

This indecision on the part of the Prosecution, to which the Defense referred repeatedly in the course of this trial, brings the Defense face to face with the extremely difficult task of objecting on behalf of its clients to charges, whose connection to its clients is not explained, let alone proven. On the other hand, this fact forces the Defense to deal with the question of prisoners of war from the very bottom, inasmuch as it pertains to the assignment of prisoners of war in the German industry, and in particular in the firm of Krupp, so as to all dangers which might arise for the defendants as a result of the un-objective generalization on the part of the Prosecution.

I have taken it upon myself to treat the fundamental aspect of the subject Prisoners of War within the framework of the general case of the defense. I shall throw light on the questions of international law in this field and I shall treat all basic questions concerning the procurement, billeting, food, hygiene and medical care, questions of cultural welfare and protection against air raids, of wages, supervision and discipline and of the assignment to the plants. I shall deal at length with the special position into which Russian and French prisoners of war and Italian military internees are placed by virtue of the international law and I shall finally define in detail the limits of competency and responsibility concerning all matters pertaining to the assignment of prisoners of war.

The same principle is being dealt with by Herr Kranzbuehler with reference to the civilian foreign workers and by Herr Wandschneider with reference to the concentration camp inmates.

Individual questions concerning the local assignments of prisoners of war to plants I shall treat only inasmuch as they concern the plants of the Essen Gusstahlfabrik (steel casting plant). In view of the external connections with similar questions concerning the assignment of prisoners of war I shall, for reasons of expediency, also deal with all pertinent questions concerning the local assignment to plants of civilian foreign workers and concentration camp inmates. Avoiding all principal issues.

I shall restrict myself exclusively to contesting the individual charges made by the Prosecution and I shall attempt to present the Tribunal with a true and exhaustive picture of conditions at the Essen Gusstahlfabrik this oldest and most important enterprise of the firm of Krupp, inasmuch as it was brought into the public eye by the Prosecution in connection with the assignment of prisoners of war, civilian foreign workers and in one case also concentration camp inmates.

I am afraid it will be unavoidable to go into that part of the defense at greater length than would have been necessary, had the argumentation of the Prosecution been more precise and to the point.

Dr. Behringer will supplement the discussion of that subject and deal with the questions of camps and food for foreign workers and welfare outside their place of work. Other gentlemen will discuss the local problems of the other Krupp plants.

I am firmly convinced that in conjunction with my colleague, I shall be able to prove to the Tribunal that in connection with the assignment of prisoners of war and foreign workers, none of these defendants bears any personal guilt which, according to the principles of criminal law of your country and that of all other civilized nations and according to the practice of the Nurnberg Military Tribunals, alone could provide the necessary prerequisite for their conviction.

Up to now I have restricted my remarks to my task of presenting the general case of the defense. If I mention the name of my client, Dr. Heinrich Lehmann, only at the end, this is done

so as to draw a clear dividing line -- by its mere position on the paper -- between the problems under discussion and the person of the defendant Dr. Lehmann, who knows himself free from any guilt. I openly admit that up to this day I have not been able to understand why this man, whose position in the firm did not endow him with any executive power, should be in the dock as a defendant, as the only one -- apart from his co-defendant Kupke -- out of the number of his numerous colleagues in identical or similar positions. In all the Nuernberg trials up to now only such persons were indicted who either were personally charged with a serious crime or who, owing to their special position within the State, the army, the Party or industry were held responsible for certain conditions or incidents, which constituted crimes according to the definitions of Control Council Law No. 10. As the defendant Dr. Lehmann is not even alleged to have personally committed any crimes, we are in this case near the conclusion of the Nuernberg Trials as such, faced with the first and unique instance of an employee of a private firm in a subordinate position being held responsible to the same extent as the members of the management for such alleged conditions and incidents in the firm. I am firmly convinced that the Tribunal will take this extraordinary fact into account.

In as far as Dr. Lehmann was mentioned in connection with the Counts of the Indictment, namely No. 1 (planning, preparation, initiation and waging of wars of aggression) and No. 4 (participation in a common plan and conspiracy), I think I do not have to waste any words on the defense, as the Prosecution has not even produced the slightest trace of evidence that defendant Dr. Lehmann had anything to do with these matters. He entered employment at the firm of Krupp in 1940, later than all other defendants. I am confident that the Tribunal will not hold responsible an employee in a non-executive position, of an administrative department of a branch of a private industrial enterprise for alleged crimes, of which in the trial against the main war criminals before the IMT, 14 out of 22 defendants were acquitted, all of them being highest

officials of the State, the Wehrmacht, Party and industry, including Funk, Schacht, Doenitz, Bohrmann, Papen, Speer and Sauckel.

If at this juncture I do not formally move on behalf of defendant Lehmann that proceedings be discontinued at least under Counts 1 & 4 it is only because a motion of such a nature has already been submitted by the entire Defense on behalf of all defendants.

I believe therefore that in stating the defense of defendant Lehmann I may restrict myself to refuting the Prosecution statement that Dr. Lehmann had any decisive influence in the procurement, treatment and assignment of prisoners of war, foreign workers and concentration camp prisoners in the plant of the Gusstahlfabrik at Essen. For the rest, I shall deal briefly with Dr. Lehmann's career and his position in the firm of Krupp. With the help of a minimum of evidence, I shall establish his blameless character and convince the Tribunal that no guilt is attached to this defendant.

Your Honors, in its indictment the prosecution charges my client, Herr Hans Kupke, with having committed Crimes against Peace, War Crimes, Crimes against Humanity and with participation in a Common Plan or Conspiracy for the commission of these crimes, as defined in Control Council Law No. 10.

Kupke's name is mentioned only once in the indictment itself, i.e. when he is excluded from the charges of spoliation and robbery under Count II. Kupke's name is not mentioned in connection with counts I, III and IV of the indictment.

At the end of the indictment there is a supplement concerning each individual defendant. Kupke's former activities are mentioned, it is stated that he joined Krupp in 1938 and a list of his positions follows.

According to the indictment, therefore, the only period of my client's life which is of interest in these proceedings is the period of his employment in Krupp.

As far as the actual facts are concerned, the prosecution in its presentation of evidence only dealt with my client's activities as chief

of the Office Oberlagerfuehrung (foreign workers' camp administration).

The prosecution has not even attempted to prove that my client was guilty under Counts I and IV of the indictment during the period 1938 - April 1943, at which time he took over the office Oberlagerfuehrung.

For this reason I have requested that the proceedings with regard to Counts I and IV of the indictment against the defendant Kupke be stopped. I take the liberty of referring to the motions of the 11 and 15 March 1948 submitted by the entire defense.

The focal point of the defense is therefore the refutation of the prosecution evidence concerning Count III. With regard to Counts I and IV of the indictment I reserve the right to submit evidence.

In its opening statement of the 8 December 1947 the prosecution emphasized that Kupke was one of the less important employees of the firm Krupp. This statement was stressed by the prosecution in that in the chart of "Date of Entry of Defendants into Krupp and High Positions" which it submitted and which was exhibited in the Courtroom, the box with Kupke's name was the only one of all the 12 which was not shaded but was left white. This also shows that the rank of my client as "Gruppenvorstand" did not imply membership in the Vorstand of the firm Krupp, i.e. the administrative body of the enterprise.

According to the indictment itself, the opening statement of 8 December 1947 and the evidence submitted by the prosecution, my client, in his capacity as chief of the office Oberlagerfuehrung since 1943, is supposed to have been guilty of crimes enumerated in Control Council Law No. 10.

I will deal with this question from the point of view of the principles and of the facts.

The principles will be discussed extensively during the defense of the other defendants. The defense of my client will therefore be limited to any supplementation which may be required.

With regard to the facts, my defense of my client will start from his position and his activities as chief of the Oberlagerfuehrung, insofar as he was in charge of living conditions of the foreign workers as far as quarters were concerned.

I have to agree here with the prosecution's statement that the sphere of activity of my client extended only to the Krupp camps in the Essen area.

The plant of the case iron factory at Essen did not in principle come under the charge of the office Oberlagerfuehrung, since those camps were established and managed by the individual plants.

In order to describe the nature and extent of the activities and thus of the responsibility of my client, I will first discuss what was the official date on which Kupke was appointed by the Vorstand of the firm Krupp to take over the camps for foreigners, what were his tasks, what organization for the execution of these tasks existed at the time of his taking over and what new organizations were created by him.

The living conditions in the camps were to a very large extent dependent upon the relevant laws, regulations and other directives. In this respect the defense will prove, by submitting legal ordinances and other documentary evidence, that a number of state and municipal authorities Party agencies, agencies of Party affiliations and organizations as well as agencies of the Wehrmacht, had a decisive influence on this matter.

In addition to this I shall prove that the firm of Krupp and thus Kupke were not in principle responsible for living conditions in the prisoner of war camps, in the labor training camps of Dechenschule-Neerfeldschule and the concentration camp Humboldstrasse.

In connection with this I shall discuss the question of the rights and duties of the camp leaders with regard to maintaining peace, order and security, whether they had any right to mete out punishment and, if so, to what extent, and what their duties were vis-a-vis the security agencies, like the office of the Public Prosecutor, the criminal police and the Secret State Police.

Here too, I shall prove that my client was not in charge of the Abwehr (counter-intelligence) for the office Oberlagerfuehrung.

The sphere of activity assigned to my client included first of all the

organization of the quarters which were planned and built by Krupp according to State directives. In this connection I shall prove that Krupp and my client Kupke, within the scope of his duties, did not only fulfil the basic requirements, but in addition did some excellent work.

Inasmuch as such camps were placed under the supervision of the German Wehrmacht (Stalag), of the Gestapo and of the SS, evidence will prove that as soon as those camps were turned over to offices which had no connection with Krupp the responsibility of that firm ceased.

A further task of the office Oberlagerfuehrung was to supply the camps with food. I shall prove that the nature and the extent of the food rations were prescribed by the state that the prescribed rations were furnished but that in addition to this not only Krupp but also the office Oberlagerfuehrung and Kupke personally did everything to provide additional foodstuffs. I will especially furnish proof that, with regard to the problem of food, everything humanly possible had been done or attempted by Krupp to provide the best possible supply and distribution even before my client took over his work in 1943.

After the air-raid in October 1944 when local supplies were disrupted, Krupp for instance, immediately had bread brought from the vicinity of Leipzig, meat from Cologne and Osnabrueck, vegetables and potatoes from the Lower Rhine and from Hannover.

With regard to clothing I shall investigate whether and to what extent Krupp was responsible for procuring clothing and what had actually been achieved in this respect.

The problem of medical care plays an important role in the presentation of the case of the prosecution as well as the problem of the supply of drugs and of sanitary equipment. Here too, the evidence will prove clearly that neither the office Oberlagerfuehrung nor Krupp was responsible or competent for the prisoner of war camps, the labor training camps and the concentration camp Humboldtstrasse; in all the other camps for which Krupp was responsible, the duties arising from these tasks were performed to the full extent.

Finally the evidence for the defendant KUPKE will also touch upon the problem how life in the camps for foreign workers subordinate to the office Oberlagerfuehrung actually was. The result will be that in all other questions concerning the care for these foreign workers, e.g. vacations communication with their homes as far as mail and packages were concerned, activities for leisure hours, cultural and sporting activities, excursions in the vicinity, all sorts of plans were made and actually carried out.

If, during the course of the war years, there were considerable disturbances and difficulties with regard to life in the camps, the effects of the air-raids were of decisive importance, as has already been proven by the evidence so far submitted. It will be proved that the bomb attacks, which increased after 1942 to a considerable extent finally brought to nothing all plans and superhuman efforts and achievements. This resulted in a time of distress for the German population which became more serious from day to day and which necessarily also affected the life of the foreigners.

During air-raids and before the all-clear signal had been given, KUPKE, without regard for his own health and often at the risk of his own life picked his way laboriously through burning streets and over smoking heaps of rubble, to the camps, in order to inquire about the fate of the camps, in order to be on the spot to give first instructions for alleviating the great distress and also in order to lend a hand wherever it was needed.

His high sense of duty was shown by the fact that after the collapse none of the foreign workers did any harm to him, although he was easily accessible to everybody. If he had been the guilty person, as is maintained by the prosecution, an avenging fate would also have reached out for him, as it did in some other cases.

If, during the session of 17 November 1947 Herr KUPKE pleaded not guilty, it was a confession made out of inner conviction.

DR. DEHRINGER: I can be very brief on the basis of the very lengthy statements by my colleagues. Within the scope of the total defense I shall also have to deal with the foreign workers as such. My presentation of evidence will therefore cover the period of time prior to the establishment of the office of the main camp management and put into Kupke's charge.

In conjunction with the evidence to be submitted by other Defense Counsel my presentation of evidence will contribute to completely refute the accusation by Prosecution that foreign workers employed by this Krupp firm were treated inhumanely and cruelly.

PRESIDING JUDGE DALY: I believe that the date agreed for the presentation of evidence will be next Tuesday, March 30th. Right, is it not, as to date?

DR. POHLE: May I just present two more matters. First of all I would like to inform the Tribunal that the Defense has made two motions which are probably already in the hands of the Court. One is the motion of the 11th of March and the second, the one of the 15th of March. The motion of the 11th of March regards striking Counts I and IV and the motion of the 15th of March regards the striking of Count IV. I believe I don't have to read the reasons for this motion into the record. I may refer to the written reasons, but I would like to be told whether the Tribunal would like to have some argumentation on this point or not.

PRESIDING JUDGE DALY: No, I don't think so. Do you mean briefs, Dr. Pohle? We don't care to hear any arguments at this time, but if you would like to file a brief, we would be glad to have them. There is a Prosecution brief which we have received. You spoke about argumentation and I thought you were talking about arguments.

DR. POHLE: We are concerned here with two motions. I don't know whether you would call them briefs. They are really two motions, one is the 11th of March and one is the 15th of March. Both concern the striking of Counts I and IV and I believe they are already in the

possession of the Tribunal because we made them some time ago. I only wanted to try and explain here that these motions have been put and wanted to make them part of the record by this statement and I would like them to be received into the record and no argumentation is necessary then I expect.

The second point has reference to the fact that the Trial brief which has been promised to us by the Prosecution has not been received by us. In our opening statements we have pointed out that we believe that what the Prosecution has charged the defendants with is mostly unsubstantiated and the extent of the punishment to be meted out to the individual defendants will make it necessary for the Defense that the Trial brief will be given to us and in the interval we have not received it yet and I wanted to inform the Tribunal of this fact. I don't want to put any motions here at this moment but I want to reserve the right to put motions at a later time as soon as we receive the Trial Brief.

PRESIDING JUDGE DALY: All right.

MR. R. GLAND: May I state with regard to the Prosecution brief which is filed as a part of our answer that English copies have been submitted to the Secretary General in accordance with the rule.

The Secretary General takes care of the translation question. I can, however, supply a number of copies in English to the Defense Counsel if they desire them. At least one copy has already been handed over to Dr. Orth of the Defense.

THE PRESIDENT: Dr. Pohle, this is by way of comment on what you said with respect to those motions. I understand the situation is that the brief of the Prosecution which you have not yet received -- they intended as a reply to the two motions to which you refer and if you -- what I wanted to say was this that if the Defense Counsel want to file a brief or a reply to the Prosecution brief which deals with Counts I and IV, why, of course, the Tribunal would be glad to have it, if you care to do so.

DR. FOHLE: May I just say this, Mr. President, it is our original idea or rather the original idea of the Prosecution in submitting a brief was not to answer our motion. The original idea was according to a suggestion of the Court to substantiate its indictment and it is quite probably that the Prosecution included in this brief the answer to our motions.

THE PRESIDENT: Well, I understand that, but they have elected to adopt the brief they filed as a reply to your motion you see. Now, we don't know whether you care to add anything further to what you said in your motion or not. If you do why, file it in writing.

PRESIDING JUDGE DALY: We adjourn until next Tuesday morning at nine o'clock.

(The Court adjourned at 1125 hours, 23 March 1948.)