has already been broached during the presentation of evidence of the Prosecution authority.*

* Session of 28 Jan. 1948, Record page 2565 and the following .

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This was done in view of the ruling in article 10 of Ordinance No. 7, issued on 18 October 1946 by the US Military Government for Germany, concerning the constitution and jurisdiction of certain Military Tribunals.

This article 10 prescribes:

"The determinations of the International Military Tribunal in the judgments in Case No. 1 that invasions, aggressive acts, aggressive wars, crimes, atrocities or inhumane acts were planned or occurred, shall be binding on the tribunals established hereunder and shall not be questioned except insofar as the participation therein or knowledge thereof by any particular person may be concerned. Statements of the International Military Tribunal in the judgment in Case No. 1 constitute proof of the facts stated, in the absence of substantial new evidence to the contrary."

Against this ruling, which the Tribunal at the time described as "most unusual", it expressed considerable misgivings even then because it ties persons to proceedings in which they did not participate and did not have any chance to defend themselves. The defense already at that time pointed to the fact that Military Tribunal IV which had to pass judgment on FLICK and others, had refused to draw conclusions to the detriment of the defendants on the basis of Article 10 of Ordinance No. 7.*

* FLICK case, record dated 22 December 1947, Engl. page 10978.

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I ask you to accept this view. The defense maintains that the provisions of article 10 are legally invalid and not binding for the Tribunal. The basic law concerning the International Military Tribunals which in accordance with article 2 of the London Agreement on the Prosecution and punishment of the major war criminals, dated 8 August 1945, forms its essential part, lays down in its article 10:

"In cases where a group or organization is declared criminal
national
by the Tribunal, the competent/authority of any Signatory
shall have the right to bring individuals to trial for
membership therein before national, military or occupation
courts. In any such case the criminal nature of the group
or organization is considered proved and shall not be questioned."

This is a special exception from the principle of direct procedure and, in the absence of other provisions, it limits the departure from this maxim of law to this particular case. Beyond that, therefore, it is not permissible to tie the Military Tribunals down to the decisions and findings of the IMT judgment. At all events, the range of its extended validity might have been changed and expanded by a joint act of the four occupation powers who had agreed upon the London Agreement and the above mentioned basic law incorporated in it. This, however, has been done neither in the Control Council Law No.10 on which the indictment is based the defeasibility of which I do not propose to discuss, nor elsewhere. In any case, a mere implementation order of a zone commander - which is exactly what the afore-said decree No.7 amounts to in relation to Control Council Law No.10 - could never

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put into effect the extension of the legal validity of the IMT -- decisions for the very reason that this would be in contradiction with the London Agreement and its charter. This Tribunal which has the right and the duty to scrutinize the rules to be adopted by it will have all the more cause to consider the foregoing comments, if it is of the opinion that it is administering justice by INTERNATIONAL order.

The defendants, therefore, submit the request to treat article 10 of decree No.7 as legally invalid and not applicable against them.

And now I turn to the defense of my client in particular.

B

Having regard to the desirable economy of time I shall, as far as possible, refrain from commenting on the basic questions in regard to the two remaining Counts 2 and 3 of the indictment. The presentation of these comments within the framework of the general defense is entrusted to other hands. I claim the same benefit for my client from all which has been said and what is yet to be said. This applies both to the general rejoinders of the defense in legal respect and the general pleas, both objective and subjective, concerning the facts of the case.

Nowhere in the indictment have I been able to find specific charges against PFIRSCH relating to Counts 2 and 3. Consequently I have not been able to this day to see clearly what exactly the Prosecutors charge him with. Those allegations of the Prosecution with which they brought him into incidental relation in the course of the proceedings -- in particular

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in the opening speech of 8 December 1947 and in their preliminary brief of 3 May 1948 on "looting" - do not according to my conviction constitute any implication of my client, at least none which might with sufficient reason be construed as an international breach of law.

I.

Surveying in the period dealt with by the Prosecution in this connection - i.e. from March 1938 till the collapse of the HITLER regime - it appears that PFIRSCH was employed in the KM section in Essen all along till March 1943 subsequently ^{to be transferred} as chief of the KRUPP Central Office in Berlin on 1 April 1943. Apart from that he held no functions in political, financial, industrial and economic organizations, unless maybe as member of an advisory committee of the Export Combine for War Equipment, as self-defense organization of the armament industry against which not even the Prosecution had to bring any charges within the framework of the remaining Counts of the indictment.

In his capacity as a commercial employe of KRUPP since 1902 PFIRSCH had concerned himself in particular with problems of export and the calculation of prices and by so doing, if I may so say, well deserved of the company, as early as prior to No 2 World War.

In department KM he was prokurist and deputy manager till March 1941 subsequently to become deputy member of the Vorstand - although, by years of age and under normal conditions, he would have been on the age limit for pension. This appointment was not an extension of his sphere of work, but

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to use the words of the witness HARDACH - a reward for almost 40 years' activity in the company and, thus, for services rendered to the enterprise.

As is known, department KM in Essen was that sector of the main business which was concerned with the commercial side of the sale of a considerable proportion of KRUPP's armament materials for armies and navies both on the home market and abroad. However, this department had nothing whatever to do with the procurement of plant installations, fuel and manpower for this production. Within the sphere of its business it was its main task to offer goods for sale, to examine incoming orders from a commercial point of view to calculate prime costs and prices, to conduct negotiations with the buyers - most of them officially authorized buyers - on the home market and abroad and to see to it that payment was duly made after conclusion of the transaction. It was just in that section that efficient pricing was a job particularly important for the company, but at the same time difficult and therefore, implying great responsibility for the men in charge. It must be borne in mind that the transactions frequently involved large quantities of material or long developmental work on new guns so that prices could not simply be kept within the limits set by the law of offer and demand.

* Morning Session of 3 May 1948, Record page 6753 German.

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The tasks mentioned and they alone were the responsibility of the department KM as such while PFIRSCH worked there. He was Department Chief (Dezernent) there within the meaning of KRUEP's method of designation, i.e. the person within the plant responsible under and to the Vorstand, although bound by its directives and supervised by it.¹⁾ According to the confirmation of several witnesses, the co-defendant EBERHARDT's position was parallel to and coordinated with his²⁾ since 1938. He was PFIRSCH's successor - to-be, and already at an early time he had gained a great deal of independence. For the period after PFIRSCH's appointment as deputy member of the Vorstand in March 1941 until he left department KM at the end of March 1943 no new relationship in rank was established for these two. Accordingly, in the graph of the business distribution published by the inner group of the Vorstand on 31 January 1942, they both figure on the same level in the vertical row of "department chiefs" for "armament sale".³⁾ Also in the actual management of business also the mutual status of PFIRSCH and EBERHARDT within department KM remained as before. Special tasks, directly and independently delegated to EBERHARDT by the inner group of the Vorstand, were dealt with separately. PFIRSCH did not deal with them and, therefore, is not responsible for them.

- 1) Circular dated 8 March 1941: NIK-10497, Exh. 38, Doc. Book 3, page 20 Engl., German 26, Witness HARDACH; session dated 3 May 1948, afternoon, transcript 6809,
- 2) Witness HAUPT, session dated 16 February 1948, afternoon, transcript 4212, Witness TUBBESTING, session dated 19 February 1948, morning, transcript 4476 f.
- 3) NIK-8822, Exh. 39, Doc. Book 3, pages 13 f Engl., 18 f German.

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As already stated, at the end of March 1943, PFIRSCH left department KM in Essen and moved to Berlin as Chief of the KRUPP Main Office there. In spite of his advanced age - he was already 66 years old at that time - he could not refuse to help out there because of the personnel shortage during the war. He was given the liberty of taking up his residence here in Bavaria and of spending some of his time there. As the affiant Wilhelm VAILLANT confirmed,¹⁾ he was therefore frequently absent from Berlin. Such frequent absences were permissible, because the representatives of the different departments and auxiliary plants of the enterprise, concentrated in the Main Office Berlin, remained members of their original departments and, as far as their work was concerned, were independent of the Chief of the Berlin Main Office. Thus, as the evidence has clearly shown²⁾, they dealt with their spheres of work independently and on their own responsibility according to the directives of their original departments. They were not obliged to even inform my client to whom they were subordinate solely in matters of discipline.

The fact that documents addressed to the firm of KRUPP "attention of PFIRSCH or deputy in Berlin" did not pass over the desk of my client but were sent directly to the representative of the department competent for dealing with them,

1) Document PFIRSCH No. 95 Exh. 2612, Doc. Book PFIRSCH 6, p. 13

2) Witness HOELKESKAMP, Session of 17 Feb 1948 afternoon,

Record 4299-4302

Witness TUBBESING, Session of 19 Feb 1948 morning, Record 4465

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has been confirmed repeatedly in the course of trial.¹⁾ That the actions designated by the Prosecution as robbery and looting did not belong to the sphere of work and responsibility of my client is proved most conclusively by the insignificance of the prosecution evidence presented against him in this connection. Nor could the Prosecution prove that PFIRSCH participated in any conference, on questions concerning plant transfer, procurement of machinery, or labor allocation, with the numerous authorities and other outside agencies, which were included in these matters. No application, regulation or any other letter, which he might have sent out, has been submitted. Even as far as inter-plant conferences which touched on such questions are concerned, only two at the most involve PFIRSCH.

Beyond that, whenever his name is mentioned in these counts of the indictment, it is only in cases where the office on its own initiative ascribed some document or other to him. When the evidence was presented, we heard what this distribution procedure of documents on the part of the AK office was like. In this connection, may I refer to the detailed description, particularly of the Prosecution witness TUBBESING²⁾.

- 1) Witness TUBBESING, session of 19 February 1948, morning, record 4463 f. Affiant VAILLANT Doc. PFIRSCH No.95, Exh.2612, Doc.Book PFIRSCH 6, p.13;
Affiant Lotte RICHTER for the analogous case JANSSEN, Doc.JANSSEN No.44, Exh.3060, Doc.Book JANSSEN 3, p.27.
- 2) Witness TUBBESING, session record of 19 February 1948, morning, p.4452 ff. compare also witness KOETTGEN, session record of 11 June 1948, morning, p.12541.

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Accordingly, the auxiliary workers of this office, who, in the period of war with which we are here concerned, were only poorly trained for their jobs, distributed the documents to as many persons as possible, in order not to expose themselves to the reproach that they had missed out some office. The fact, therefore, that a document was ascribed to someone is in itself no proof that it belonged to that persons sphere of responsibility, or that he had to participate in the matter in question.

Apart from this, it was ^{im-}possible, in view of the situation, for a department chief to deal with all the documents ascribed to him. As the witness TUBBESING confirms, the AK office distributed 4,000 - 5,000 letters per day ¹⁾. For practical reasons it was therefore customary that the gentlemen pre-sorted the mail distributed to them and had only those letters submitted to them which really concerned them ²⁾. No obligation to the contrary, i.e. to read ^{all} the distributed documents, existed ³⁾.

Such a pre-sorting has been expressly confirmed in the case of PFIRSCH ⁴⁾. Alfred MILZER, PFIRSCH's secretary in Essen, also discussed this in detail in the affidavit sent to me. ⁵⁾

- 1) Witness TUBBESING, Session of 19 February 1948, morning, record 4452
- 2) Witness TUBBESING, Session of 19 February 1948 morning, record 4466
- 3) Witness HARDACH ibid.
- 4) Witness TUBBESING, Session of 19 February 1948 morning, record 4466
- 5) Doc. PFIRSCH, No. 102 Exh. 2611, Doc. Book PFIRSCH 6, page 11.

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I beg to refer to this. The fact that my client was to receive some copy according to the distribution list, does therefore not necessarily prove that he really received it, still less does it prove that he had to take, and took, notice of its contents.

I furthermore may point out the following in this connection: if anybody received copies of outgoing document or of minutes of conferences through the distribution list, this happened naturally always a f t e r the letter had left and a f t e r the conference had taken place. From this fact alone it is obvious that it could not be a matter of an intimation to take part in any way, but only of a subsequent information, the reason of which cannot be determined. For these reasons alone, such an information cannot in itself incriminate the addressee.

If, under II and III below, with regard to one or the other subject of the indictment, I only touch upon the question of the non-participation of my client, I ask that this fact may not be interpreted in the sense that I am admitting the description the Prosecutors gave of this subject to be correct or legally relevant or that I would be ready to recognize as decisive the participation or knowledge laid to the charge of my client, if such participation or knowledge really did exist. I only choose this procedure because - as had been said before - the objections of a general nature will be presented by somebody else.

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II.

I had already mentioned the fact, that PFIRSCH's individual participation in the cases of "spoliation" and "plunder" charged by the Prosecution is not listed in the indictment.

With regard to the ELMAG and the TATRA Works the following was stated in the Opening Statement of the Prosecution * whereby my client was mentioned:

"In March 1943 the directors of the firm of KRUPP gained the conviction that KRUPP needed additional production installations and they therefore inspected the TATRA Works in Czechoslovakia and the ELMAG factories in Alsace."

All I could find in the Prosecution material about the agreement of March 1943 are the minutes of a conference of 8 March 1943 ** about the "Removal of Production Plants owing to the air attack of 5 March 1943", according to which the removal of plants from Essen was decided on the basis of the previously established impairment of the Essen workshops, without the ELMAG or TATRA Works being at all mentioned in this connection. The fact that my client did not participate in any inspection of these installations I have carefully proved by the submitted Affidavit of the Diplom Ingenieur Wilhelm BALZ ***. I may in this connection refer particularly to the latter's statement that no removal ever took place with regard to the TATRA Works.

* Session of 8 December 1947, Transcript page 76

** Prosecution Document NIK 11571, Exh. 1181 Doc. Book 42; p. 36 English
*** Document PFIRSCH No. 94, Exh. 2616, Doc. Book PFIRSCH VI, / 72 German
p. 24.

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In another instance* the Prosecution stated that PFIRSCH had been informed, by means of the distribution of copies of the record, about the discussions of 27 March and 5 April 1943, which concerned the moving of the Krawa to Muelhausen into the plants of the Elmag, in which discussions, however, he did not participate. This also, however, can be refuted. The Prosecution refers to documents which were drawn up on 5 April 1943**. However, at that time PFIRSCH was no longer in Essen but, according to the Prosecution's own statement, he was already at that time in Berlin as chief of the main office there. The reports on conferences of 3 and 5 April 1943 which were marked for him could therefore no longer have been submitted to him in Essen. According to the testimony of the witness TUBBESING*** copies which were destined for gentlemen who were no longer located in Essen were sent back to the office (Kanzlei) as being undeliverable. There they were filed. It is not evident nor has it been suggested that a different procedure was adopted in the case in question.

The fact that the numerous other documents which have been submitted to the Court in connection with the Elmag do not show the name of my client suffices to prove that neither did he have anything to do with the Krawa itself, nor with its moving.

* Preliminary Brief concerning "Plundering" of 3 May 1948, page 30

** Pros.Doc.NIK 6268 Exh.1303, Doc.Book 53, Engl.21, German 19
" Doc.NIK 6252 Exh.1305, " " 53, pages 30

*** Witness TUBBESING, session of 19 February 1948, morning, transcript 4470

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Nor was he connected with the return transport of the machines from Muelhausen in Autumn 1944. The "representative in Berlin" who is mentioned in the Prosecution's* opening statement, but not by name, is not PFIRSCH but - as shown by Exh.NIK 8908 ** - the witness SCHMIEDERS who, in the course of his interrogation on 25 May 1948, described himself as independent liaison representative of the Elmag in Berlin.

With regard to the transactions in Russia, which were described as plundering by the Prosecution, the latter asserts*** that PFIRSCH participated in "conferences" concerning the munitions program of Sartana Mariupol and was continually kept informed about the progress of this program. The only thing that has been proved in this connection is my client's presence (recorded in the minutes) at an intermediary discussion on 14 September 1942 **** concerning the Iwan-program, and the fact that two or three informational copies were then sent to him in October 1942. The discussion of 14 September 1942 dealt mainly with the negotiations which had up to then been carried on by other parties. The conditions had at that time not yet been clarified and were not ripe for decision. It cannot be recognized that PFIRSCH, either at this conference or during the subsequent period, furthered the matter.

* Transcr.of 8 December 1947, p.77

** Exh.819, Doc.Book 27, p.47 Engl., 59 German

*** Preliminary Brief concerning Plundering dated 3 May 1948, page 58

**** Doc.NIK 858 Exh.1385 (p.4 of the document), Doc.Book 52, pages 37 et seq.Engl., 48 et seq.German)

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The fact that he was not called upon to take part in further discussions and later on did not even receive copies for information, should prove unequivocally that the matter - be it otherwise relevant or not - was outside his sphere of activity and that he had nothing to do either with the participation of KRUPP in Essen, which at that time was still in the planning stage, or later on in Berlin.

Within the framework of the so-called "exploitation of mineral deposits" I find that my client has not been mentioned at all; in connection with the "removal of machines, scrap metal and other material" his is mentioned only insofar as he took part in the meeting of the supervisory board on 31 March 1943 in Essen, at which time credits for the purchase of machinery, including 800 000 RM for captured machines, may have been approved for the engineering project 21. I cannot understand why his mere presence should incriminate him. He did not have the right to vote on the supervisory board so that his presence was without significance for the approval or disapproval of the credit applications which he had not initiated and which he had not worked out. Moreover, I object to the assertion of the Prosecution that the agenda for the meeting of the supervisory board on 31 March 1943, which allegedly had also been given to my client, contained a long list of credits.*) The submitted letter of invitation of 6 March 1943 **) merely proves that "the agenda", that is to say the paper described as such and containing the five points of the program,

*) preliminary document to the point "plunder" of 3 May 1948,
page 88;

**) Doc. NIK-9232, Exh. 1180, Doc. Book 42, pp. 32 English,
pp. 64 German

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was included, not however those detailed lists, submitted in addition by the Prosecution, which appear to me to be a report on the meeting. Considering the thoroughness of the KRUPF correspondence, a larger number of enclosures to the invitation would undoubtedly have been recorded. However, the fact that an unprepared listener during the usually purely formal procedure of credit approvals in the meetings of the supervisory board, as confirmed by the witnesses v. WILMOWSKI *) and Johannes SCHROEDER **), was unable to judge the respective matter under consideration, hardly calls for any lengthy argument. Nor has the Prosecution offered any valid details which prove that the case of the "captured machines", for which the 800 000 RM in question had been appropriated, in any way concerned a purchase which was in violation of International Law. The same applies to those machines which were needed in the autumn of 1942 for the production of part for anti-tank weapons 40 (Pak) and which were to be "confiscated by special action" ***). This will have been a matter of search-actions, which at that time were carried out in plants in the German interior ****).

*) Transcript of session of 1 April 1948 in the morning,
page 5358 and following.

**) " " " of 27 April 1948, afternoon,
page 6291 and following.

***) Document NIK-6902, Exh. 1497, Rebuttal-Book 2A, page 1.

****) Witness HERRMANN, transcript of session of 30 April 1948,
afternoon, page 6608,
Witness HUPE, transcript of session of 13 May 1948,
afternoon, page 8006,
Witness REIFF, transcript of session of 8 June 1948,
afternoon, page 12242.

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III.

PFIRSCH of course came to know in the course of time that KRUPP was employing foreign laborers and prisoners of war. But as far as his department was concerned, he had as little to do with their recruitment, commitment and treatment, as at all times in the case of workers at home. The evidence material on both sides, rather extensive in this matter, has shown that for the questions of labor commitment during the war a multiform office apparatus and, as far as certain tasks were entrusted to them, special departments of the KRUPP combine, were the competent authorities. These departments were not the responsibility of my client. The Prosecution has tried in vain to find a legally relevant connection between them and the department KM. The manufacture of armament material was in the hands of the technical plants. The department KM and their chiefs which were entrusted with the commercial treatment of the orders did not have any influence on those plants. That PFIRSCH visited the technical plants during this period of the war which is in question has not been proved. He therefore did not know the manner and the circumstances of the commitment of foreign laborers there. Nor, considering his position in the firm, could he have exerted any influence.

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The fact that the department KM was not competent for applications for workers has been confirmed explicitly by the witnesses Dr. HARDACH, REIFF and KOETTGEN *). If deliveries of army orders, for which a dead-line was set and which were entered in the books of the department KM, ran into difficulties during the war, the department informed the anxious customers of the reasons for the delay as given by the technical plants. This is the reason, as testified to by REIFF and KOETTGEN **), for the fact that in correspondence and other contacts of the department KM with the Ordinance offices the labor shortage was occasionally also mentioned in the report. Applications for workers and labor commitment were carried out by other offices and were independent of these reports.

*) Witness HARDACH, transcript of session of 3 May 1948,
afternoon, p. 6809,
" REIFF, " " " of 8 June 1948,
afternoon, p. 12238,
" KOETTGEN, " " " of 11 June 1948,
morning, p. 12539.

**) Witness REIFF, as above p. 12239 and following, 12253,
" KOETTGEN, as above p. 12535, 12539, 12570, 12576
and following, 12581.

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That some of the reports or other documents on this subject were ascribed to PFIRSCH despite his not having been competent at all in labor questions, is not surprising in view of the importance of these problems at that time. Such cases of orientation are however rare enough, as the evidence has shown. They cannot therefore offer conclusive proof as the Prosecution contends, of PFIRSCH's participation to any degree in a legally relevant manner in the execution of the Government's slave labor program. What was said before applies here too: He was not summoned to any important conference, neither in Essen nor in Berlin. Nor did he conduct any correspondence on these matters, and the Prosecution could not prove any decision made by him on labor questions and no suggestions made by him in this connection. If the 1941/42 business report of Section KM*, which bears in the section dealing with economic matters also PFIRSCH's signature, partly mentions also an existing labor shortage, it is obvious that this is done only in the form of a report in describing the then prevailing general business situation, and it cannot therefore be evaluated as something apt to incriminate my client with the measures taken to overcome these bottle necks which were outside his competency.

* Document NIK 11504 Exh.524, Doc.Book 13 B, pp. 113 and following, German; pp. 98 and following, English.

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Furthermore, contrary to the Prosecution's contention*, my client did not assist in the procurement of concentration camp labor.

KRUPP's program of manufacturing in Auschwitz parts for automatic weapons was not put into effect. The idea to use instead the shop available in Auschwitz for the manufacture of detonators arose after the destruction of the Essen Detonator Factory on 5 March 1943. At the time of the conference on the general situation held in Essen following the catastrophe on 8 March 1943, this shift still was in the planning stage, as shown by the minutes of that conference, which was dealt with already in connection with the Elmag **. PFIRSCH neither made any suggestions concerning this matter nor did he -- in his position -- have to make any decisions. The matter and its treatment was outside his sphere of work in Essen. This accounts for the fact that only few of the documents dealing with the further procedure were sent to him. But even these he never saw. His transfer to Berlin was already settled at that time. He instructed his secretary MELZER mentioned already, as the latter confirms in his affidavit introduced by me. ***

* Opening Statement of 8 December 1947, Record page 102;

** Document NIK-11571 Exh.1181, Doc. Book 42, pp.36 and following English, page 79 German;

*** Document PFIRSCH No. 102 Exh.2611, Doc. Book PFIRSCH 6, page 11.

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"... on 9 or 10 March 1943... because of the little time available to him due to his departure for Berlin, to submit to him only those business reports and documents which he himself had to deal with personally. Everything else I (MELZER) was to pass along immediately. I complied with these instructions".

The subjects which, accordingly, were not submitted to him any more included those of the Auschwitz project because PFIRSCH did not have to deal with them for the reasons of jurisdiction previously mentioned.

Moreover, the allegation of the Prosecution*) to the effect that the witness HOELKESKAMP had, in connection with the transfer of 500 Jews from Berlin to Auschwitz, sent his report dated 16 March 1943 about a discussion with Obersturmfuehrer SOMMER also to PFIRSCH, is refuted by the Pros. Exh. **) submitted on this subject. PFIRSCH's name does not appear in this document, neither in the distribution list nor elsewhere.

Insofar as the Prosecution points to the credit grant of 2 million Mark for Auschwitz which was formally confirmed during the conference of the Advisory Board of 31 March 1943 already previously mentioned, I take the liberty, in order to avoid unnecessary length, to refer to what I set forth at the close of Part II (spoliation) about that conference.

*) Opening Statement of 8 December 1947, Record 97

**) Document NIK 6565 Exh. 1184 Doc. Book 42, pp. 42 English,
79 German.

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Nor did PFIRSCH have anything to do with the Auschwitz project in his capacity as chief of the Berlin main office. The affidavit, introduced by me, of the witness Wilhelm VAILLANT, who was very familiar with the conditions of that agency, shows*) that the Auschwitz project there was under the jurisdiction of the R Agency in the person of the witness HOELSKAMP. This man HOELSKAMP, according to his own statement**), which was corroborated by VAILLANT's**), handled his mail quite independently without calling in PFIRSCH or even informing him. He received his instructions, as far as they did not come from government agencies including the SS, directly from Essen. The fact that even those letters which were received under the address "c/o PFIRSCH or deputy" were handed not to my client but to the specialist HOELSKAMP directly, I should like to stress again, making reference to VAILLANT's affidavit.

As for the complex Berthawerk-Markstadt it must be first repeated in general that, once the distribution as to departments was made, my client was concerned neither with the planning, erection and operation of plants nor with personnel matters. As a precaution I have introduced three affidavits which, I believe, will disprove the possible assumption that PFIRSCH had played a part in the affairs of the Berthawerk. The witness HUPE***) states for the time of his activity in Markstaedt and Breslau - April 1942 through August 1944 - that PFIRSCH visited the plant only once when it was still in the stage of construction in the middle of April 1943.

*) PFIRSCH Document No.95, Exh.2612, Doc.Book PFIRSCH 6, pp. 13 ff.

**) Record of 17 February 1948, afternoon session, p.4302;

***) PFIRSCH Doc.No.97, Exh.2613, Doc.Book PFIRSCH 6, p.19.

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The production had not yet started at that time; the so-called slave-workers were allocated to the plant only at a later time. The visit as stated by HUPE is the same as that mentioned by PFIRSCH in his affidavit of 8 July 1947^x in cipher 3. The supposed inmates of concentration camps mentioned there were not employed by KRUPP, but by the organization Todt. The second affidavit presented to me comes from Wilhelm REIFF^{xx}. As to the period from June 1943 until early 1944 and also the preceding time, he confirms that PFIRSCH had no influence on the Markstaedt production and on the allocation of labor there. GIROD^{xxx}, finally, says that, during the time of his working in Markstaedt, until January 1945, my client had no part in the Bertha plant, neither did he participate in any written directive; neither did any meeting of the Aufsichtsrat take place. To be sure, PFIRSCH was a member of this Aufsichtsrat from the time the Bertha Plant was converted into a limited company, but he was never called in for any activity whatever, neither did he receive reports, nor, moreover, any bonus money. The membership was a mere formality, therefore.

The only points with which PFIRSCH can be brought in connection at least outwardly as regards the Bertha Plant is the fact that he received, until the summer of 1942, while he was still at Essen, copies of a few ordinances from state authorities

x Doc. MIK 10343, Exh. 1253, Book 44, p.47 Engl., 80 Germ.

xx Doc. PFIRSCH No.96, Exh. 2614, Doc. Book PFIRSCH, p.20.

xxx Doc. PFIRSCH No.103, Exh. 2615, Doc. Book PFIRSCH 6, p.22.

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and of some factual reports by other staff members of KRUPP's. They disclose that the construction and operation of the Bertha Plant which HITLER had ordered himself was requested by state authorities, although the pressure varied, depending on the general situation. But they do not offer any indication for the assumption that there was any cooperation in this matter on the part of PFIRSCH. Neither can such a cooperation be deduced from the KM report on the fiscal year of 1941/42^x, which, among other things, contains a report on the state of this project. Beginning in the fall of 1942, this kind of information sent to my client by way of distribution came to an end and likewise. Only in the minutes made by the witness REITER of a conference in Markstaedt on 27/28 August 1943^{xx}, I find the name of my client once more in the Essen Distribution. He never received this document. In this case, it is obviously a faulty marking made by the clerk's office on the basis of an out-of-date list. In consideration of all these facts, there is no basis at all for the assumption of an individual participation.

It is an established fact that the 520 Hungarian Jewesses did not come to the Essen KRUPP Works until 1944. The statement to the effect that PFIRSCH had his office in the Essen Main Administration Building at that time, was corrected by the witness Johannes SCHROEDER^{xxx}. It is well known that my client had been permanently in Berlin since April 1943 already. He neither acted as an intermediary in the allocation of these Jewesses nor did he have any knowledge about it at all.

x Doc. NIK 11504, Exh. 524, Doc. Book 13B, p. 98 ff Engl. 115 ff Germ.

xx Doc. NIK 7446, Exh. 1115, Doc. Book 41 A, p. 44 ff Engl. 66 ff Germ.

xxx Witness SCHROEDER, record of 29 April 1948, p. 6427.

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Neither could the Prosecution produce incriminating evidence with respect to other cases. For this reason it is not at all evident on which facts it bases its assertion^x, mentioned already at an earlier time, that PFIRSCH, in his capacity as liaison agent in Berlin, helped in procuring concentration camp workers.

IV.

I think I have shown in detail that PFIRSCH had no personal part in the actions of which the Prosecution has accused him, neither in the measures which the Prosecution, - unjustifiedly, I am sure - calls a program of spoliation and slavery. The individual responsibility of my client, as asserted by the Prosecution, is, therefore, non-existent in my opinion.

In order to fill in this gap in the structure of its accusation, the Prosecution, in addition, construes a joint criminal liability of the defendants from the mere fact alone that they were members of the management of the KRUPP Works. If we were to follow this practice, we would arrive at a collective criminal responsibility of the leading men and thus, perhaps, at a criminal co-liability for the exclusive guilt of another. This would absolutely be in contradiction to the fundamental legal principle, which the Nuremberg Tribunals have likewise recognised so far, namely that nobody should be condemned unless his personal guilt has been clearly established.

x Opening Statement of 8 December 1947, record p.102.

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Consequently, already for legal reasons there can be no collective liability of even the closer Vorstand. Although I am convinced that there neither is nor has been proven an actual guilt of the full members of the Vorstand of the limited company, nor of the management of the later family enterprise of Friedrich KRUPP, as a matter of precaution I submit to take into consideration the following facts likewise: If a collective criminal liability of the joint

Vorstand and/or of the joint management is assumed, this would leave out of consideration the differentiated spheres of jurisdiction of the individual members^x. Only the regular members constituted the highest leadership of the firm and were - collectively in the case of general questions - entitled to issue directives, next to the chairman of the Aufsichtsrat in the case of the limited company, and next to the owner in the case of the later family enterprise. The department heads, including the deputy members of the Vorstand and/or of the management, were restricted in their work and responsibility to their own spheres of work and bound to the directives of the closer Vorstand. They attended the meetings of the latter only if their own spheres of work were involved^{xx}.

x Circular Letter of 8 March 1941: Doc. NIK 10497, Exh. 38, Doc. Book 3, pp. 20 Engl., 26 Germ.
Agenda of 31 January 1944, Doc. D 137 a, Exh. 51, Doc. Book 3, pp. 67 Engl., 102 Germ.
Witness Dr. HARDACH, record of 3 May 1948, morning session, p. 6744.
Witness Johannes SCHROEDER, record of 29 April 1948, morning session, p. 6435.

xx Witness HARDACH, record of afternoon session on 3 May 1948, p. 6809.

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To hold the deputy members of the Vorstand also criminally responsible inspite of this relationship of dependence and inspite of the demarcation of their duties for possible mistakes in the leadership of the full members in general, even though it concerned only other departments, would mean to charge them also with being guilty of acts committed by their superiors, although in this respect they had neither the right to control nor the possibility to influence. It is impossible that at that time they could have been conscious of such a far-reaching responsibility. But in that case, it is not admissible to want to establish such a responsibility subsequently.

V.

Your Honors! In the case of PFIRSCH, I have tried to summarize concisely and soberly on the basis of evidence that which seems to me to be essential for the decision. I am convinced that my client would not sit in the dock if the points at issue in this trial had only been the remaining counts two and three of the indictment.

Herr PFIRSCH, who by diligence and honesty worked himself up from small circumstances to a high position with KRUPP, was already at an advanced age at the outbreak of the war, and was ready to retire on a pension. Therefore he had already somewhat withdrawn from business affairs. His being appointed as ^adeputy member of the Vorstand did not by any means alter his position. He remained an employee dependent upon receiving a

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salary without participating in the profits of the business. Altogether he was harnessed and subjected to the system of pressure emanating from the NSDAP and its state. He never was an adherent of these methods. Joining the Party only late, he never paid homage to its ideology. Permit me to make reference, in place of other proof, to the affidavit submitted by me of Archbishop D. HEFTER *.

While he was in prison, PFIRSCH lost his wife due to a tragic fate. He now is a lonely man, robbed by circumstances of the fruits of his frugality, past 70, and only cares now to rehabilitate his honor, which he considers unsullied. I am convinced:

You will acquit him !

* Document PFIRSCH No. 101, Exh. 2608, Doc. Book PFIRSCH 6, p.3.

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CERTIFICATE OF TRANSLATION

24 June 1948

We hereby certify that we are duly appointed translators for the German and English languages and that the above is a true and correct translation of document Final Plea FFIRSCH.

FIRTEL, Hildegard, ETO 17 415, (Pages 11 - 12)

.....

FISCHER, Gerhard, ETO 17 397, (Pages 13 -14)

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GETREU, Rosl, ETO 45 672, (Pages 15 - 18)

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GROFF, Paul E., AGO B-397 975, (Pages 19 - 28)

.....

NICHTENHAUSER, Hanna Marie, AGO B-397 989, (Pages 7 - 10)

.....

NICHTENHAUSER, Hans, ETO 20 113, (Pages 1 - 2)

.....

OBERLANDER, Alfred, ETO 20 192, (Pages 3 - 6)

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