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JEWIS IN CRIMINAL CASES BEFORE THE REGIONAL COURT IN KIELCE BETWEEN 1939 AND 1941 – CONTRIBUTION TO POLISH-JEWISH RELATIONS DURING THE GERMAN OCCUPATION

Introduction

During the Second World War, in the part of the occupied Polish lands known as the General Governorate (German: Generalgouvernement; Polish: Generalne Gubernatorstwo; GG), a dualistic court system was implemented by the German occupation authorities at the turn of 1939 and 1940. In addition to German courts (special courts, German courts, higher German courts), Polish municipal, regional and appeal courts also operated with the consent of the occupier. The issues related to their operation remain a little-explored research subject, although works that fill this gap in historiography are gradually being published, with Andrzej Szulczyński's monograph at the forefront.¹

¹ A. Szulczyński, *Sądownictwo polskie w Generalnym Gubernatorstwie*, (Warsaw, 2020); A. Wrzyszczyk, "Sądy na ziemiach polskich w czasie okupacji niemieckiej (1939–1945). Najnowsze opracowanie tematu," *Studia z Dziejów Państwa i Prawa Polskiego* 23 (2020), pp. 35–55 (there the latest list of literature); *idem*, *Okupacyjne sądownictwo niemieckie w Generalnym Gubernatorstwie 1939–1945. Organizacja i funkcjonowanie* (Lublin, 2008), pp. 101–114; *idem*, "Nadzór Hansa Franka nad sądownictwem w Generalnym Gubernatorstwie w latach 1939–1945," *Miscellanea Historico-Juridica* 14/2 (2015), pp. 375–387; *idem*, "O organizacji okupacyjnego sądownictwa polskiego w Generalnym Gubernatorstwie w latach 1939–1945," *Zeszyty Majdanka* 14 (1992); *idem*, "Tworzenie okupacyjnego wymiaru sprawiedliwości w Generalnym Gubernatorstwie w latach 1939–1940," *Studia z Dziejów*

The scarcity of such works also concerns the Kielce region.² Minor mentions of the issue we are interested in have appeared in the studies by Adam Massalski and Stanisław Meducki,³ Małgorzata Czapska, Barbara Szabat and Jerzy Zięba,⁴ as well as Tomasz Domański.⁵ The issue of the activity of “Polish” courts in the Kielce region was discussed in detail in Szulczyński’s monograph. The author explored the operations of the Municipal Court (*Sąd Grodzki*, SG) in Sandomierz and the Regional Court in Kielce (*Sąd Okręgowy w Kielcach*, SOK), to analyse the judicial practice and the nature of the criminal offences tried in criminal and civil cases.⁶ No independent text was created that would discuss the functioning of the “Polish” judiciary in this area under German occupation.

Even less is known about the members of the Jewish minority who had to face the “Polish” judiciary. The analysed material concerns civil cases related to property ownership.⁷ The historical period to which the published documents refer was, after all, a period of persecution of Jews by the German occupying

Państwa i Prawa Polskiego 8 (2003), pp. 247–270; M. Worsen, “Sędziowie w podbitym kraju. Oficjalne sądownictwo polskie w Generalnym Gubernatorstwie 1939–1945,” *Zeszyty Historyczne* 128 (1999), pp. 38–53. A cognitive analysis of the trials before the Municipal Court in Cracow is also presented in: A. Czocher, “Drobna przestępczość pospolita w okupowanym Krakowie na podstawie akt więźniów więzienia przy ul. Senackiej (tzw. więzienia św. Michała) z lat 1939–1945,” *Polska pod Okupacją 1939–1945* 3 (2019), pp. 119–137.

² I define the Kielce Region as a historical area located between the Vistula and Pilica rivers.

³ A. Massalski, S. Meducki, *Kielce w latach okupacji hitlerowskiej 1939–1945* (Wrocław–Warsaw–Cracow, 2007), pp. 32–33.

⁴ M. Czapska, B. Szabat, J. Zięba, *Adwokatura Świętokrzyska. Zarys dziejów od początku XIX wieku* (Kielce, 2013).

⁵ T. Domański, “Pierwszy rok okupacji niemieckiej Kielc,” in *Życiorysy niepokornych*, vol. 1: *Stefan Artwiński (1863–1939)*, ed. by M. Jedynak and P. Wolańczyk (Kielce, 2021), pp. 67–94.

⁶ Szulczyński, *Sądownictwo polskie*, pp. 118–113, 131–133.

⁷ This issue was raised in Szulczyński’s monograph, in several articles and in another monograph remaining in the typescript. See Szulczyński, *Sądownictwo polskie, passim* (especially pp. 135–160); J. Grabowski, “Żydzi przed obliczem niemieckich i polskich sądów w dystrykcie warszawskim Generalnego Gubernatorstwa 1939–1942,” in *Prowincja noc. Życie i zagłada w dystrykcie warszawskim*, ed. by B. Engelking, J. Leociak, and D. Libionka (Warsaw, 2007), pp. 75–118; E. Wiatr, “Na marginesie funkcjonowania sądów polskich w Generalnym Gubernatorstwie. Przypadek Majera Wolberga,” *Zagłada Żydów. Studia i Materiały* 11 (2015), pp. 494–502; M.D. Racine Asselin, *Justice as Witness: Jews Facing Polish Courts During the German Occupation (1939–1942)*, unpublished PhD thesis (Ottawa, 2021). The work by Marie-Dominique Racine Asselin undoubtedly deserves a detailed analysis. The author completely omitted Andrzej Wrzyszczy’s findings on the functioning of the “Polish” judiciary under the occupation. The name of this researcher did not appear at all in her work. Also quite interesting is Szulczyński’s conclusion that “Polish courts became involved in the process of gradual plundering of Jewish property as they were unable to evade it.” See Szulczyński, *Sądownictwo polskie*, p. 156.

authorities, which included stigmatisation, the deprivation of any rights and, finally, physical extermination. The purpose of this source study is, thanks to the publication of documents from two preserved criminal cases conducted before the Regional Court in Kielce, to show the judicial practice in criminal cases involving Jews (as claimants or defendants). Equally important will be an attempt to answer the question of whether the Jews facing “Polish” courts were second-class defendants and whether the “Polish” courts, when conducting proceedings in criminal cases, were *de facto* participating in the process of repression and defamation of Jews.

Due to the little-known activities of the courts and their standing in the occupation structure, the historical context of their operation in the years 1939–1941, i.e. the period to which the published documents refer, should be discussed in more detail. At the beginning of this study, it is worth raising the seemingly trivial matter of semantics. The dualism of the occupational judiciary in the General Governorate was a fact; nevertheless, describing these courts as *Polish*, without putting it in quotation marks or at least distancing oneself by using the phrase “so-called” (“the so-called Polish courts”), may be erroneous and not reflecting the reality of the time. The establishment of the “Polish” judiciary in the General Governorate was primarily of practical importance. From the beginning of the occupation, full power belonged to the German occupier, deciding the possibilities and scope of those institutions’ activities, the existence of which the occupying power found useful.⁸ From 1941, the term non-German judiciary was used in

⁸ The status of “former Polish officials”, as all officials of Polish descent, employed in the GG in the judiciary structure were formally referred to, was quite vividly presented in the letter of the head of the Appellate Court in Radom to the heads of Regional Courts in Radom, Kielce, and Piotrków: “There was a case recently where one of the courts did not hear the case at the appointed time, although the trial was supposed to be attended by representatives of the German authorities interested in the case, who had already arrived at the court [this may indicate the practice of the German officers presence during trials – T.D.]. While not prohibiting the accepted and somewhat justified by current communication difficulties, courts’ practice of scheduling more cases for one hour in the morning – instead of strictly adhering to Article 61 of the general regulations – I would like to point out that both single and three-member courts must, in any case, be ready for the trial at the appointed time, when the files show that the German authorities are to participate in the trial. I ask you to make sure that this principle is strictly observed by the courts under their jurisdiction”. Archiwum Państwowe w Kielcach (State Archives in Kielce, hereinafter APK), Sąd Okręgowy w Kielcach 1939–1945 (Regional Court in Kielce, hereinafter SOK 1939–1945, 1, Memo of the Regional Court in Radom to the Regional Courts in Kielce, Radom, and Piotrków, Radom, 13 August 1940, p. 212.

the correspondence of German offices.⁹ The competences of the “Polish” courts became limited to cases not heard by the German courts: petty crime and civil cases.¹⁰ The trials were held under the pre-war penal code of 1932. The German side had the right to interfere in the proceedings and exercise control functions directly. German law gained primacy over Polish legislation, which resulted from racial reasons. *Reichsdeutsche* and *Volksdeutsche* were not subject to the „Polish” judiciary in the GG because they had the right to the jurisdiction of the German courts.¹¹ The symbols of Polish statehood, in the form of an emblem, were to be removed or covered. Although it was allowed to use Polish printed forms, there were to be no traces of pre-war reality, like the phrase „judgment in the name of the Republic of Poland” in the heading. “Polish” courts in the GG issued occupational judgments not on behalf of a specific state but on behalf of an unspecified law.¹²

The subjugation of “Polish” courts to German administration is demonstrated in many ordinances. One of the more tangible examples of German influence on the judiciary was the order of 10 June 1940. The German *Staatsanwalt* (prosecutor), on the basis of indictments in criminal cases sent to him, decided via the “Polish” prosecutor whether to transfer cases to the appropriate municipal court.¹³ Another example can be the obligation to send the justice department subordinated to the head of the Radom District case files in which GG employees appeared as suspects or victims.¹⁴ The „Polish” courts in criminal cases were controlled not only by representatives of justice departments (civil structures) of the office of the

⁹ Andrzej Wrzyszczyński thinks that the use of the term Polish judiciary is fully appropriate in relation to the period from 26 October 1939 to 31 August 1941. See A. Wrzyszczyński, “Sądownictwo polskie w generalnym Gubernatorstwie. Refleksje o najnowszej książce Andrzeja Szulczyńskiego,” *Studia nad Autorytaryzmem i Totalitaryzmem* 3 (2021), p. 555. The term “non-German” was also applied to police formations composed of Poles – the so-called blue police, the Criminal Police.

¹⁰ Wrzyszczyński, *Okupacyjne sądownictwo niemieckie*, pp. 105–106.

¹¹ *Idem*, “Tworzenie okupacyjnego wymiaru sprawiedliwości,” pp. 247–250.

¹² Ewa Wiatr suggests that this formula was used to disguise the proper one, “on behalf of Polish law.” See Wiatr, “*Na marginesie*,” p. 494.

¹³ To emphasise the unique position of the German prosecutor in the circulars of the German authorities translated into Polish, the term “prosecutor” was written in German. APK, SOK 1939–1945, 7, Letter from the head of the Prosecutor’s Office of the Regional Court in Kielce to the president of the Regional Court in Kielce, Kielce, 15 February 1941, p. 1.

¹⁴ APK, SOK 1939–1945, 3, Letter from the head of SA in Radom to heads of the Regional court in Radom, Kielce and Piotrków, Radom, 8 August 1941, p. 91.

governor-general or heads of districts¹⁵ but also by functionaries from the offices of the commander of the security police and the Security Service (German: Sicherheitsdienst, SD) (individual KdS – Der Kommandeur der Sicherheitspolizei und des SD). On 29 October 1940, the head of the Justice Department in the governor general's office decided that these offices should receive notifications on pending proceedings without any special summons.¹⁶ Local units of German order police authorities, such as the Criminal Police Station in Kielce, also attempted to obtain the right to control the courts' decisions or at least to read them. However, this was opposed by German supervision.¹⁷

The judges were also obliged to obey and be loyal to the German authorities.¹⁸ The situation of the functionaries of the "Polish" judiciary in the realities of the occupation was probably most clearly demonstrated by the circular issued by the head of the Justice Department at the Radom District Office, which the head of the Appellate Court in Radom sent to his subordinate units on 23 March 1942:

Rumours abound that irresponsible Polish elements intend to cause widespread disquietude throughout former Poland, in particular by committing acts of terror and sabotage against enterprises of vital importance to German government offices, etc. I emphasise that the most important interest of the Polish population requires that, by being particularly vigilant in this respect, it acts preventively. Every official of the judiciary is obliged to immediately notify the relevant German authorities if they learn of any intended acts of terror or sabotage. Otherwise, in the event of any such incidents, the most severe

¹⁵ For more on this see: Szulczyński, *Sądownictwo polskie*, pp. 54–56; H. Mielnik, "Prawo sprawdzenia prawomocnych orzeczeń sądów polskich (nieniemieckich) w Generalnym Gubernatorstwie w okresie II wojny światowej. Orzecznictwo Wyższego Sądu Niemieckiego w Radomiu," *Czasopismo Prawno-Historyczne* 1 (2020).

¹⁶ APK, SOK 1939–1945, 7, Letter by Teodor Osten-Sacken to head of the Prosecutor's Office of the Regional Court in Kielce, Kielce, 5 March 1941, p. 21.

¹⁷ *Ibid.*, Letter by SS-Untersturmführer Weiß to the head of the Regional Court in Kielce, 24 February 1941, p. 10. The letter in this case met with no resistance from the "Polish" court, and its head limited himself to passing this information to the municipal courts subordinate to him (*ibid.*, Letter from the head of the Regional Court in Kielce to the heads of the second division and the heads of municipal courts in Kielce, Bodzentyn, Chęciny, Daleszyce, Kielce, 26 February 1941). He revoked the decision only after detailed explanations from the prosecutor, Teodor Osten-Sacken.

¹⁸ Wrzyszczyk, *Okupacyjne sądownictwo niemieckie*, pp. 153–156, 107; Sworzeń, "Sędziowie w podbitym kraju," pp. 44–47.

reaction from the German authorities towards the officials will be inevitable. I would like to remind you of the regulation on combating acts of violence in the General Governorate of 30 October 1939. [...]. Please immediately notify all your subordinate officials of the judiciary of the above and report to me on the execution of this command.¹⁹

The financial situation of the employees of the “Polish” judiciary was also disastrous. The preserved documentation contains numerous applications for financial aid and support.²⁰ Marian Sworzeń said that “they were living from hand to mouth along with others.”²¹

Regional Court in Kielce and Municipal Courts of Kielce Judicial District

The Regional Court in Kielce (German: *Bezirksgericht*)²² began its activities on 29 November 1939.²³ During the analysed period, the post of the court’s director (*Leiter*) was initially held by Judge Stanisław Gmitrzak, and then by Judge Karol Zieliński.²⁴ Within the Kielce Court District, the municipal courts in Bodzentyn, Chęciny, Daleszyce, Kielce (Kreis²⁵ Kielce), Busko Zdrój, Chmielnik, Pińczów, Stopnica, Szydłów (Kreis Busko), Jędrzejów, Szczekociny, Włoszczów (Kreis Jędrzejów)²⁶ were subordinate to the Regional Court in Kielce. In turn, the

¹⁹ APK, SOK 1939–1945, 4, Letter from the head of the Appellate Court in Radom to the heads of Regional Courts of the Radom Appeal District, Radom, 23 March 1942, p. 216. Detailed statistics from this circular have been preserved.

²⁰ APK, SOK 1939–1945, 3, Letter from the Justice Department at the Radom District Office to all German and Polish judiciary authorities of the Radom District, Radom, 21 October 1941, p. 346.

²¹ Sworzeń, “Sędziowie w podbitym kraju,” p. 48.

²² In 1939, after the war was lost, Kielce was relegated to the rank of a *poviat* town as the seat of the German *starosty* – *Kreishauptmannschaft*. It was not until 1941 that it obtained the status of a separate city. See P. Rogowski, E. Wójcicka, “Kielce i powiat kielecki pod rządami Eduarda Jedamczika i Huberta Rottera na przełomie 1939 i 1940 roku,” *Świętokrzyskie Studia Archiwalno-Historyczne* 8 (2019), pp. 143–162; K. Urbański, “Organizacja życia mieszkańców okupowanych Kielc,” in *Kielce przez stulecia*, ed. J.L. Adamczyk et al. (Kielce, 2014), pp. 489–492.

²³ APK, SOK 1939–1945, 10, List of actions in civil, bankruptcy and settlement cases before the Regional Court in Kielce during the period from 29 November 1939 to 30 June 1940, 4 July 1940, p. 11.

²⁴ The exact date of the appointment of the director could not be determined.

²⁵ *Starosty* under German occupation.

²⁶ APK, SOK 1939–1945, 1, Ordinance on the boundaries of German and Polish courts in the Radom district, from 16 September 1940, p. 373.

Regional Court in Kielce was subordinate to the Appellate Court in Radom. Before the war there was no Appellate Court in Radom. It was established at the initiative of the governor of the Radom District, Dr Karl Lasch, to satisfy his ambitions for power and political prestige and to correlate the division of general administration with the administrative division for judicial purposes.²⁷ An outstanding pre-war lawyer, Dr Witold Prądzyński, took the position of Appellate Court director.²⁸ In total, eleven judges worked at the Regional Court in Kielce at the end of February 1940,²⁹ including a coroner (*Untersuchungsrichter*), a prosecutor, two deputy prosecutors and a sub-prosecutor, ten clerks and three notaries (at the Regional Court in Kielce).³⁰

The number of judges in the Regional Court in Kielce decreased from 23 in the prewar period to 12. It is difficult to assess to what extent such a fundamental change resulted from the turmoil of war and the beginning of the occupation, and to what extent from the implementation of the German policy of removing from

²⁷ Wrzyszczyk, "Sądy na ziemiach polskich," p. 37.

²⁸ For more information on the Radom Appellate Court and the activities of Witold Prądzyński as the head of the SA in Radom, see S. Piątkowski, *Radom w latach wojny i okupacji niemieckiej 1939–1945* (Lublin–Warsaw, 2018), pp. 161–166; *idem*, *Sędziowie sądów powszechnych regionu radomskiego w latach 1917–1945. Noty biograficzne* (Radom, 2008), pp. 12–13. As early as March 1945, the prosecutor's proceedings against Prądzyński began. They were conducted by the prosecutor of the Special Criminal Court in Lublin – Branch in Radom, under the decree of 31 August 1944 (known as *Sierpniówka*). The main charge against Prądzyński concerned the welcome speech he gave on 25 May 1940 at the opening of the Appellate Court in Radom in the presence of Hans Frank, which was supposed to prove his pro-German attitude (this issue is partly discussed by Piątkowski in *Radom w latach wojny*, pp. 165–166). Prądzyński and many witnesses were interrogated in the case, including employees of the SA in Radom and Teodor Osten-Sacken. All of them testified in favour of Prądzyński, proving at the same time that the words attributed to him were manipulated and twisted, in *Krakauer Zeitung*. Some people from the legal milieu sent to the prosecutor's office their own flattering opinions about Prądzyński. On 9 July 1945, as a result of all these positive opinions the investigation against Prądzyński was discontinued because "in the course of the investigation, it has been proven beyond reasonable doubt that in the newspapers which quoted the speech of the former president of in Radom, Witold Prądzyński, given on the occasion of the opening of this court, the content of the speech was distorted, because the speech he delivered did not contain passages derogatory to the dignity of a Pole, nor any content that can be considered as servile". Archiwum Państwowe w Radomiu (State Archives in Radom, hereinafter APR), Prokurator Specjalnego Sądu Karnego (Prosecutor of the Special Criminal Court, hereinafter PSSK), 786, Decision on discontinuance of the investigation, Radom, 9 July 1945, n.p.

²⁹ Stanisław Gmitrzak, Franciszek Wysocki, Stanisław Brzozowski, Michał Chmielewski, Tadeusz Świdorski, Stanisław Markiewicz, Ludwik Wójcik, Edmund Siedlecki, Leszek Niewiadomski, Aleksander Woskriesieński, Gerard Wojtuń. See Domański, "Pierwszy rok okupacji niemieckiej Kielce," pp. 71–72.

³⁰ *Ibid.*

judiciary structures unreliably people labelled as “inciters” and “troublemakers.”³¹ In February 1940, as in the entire GG, the German authorities removed Jewish attorneys-at-law from the Regional Court and municipal courts jurisdiction, including 15 attorneys-at-law from the Regional Court in Kielce, and 34 Jews in the whole district. In addition, in the Radom District, Jewish attorneys were also prohibited from engaging in cases that began before 1 September 1939.³² Confirmation of employment, after prior verification, was received only by Poles. However, Jan Grabowski’s thesis that only those attorneys-at-law who “expressed support for German anti-Jewish policy” worked in “Polish” courts seems quite controversial.³³ Such a radical position is not confirmed in the sources for the Kielce Judicial District. In the preserved opinions about the bar, as prepared by the heads of individual courts, there are no references to the socio-political views of the candidates. The opinions submitted to the German authorities concerned professional experience, professional skills and professional and private life conduct. Obviously, people suspected by the German authorities of collaborating with the Polish independence underground could not work in the judiciary.³⁴

In the first of the Regional Court’s activities under the German occupation, there was an apparent decrease in the number of criminal cases dealt with by the Regional Court.³⁵ According to statistics, in 1937, a total of 6,609 cases were

³¹ In the Warsaw district, the regulation on this matter was issued on 1 May 1940 by Governor Ludwig Fischer. A. Wrzyszczy, “Ustrój i prawo w Generalnym Gubernatorstwie w poglądach prawników niemieckich na łamach czasopisma *Deutsches Recht* w czasie II wojny światowej,” *Annales Universitatis Mariae Curie-Skłodowska Lublin – Polonia* 66/1 (2019), p. 449.

³² APK, SOK 1939–1945, 1, Letter from the head of SA in Radom to the managers of the regional courts in Radom, Kielce and Piotrków, Radom, 17 August 1940, p. 224; *ibid.*, List of lawyers living in the Kielce judicial district, [n.d.], pp. 211–212. According to the authors of the study *Adwokatura Świętokrzyska* the number of cases involving the Jewish population was so large that the Germans temporarily allowed Jewish lawyers to perform defence functions. However, they introduced numerous restrictions: attorneys were called counsellors; they could not wear a toga and provided their services only in the place of residence. See Czapska, Szabat, Zięba, *Adwokatura Świętokrzyska*, p. 69.

³³ Grabowski, “Żydzi przed obliczem,” p. 97.

³⁴ See opinions addressed to the German authorities. APK, SOK 1939–1945, 1, pp. 140–175. It is worth noting that Eugeniusz Nawroczyński, one of Kielce’s best-known lawyers, who passed the verification, was active in the conspiracy (The Union of Armed Struggle-Home Army [*Związek Walki Zbrojnej-Armia Krajowa*, ZWZ-AK) and was shot by the Germans in 1942. See M. Czapska, B. Szabat, “Eugeniusz Nawroczyński (1881–1942) – kielecki adwokat i działacz społeczny,” *Palestra Świętokrzyska* 17–18 (2011), p. 35.

³⁵ On the order of the department of justice in the office of the chief of the Radom district, the courts were obliged to prepare and send to the Regional Court in Kielce detailed lists of activities

referred to the Regional Court in Kielce.³⁶ Whereas, after half a year of operation (from 1939 to mid-June 1940), only 291 criminal cases were submitted to the Regional Court, and 301 were settled (including cases from the previous period). At that time, the Regional Court handed down 46 judgments in the first instance (including 16 collectively and 30 individually), while 50 cases were “settled in a different way.”³⁷ In October 1940, the Regional Court in Kielce received 120 criminal cases, and 123 cases were examined. In November of that year, the respective numbers were 113 and 129.³⁸ In 1941, a total of 1,336 criminal cases were submitted to the Regional Court in Kielce.³⁹ The number of criminal cases from the entire period of occupation lodged in the Regional Court in Kielce, preserved to this day, amounts to 44 archival units. The fate of the rest of the documentation remains unknown, but some of the documents were undoubtedly destroyed. Annotations with such content can be found in the K repertory.⁴⁰

A decrease in the number of submitted cases both criminal and civil, was recorded in all municipal courts subordinate to the Regional Court in Kielce. In total, from the opening of the courts in 1939 until June 1940, 5,480 criminal cases were submitted to these courts,⁴¹ and 986 in July 1940 (an average of 82 cases in each court).⁴² For comparison, it can be added that in 1937 as many as

(statistics) of their own and subordinate municipal courts (APK, SOK 1939–1945, 10, Letter from the head of the Regional Court in Kielce to the president of the Appellate Court, Kielce, 12 July 1940, p. 8). A drop in the number of submitted cases also occurred in other “Polish” courts operating in GG. See Sworzeń, “Sędziowie w podbitym kraju,” p. 46.

³⁶ APK, SOK 1939–1945, 12, List of Regional Court activities in Kielce in 1937, Kielce, 22 May 1942, p. 373.

³⁷ APK, SOK 1939–1945, 10, List of activities in criminal cases of the Regional Court in Kielce for the period from 29 November 1939 to 30 June 1940, Kielce, 4 July 1940, p. 14.

³⁸ *Ibid.*, List of activities in criminal cases of the Regional Court in Kielce for October 1940, Kielce, 4 November 1940, p. 304; *ibid.*, List of activities in criminal cases of the Regional Court in Kielce for November 1940, Kielce, 2 December 1940, p. 382.

³⁹ APK, SOK 1939–1945, 12, List of activities in criminal cases of the Regional Court in Kielce for 1941, Kielce, 13 January 1942, p. 69.

⁴⁰ APK, SOK 1939–1945, 23, Repertory, Kielce, 2 January 1941, pp. 213, 215, 219, 221 ff.

⁴¹ 7,813 cases remained from the pre-war period, and 6,667 were examined, of which 1,076 were discontinued. See APK, SOK, Regional Court in Kielce 1939–1945, 10, Collective list of activities in criminal cases of the municipal courts of the Regional Court in Kielce from the beginning in November 1939 to July 1940, Kielce, 11 July 1940, p. 78.

⁴² APK, SOK 1939–1945, 10, Collective list of activities in criminal cases of the municipal courts of the Regional Court in Kielce in July 1940, Kielce, 3 August 1940, p. 142.

52,011 criminal cases were lodged in municipal courts.⁴³ The list from 1937 did not differ much from those of other pre-war years, as evidenced by the statistics cited by Sebastian Piątkowski.⁴⁴ The number of registered cases after the courts opened would indicate a significant reduction in the scale of common crime. In fact, the situation was quite the opposite. After the amnesty of 2 September 1939 and the release of many criminals from prisons, a wave of banditry swept through the areas of central Poland occupied by the Germans. Also in the years that followed, this ratio remained very high, which was reported from everywhere.⁴⁵ The reasons for the decreasing crime statistics were probably the general chaos of war, unclear legal regulations (concerning the competence of „Polish” courts) and the ambivalent attitude of the German authorities, which mainly dealt with combating the remnants of the Polish army and any resistance attempts, and the extermination of the Polish elite. Controlling common crime was assigned to the structures of *Polnische Polizei* (blue police) and criminal police (including *Polnische Kriminalpolizei*).⁴⁶ The Germans dealt with ad hoc actions, carrying out roundups in different towns,⁴⁷ activities the “Polish” judges knew about. The crimes accompanying the liquidation of banditry were, in a veiled way, conveyed in the correspondence addressed to the Regional Court in Kielce.⁴⁸ The direct

⁴³ APK, SOK 1939–1945, 12, List of activities of municipal courts in criminal cases in 1937, Kielce, 26 May 1942, p. 416.

⁴⁴ See S. Piątkowski, “Bandytyzm i inne formy przestępczości kryminalnej na obszarach wiejskich Generalnego Gubernatorstwa na początku okupacji (October 1939 – May 1941)”, *Polska pod Okupacją 1939–1945* 1 (2015), pp. 64–69; *idem*, “Zapomniane ofiary. O przestępcach kryminalnych i ich losach w Radomskim w pierwszym roku okupacji hitlerowskiej,” in *Spółeczeństwo i kultura w regionie świętokrzyskim w XIX i XX wieku*, ed. by U. Oettingen, J. Szczepański (Kielce, 2009), pp. 190–193.

⁴⁵ The problem of crime in the province of the General Governorate is extensively discussed in Piątkowski, “Bandytyzm i inne formy przestępczości kryminalnej,” pp. 64–120.

⁴⁶ A. Hempel, *Pogrobowcy kłęski. Rzecz o policji “granatowej” w Generalnym Gubernatorstwie 1939–1945* (Warsaw, 1990); M. Korcuć, “Niemiecka *Polnische Polizei*. Historyczny i państwowo-prawny kontekst funkcjonowania granatowej policji w Generalnym Gubernatorstwie 1939–1945,” in *Policja granatowa w Generalnym Gubernatorstwie w latach 1939–1945*, ed. by T. Domański and E. Majcher-Ociesa (Kielce–Warsaw, 2019), pp. 14–85.

⁴⁷ A roundup was carried out in Kielce in October 1939. In Pińczów, in the courtyard of the prison, the Germans shot nine people suspected of banditry or possession of weapons. See Domański, “Pierwszy rok okupacji niemieckiej Kielc,” p. 82; Archives of the Diocese in Kielce, OD-4/5, Letter from the dean of Pińczów to the diocesan authority in Kielce, Kielce, Pińczów, 7 December 1939, pp. 54–54v.

⁴⁸ APK, SOK 1939–1945, 10, Letter from the head of the Municipal Court in Daleszyce to the president of the Regional Court in Kielce, Daleszyce, 2 July 1940, p. 41; *ibid.*, List of activities in criminal

practice of lower-level German security authorities (local gendarmerie stations) also caused a drop in the activities of “Polish” courts in criminal cases. For example, in the former Włoszczowa powiat (Kreis Jędrzejów), the local Polnische Polizei stations sent indictments to the police station in Włoszczowa, wherefrom they were transmitted to the local German gendarmerie, which “kept the documents for themselves.”⁴⁹

In the initial period of the occupation, the authorities of the Regional Court in Kielce noticed many irregularities in the conduct of criminal cases by individual municipal courts: the illegible preparation of minutes of hearings and justifications for judgments, the use of unacceptable abbreviations and extremely brief summaries of witnesses’ testimonies (sometimes unrelated to the actual testimonies), omitting the appointment of defence barrister *ex officio* and the provisions of the Criminal Code. Occasionally courts did not check evidence in individual cases and refused to hear witnesses.⁵⁰ The expressed reservations were substantive in nature, and, in peacetime, these transgressions would have to be assessed as unequivocally negative. However, considering the conditions of occupation, we should be more cautious in our judgment. So either these were offences incompatible with the office or acts of deliberate negligence that were to hinder the exercise of German control. If this was the aim of the municipal courts, these actions turned out to be relatively ineffective because the Regional Court was responsible for drafting the justifications in German. Later, the Germans, as evidenced by brief references, following the widely used “law” in the GG, imposed on judges personal responsibility for the proper implementation of orders.⁵¹ So it is not surprising that many judges and heads of courts tried to avoid responsibility by submitting various types of requests to the Appellate Court in Radom, with only the mention “I submit for decision, disposal, etc.” Witold Prądzyński, head of the Appellate Court in Radom,

cases of the Municipal Court in Szczekociny, under the Regional Court in Kielce, for the period from 13 November 1939 to 30 June 1940, p. 97.

⁴⁹ APK, SOK 1939–1945, 1, A copy of the letter from the justice department of the Radom district to the prosecutor at the Appellate Court in Radom, Radom, 10 April 1940, p. 65.

⁵⁰ APK, SOK 1939–1945, 7, Letter from the vice-president of the Regional Court to the president of the Regional Court in Kielce, Kielce, 16 May 1941, p. 42.

⁵¹ *Ibid.*, Letter from the head of the Regional Court in Kielce to the heads of divisions of the Regional Court and heads of municipal courts of the Kielce Court District, Kielce, 6 August 1942, pp. 166–167.

expressed his objection to such requests. He deemed the conduct of the judges unacceptable.⁵²

Jews before the Regional Court in Kielce

Given that the documentation is incomplete, it is difficult to answer the question about the quantitative scope of criminal cases of the Regional Court in Kielce in cases involving Jews as parties. It is known that the “Polish” courts were dealing with cases involving people accused of common crimes. Criminal cases against Jews (and Poles) resulting from violations of German occupation regulations (e.g. “illegal” trade) were subject to the German judiciary, and there were many more of those. From just the rural areas of Kreis Kielce, nearly 100 Jews were brought before the Sondergericht in Kielce.⁵³

An attempt to reconstruct the number of cases handled by “Polish” courts can be made on the basis of the repertory of the 2nd Criminal Division, which was divided into two sections. In 1939, no cases were entered in either section in which Jews were tried, and from November to the end of the year, three cases were entered in total.⁵⁴ In the following year, 73 cases were entered in section 1, in 1941 – 72 cases, in 1942 – 29 cases, in 1943 – 12. For 1941 and 1943, there were no entries about proceedings against Jews.⁵⁵ On the other hand, section 2 only sets out data for the year 1940, when 166 cases were entered.⁵⁶ Altogether, for the years 1939–1943, the repertoires recorded seven proceedings in which Jews were the defendants. The Regional Court in Kielce (section 1) proceeded with cases against Perec Fuks, Chaim Machtyngier, and Shlama Machtyngier,⁵⁷ as well as

⁵² APK, SOK 1939–1945, 3, Letter from the head of the Appellate Court in Radom to the heads of Regional Courts in Radom, Kielce, and Piotrków, Radom, 4 November 1941, p. 329.

⁵³ T. Domański, “Prześladowanie Żydów na obszarach prowincjonalnych Kreis Kielce w latach 1939–1941,” *Res Historica* 54 (2022), pp. 481–532.

⁵⁴ APK, SOK 1939–1945, 23, Repertory of the 2nd criminal division. Section 1 for 1939–1945, pp. 208–209; APK, SOK 1939–1945, 24, Repertory of the 2nd criminal division. Section 2 for 1939–1945, p. 496.

⁵⁵ APK, SOK 1939–1945, 23, Repertory of the 2nd criminal division. Section 1 for 1939–1945, pp. 208–209, 315–316, 445–446; *ibid.*, pp. 490–491, 509–510.

⁵⁶ APK, SOK 1939–1945, 24, Repertory of the 2nd criminal division. Section 2 for 1940, pp. 647–648.

⁵⁷ The case against these defendants was entered into the repertoires of both sections. APK, SOK 1939–1945, 23, Repertory of the 2nd criminal division, for 1940, pp. 292–295; APK, SOK, 24, Repertory of the 2nd criminal division. Section 2, for 1939–1945, pp. 571–572. The files of this case have been preserved, see “Documents” published in this article.

(section 2) Chun Wajnsztajn,⁵⁸ Majer Mandel,⁵⁹ Lejzor Gutman, Majer Diament, Motel Ciecierski, Josek Fajnkuchen,⁶⁰ Herszel Ejzykowicz,⁶¹ Chilel Cetel,⁶² Josek Kampel.⁶³ A simple mathematical calculation shows that the percentage of court proceedings against Jews from all registered cases amounted to 2.23%, which was very low given the thousands of Jews living in the Kielce Court District (in Kielce alone, Jews constituted one-third of the city's population). This conclusion is not changed by the proceedings against Ignacy Kaufler and Moshe Borkowski,⁶⁴ found in the files of the Regional Court in Kielce (about these cases in the footnotes), which were not recorded in the repertoires.

It should be emphasised that the entries in the repertoires were made in very brief form, containing primary data – the date, the actual judgment and its legal basis (a specific article of the Criminal Code). Therefore, it is impossible to reconstruct the matters that are important for the purposes of this text: the line of defence of the accused and the attitude of the court towards Jews. Much more information can be found in (the only) three preserved files from criminal cases conducted by the Regional Court in Kielce in 1939–1941, in which five Jews were indicted,⁶⁵ and on other three cases in which the perpetrators of crimes against Jews were tried. Unfortunately, the archival material is incomplete. Some documents from the hearing are missing, including witness testimonies given during the preparatory

⁵⁸ Accused under Article 257 section 1 as well as 129 and 96 of the Criminal Code (*kodeks karny*, hereinafter *kk*), 2 September 1940, was sentenced to three years in prison and the loss of public and honorary rights for five years, and a fine. The loss of public and honorary rights adjudged by the Regional Court in Kielce clearly proved that the jury did not consider Jews as second-class defendants. See APK, SOK 1939–1945, 24, Repertory of the 2nd division, section 2, p. 526.

⁵⁹ Sentenced on 19 October 1940, under Article 134 *kk* to six months in prison and a fine of 10 *zl*oty. *Ibid.*, pp. 557–558.

⁶⁰ They were charged under Article 160 *kk*. The Regional Court acquitted Gutman, Ciecierski and Fajnkuchen on 23 January 1941. The proceedings against Diament were suspended by the Regional Court on May 3, 1941, and then, on 18 September 1941, the accused was acquitted. *Ibid.*, pp. 569–570.

⁶¹ The accused, together with a Pole, Józef Dolik under Article 236 sec. 1 and 26, and 140 *kk*. 4 May 1941. Ejzykowicz was sentenced under Article 236 sec. 2 *kk* for a week in detention, and Dolik was acquitted. See APK, SOK 1939–1945, 24, Repertory of the 2nd division, section 2, pp. 603–604.

⁶² Cetel was charged under Article 257 section 1 *kk* and on 7 July 1941, sentenced to 10 months in prison and a fine. See *ibid.*, pp. 645–646.

⁶³ Sentenced on 21 March 1941 under Article 143 *kk* for one week of detention. See *ibid.*, pp. 647–648.

⁶⁴ APK, SOK, 775.

⁶⁵ These are the cases against Ignacy Kaufler, Moshe Borkowski and Perec Fuks, Chaim Machtyngier, and Shlomo Machtyngier.

proceedings and records of other investigative activities. Only indictments, minutes of the main hearing and judgments have survived. However, these documents are significant enough to shed much light on the court proceedings.

In the first case, on 21 March 1941, the Regional Court in Kielce sentenced Ignacy Kaufler from Kielce to 10 months in prison (the co-defendant and then sentenced was Stanisław Kowalski) for forging a notarial deed for the benefit of Stefania Hempel, a fraudster.⁶⁶ In the second case, against Moshe Borkowski, accused of handling stolen goods, the court acquitted the accused. Borkowski's trial undoubtedly deserves more profound analysis, as it enables an assessment of the professionalism of the "Polish" court in deciding on a case under the conditions of occupation.

In the autumn of 1940 and the spring of 1941, there was a series of thefts of livestock (pigs and horses) in Kreis Jędrzejów near Wodzisław. The case was investigated by officers of the Polnische Polizei from Wodzisław (n.d.) and Polnische Kriminalpolizei (Julian Peas and Kazimierz Pajączek⁶⁷) from Jędrzejów. On 19 May 1941, based on the collected evidence, the Regional Court's prosecutor, Adam Fałara, accused several men (Roma – then commonly referred to as Gypsies) of the thefts mentioned above, whereas Moshe Borkowski from Kielce was accused of knowingly buying stolen horses.⁶⁸ The first hearing took place in Kielce on 16 July 1941, with the participation of the defence lawyers. Due to an ongoing typhus epidemic, the defendants, who were then in prison, were unable to appear in person.⁶⁹ The retrial took place on 4 September. At that time, during the examination of the defendants and witnesses, circumstances were revealed that completely changed the course of events laid down by the representatives of the German police authorities. The main accused, Aleksander Waśkowski, admitted

⁶⁶ APK, SOK, 762, judgement in the name of the law the case of I. Kaufler and S. Kowalski, Kielce, 21 March 1941, pp. 31–33. Kaufler withdrew his appeal submitted to the Appellate Court in Radom.

⁶⁷ APK, SOK, 775, Kazimierz Pajączek's testimony at the main trial, Kielce, 4 September 1941, pp. 20–21. According to Eugeniusz Adamczyk, the head of the Second Section of Home Army Jędrzejów District and also a *Reichskriminalpolizei* (Kripo) officer in Jędrzejów, Pajączek and Peas served the Germans. See. E. Adamczyk "Wiktor", *Mój udział w kontrwywiadzie Armii Krajowej* (Warsaw, 2007), p. 79.

⁶⁸ APK, SOK, 775, The indictment against Aleksander Waśkowski, Władysław Federowicz, Waław Wiśniewski, Stanisław Gruszka, Moshe Borkowski, Kielce, 19 May 1941, pp. 1–7.

⁶⁹ *Ibid.*, Minutes of the main hearing, Kielce, 16 July 1941, pp. 8–10.

to several thefts, but as to others, he testified: “I confessed to the police because the police were beating us, and to avoid further beatings, I preferred to admit thefts that I did not commit.”⁷⁰ Władysław Federowicz testified the same: “To stop the beatings, the police made me confess to all the thefts, but I was not involved in the other thefts. The police gave us a description of a jew,⁷¹ Borkowski, and we testified against him, that he was buying horses from us, but Borkowski didn’t buy any horses from us, and I don’t know him at all.”⁷² Waclaw Wiśniewski also denied participation in other thefts, and talked about being beaten by the police.⁷³ Finally, Borkowski pleaded not guilty. Among the evidence of his innocence, he pointed out, as follows: „I did not leave the ‘ghetto’ at all, because this was not allowed.”⁷⁴ Borkowski was also defended by several witnesses of Jewish nationality: Lejbuś Rubinsztajn, Icek Frydman and Moshe Moszkowicz. According to their testimonies, Borkowski did not leave his place of residence at the time of the theft, due to his illness and “the closure of the Jewish quarter.”⁷⁵ Kazimierz Pajączek, whose role – as the investigator – was limited to recording testimonies, did not notice any irregularities during the investigation. Julian Peas was interrogating.

The course of events undoubtedly surprised prosecutor Fąfara, who requested that the hearing be discontinued, and that Peas be questioned.⁷⁶ The latter, in turn, as conducting the prosecutor’s proceedings, claimed that the defendants had confessed to their crimes without the use of coercive measures.⁷⁷ The Regional Court in Kielce saw the case in a completely different way, recognising the testimonies of the accused during the main hearing as true. When issuing the verdict, Judges Leszek Niewiadomski and W. Szulc negatively assessed the results of the proceedings conducted by the police officers. According to the judges, Waškowski and the other defendants were unable to provide many important details that would be

⁷⁰ *Ibid.*, Testimony of the accused Aleksander Waškowski at the main hearing, Kielce, 4 September 1941, p. 14.

⁷¹ The original spelling has been retained in the quotations from the documents (*Jew* written *jew*, not capitalised).

⁷² *Ibid.*, Władysław Federowicz’s testimony at the main trial, Kielce, 4 September 1941, p. 15.

⁷³ *Ibid.*, Waclaw Wiśniewski’s testimony at the main trial, Kielce, 4 September 1941, p. 15.

⁷⁴ *Ibid.*, Moshe Borkowski’s testimony at the main trial, Kielce, 4 September 1941, pp. 15–16.

⁷⁵ *Ibid.*, Lejbus Rubinsztajn, Icek Frydman and Moshe Moszkowicz’s testimonies at the main trial, Kielce, 4 September 1941, pp. 21–22.

⁷⁶ *Ibid.*, Prosecutor’s motion at the main trial, Kielce, 4 September 1941, p. 22.

⁷⁷ *Ibid.*, Julian Peas’s testimony at the main trial, Kielce, 12 September 1941, pp. 27–31.

quite obvious if they had acted in collusion with Borkowski. In the final words of the justification of the judgement in favour of Borkowski, the judges also outlined the tragic situation of the Jews: “Finally, the witnesses Lejbuś Rubinsztajn, Icek Frydman and Moshe Moszkowicz also testified that the accused Borkowski was ill at the critical time and did not go anywhere, and moreover was in a closed Jewish quarter. It is known to the Court that in April this year [1941], due to the typhus epidemic in this quarter, strict regulations regarding the movement of people living there were in force.”⁷⁸ During the appeal trial, the Appeal Court in Radom mitigated the sentence handed down against the accused Roma, clearly indicating that one of the thefts had been committed out of hunger, which must have been the result of the occupation situation: “The defendants confessed to the acts attributed to them, they stole the piglets not for trade, but immediately after the theft they ate the meat of these piglets together with their families.”⁷⁹

Considering the historical circumstances, the trial before the Regional Court in Kielce and the judgement, together with the justification, should be assessed as quite impartial. The court did not pay attention to the national origin of the accused – Gypsies and Jews – and did not refer in any way to their legal inferiority imposed by the Germans in the General Governorate. It allowed the statements of the defendants about being forced to confess by beating to be recorded. It showed numerous logical errors in the version of events presented by the Kripo officers.

Cases in which Jews became victims of various common crimes, such as beatings or thefts, were brought to court. Records of three such proceedings (see below) examined by the Regional Court in Kielce were discovered. The incomplete documentation of the Regional Court in Kielce from the occupation years does not make it possible to draw any quantitative conclusions. The repertoires cannot be referred to, because they did not include any names of the victims, only the data of the suspects and the sentenced. However, it can be assumed with a high degree of probability that only a small number of crimes against Jews ended up in court. The reasons for the low representation of the Jewish population in court

⁷⁸ *Ibid.*, Justification of the judgment of the Regional Court in Kielce, Kielce, 12 September 1941, p. 42; *ibid.*, Judgement of the Appellate Court in Radom, Radom, 10 November 1950, p. 50.

⁷⁹ *Ibid.*, Judgment of the Appellate Court in Radom according to law, Radom, 10 November 1950, p. 50.

proceedings was, quite obviously, the anti-Jewish German policy of systematic persecution and limitation of all rights, including the right to a defence. As early as mid-1940, from the area of the Municipal Court in Szczekociny, it was reported: “in view of the restrictions in relation to jews, the jewish population has ceased any litigation procedures.”⁸⁰ This note presumably points to cases under the Civil Code rather than the Criminal Code. However, it could – in the situation of occupation restrictions – also apply to Jewish victims of crime. Certainly, the German racist policy was at work here. It led to Jews not reporting common crimes of which they were victims. This is evidenced by testimonies during trials.⁸¹ Getting to the appropriate court was extremely complicated. This mundane activity, which in times of peace in the Second Polish Republic, apart from exceptional situations, was not a problem, in the conditions of occupation posed a real challenge. Due to the ban on the use of railways (Ostbahn) imposed on Jews, only the head of the German special court (Sondergericht)⁸² had the right to issue an appropriate order enabling travel by train to court. This regulation was further tightened on 21 March 1941. The German authorities, in this case, the head of the Justice Department of the General Governorate by the name of Wille, explained that “the official summons on a jew by the German or Polish judicial authority constitutes a permit allowing him to use public means of communication in non-local traffic.” However, Wille went on to “observe” that, „the summoning of a jew should be relinquished unless it is absolutely necessary to interrogate him. If the interrogation cannot be omitted, then each time it should be checked whether the jew can comply with the summons without using public means of transport (e.g. by walking for several hours). [If] it turns out that he can be required to walk from his place of residence to the place he is summoned to, or if for some other reason, it is not necessary to use a public means of transport, then the summons should indicate, ‘This summons

⁸⁰ APK, SOK 1939–1945, 10, a list of activities in criminal cases in the Municipal Court in Szczekociny of the Regional Court in Kielce for the period from 13 November 1939 to 30 June 1940, p. 97.

⁸¹ APK, SOK 1939–1945, 768, testimony of Jójchen Fajrajzen at the main trial, Busko-Zdrój, 9 September 1941, p. 20.

⁸² The granting of the permit concerned the courts within the Court District in Kielce, Piotrków and the non-local division in Częstochowa. See APK, SOK 1939–1945, 2, Letter from the head of the justice department in the Radom district to the head of the Appellate Court in Radom, Radom, 6 December 1940, p. 2.

does not authorise the use of public means of transport.”⁸³ The German ordinance can hardly be understood as anything other than a tacit encouragement to limit cases involving Jews, and also for them, the prospect of walking for hours to the Regional Court to seek “justice” could have been very discouraging.⁸⁴

At the same time, in the conditions of German persecution, a summons to a court hearing could turn out to be an extremely valuable document facilitating leaving the ghetto to the ‘Aryan’ side to get food or settle other matters. Despite the threat of repression, some Polish officials used court forms and thus helped the Jews, which must have reached the head of the Appellate Court, Witold Prądyński. He issued an order to combat this “practice.” Prądyński wrote in a very categorical manner: “I have received confidential information about the misuse of forms by court staff – court summons for unofficial purposes, such as to help Jews leave the Jewish quarter (ghetto). I will not tolerate this kind of abuse of an official position, and in the event of similar facts being found, the official or usher, in addition to criminal liability, will be immediately dismissed from court service. To prevent this kind of abuse in the future, I am asking you, as presidents, to issue orders that the summons forms be kept under lock and key, for which the office managers or secretaries will be responsible. At the same time, please bring the content of this circular

⁸³ *Ibid.*, Letter from the Justice Department of the General Governorate to the Justice Divisions in Cracow, Lublin, Radom and Warsaw, Cracow, 20 March 1941, p. 296. While sending a translation of the analysed letter, he “explained from his side”: “for assessing whether a given Jew is to arrive at the court using public means of transport or without using them – no distance expressed in kilometres applies. Therefore, individual cases should be treated individually and, based on the collected information, it should be decided whether there are substantiated reasons for using public means of transport (e.g. due to age, disability, etc.). It is the responsibility of the presiding judge or unitary judge who has set out the court trial and ordered the summoning of the given Jew, to check this matter and decide upon it. If a Jew is not to use public means of transport, then at the bottom, under the last column, on the first page of the summons form (copy), there should be placed an impression of a seal with the following content: Diese Ladung berechtigt nicht zur Benutzung öffentlicher Verkehrsmittel. This summons does not entitle the use of public means of transport”. See *ibid.*, Letter from the head of the Appellate Court in Radom to the presidents of the civil and criminal departments of the Appellate Court in Radom and the heads of the Regional Courts in Kielce, Radom and Piotrków, Radom, 25 April 1941, p. 295.

⁸⁴ The regulation concerning the oath taken by Jews in courts was also changed. The Main Department of Justice of the General Governorate in Cracow took the Torah out of the “Polish” courts. The previous provision of the Code of Criminal Procedure: “followers of Judaism keep their right hand on the Torah when taking the oath”, was removed. The content of the oath remained the same. See APK, SOK 1939–1945, 3, Letter from the head of the Appellate Court in Radom to the heads of Regional Courts in Radom, Kielce and Piotrków, Radom, 7 September 1941, p. 181.

to the attention of all officials and court ushers.”⁸⁵ Indeed, documents confirming the reading of the above document in individual district and municipal courts, and minutes with personal signatures of employees confirming that they had read them, have been preserved. However, we do not know whether and to what extent the German authorities influenced the issue of this ordinance.⁸⁶ It is all the more difficult to decide whether the cited document was a kind of “security” in case the Germans became interested in this practice, or whether it reflected Prądyński’s actual socio-political views. In light of the available sources, it seems that it could have been the first of these possibilities. During the post-war court proceedings against Prądyński, a letter in his defence to the prosecutor of the Special Criminal Court in Radom was sent by Mieczysław Maślanko, a lawyer of Jewish origin who became famous during the Stalinist era. Maślanko recalled several events from the occupation in which Prądyński personally helped him, e.g. by obtaining from the German authorities a temporary entry on the list of attorneys, and above all, he intervened in the German Sondergericht, so that it would look favourably on Maślanko when resolving a case against him for not wearing an armband with the Star of David.⁸⁷ Nevertheless, the official circular, in addition to the ordinances of the German authorities, could have had an adverse impact on the Polish court staff in the field of examining Jewish cases.

After overcoming so many restrictions and harassment introduced by the Germans, Jews sometimes sought justice in the courtroom. It is, therefore, worth looking in detail at three cases conducted before the Regional Court in Kielce, the files of which have been preserved. They concern the residents of the area covered

⁸⁵ APK, SOK 1939–1945, 2, Letter from the head of the Appellate Court in Radom to the heads of the civil and criminal department of the Appellate Court and heads of the Regional Courts in Radom, Kielce, and Piotrków, Radom, 13 May 1941, p. 406.

⁸⁶ Prądyński just as firmly demanded that the Polish staff subordinate to him stop sending various private requests for interventions to the German authorities. APK, SOK 1939–1945, 3, Letter from the head of the Appellate Court in Kielce to the presidents of the Regional Courts in Radom, Kielce, and Piotrków, Radom, 5 September 1941, p. 176.

⁸⁷ At some point, Maślanko was denounced to the German authorities for not wearing an armband with the Star of David. “Having learned from me,” Maślanko wrote, “that I had a case for this in a German special court, he influenced the prosecutor of this court to settle the case with a small fine of 120 zloty [as stated in a letter – T.D.]. Due to the fact that a similar charge cost others freedom, and sometimes life, my duty of gratitude to Dr Prądyński increased immeasurably”. See APR, PSSK, 786, A letter from Mieczysław Maślanko to the prosecutor of the Special Court in Radom, Lublin, 10 April 1945, n.p.

by the Regional Court in Kielce: Janas Kwaśniewski and Jojchen Fajrajzen,⁸⁸ Moshe Grysman, Szmerek Ajdelkopf, Moshe and Jenty Kaskowicz, Chawa Binsztok, Moshe and Chai Polus, Estera Bojgen, Wolf Żyto, Fajgla Jakubowicz⁸⁹ as well as Szymon Kołacza, Brucha Wagner, Izrael and Symcha Ostrowiecki, Josek Luft, Wólf Lejzor Kołacz.⁹⁰ These Jews fell victim to various common crimes, most often theft, committed by local Poles.

The case in which thefts committed to the detriment of Moshe Grysman and others were examined does not raise any doubts about the correct diagnosis. In January 1941, officers of the Kielce Kripo received a confidential report (we do not know its source) that Stanisław Kudła was guilty of this crime. During the investigation conducted by officers of the Polnische Kriminalpolizei,⁹¹ evidence was collected indicating the complicity of Kudła's wife and the Gawlik couple.⁹² It is particularly noteworthy that the Kripo officers did not disregard the anonymous report and acted according to the purpose for which the service was established, even though the victims were Jews. The case was tried by the Regional Court: its head Franciszek Wysocki and judges Stanisław Gmitrzak and Aleksander Woskriesieński. Stanisław Kudła was found guilty of theft, while his wife was found guilty of receiving stolen goods. The Gawliks were acquitted.⁹³

In the case of Kwaśniewski and Fajrajzen, although they were victims of crime, the content of the sentence revealed the anti-Semitic prejudices of the judges. The panel of judges was headed by Stanisław Gmitrzak. Apart from him, there were also district judge Michał Chmielewski and municipal judge Jan Jurkiewicz. Weighing the testimonies of the victims against Franciszek Możdżyński, known under the thief nickname "Siutka", accused of theft in Pińczów,⁹⁴ they stated, "the Regional

⁸⁸ APK, SOK 1939–1945, 768.

⁸⁹ APK, SOK 1939–1945, 780.

⁹⁰ See Document No. 1.

⁹¹ Kudła's place was searched by officers, Wojciech Szewczyk, Stanisław Adach, Kończak and Wesołowski. See APK, SOK 1939–1945, 780, Judgement by the Regional Court in Kielce according to law, Kielce, 1 October 1941, p. 26.

⁹² *Ibid.*, Indictment against Stanisław Kudła, Stefania Kudła, Stanisław Gawlik, and Aniela Gawlik, Kielce, 30 July 1941, pp. 1–6.

⁹³ *Ibid.*, Judgement by the Regional Court in Kielce according to law, 1 October 1941, p. 25.

⁹⁴ Możdżyński could have been also involved in smuggling food into the Pińczów ghetto. At the trial, he was saying that the Jews had conspired against him and accused him out of vengeance. He claimed that he did not want to "take on himself" the matter of grain confiscated by the navy-blue

Court did not believe the statements of the evidence witnesses Kwaśniewski and Rozenchwajg that the accused tried to snatch clothes from Kwaśniewski's hands, but believed the testimony of the witness Kempkiewicz that the accused tried to find out what the accused [as in the original – T.D.] was carrying in the package by asking him 'what are you carrying, smugglings?'; for he came to the conclusion that the witnesses Kwaśniewski and Rozenchwajg, with the ease and eagerness known to their race, to exaggerate the effects of even minor incidents, especially if the injured party in these incidents are members of their tribe, so also in this case they tried to present the incident as an attempted robbery of a person, Kwaśniewski, while according to the court, it was an ordinary prank on the part of a member of the city scum, so common nowadays, anyway, to a Jew. For it is hard to suppose that the defendant, who is widely known in Pińczów, tried to commit a robbery while there was still daylight, and on a street frequented by people. Rather the hypothesis mentioned above should be accepted as correct.⁹⁵ According to this hypothesis, Możdżyński beat Janas Kwaśniewski only to make him show what he was carrying in the package, but did not try to rob him.⁹⁶ The verdict of the court in this part of the charge must be shocking also because the veracity of the testimonies of the Jewish witnesses was confirmed by the platoon-leader of the Polnische Polizei, Wincenty Duraczyński.⁹⁷

As for the other misdeeds, the judges correctly assessed the testimonies of Możdżyński's victims, including Fajrajzen,⁹⁸ which resulted in Możdżyński being sentenced for theft. The court also nullified the penalties imposed on Jewish (and Polish) witnesses for failing to appear.⁹⁹ Duraczyński mentioned above confirmed the reasons for their failure to appear. In turn, Możdżyński's appeal undermining

police or gendarmerie (he was allegedly offered a bribe of 200 zloty), which he transported for Jew Karmioł "and his associates", See APK, SOK, 768, Franciszek Możdżyński's testimony at the main trial, Busko, 9 September 1941, p. 15.

⁹⁵ *Ibid.*, Judgement by the Regional Court in Kielce, Busko, 9 September 1941, pp. 31–32.

⁹⁶ *Ibid.*, p. 30.

⁹⁷ *Ibid.*, Wincenty Duraczyński's testimony at the main hearing, Busko, 9 September 1941, p. 17.

⁹⁸ Możdżyński stole about 30 kg of cereal bran from Fajrajzen's outbuildings and tried to steal several dozen kilograms of grain. *Ibid.*, Jójchen Fajrajzen's testimony at the main trial, Busko, 9 September 1941, pp. 20–21.

⁹⁹ The trial took place only at the third attempt. Earlier, the defendant did not appear because of typhus in the prison in Pińczów. For this reason, PP officers informed the witnesses that their appearance in court is pointless, because the trials would not have taken place in the absence of the defendant.

Fajrajzen's testimony was utterly rejected by the Appellate Court in Radom, which accepted the latter's testimony as much more reliable.¹⁰⁰

The preserved files of „Jewish” criminal cases within the scope of the judicial practice of the Regional Court in Kielce undoubtedly constitute too small a sample to extrapolate the observed regularities to all trials held in the area of the Kielce Court District. In the future, the judicial practice of individual municipal courts should be examined. We do not know whether, after analysing the remaining cases, the quantitative and qualitative proportions between those cases in which Jews were involved and the others would change. On the basis of the available material, it must be stated that in most of the cases discussed, the court coldly and objectively focused on establishing the circumstances of the events and the credibility of the witnesses' testimonies. Only in one case, and in respect of one charge, were the judges driven by anti-Semitic prejudices. Most importantly, however, the above conclusions are largely consistent with the results of research conducted on a much broader source basis (files of the Municipal Court in Sandomierz, among others) by Andrzej Szulczyński. According to his findings, the “Polish” courts in the General Governorate “in both criminal and civil cases involving Jews maintained, apart from a few exceptions, impartiality and legal, judicial objectivity.”¹⁰¹

However, the details of the preparatory stage conducted by officers of the *Polnische Polizei* and *Polnische Kriminalpolizei* remain elusive in the sources. The policemen were the first representatives of the German authorities with whom the indicted and the victims had contact. They also testified before the court about their activities. In light of the preserved and analysed material, there were no discernible racial prejudices in the policemen's attitude regarding the investigated cases. The same wicked rules, such as resorting to coercion during interrogations in order to obtain desired testimonies, were applied regardless of the origin and religion of the accused.¹⁰² Unquestionably, research into files of the “Polish” judiciary in the

¹⁰⁰ APK, SOK 1939–1945, 768, Judgement of the Appeal Court in Radom, Radom, 6 November 1941, pp. 38–42.

¹⁰¹ Szulczyński, *Sądownictwo polskie*, p. 160.

¹⁰² Even in the case of Borkowski, the attempt to blame him for the alleged dealing in stolen goods resulted rather from looking for the guilty “by force” than from racial prejudices. Kripo officers pointed to Borkowski as a prewar dealer in stolen goods. See APK, SOK, 775, Kazimierz Pajączek's testimony at the main hearing, Kielce, 4 September 1941, pp. 20–21.

context of its treatment of Jews (and Poles), as a source for the history of Polish-Jewish relations during the times of the German occupation should be continued for the entire GG area.¹⁰³

Documents

This article is accompanied by four documents (including one from the appeal procedure before the Appellate Court in Radom) from two criminal cases conducted by the Regional Court in Kielce. Both trials concern crimes committed by Poles and Jews during the occupation (including during direct German-Polish military operations in September 1939), which fell within the competence of the “Polish” courts. In the first case, Władysław Ozimek from Nowy Korczyn, a Pole, was charged with committing several crimes to the detriment of local Jews, in the autumn of 1939. Prohibited acts included intimidation, beatings and the seizure of property. A separate charge was for the theft of pepper from the municipal warehouse in Nowy Korczyn in September 1939.¹⁰⁴ A defence lawyer attended the hearing, but his name remains unknown. The Regional Court in Kielce, issuing a judgement in the case on 2 December 1940, had no doubts about Ozimek’s guilt and sentenced him to one year and three months in prison.¹⁰⁵ Ozimek served the whole sentence, which included a temporary arrest, from 23 November 1939 to 23 February 1941.¹⁰⁶

In the second case, the subject matter of the proceedings concerned the theft of clothes, committed in 1939 by a certain Perec Fuks, residing in Kielce, together with Chaim Machtyngier from Mąchocice near Kielce, to the detriment of Frymeta and Moshe Kochen. On the other hand, the Kochens were charged with stealing textiles. Szlama Machtyngier was accused of buying stolen trousers.¹⁰⁷ Thus both the suspects and the victims were Jews. This time, the Regional Court in Kielce

¹⁰³ Marie-Dominique Racine Asselin presents a completely different picture of the “Polish” judiciary in Jewish matters. Based on the preserved documentation of the courts from the Warsaw district, she depicts the milieu of the “Polish” judiciary as imbued with anti-Semitism. See Racine Asselin, *Justice as Witness*, pp. 126–200.

¹⁰⁴ See Document No. 1.

¹⁰⁵ See Document No. 1.

¹⁰⁶ APK, SOK 1939–1945, 757, Letter from the Prosecutor’s Office at the Regional Court in Kielce to the Regional Court in Kielce, Kielce, 28 February 1941, p. 30.

¹⁰⁷ The subject of the crime was described in detail in the indictment. See Document No. 2.

had no doubts about the guilt of Fuks and Chaim Machtyngier, sentencing the first of them to a total of three years in prison on 2 November 1940, and the second to two years.¹⁰⁸ During the main hearing, it turned out that Szlama Machtyngier had been arrested by the Sicherheitspolizei (security police) „as a result of denunciation” and was sentenced to one year in prison by a special court (Sondergericht). However, it is not known on what charge and in which case.¹⁰⁹ The “Polish” court acquitted Szlama Machtyngier of the charge listed in the indictment. It is noteworthy, however, that the hearing was held without the presence of a defence lawyer. According to the correspondence of the prosecutor’s office at the Regional Court in Kielce, Machtyngier was to fully “endure” the sentence. His further fate, like that of Fuks, remains unknown.

The value of the published documents lies primarily in analysing the evidence in the content of the judgments. Sentences were handed down by competent judges with many years of experience. A similar conclusion can be drawn about prosecutors (see Documents Nos. 1–4). Their professionalism cannot be questioned. Based on the pre-war Polish Criminal Code, the Regional Court impartially analysed the testimonies of witnesses and weighed the evidence. In legal, “dry” language, it referred only to specific articles and deeds, treating the charges as an evident phenomenon of common crime, which – it can be assumed – was an inevitable element of war times. The language used differed significantly from the negative terminology in German ordinances quoted above, in which Jews were described as objects. In both judgments, there are no mentions of the situation of Jews and Poles in the reality of the occupation. There was not even any information about what militia the accused Ozimek served and why Fuks and Machtyngier stood before the court without legal representatives. A trial in which the defendants were deprived of the right to defend themselves should not have taken place at all. Much more important is whether the judges of the Regional Court in Kielce could raise such matters in the justification of the judgment or indicate them without exposing themselves to repression. The judge’s certificate did not in any way exempt them from possible German repression.¹¹⁰ Indeed, each sentence justification was

¹⁰⁸ See Document No. 3.

¹⁰⁹ APK, SOK 1939–1945, 759, Minutes of the main hearing, Kielce, 20 November 1940, p. 13.

¹¹⁰ Sworzeń, “Sędziowie w podbitym kraju,” pp. 48–49.

subject to analysis by the German judiciary and the security police (Gestapo). So it seems that the judges had a special (extra-normative) responsibility to hand down a just judgement in such circumstances. At the same time, the maximum care to consider the pre-war code's procedures resulted in the Radom Appellate Court's judgment favouring the defendants, contrary to German policy.¹¹¹ Including temporary arrest in the whole sentence, its beginning was set by the court not on the date of issuing the detention order in June 1940 but on the date of actual imprisonment in Kielce, i.e. on 16 December 1939.¹¹² The position of the court resulted from a suggestion sent in the form of a circular by the head of the Appellate Court in Radom, Witold Prądyński, to the heads of the Regional Courts in Kielce, Piotrków, and Częstochowa.¹¹³

¹¹¹ The available publications about the "Polish" judiciary during the occupation indicate the high ethics and professional qualifications of the judges of that time. Sebastian Piątkowski described the group of judges of the Radom region as follows, "It is a paradox that exactly during the tragic period of the Nazi occupation, the common judiciary of the Radom region reached heights in the sphere of competence, education and professional practice of people working in its structure. This phenomenon resulted from the fact that many judges displaced from the Polish lands incorporated into the Reich (especially from Greater Poland) as well as runaways from the Eastern Borderlands arrived in the Radom district." See Piątkowski, *Sędziowie sądów powszechnych*, p. 13.

¹¹² See Document No. 4.

¹¹³ In the circular, Prądyński wrote generally about the "police authorities" that protractedly "hold the arrested" through no fault of their own. See APK, SOK 1939–1945, 2, Letter from the head of the Appellate Court in Radom to the heads of the Regional Courts in Kielce, Piotrków, Częstochowa and Radom, 25 April 1941, p. 108.

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SUMMARY

During the Second World War, in the part of the Polish lands called the General Governorate by the German authorities, there was judicial dualism. On the one hand, there were the German courts, and on the other, the so-called Polish courts – municipal, district and appeal courts, which handed down judgments according to the law. The article uses the preserved files of the Regional Court in Kielce to show the judicial practice of this court in criminal cases in which Jews were the defendants or victims in the years 1939–1941. The text is accompanied by four source documents containing judgments and indictments.

KEYWORDS

Judiciary under occupation • General Governorate • Poles • Jews
• Regional Court in Kielce

DOCUMENTS

Editorial note

The documents presented below have been subjected to editorial alterations and provided with substantive and related to wording and spelling footnotes. Any emphasis in the text is marked in bold. In some cases, the punctuation has been updated; otherwise, the original spelling (in the Polish text) has been retained. The obvious typos have been corrected. All the documents included in this article are from the archival records "Regional Court in Kielce (1939–1945)," kept in the State Archives in Kielce.

No. 1

2 December 1940, Kielce – Judgment of the Regional Court in Kielce against
Władysław Ozimek

No. II 1K. 56/40^a

Judgment^b

in the name of the law
of 2 December 1940

The Regional Court in Kielce, the 2nd Criminal Division at a session
in Busko-Zdrój in a bench composed of:

Presiding Judge M[ichał] Chmielewski¹

Judge of the Regional Court St[anisław] Gmitrzak²

Judge of the Municipal Court J[an] Jurkiewicz³

^a *In the upper right corner handwritten in red ink: 229 crossed out with black pencil and added: 19.*

^b *On the right, an impression of a round seal with an inscription State Archives in Kielce printed in black ink. In the middle: *21*.*

¹ Michał Chmielewski, b. 1894, graduated in 1926; from 1939 a judge of the Regional Court in Kielce. Detained by the Soviets from 16 January 1945 to 17 October 1945 and deported to Stalino in the USSR. He returned to Poland on 17 October 1945. Then, until 8 July 1949, he was again a judge of the Regional Court in Kielce. From 9 July 1949 to 1 January 1951, he was a judge at the Voivodeship Court in Kielce. Before the Second World War, he was a member of the Association of Judges and Prosecutors of the Republic of Poland, and after the war, a member of the Polish-Soviet Friendship Society and a member of the United People's Party (*Zjednoczone Stronnictwo Ludowe*, ZSL). APK, Voivodeship Court in Kielce, 2189, List of judges, junior judges and judge trainees in the Region of the Voivodeship Court in Kielce, [n.d.] p. 211.

² Stanisław Gmitrzak, b. 25 October 1891 in Witków Nowy, Kamionka Strumiłowa Poviát. He graduated from high school in Brody. From 15 June 1921 to 15 October 1922, he worked as a second lieutenant of the State Police in the 13th Volhynia Region. Later – in the poviát council in Horochów. He graduated in law from Jan Kazimierz University in Lwów in 1928. Then he started his training in the region of the Appellate Court in Lublin (worked in Łuck), after which he was an assessor in Lublin (1931–1932), a municipal judge in Włodzimierz (1932) and a judge at the Regional Court in Łuck. On 16 October 1938, he was appointed a judge at the Regional Court in Kielce. Archiwum Akt Nowych (Central Archives of Modern Records, hereinafter AAN), Ministry of Justice, 1594. Judge Stanisław Gmitrzak's personal files.

³ Jan Jurkiewicz, b. 1887, academic education, he has worked in the judiciary from the time he graduated in 1911 to 1914. Afterwards, in the years 1920–1922 he was the secretary of the Court of Peace in Horochów and from February 1922 a judge at the Municipal Court in Busko-Zdrój. In 1939, until the entry of the Soviet army, he was the head of the Municipal Court in Busko. From 1 January 1951, a judge at the Poviát Court in Busko-Zdrój. Before the war, he was a member of the Association of Judges and Prosecutors of the Republic of Poland. Not affiliated to any party after the war. APK,

Senior recording clerk registrar St[anisław] Gala

with the participation of Deputy Prosecutor M[arceli] Bogdanowicz⁴

on 2 December 1940, having examined the case of Władysław Ozimek, son of Józef and Wiktoria née Kasperek, born on 21 August 1901 in Nowy Korczyn, accused of the following misdemeanours:

I. in the first days of November 1939 in the municipality of Nowy Korczyn, while striking Szymon Kołacz's chest with his hand, snatched from him and took one kg of tea and four hundred packets of tissue paper in order to appropriate it;

II. at the same time and place, in order to gain a financial gain for himself, he used violence against Brucha Wagner and the people riding with her, beating them with a stick all over their bodies and thus forcing her to pay him fifty zlotys;

III. at the same time in Nowy Korczyn, in order to obtain a financial gain for himself, twice, with the threat of immediate beating and killing, forced the spouses Izrael and Symcha Ostrowiecki to give him kerosene, threads and handkerchiefs, which were their property;^c

IV. at the same time and place, by threatening to bring in the gendarmerie and inciting criminal proceedings, forced Josek Luft to give him one pair of shoes;

V. at the same time, in the area of Nowy Korczyn municipality, by threatening Wolf Lejzor Kołacz and the passengers travelling with him with the confiscation of transported goods, forced Kołacz to give him one kg of soap;

VI. in September 1939 in Nowy Korczyn, he took twelve kg of pepper from the municipality warehouse for the purpose of appropriation, for acts covered by Articles 259, 261, 251 and 257(1) of the Criminal Code

Voivodeship Court in Kielce, 2189, List of judges, assistant judges and court trainees in the Region of the Voivodeship Court in Kielce, [n.d.], p. 216.

⁴ Marceli Bogdanowicz, b. 15 December 1903 in Ryczów (Wadowice Poviát). He graduated in law from Jagellonian University in 1926. He began his judicial traineeship in 1927, and passed the judicial exam in 1930. In the subsequent years, he was a court assessor in Frysztak, a judge at the Municipal Court in Frysztak, and a deputy prosecutor at the Regional Court in Rzeszów. Then, in 1932 he was transferred to the position of deputy prosecutor at the Regional Court in Jasło, and from 14 November 1936 he worked as a deputy prosecutor at the Regional Court in Kielce. In 1938 he was appointed deputy prosecutor at the Regional Court in Kielce. During the German occupation, from 1 December 1939, he served as deputy prosecutor at the Regional Court in Kielce, and on 19 March 1941, he was appointed mayor of Kielce. APK, Sąd Okręgowy w Kielcach, 1917–1939 (Regional Court in Kielce 1917–1939, hereinafter SOK 1917–1939), Marceli Bogdanowicz's personal files).

ruled:

- 1) that Władysław Ozimek is guilty of the acts described in points II, IV and V;
- 2) the same Ozimek is also guilty that:
 - a) in the first days of November 1939 in the municipality of Nowy Korczyn, snatching a package containing one kg of tea and four hundred packets of tissue paper from the hands of Szymon Kołacz, and by threatening to take the package to the German gendarmerie station, forced Chaim Jankel Kołacz to sell him twelve dkg^d of tea and one hundred packets of tissue paper for twelve groszy;
 - b) at the same time in Nowy Korczyn, by threatening Izrael and Szymsza Ostrowiecki with a denunciation to the German authorities that they have hidden goods in the basement, forced them to sell him a small amount of kerosene on credit;
- 3) to sentence him of the act described in p. II pursuant to Article 261 of the Criminal Code, to one (1) year in prison and the deprivation of civil rights and civil honours for three (3) years, and for each of the other acts imputed to him, pursuant to Article 251 of the Criminal Code to eight (8) months in prison and a total of, pursuant to Article 31 of the Criminal Code, to one (1) year and three (3) months in prison, including pre-trial detention, from 23 November 1939 to 2 December 1940, to the deprivation of public rights and civic honorary rights for three (3) years;
- 4) imposing a fine as an additional penalty under Article 42 of the Criminal Code to be considered inexpedient;
- 5) to acquit the same Ozimek of the charge specified in p. VI and of the charge that in order to gain a financial benefit for the second time, he forced the spouses Izrael and Symcha Ostrowiecki to hand to him kerosene, threads and tissue papers;
- 6) exempt the defendant from incurring court costs;
- 7) material evidence – payroll list of members of the civil guard – to be given to the board of the Nowy Korczyn^e municipality.

^c *Crossed out: IV.*

^d *A in the original. Currently: dag. All indicated corrections have been made in the Polish text.*

Grounds

The court proceedings determined as follows:

The defendant was a militiaman⁵ for only three days when German troops entered Nowy Korczyn. Soon after, he was fired from the force for some misdemeanor (testimony of a witness) Ludwik Czyrak – p. 158, guard members' payroll – p. 142 and a letter from the board of the N[owy] Korczyn municipality – p. 110).

In reference [to] p. I of the indictment

According to the testimonies of witnesses Szymon Kołacz, Chaim-Jankel Kołacz and Adam Lachowski, in early November 1939, witness Szymon Kołacz was carrying a package containing one kg of tea and four hundred packages of cigarette papers from Nowy Korczyn to Stopnica. Near Nowy Korczyn, he met the defendant and witness Adam Lachowski. The defendant approached Szymon Kołacz and asked him what he was carrying under his arm. When Kołacz replied that tea and tissue paper, the defendant, saying, "This is what I^f need," wanted to buy from him the tissue paper, but Kołacz did not want to sell it. Then the defendant snatched the package from under^g Kołacz's arm and stated that he would take him to the German gendarmerie station. When Kołacz approached the defendant and demanded the return of the package, the defendant forcibly pushed him away, and then, with the package and witness Lachowski, he went to Nowy Korczyn, where witness Sz[ymon] Kołacz also returned and told his father, Chaim-Jankel Kołacz, about the incident. The latter soon after met the defendant in the market square, carrying a package taken from his son under his arm. When Chaim Kołacz demanded the defendant to hand over the package, the defendant stated that if he sold him twelve dkg of tea and one hundred packets of tissue paper, he would return the rest of the goods. Chaim Kołacz agreed, on the condition that the defendant would pay him the maximum price for tea and tissue paper, but the defendant paid him only ten zlotys for one hundred packets of tissue paper, when the tissue paper cost

^e *Below an impression of a round seal with the inscription: State Archive in Kielce in black ink. In the middle: *21*.*

^f *The printed word nie overwritten in black ink with mi.*

^g *In the original: z pod. This spelling was in use until 1936.*

⁵ It is probably about Citizens' Militias (Polish pl.: *milicje obywatelskie*) established just before the outbreak of war to ensure social order and public security. These bodies most often self-dissolved after the entry of the German army.

twenty zlotys, and two zlotys fifty groszy for twelve dkg of tea, when one dkg of such tea cost seventy groszy at that time. Chaim Kołacz was forced to accept the money from the defendant and give him the requested goods, because in this way he wanted to save the rest of the goods. At that time, the defendant was no longer a militiaman. The testimony of the witness, Adam Lachowski, that the defendant did not snatch the package from the hands of Szymon Kołacz and did not push him away when Kołacz demanded the return of the package, does not deserve to be believed, because it contradicts the testimony of Szymon Kołacz, since the witness Lachowski was the defendant's travelling companion at the time and gave a favourable for the defendant testimony in this matter. During the investigation, Szymon Kołacz (p. 75) testified that the defendant, having hit him in the chest with his hand, had forcibly snatched the package from his hands and took it, but he did not confirm this during the hearing, testifying that the defendant hit him in the chest or pushed him forcibly away when the witness approached him demanding the return of the package. The testimony of the witness Szymon Kołacz at the hearing should be considered credible because it was given under oath. The defendant pleaded not guilty and generally made explanations^h in accordance with the testimonies of the witness A[dam] Lachowski, denying that he snatched the package from the hands of the witness Szymon Kołacz by pushing him and threatened both him and his father Chaim Kołacz with taking the package with the goods to the German gendarmerie station, but admitted the fact that he met the witness Szymon Kołacz with tea and tissue paper on the way and that later, in the town, he purchased a small amount of tea and tissue paper from his father. However, these explanations of the defendant, as contradictory to the testimonies of the witnesses Szymon and Chaim Kołacz, do not deserve to be believed. Considering all the testimonies of the witnesses Sz[ymon] Kołacz, Ch[aim] Kołacz and A[dam] Lachowski, and the circumstances that the incident between the defendant and the witness Szymon Kołacz took place in full daylight, on the road, in the presence of a third party (witness Adam Lachowski), that the defendant carried the taken package on the outside, openly, and directly after the incident took it to the town, to the market square, it should be concluded that there are no features of robbery

^h *It was written: naigól. Handwritten correction in black ink to: naogól.*

in the act of the defendant, but that there are all signs of arbitrariness, covered by Article 251 of the Criminal Code, consisting in the fact that the defendant, having snatched a package containing one kg of tea and four hundred packets of tissue papers from the hands of Szymon Kołacz, and threatening to take this package to the German gendarmerie station, forced Chaim-Jankel Kołacz to sell twelve dkg of tea and one hundred packs of tissue papers for twelve zlotys and fifty groszy.

In reference [to] p. II of the indictment

By mutually consistent and complementary testimonies of Brucha Wagner, Sura Stalewicz, Izrael-Majer Płużnik, Gitla Pinkus and Ruchla Taubenblat^k, it has been established that in November 1939, when the first four of the aforementioned witnesses and the daughter of the last-mentioned witness were travelling with goods in a waggon from Nowy Korczyn to Pacanów, after passing Nowy Korczyn they were caught up by the defendant riding on a bicycle, who, having declared that he is militiaman, demanded that they pay him because they were carrying goods. The passengers stated to the defendant that they would pay, but they did not pay and drove on. Near the village of Swiniary^l the defendant caught up with them and with the words, „Where will I chase you, didn't you promise to pay?“, he ordered the cartman to turn back towards Nowy Korczyn, the passengers to get off the waggon, and when they lingered or started to run after the cart, he started to beat them with a stick. They got severely beaten: witness Burcha Wagner,^m S[ura] Stalewicz, Gitla Pinkus and the daughter of the witness R[uchla] Taubenblat. Then witness S[ura] Stalewicz gave the amount of fifty zlotys to witness B[rucha] Wagner, who gave the money to the defendant, who released the goods and the wagon. Later all the passengers contributed to this sum. During this incident, the defendant was supported by two younger individuals. At the time of this incident, the defendant was not wearing a militiaman's band on his sleeve.

The defendant pleaded not guilty and explained that he was doing his duty when had stopped the wagon with Jews who were carrying tobacco, that Bruchaⁿ Wagner gave him twenty zlotys, of which he paid ten zlotys to the peasants who

^k *It was written:* Taurenblat. *Handwritten correction in black ink to:* Taubenblat.

^l *As in the original.*

^m *It was written:* Brachy. *Handwritten correction in black ink to:* Bruchy.

ⁿ *It was written:* Brachy. *Handwritten correction in black ink to:* Bruchy.

were helping him, and the other ten zlotys and the tobacco he kept The explanations of the defendant do not deserve to be believed, because they are in stark contrast to the testimonies of the aforementioned witnesses, which are clear, categorical and consistent with each other.

In this act of the defendant, there are all the characteristics of a crime covered by Article 261 of the Criminal Code.

In reference [to] p. III of the indictment

According to the testimonies of the witnesses Izrael Ostrowiecki and Symcha Ostrowiecka (pp. 82 and 14–15), in November 1939, in the evening, the defendant who was their former neighbour, came to their flat, placed an empty bottle on the table and said, “Stretch out, but I have to have kerosene in five minutes.” When the witness, Izrael Ostrowiecki, declared that he did not have kerosene, the defendant began to threaten him, that he would never forgive him, that he would report to the German authorities that Izrael had goods hidden in the basement, and he forced out Izrael Ostrowiecki’s wife Symcha Ostrowiecka to another toilet. Seeing the pugnacious behaviour of the defendant, witness Izrael Ostrowiecki poured kerosene from his „Primus” machine and kerosine lamp into the bottle of the defendant, who took the kerosene and left the flat without paying anything for it. There were such occurrences before that the defendant took goods on credit from Ostrowiecki’s shop, but had not yet paid for them. The kerosene taken by the defendant was worth about fifty groszy. The next day, in the evening, the defendant came again to the Ostrowiecki spouses’ flat with an empty bottle and demanded kerosene from the witness, Symcha Ostrowiecka, and when she told him why he was pestering her, the defendant declared, “I’ll break your bones, you stupid jerk, I’ll make you remember that Ozimek was a clerk in Korczyn.” As a result of the intervention of Symcha Ostrowiecka’s neighbour, the defendant calmed down and left the flat without kerosene.

A few days later, in the evening, the defendant again came to the Ostrowiecki spouses’ shop and, in the presence of Symcha Ostrowiecka, took a certain amount of thread and handkerchiefs without paying anything for it. Symcha Ostrowiecka did not react to this because she was afraid of him.

The defendant pleaded not guilty and explained that knowing that Izrael Ostrowiecki had stated that he had no kerosene, but finally poured some kerosene

from his “Primus” into the defendant’s bottle, that he gave Ostrowiecki twenty groszy for kerosene but Ostrowiecki did not accept the money and returned it to him, that he did not take threads and handkerchiefs from the Ostrowiecki spouses’ shop and did not make any threats against them.

As for the first case of taking kerosene, based on the consistent and categorical testimonies of the witnesses, spouses Israel and Symcha Ostrowiecki, and not believing the explanations of the defendant in this matter, as incompatible with the credible testimonies of these two witnesses, the Regional Court came to the conclusion that the act of the defendant does not have the characteristics of a crime under Article 261 of the Criminal Code, but, on the other hand, there are all signs of arbitrariness covered by Article 251 of the Criminal Code, consisting in the fact that the accused, threatening the Ostrowiecki spouses with a report to the German authorities that they had hidden goods in the basement, forced them to sell to him on credit a small amount of kerosene worth fifty groszy.

As for the second case of the defendant’s attempt to take kerosene and the third case of the defendant taking threads and handkerchiefs from the store of the Ostrowiecki spouses, bearing in mind that to the defendant’s second attempt to take kerosene only the witness Symcha Ostrowiecka testified, while the witness Izrael Ostrowiecki did not mention this fact at all, that the defendant in this case did not obtain kerosene, that earlier the defendant took goods on credit in Ostrowiecki spouses’ shop, that in the light of the testimony of the witness Symcha Ostrowiecka, the defendant in her presence took an unspecified amount of threads and handkerchiefs of an undetermined value from the shop, and in this case he did not use violence against her nor a punishable threat, that according to the testimony of the witness, Izrael Ostrowiecki, his wife had to give to the defendant threads and handkerchiefs because the defendant threatened her, but she did not tell her husband in which way the defendant threatened her, that the defendant did not plead guilty, the District Court came to the conclusion that in these two cases there is insufficient evidence of the defendant’s guilt, and therefore acquitted the defendant.

In reference [to] p. IV of the indictment

According to the testimony of witness Josek Luft, in November 1939, this witness found a pair of military boots on the road, probably left by the retreating Pol-

ish soldiers. The son of this witness, fourteen-year-old Moshe, told the militiaman Krzemiński about these boots, who soon after, together with his son, came to the witness Luft and wanted to buy these boots for fifteen zlotys. Witness Luft did not want to sell the shoes, and the Krzemińskis walked away. After about two hours, Krzemiński's son came again with the defendant to witness Luft, and demanded the boots, and when the witness Luft said that he would not sell the boots, the defendant threatened that he would bring in the German gendarmerie who would do 'that' to all Jews, and he drew his finger across his neck in a throat-slitting gesture as he said this. Witness Luft's wife, fearing that the threat would come true, gave the defendant the shoes he demanded. The defendant put fifty groszy on the table, but the Luft spouses did not want to accept the money. The defendant took the boots and the fifty groszy and left the Lufts' flat.

The defendant pleaded not guilty and explained that when he was still a militiaman, he learned from Krzemiński that Josek Luft was in possession of military boots, which he did not want to give, that he went to Luft's flat and, having learned from him that his son paid a soldier fifty groszy for these boots, placed fifty groszy on the table and demanded that Luft hand over the boots, that Luft gave the shoes voluntarily, that he took the boots to the communications officer of the German army stationed in Nowy Korczyn, but the officer ordered the defendant to take the boots for himself, that he then sold the boots to Krzemiński for six zlotys, that he did not receive any explicit order from anyone to take away the boots from Luft, that he made no threats to Luft and his family.

The explanations of the defendant deserve credibility only to the extent that they are consistent with the testimonies of the witness Josek Luft, which, being clear and categorical, are completely credible.

In this act of the defendant, there are all the characteristics of a misdemeanour covered by Article 251 of the Criminal Code.

In reference [to] p. V of the indictment

Through testimonies of witnesses Wulf^o-Lejzor Kołacz and Brucha Wagner, it has been established that in November 1939, on the road from Nowy Korczyn to Pacanów, the defendant stopped Wulf-Lejzor Kołacz's wagon with goods, threat-

^o *As in the original. Earlier: Wólfa.*

ened him and the passengers travelling with him that he would take the goods if they did not give him one slab (kg) of soap, that when the passengers promised to deliver the requested soap to the defendant, the defendant released the waggon, that after returning home the passengers contributed to the purchase of one slab of soap, which was then personally delivered by the witness Kołacz to the defendant.

The defendant pleaded not guilty and explained that he had neither demanded nor received any soap. The defendant's explanations are not credible because they are completely contradictory to the clear, categorical and mutually consistent testimonies of the aforementioned witnesses.

This act of the defendant has all the characteristics of a misdemeanour covered by Article 251 of the Criminal Code.

In reference [to] p. VI of the indictment

According to the testimonies of witnesses Teofil Majzerowicz and Jan Gołdyn, in the municipal warehouse in Nowy Korczyn, there was, among other things, pepper in two bags as evidence in a criminal case. In the month of September 1939, witness T[eofil] Majzerowicz, the municipality secretary was relocating from a municipal building to a private house. The defendant and witness J[an] Gołdyn helped him in this relocation. When witness Majzerowicz came to the municipal building at some point, he heard the defendant saying, "I'll take the pepper". Witness Majzerowicz did not respond to this and walked out. From the municipal warehouse, which was open at the time, the defendant took one bag of pepper weighing twelve kg and brought it to his flat. After some time, the defendant came to witness Majzerowicz, claiming that the latter was spreading the word that the defendant had taken pepper from the municipal warehouse, and the defendant threatened that something bad might happen to him as well because he was supposed to have taken something too.

The defendant pleaded not guilty to stealing pepper and explained that, at the beginning of September 1939, he was moving the furniture of the municipality secretary Majzerowicz from the municipal building to Anielski's house, that because the municipal warehouse was open, he asked secretary Majzerowicz what to do with the pepper which was there in a bag, that Majzerowicz did not say anything, so the defendant decided to take the pepper to his flat for safekeeping, that he took the pepper in the presence of Majzerowicz and Anielski not for the purpose

of appropriation, but for safekeeping, that this pepper was in his apartment until the day of the search, and since the defendant was arrested and imprisoned, he was unable to return the pepper to the proper authority.

Taking into consideration that the secretary of the municipality, Majzerowicz, was relocating from the municipal building to a private house and did not issue any instruction on what to do with the pepper in the municipal warehouse, which was open, although the defendant told him that he would take the pepper to his flat, that at that time Nowy Korczyn was an area of warfare, that the defendants took pepper from the municipal warehouse overtly, in the presence of witness J[an] Gołdyn, that according to the explanations of the defendant on 3 November 1939, the German gendarmerie searched the defendant's flat and took the pepper (p. 117), but in the course of the investigation, the state police could not determine what happened to the pepper (p. 108), that the accused pleaded not guilty to the theft, therefore in view of the fact that there is insufficient evidence that the defendant took the pepper from the municipal warehouse for the purpose of appropriation, the defendant should have been acquitted of the charge of theft of pepper.

When imposing the sentence, the court took into account, on the one hand, the defendant's reduced mental capacity, his family situation (he has a wife and three children to support), and poverty, and on the other hand, his previous three sentences for various crimes (p. 43) professionalism in criminal activity, a sophisticated way of committing crimes, the defendant's cruel treatment of the victims, thus^r the court deemed it right to sentence him for the crime described in p. II of the indictment to one year in prison, and for each of the other acts imputed to him to eight months in prison, and jointly under Article 31 of the Criminal Code to one year and three months in prison. On account of this total punishment, the court, based on Article 58 of the Criminal Code, included the entire pre-trial detention period. Since the crime described in point II of the indictment was committed out of a desire for profit, the court, pursuant to Article 47(1)(c) and Article 52 of the Criminal Code, sentenced the defendant to the deprivation of public rights and civic honorary rights for three years. Since the defendant is poor, the court found it pointless to impose a fine on him as an additional punishment under Article 42

^r *Handwritten in black ink: i.*

of the Criminal Code, and exempted him from incurring^s court costs (Article 83 p. o.k.s. and Article 598 of the Code of Criminal Procedure) The evidence – the payroll list of the members of the civil guard – had to be handed over to the municipality board of Nowy Korczyn, which delivered it to the court.

[1]

Source: APK, Regional Court in Kielce 1939–1945, 757, typescript in Polish.

^s Originally: poniesienia. Handwritten correction in black ink to: ponoszenia.

^t Below, two handwritten illegible signatures in black ink. Underneath an impression of a round seal in black ink: State Archive in Kielce. In the centre of the impression: *21*. On the right side, a handwritten note in black ink: No signature of the municipal judge Jan Jurkiewicz, who permanently resides in Busko-Zdrój. Under the note, an illegible handwritten signature in black ink.

Kielce, 30 September 1940^a

I Ds. 318/40

File

Indictment^b

against

1. Perec Fuks,
charged under Article 257(1) and Article 143 of the Criminal Code
2. Chaim Machtyngier,
charged under Articles 27, 257(1, 26) and 143 of the Criminal Code
3. Szlama Machtyngier,
charged under Article 160 of the Criminal Code^c

I accuse:

1. Perec Fuks

son of Benjamin and Chawa neé Bidna, b. 1 January 1919 in Kielce (detained from 22 June 1940, pp. 33, 43),

of the following crimes/misdemeanours:

I. in Kielce, on the night of 29 November 1939, acting together with Berek Farsztaj, he took from the attic of the apartments of Moshe and Frymeta Kochen, their property, namely sixty complete men's suits of various colours, 75 pairs of trousers, seven sports clothes, four jackets, four waistcoats, four navy blue school uniforms, seven items of clothing materials, two quilts and a tablecloth – with a total value of about 5,700 zlotys;

^a On the left-hand side, an impression of a seal in purple ink: II 2 K. The seal impression crossed out, next to it a handwritten subjoin in black ink: 80/40. Stamp imprint in red ink on the right-hand side: Arrest and handwritten subjoin in black ink: 157.

^b On the left hand side handwritten in red ink: 1K. 59/40. Below it an illegible word and: 51281.

^c Underneath an impression of a round seal in black ink: State Archive in Kielce. In the centre of the impression: *21*.

II. in Kielce, he knowingly deceitfully accused Moshe and Frymeta Kochen of stealing clothing materials:

a) on 5 December 1939, before Franciszek Starościk,¹ a senior sergeant of the Polish Police,

b) on 18 December 1939, before the head of Sicherheitspolizei Aussendienststelle^{e2} Kielce, Preuß [Preuß],³

c) on 22 June 1940, before the investigating judge G[erard] Wojtuń.

2. Chaim Machtyngier^f

son of Josek and Małka neé Dziadek, b. 16 May 1914 in Małchocice, Dąbrowa municipality, Kielce powiat (detained from 22 June 1940, pp. 36, 43),

of the following crimes/misdemeanours:

III. between 26 and 29 November 1939, in Kielce, he helped Perec Fuks and Berek Farsztajn to commit the crime described in point 1, by promising them before the crime was committed that he would store and sell clothes and materials stolen by them from Moshe and Frymeta Kochen [Kochens] and by taking them from them for this purpose after the theft;

IV. between 29 November^h 1939 and 5 December 1939, in Kielce, he persuaded Perecⁱ Fuks to commit a crime described in point II a).

^e *In the original: Aussendienststelle.*

^f *Originally: Machtynkiera. Handwritten correction in black ink to: Machtyngiera.*

^h *Struck through: list opadeo.*

ⁱ *Originally: Perca. Handwritten correction in black ink to: Pereca.*

¹ Franciszek Starościk *vel* Karol Dewoński alias Cat, E30, b. 17 October 1885 in Ligota, powiat Chrzanów. During World War I he served in the Legions. He was interned in Szczypiorno. He joined the police in 1919, in the 1920s he worked in Będzin in the investigative police. In 1932–1933 he was transferred from the investigative police to Kielce. In September 1939, together with other policemen, he fought in the Battle of Kock. Then he served in the Polnische Kriminalpolizei in Kielce as the head of the fraud and forgery brigade in the rank of senior sergeant. Involved in the underground activities of the ZWZ-AK. In 1944, he deserted from the police and fought in Operation Tempest. After the war, tried under the August decree (31 August 1944, issued by Polish Committee of National Liberation [Polish: *Polski Komitet Wyzwolenia Narodowego*, PKWN]) and acquitted. Archiwum Delegatury IPN w Kielcach (Archives of the Institute of National Remembrance Delegation in Kielce), SOK, 127/335, Files of criminal proceedings against Franciszek Starościk; Domański, “Pierwszy rok okupacji niemieckiej Kielc,” pp. 80, 87.

² Aussendienststelle Sipo Kielce – a branch office of the security police in Kielce. Division IV was Geheimstaatspolizei (Gestapo), division V – Kriminalpolizei (criminal police). This division included the Polnische Kriminalpolizei, the so-called Polish Kripo. In the years 1939–1941, Sipo Kielce was headed by Emil Eggers. Preuß was the head of Kripo.

³ Head of Kriminalpolizei in Kielce.

3. Szlama Machtyngier

son of Josek and Małka née Dziadek, b.1 January 1917 in Kielce, sentenced by the judgment of the Regional Court in Kielce of 10 August 1938, No. II 2K. 104/38 for a crime under Article 160 of the Criminal Code to a two-year imprisonment and a fine of 300 zlotys (currently under the police supervision, p. 147, previously detained from 22 June 1939, pp. 40, 43, until 21 September 1940, p. 149),

for the following crime:

V. on 1 December 1939, in Kielce, he purchased from Chaim Machtyngier trousers obtained by^j Perec Fuks^k and Berek Farsztajn through criminal means described in point I, and deposited by them for safekeeping in Chaim Machtyngier's flat, knowing that these trousers were stolen, and he committed this act before the end of a five-year period from the time he served his sentence for receiving stolen goods.

The act indicated in point I constitutes a crime under Article 257(1) of the Criminal Code, the acts indicated in point II constitutes a crime under Article 143 of the Criminal Code, the act indicated in point III constitutes a crime under Article 27, 257(1) of the Criminal Code, the act indicated in point IV constitutes a crime under Article 26, 143 of the Criminal Code, and the act indicated under point V constitutes a crime under Article 160 of the Criminal Code.

On the basis of Articles 19, 26 and 381(1) of the Code of Criminal Procedure the case is examined by the Regional Court in Kielce composed of one judge.

Grounds

On 1 December 1939, Frymeta Kochen reported to the Polish Police Station in Kielce that, on the night of 29 November 1939, unknown perpetrators broke into her apartment in Kielce and stole ready-made clothes and clothing material, and that on the same day, on the Freedom Square in Kielce she came upon a man wearing trousers, which she recognised as stolen along with clothes and materials. She further reported that this man, whom she then pointed to the police, explained that he had bought the trousers in Lodz, then that he had bought them

^j *Inserted above the line of writing, handwritten in black ink: przez.*

^k *Originally: Fukasa. Handwritten correction in black ink to: Fuksa.*

“in bazaars” in Kielce, and finally that the trousers had been bought by his brother, from whom he bought them.

This man turned out to be Szlama Machtyngier. Interrogated by the police, he explained that on 1 December 1939, his brother Chaim Machtyngier came to his flat and, for twelve zlotys, sold him trousers recognised by Frymeta Kochen.

During the search carried out in Chaim Machtyngier’s flat on 1 December 1939, 45 suits, 74 pairs of trousers, seven sets of sportswear, four jackets, four waistcoats, four school uniforms and seven pieces of clothing materials were found, which Frymeta Kochen recognised as her stolen property.

Interrogated as a witness, Frymeta Kochen testified that the perpetrators had stolen about sixty suits and 75 pairs of trousers and, in addition to founding items, also two quilts and a tablecloth – with a total value of about 5,700 zlotys.

Chaim Machtyngier interrogated by the senior sergeant of the Polish Police, Fr[anciszek] Starościk, explained that the items found during the search were on 29 November 1939 at about four in the morning brought to his flat by Perec Fuks and Berek Farsztajn and asked him to store them, then Perec Fuks said that „the goods” were „robbed” by some woman, and then stolen by them from this woman. As for the trousers, he explained that he had sold them to Szlama Machtyngier for twelve zlotys.

Interrogated on 5 December 1939 by the same sergeant, Perec Fuks admitted that he had committed the theft from Frymeta Kochen and explained that the items found in Machtyngier’s flat, he, together with Berek Farsztajn,ⁿ had stolen from the victim’s attic. They both^o got into the attic by a ladder, he explained, and the padlock at the door he opened with a nail. After the theft, together with Berek Farsztajn, they took the stolen items to the flat of Chaim Machtyngier, whom he, Perec Fuks, had informed as early as Tuesday, 28 November 1939, that they would steal and bring the loot to him. According to the agreement concluded between Fuks and Farsztajn in this case, Chaim Machtyngier was to help them also in selling^q the “stolen goods”. Finally, Perec Fuks explained that he committed the theft because he had nothing to live on, and, moreover, because he knew that Kochen

ⁿ *On the left margin: 9.*

^o *Originally: obydwaj. Handwritten correction in black ink to: obydwaj.*

^q *As in the original.*

together with his wife had stolen the “aforementioned goods” from a rail siding in Kielce in the first days of September 1939.

On 13 December 1939, Perec Fuks, interrogated by the head of the Sicherheitspolizei Aussendienststelle Kielce, also confessed to committing the theft and said the same as on 5 December 1939, and also claimed for the minutes that he had seen when at the beginning of September 1939, at night after the bombing of Kielce, Moshe Kochen and Frymeta Kochen went to the railway station in Kielce and stole many bales of materials from the freight car,^p which they packed into sheets and carried to their flat at 24 Warszawska Street. He further claimed that, as he lived in the same house, he saw Kochens^r carrying the materials on their backs and hiding them in a closet in the attic. They went to the station to get materials and brought them to the attic four times. He saw them clearly because he followed them. When the interrogator pointed out to him that his claims sounded implausible, he explained that the city was in turmoil that night and people were stealing wherever they could. In an effort to incriminate Kochens, he further claimed that later Kochen took several bales of fabric from the hiding place, cut them (“trimmed”) and gave them to tailors to sew clothes, and then put some ready-made clothes in the shop, and the rest of the clothes in the attic. Perec Fuks also pointed out that he was telling the truth and that he could even swear an oath to it.

During the confrontation on 18 December 1939, Perec Fuks repeated the same to Moshe Kochen’s face [Polish *óczs*]^s and Frymeta Kochen, who was arrested in connection with the allegations raised by Perec Fuks.

Berek Fersztajn was not interrogated because he has run away and been hiding.

Perec Fuks, interrogated by the investigating judge on 22 June 1949, admitted that acting together with Berek Fersztajn and in agreement with Chaim Machtyngier, he had stolen clothes and materials from Kochens, and explained as follows. Two days before the theft, they agreed to carry out the theft and take the loot to Chaim Machtyngier, who undertook to store it and sell it.^t Fuks further explained that Berek Fersztajn threw down the clothes and materials from the attic, and he

^p *On the left margin: 11.*

^r *Above the line of writing handwritten in black ink addition: ów.*

^s *Original Polish text: ócz (should be: oczu – meaning: eyes).*

^t *As in the original.*

brought them to Machtyngier's flat around five o'clock in the morning. Finally, giving the motives for his act, he claimed before the investigating judge that, "in September 1939, Frymeta Kochen together with Moshe Kochen, took the goods from the freight cars in Kielce." He added that he saw it himself and that it took place "on Monday, when the train station was bombed – at night."

Chaim Machtyngier, interrogated by the investigating judge on 22 June 1940, testified otherwise than before the police and, not feeling guilty, explained that on 29 November 1939, in the morning, Perec Fuks and Berek Farsztajn brought "goods" to his flat and asked him to let them deposit it here "because nowadays they are afraid to keep it in their flat."^u He accepted the goods, not knowing that they had been stolen, and on the same day he sold to Szlama Machtyngier trousers from the goods taken for safekeeping. He told Szlama Machtyngier that these were his own^v trousers, and that he intended to tell Fuks and Farsztajn^w what to do with these trousers.

Szlama Machtyngier, examined by the investigating judge on the same day, explained that he had bought trousers from Chaim Machtyngier not knowing that they were stolen, because Chaim Machtyngier told him that he had bought them "in bazaars" and that they are too long for him.^x When, after Frymeta identified these trousers, Kochen returned them to Chaim Machtyngier, who told him to claim during the investigation that he (Szlama Machtyngier) had bought them "in the bazaars."

During the confrontation, Chaim Machtyngier stated that he did not remember whether he had said that to Szlama Machtyngier.^y

Rivka Machtyngier, Chaim's wife, who was heard as a witness, testified that Perec Fuks, after bringing the clothes together with Berek Farsztajn, assured^z her husband that "the goods were not stolen," and that Perec Fuks then took the trousers out of the package and gave them to Chaim Machtyngier for safekeeping.^{aa}

^u *On the left margin:* 34.

^v *Originally:* właśnie. *Handwritten correction in black ink to:* własne.

^w *Originally:* Tarsztajnowi. *Handwritten correction in black ink to:* Farsztajnowi.

^x *On the left margin:* 38.

^y *On the left margin:* 134.

^z *Struck through:* mężowi.

^{aa} *On the left margin:* 70.

The witness, Rivka Machtyngier, changed her testimony during the examination and finally testified that, while accepting the “goods”, neither she nor her husband, Chaim Machtyngier, had asked Fuchs^{bb} and Farsztajn about the origin of the received items and that it was not until the next day that Fuks and Farsztajn asked Chaim Machtyngier whether he was not afraid to store them and assured him that the goods were not stolen. Finally, she testified that she and her sister-in-law had visited Frymeta Kochen after Chaim Machtyngier was detained, entreating her “to do something to have her husband released.”

Witness Frymeta Kochen testified that on the second day after the search, Chaim Machtyngier’s wife, with her sisters Dyna and Frania, had come to her and told her, amidst various threats, that if she did not save their brothers and husband, they would report that “these goods” had been looted by Frymeta Kochen, and will cause her to be “taken to prison.”^{cc} She further testified that Szlama Machtyngier, when asked by her where he bought the trousers, answered that he had bought them in Lodz for twenty zlotys, and when she told him that they came from her shop, he claimed that he had bought them “in bazaars” and finally in his flat he claimed that he had bought them for twenty zlotys from Chaim Machtyngier, while his sister claimed that he had bought them for fifteen zlotys. According to the testimonies of Frymeta Kochen and the witness Maks Lejzorowicz, Szlama Machtyngier tried to run away on the way to the police station.

According to Frymeta Kochen’s testimony, when at the Freedom Square, she was asking Szlama Machtyngier about the origin of the trousers, Chaim Machtyngier approached them and ordered Szlama Machtyngier to punch Frymeta Kochen’s “mug” for accosting him, and then, when she was not giving way, he claimed that he bought the trousers the same morning and sold them to Szlama Machtyngier.^{dd}

Witness Moshe Goldfarb testified that the trousers shown to him by Frymeta Kochen, had been taken from Szlama Machtyngier, he recognised their characteristic features and special additions as sewn by his friend Shima Sztajnberg, and

^{bb} *As in the original.*

^{cc} *On the left margin: 92.*

^{dd} *On the left margin: 122.*

that the Jew from whom the trousers were taken claimed that he had bought these trousers in Lodz.^{ee}

Witness Szime Sztajenberg testified that he identified not only^{ff} the trousers but also some of the clothes as sewn by him to Kochen's order and that Szlama Machtyngier, in the process of determining the origin of the trousers, claimed that he had bought them "in bazaars."^{gg}

In the course of the investigation, based on the testimonies of witnesses Zelig Zilberberg (p. 117), Abram Tarnowski (p. 118), Szymon Zylberberg (p. 125), Szime Sztajenberg, Moshe Goldfarb (p. 116), Moshe and Frymeta Kochen, and Franciszek Starościk (p. 12), it has been determined that the Kochen's materials and clothes stolen by Perec Fuks and Berek Farsztajn and stored by Chaim Machtyngier were not stolen, but that the Kochen acquired the materials legally, that the clothes were made of these materials and were sewn by homework tailors working on Kochen's account.

On 12 September 1940, Perec Fuks, interrogated about this, testified that he did not know where from Frymeta Kochen had the materials and clothes which were stolen from her, that he had not seen the Kochens stealing from freight cars in September last year, and if he had previously accused them, it was because he was afraid that he would be shot for stealing from the Kochens.^{hh}

Witness Franciszek Starościk testified that Perec Fuks duringⁱⁱ the police investigation, explained that the theft from Frymeta Kochen he committed together with Berek^j Farsztajn and that both of them took the loot to Chaim Machtyngier, whom they had previously notified and came to an agreement about it.^{kk}

Perec Fuks, while being examined by the investigating judge on 12 September 1940, changed the prior explanations given before the investigating judge and explained that on 29 November 1939, while on his way for bread, he accidentally met Berek Farsztajn, and then, on his request, he helped him three times in car-

^{ee} *On the left margin:* 116.

^{ff} *Struck through:* zpod.

^{gg} *On the left margin:* 115, 135.

^{hh} *On the left margin:* 129.

ⁱⁱ *Originally:* o. *Handwritten correction in black ink to:* w.

^j *Originally:* berkiem. *Handwritten correction in black ink to:* Berkiem.

^{kk} *On the left margin:* 128.

rying “goods” from Farsztajn’s backyard to Chaim Machtyngier’s flat,^{ll} of which Farsztajn said he stole them “from one place.” Perec Fuks further explained that then Farsztajn^{mmm} told him that he himself had thrown the “goods” from Frymeta Kochen’s attic, and that he climbed up the ladder to get there. Finally, he explained that when they were carrying the “goods” for the first time, Farsztajn knocked on the door of Chaim Machtyngier’s flat, “who opened the door and, without saying a word, let them in, and there they deposited the goods on the floor^{mmm} in the second room.” As he claims, Perec Fuks did not talk to Chaim Machtyngier, and he does not know whether Farsztajn talked to him.

Chaim Machtyngier, examined on 12 September 1940, referred to his explanations of 22 June 1940 and added that when in the morning of 29 November 1939, around five o’clock, he looked through the window and noticed Fuks and Farsztajn walking, he immediately went to the door, opened it and accepted the “goods” for safekeeping, because first Fuks and then Farsztajn asked him to do so.^{oo}

During the confrontation, Perec Fuks denied this and furthermore stated to Chaim Machtyngier’s ócz^{pp} that during the interrogation by the police, Chaim told him that Frymeta Kochen^{qq} had taken the “goods” from the freight cars.

Perec Fuks, Chaim Machtyngier and Szlama Machtyngier, acquainted with the content of the evidence collected in the investigation on 21 September 1940, claimed that they were not guilty and explained that Fuks only at Farsztajn’s request brought the items in question to Chaim Machtyngier’s flat, who in turn explained that he accepted them not knowing that they were stolen, and Szlama Machtyngier explained that he bought the trousers without knowing that they were stolen.^{rr}

Szlama Machtyngier had already^{ss} – as it is attested by the judgement of the Regional Court in Kielce No. II 2K.104/38 made on 24 March 1938 – been sentenced^{tt} to two years in prison and a fine for receiving stolen goods. A certificate

^{ll} *On the left margin: 129.*

^{mmm} *Originally: Farsztaj. Handwritten addition in black ink: n.*

ⁿⁿ *As in the original.*

^{oo} *On the left margin: 131.*

^{pp} *As in the original.*

^{qq} *Originally: zabrał. Handwritten addition in black ink: a.*

^{rr} *On the left margin: 144–146.*

^{ss} *On the left margin: 153.*

^{tt} *The word is typewritten above the line of writing.*

from the Prosecutor's Office of the Regional Court in Kielce, dated 30 September 1940, states that on this basis, he was imprisoned on 10 August 1938, and that due to war activities, he was released we^{uu} we^{vv} in September 1939.

Deputy Prosecutor
(Marceli Bogdanowicz)^{ww}

List of persons summoned to attend the hearing

Accused:

1. Perec Fuks^{xx} – prison in Kielce.
2. Chaim Machtyngier^{yy} – [prison in Kielce].
3. Szlama Machtyngier^{zz} – Kielce, 9^{aaa} Leszczyńska Street.

Witnesses:

1. Frymeta Kochen^{bbb} – Kielce, 24 Starowarszawskie Przedmieście Street.
2. Moshe Kochen^{ccc} – [Kielce, 24 Starowarszawskie Przedmieście Street].
3. Franciszek Starościk^{ddd} – senior sergeant of the State Police Kielce, Investigation Division.
4. Szime Sztajnberg^{eee} – Kielce, 86 Bodzentyńska Street.
5. Moshe Goldfarb^{fff} – Kielce, 22 Targowa Street.
6. Maks Lejzorowicz^{ggg} – [Kielce, 12 Starowarszawskie Przedmieście Street.

List of other evidence

To be read:

Notification.^{hhh}

Minutes of the interrogation of Perec Fuks on 5 December 1939, in the part relating to the accusation of Kochens of theft.ⁱⁱⁱ

^{uu} *Three letters struck through.*

^{vv} *As in the original.*

^{ww} *Above, an illegible handwritten signature in black ink.*

^{xx} *On the left margin: 9, 11, 30, 129, 144.*

^{yy} *On the left margin: 10, 34, 131, 145.*

^{zz} *On the left margin: 10v, 38, 133, 146.*

^{aaa} *Below, handwritten in pencil: (Kielce prison at the disposal of the German authorities).*

^{bbb} *On the left margin: 64, 92, 121.*

^{ccc} *On the left margin: 62.*

^{ddd} *On the left margin: 9–10, 128.*

^{eee} *On the left margin: 115, 135.*

^{fff} *On the left margin: 116, 140.*

ⁱⁱⁱ *On the left margin: 9.*

Minutes of the interrogation of Perec Fuks written down by the head of the Sicherheitspolizei on 18 December 1939, together with the minutes of the confrontation.^{jjj}

Criminal record data.^{kkk}

Testimonies of witnesses: Rivka Machtyngier p. 77, Dyna Machtyngier p. 72, Rosa Kapelmajster p. 90, Frania Machtyngier p. 93, Małka Białobroda p. 95, Stanisław Kwiatek p. 96, Zelig Zylberberg p. 117, Abram Tarnowski p. 118, and Szymon Zylberberg p. 125.

Record of search, a list of the items taken away and a record of the inspection of the trading books.^{lll}

Evidence: materials and clothes were seized by N.S.V.^{mmm}

A copy of the ruling by the Regional Court in Kielce of March 24, 1938. No. II 2K. 104/38 with mention of Szlama Machtyngier having served a sentence.ⁿⁿⁿ

Deputy Prosecutor

(Marceli Bogdanowicz)^{ooo}

ZK.^{ppp}

Source: APK, Regional Court in Kielce 1939–1945, 759, typescript in Polish.

^{jjj} *On the left margin: 11 and 154.*

^{kkk} *On the left margin: 54–56.*

^{lll} *On the left margin: 6, 7, 126.*

^{mmm} *On the left margin: 13.*

ⁿⁿⁿ *On the left margin: 153.*

^{ooo} *Above, an illegible handwritten signature in black ink.*

^{ppp} *Below an impression of a round seal with an inscription State Archives in Kielce in black ink. In the middle: *21*.*

No. 3

20 November 1940, Kielce – Judgment of the Regional Court in Kielce against
Perc Fuks and others

Case No. II 1K. 59/40^{aa}

Judgement
in the name of the law
of 20 November 1940

The Regional Court in Kielce, the 2nd Criminal Division composed of:

Presiding Judge: Deputy President Fr[anciszek] Wysocki

Judges: L[eszek] Niewiadomski¹

A[leksander] Woskriesieński²

Recording clerk: secretary M. Grzędzielski³

In the presence of Deputy Prosecutor of the Regional Court Marceli Bogda-
nowicz,

on 20 November 1940, having examined the case of

1. Perc Fuks, born on 1 January 1919 in Kielce, son of Benjamin and Chawa
née Bidna, accused of the following misdemeanours:

^a *On the right side an impression of a round seal with an inscription State Archives in Kielce in black ink. In the middle: *21*. In the upper right corner, a handwritten number in red pencil: 185, crossed out in black pencil and next to it: 24.*

¹ Leszek Niewiadomski, b. 1894; completed tertiary studies, worked in the judiciary from 11 July 1924. In 1939, he served as a judge of the District Court in Kielce, and performed this function until 6 December 1945. Then, from 7 December 1945 to 11 December 1950, he was deputy president of the Regional Court in Kielce. From 1 January 1951, judge of the Poviatic Court in Kielce. Before the war, he was a member of the Association of Judges and Prosecutors of the Republic of Poland and of the Polish Legionaries Union. From August 1945, member of Democratic Alliance. APK, Voivodeship Court in Kielce, 2129, List of judges, junior judge trainees at the Regional Court in Kielce (n.d.).

² Aleksander Woskriesieński, b. 1 March 1881 in Kretinga in the Kovno Governorate. He studied law at the University of Warsaw and then at the University of Moscow, graduating in 1907. At that time he began working in the judiciary as a candidate for court cases at the Regional Court in Radom, and then, in 1910, he was appointed as investigating judge in Iłża. In 1921, he was delegated from this position to perform the duties of an investigating judge for special cases at the Regional Court in Piotrków. During the war, he was evacuated to Moscow and then delegated to serve as an investigating judge in the Kherson and Simferopol regions. He returned to Poland in December 1921. On 27 February 1922, he was appointed an investigating judge at the Regional Court in Kielce. He held this position at least until 1935. AAN, Ministry of Justice, 801, Personal files: Aleksander Woskriesieński.

³ It should be: Tadeusz Grzędzielski.

I. on the night of 29 November 1939 in Kielce, acting together with Berek Farsztajn, he took from the attic of the apartments of Moshe and Frymeta Kochen, which they owned, sixty sets of multi-coloured men's clothes, 75 pairs of trousers, seven sports clothes, four jackets, four waistcoats, four school uniforms, seven pieces of clothing materials, two quilts and a tablecloth – of a total value of about 5,700 zlotys

II. in Kielce, he knowingly deceitfully accused Moshe and Frymeta Kochen of stealing clothing materials:

a) on 5 December 1939, before the senior sergeant of Polish Police, Franciszek Starościk,

b) on 18 December 1939, before the head of Sicherheitspolizei Aussendienststelle Kielce, Preüss,

c) on 22 June 1940, before the investigating judge G[erard] Wojtuń;

2. Chaim Machtyngier, son of Josek and Małka neé Dziadek, b. 16 May 1914 in Mąchocice Dąbrowa municipality, Kielce powiat, accused of the following misdemeanours:

III. in the period between 26 and 29 November 1939, in Kielce, he helped Perceb^b Fuks and Berek Farsztajn to commit the crime described in p. I, promising them before committing the crime that he would accept for safekeeping and sell the clothes and materials stolen by them from Moshe and Frymeta Kochen [Kochens], and then accepting these goods for this purpose after the theft;

IV. in the period between 29 November 1939 and 5 December 1939, in Kielce, he persuaded Perceb Fuks to commit the crime described in point II a);

3. Szlama Machtyngier, son of Josek and Małka neé Dziadek, b. 1 January 1917 in Kielce, accused of the following misdemeanour:

V. on 1 December 1939 in Kielce, he purchased from Chaim Machtyngier trousers obtained by Perceb Fuks and Berek Farsztajn through the crime described in p. I, and deposited by them for safekeeping in Chaim Machtyngier's flat, knowing that these trousers were stolen, and he committed this act before the end of five-year period from the time he served his sentence for receiving stolen goods, that is for acts covered by Articles 257(1), 143, 27, 257(1), 26 and 143, and 160 of the Criminal Code

^b *As in the original.*

ruled:

Perec Fuks and Chaim Machtyngier guilty of the crimes they were accused of. Perec Fuks for the crime described in point I, to be sentenced under Article 257(1) of the Criminal Code, to two years and six months in prison; for the crimes described in point II, to be sentenced for each of them under Article 143 of the Criminal Code to one year in prison. Pursuant to Article 31 of the Criminal Code, Perec Fuks to be sentenced to one cumulative sentence of three years in prison, with the period of temporary detention, from 22 June 1940 to 20 November 1940, credited towards their sentence.

Chaim Machtyngier for the crime described in point III under Articles 27 and 257(1) of the Criminal Code, to be sentenced to one year and six months in prison, and for the misdemeanour described in point IV, to be sentenced under Articles 26 and 143 of the Criminal Code to one year in prison. Pursuant to Articles 31 of the Criminal Code, to sentence Chaim Machtyngier to one cumulative sentence of two years in prison, with the period of temporary detention, from 22 June 1940 to 20 November 1940, credited towards the sentence. The fine under Article 42 of the Criminal Code for both defendants to be adjudged as pointless. Both defendants from paying court costs.

To acquit Szlama Machtyngier.

Grounds

The defendant, Perec Fuks, pleaded guilty and explained that he and Berek Farsztajn had agreed to steal together from Moshe and Frymeta Kochen. Two days before the theft, Berek Farsztajn, in the presence of the defendant Fuks, agreed with the defendant Chaim Machtyngier, that the stolen items they will deposit in his flat for safekeeping. They stole the packaged goods and various materials listed in the sentence in such a way that B[erek] Farsztajn entered the Kochens' attic and from there handed the goods to the defendant Fuks, and then they both carried them in three takes, at dawn, to the defendant Chaim Machtyngier's flat, which was opened by the defendant Chaim Machtyngier himself, who without saying anything, allowed them to put the loot in the room. Then, when the defendant Fuks was detained by the police on charge of committing this theft, fearing repression by the German police, and at the instigation of the defendant Chaim Machtyngier,

he deceitfully accused the Kochens before the Polish and German police that the stolen goods were earlier stolen by both Kochens from freight cars, during warfare.

The judicial proceedings fully demonstrated the truthfulness of the account of events presented by P[erec] Fuks and the truthfulness of his explanations does not raise any doubts, as the aggrieved witnesses, Moshe and Frymeta Kochen, testified accordingly that the perpetrators, after removing the padlock, got to the attic where the items listed in the sentence were stored,^c and they locked the door of their apartment on the outside with a wooden stick, thus protecting themselves against possible obstacles by the Kochens, that the goods found in the apartment of the defendant Chaim Machtyngier are their property, that they do not come from any theft from freight cars, but was legally acquired. The sources of this purchase are confirmed by the testimonies of witnesses: Szime Sztajnberg, Zelig Silberberg, Abram Tarnowski and Szymon Zylberberg. In addition, the witnesses Szime Sztajnberg and Moshe Goldfarb stated beyond any doubt that the trousers taken from the defendant Szlama Machtyngier, the brother of the defendant Chaim, had been sewn by the witness Szime Sztajnberg at the request of the Kochens and delivered to them.

However, the defendant, Chaim Machtyngier, pleaded not guilty, denied the entire charge, and explained that he had taken the items from Perec Fuks and Farsztajn to his flat, having been misled by them that these were their own things from their flat, which, by order the German authorities they have to leave, and asked them for one pair of trousers for storing the things brought in, to which they told him that “they won’t mind giving him the trousers.” So he sold to his brother, defendant Szlama Machtyngier, one pair of trousers for twelve zlotys. However, the defendant Chaim Machtyngier was unable to explain why in the police investigations he stated that the goods deposited in his flat by Fuks and Fursztajn^d were stolen by some woman, and only then they were stolen from this woman by Forsztajn^e and Fuks. Finally, he denied that he had persuaded Fuks to deceitfully accuse Kochens of theft.

This explanation of the defendant Chaim Machtyngier is, however, untrue and evasive. There is no reason to deny the truth of the slanders of the defendant

^c *Originally: przechowywali. Handwritten correction in black ink to: przechowywano.*

^d *As in the original.*

^e *As in the original.*

Fuks, who does not bear any anger towards Chaim Machtyngier. After the explanations given at the hearing by the defendant Chaim Machtyngier, the defendant Fuks firmly repeated that “the defendant Chaim Machtyngier taught him how to defend himself when they were arrested by the Polish police, and he told him, word for word, to testify that he had seen with his own eyes the Kochens carrying materials from the railway station.” Besides that^f variousness and lack of clarity of the defendant, Chaim Machtyngier’s explanations^g and the fact testified by the witnesses: Frymeta Kochen, Rosa Kapelmajster and Małka Białobroda, that Rivka Machtyngier, wife of the defendant Chaim, and his sister Dyna Machtyngier visited the aggrieved Frymeta Kochen while the defendant Chaim Machtyngier was detained by the police on suspicion of theft in question, and threatened Frymeta Kochen that if she did not save their brother and husband, they would ruin her life and put her in prison, because they would say that she had stolen goods on a railway siding during the bombing of Kielce.^h

The defendant Chaim Machtyngier actually carried out the describedⁱ threat, using as a tool to carry it out the younger, less cunning and shrewd defendant Fuks, who, persuaded by the defendant Chaim Machtyngier, deceitfully blamed Kochens, as a result of which Kochens were detained for quite a long time in prison by the German police and lost all the goods taken from the flat of the defendant Chaim Machtyngier (pp. 153 and 13), and there was a large number of goods to the value of over 5,000 zlotys, being stored by the defendant Ch[aim] Machtyngier in his flat, in the wardrobes.

When the proceedings proved that the defendant P[erec] Fuks and the defendant Chaim Machtyngier were completely guilty of the alleged acts, it was necessary to rule as in a sentence.

When imposing the sentence, the court took into consideration the clean criminal record of both defendants until now, their young age, and Fuks committing theft of a large value in a very daring manner, and the help of Chaim

^f *The word Zważywszy crossed out with black ink. Above the line of writing handwritten in black ink: Poza tym.*

^g *As in the original.*

^h *Handwritten in black ink: Potwierdza prawdziwość pomówień osk[arzonego] Fuksa.*

ⁱ *Crossed out with black ink: I tę. Handwritten insert: Opisaną.*

Machtyngier in committing this crime, who was most likely to make the largest profits from this theft; moreover, causing great harm to the aggrieved Kochens, not only materially, but above all morally and physically, by deceitfully accusing them. For these reasons, the court deems the sentence imposed on the defendants to be commensurate with their guilt and the extent of their malice.

Since neither of the defendants has any property, the court found it pointless to impose a fine on them under Article 42 of the Criminal Code and exempted them from paying the costs of the proceedings and the court fee.

The defendant, Szlama Machtyngier, was acquitted by the court, because the court proceedings did not provide any evidence of his guilt.^j

^kOn 11 March 1941,^[l] the Regional Court in Kielce ^[m]
regarding Chaim Machtyngier and Perec Fuks
^[n]
with the transfer of the detained ^[o]
Criminal cards were simultaneously sent to the Criminal Register in Warsaw.
Secretary^p

Source: APK, Regional Court in Kielce 1939–1945, 759, pp. 24–29, typescript in Polish.

^j *Below handwritten in black ink:* On the reserve side of the page, the word “Zważywszy” was added and the word “Poza tym” was written at the top. The following text was added: “potwierdza prawdziwość pomówień osk[arżonego] Fuksa i “Opisaną” – skreślono “I tę”. *Below are three illegible handwritten signatures. The first on the left in black ink, the second in green, the third in pencil.*

^k *Impression of a seal in purple ink. Partially illegible. Its handwritten completion in black ink.*

^l *Four illegible words.*

^m *Two illegible words.*

ⁿ *Three illegible words. Then four words crossed out.*

^o *Crossed out: zawiadomienie o uniewinnieniu.*

^p *Above, an illegible handwritten signature in black ink.*

1941, 13 February, Radom – judgement of the Appellate Court in Radom against
Perec Fuks and Chaim Machtyngier

KA. 12/41^{aa}

Judgement
in the name of the law
of 13 February 1941
of the Appellate Court w Radom, Criminal Division,
at an open hearing, composed of
Presiding Judge of the Appellate Court: J[ózef] Songajło¹
Judges of the Appellate Court: Dr J[an] Haber² (rapporteur)
Judge of the Appellate Court T[eodor] Kosiński³
Recording clerk: judge trainee T. Skulimowski
with the participation of the Deputy Prosecutor of the Appellate Court J. Kruszewski,
having examined the case of 1) Fuks Perec accused under Articles 257 and 143
of the Criminal Code 2) Machtyngier Chaim accused under Article 27 in connec-

^a On the right side an impression of a round seal with an inscription State Archives in Kielce in black ink. In the middle: *21*. Next to it, handwritten in blue ink: 201. Added: 33.

¹ Józef Songajło, b. 4 July 1887 in Wilkomierz near Kovno. From 1903 until 18 December 1917, he worked in the Russian judiciary. On 21 October 1918, he joined the Polish judiciary as an investigating judge of the Regional Court in Lodz. Then he worked as a judge of the Regional Court in Grodno and a judge of the Appellate Court in Vilnius. On 8 March 1930, appointed by the President of the Republic of Poland as a judge of the Supreme Court (Criminal Chamber). During the German occupation, he worked in the so-called Polish judiciary. By an order of the Justice Department at the Governor's Office of the Radom District issued on 30 April 1940, he was appointed judge of the Appellate Court in Radom, as deputy head of the criminal division. He died in Radom on 10 December 1944. See Piątkowski, *Sędziowie sądów powszechnych regionu radomskiego*, p. 74.

² Jan Haber, b. 7 July 1900 in Łojewo, Inowrocław powiat. In 1922, he graduated from the Faculty of Law and Economics at the University of Poznan. He passed the judicial exam in 1924. Then, from 1924 to 1927, he worked at the Municipal Court in Poznan, and later at the Regional Court in Poznan (1927-1930). Poznan. He was also socially active. In September 1939, he was evacuated to Lvov, and then returned to the territories incorporated into the Third Reich. He made a living by selling property and as a translator, afterwards he started working in the "Polish" judiciary. On 13 September 1940, he was appointed judge of Appellate Court in Radom. On 25 July 1941, he was laid-off from the judiciary at his own request. See *ibid.*, pp. 37–38.

³ Teodor Kosiński, in 1941 worked as a judge of the Appellate Court in Radom, assigned to the criminal division. See *ibid.*, p. 46.

tion with Articles 257, 26 and 143 of the Criminal Code, as a result of the appeal filed by the above-mentioned defendants against the judgment of the Regional Court in Kielce from 20 November 1940, No. II 1K. 59/40,

according to Articles 360, 499 a) and b) 598 of the Code of Criminal Procedure, the Appellate Court upholds the judgment of the Regional Court in Kielce of 20 November 1940, against the defendants Perce Fuks and Chaim Machtyngier, and adds that both defendants' temporary detention from 15 December 1939 is credited towards their sentence, and releases the defendants from payment of the court fee and the costs of the appeal proceedings.

Grounds

The Regional Court in Kielce, in its judgment of 20 November 1940, found

1) the defendant Perce Fuks guilty of the following misdemeanours:

I. on the night of 29 November 1939, in Kielce, acting together with Berek Farsztajn, he took from the attic of Moshe and Frymeta Kochen's apartment, which was their property, sixty sets of multi-coloured men's clothes, 75 pairs of trousers, seven sports clothes, four jackets, four waistcoats, four school uniforms, seven pieces of materials for clothes, two quilts and a tablecloth – with a total value of about 5,700 zlotys;

II. in Kielce, he knowingly deceitfully accused Moshe and Frymeta Kochen of stealing clothing materials:

a) on 5 December 1939, before senior sergeant of the Polish Police, Franciszek Starościk⁴,

b) on 18 December 1939, before the head of Sicherheitspolizei Aussendienststelle Kielce, Preüss [*Preuß*],

c) on 22 June 1940, before the investigating judge G[erard] Wojtuń, and sentenced him under Article 257(1) of the Criminal Code to two years and six months in prison, and under Article 143 of the Criminal Code to one year in prison for each misdemeanour, imposing on the basis of Article 31 of the Criminal Code, a total sentence of three years in prison;

2) the defendant Chaim Machtyngier guilty of the following misdemeanours:

⁴ See Document No. 2.

that between 26 and 29 November 1939 in Kielce, he helped Perec Fuks and Berek Farsztajn to commit the crime described in point 1, promising them before the crime was committed that he would store and sell the clothes and materials stolen by them from Moshe and Frymeta Kochen [Kochens], and then receiving from them for this purpose the goods they had stolen.

Further, that between 29 November 1939 and 5 December 1939, in Kielce, he persuaded Perec Fuks to commit the crime described in p. II a) and sentenced him under Articles 27 and 257(1) of the Criminal Code for one year in prison, imposing on him under Article 31 of the Criminal Code, a total sentence of two years in prison.

The court credited towards the sentences imposed on the defendants the period of temporary detention, from 22 June 1940 to 20 November 1940.

The defendants appealed against this judgment only regarding the duration of the imprisonment, requesting that the entire period of remand in this case, that is from 1 December 1939, be credited towards the sentence, moreover, the defendant Fuks pleaded for leniency.

The Appellate Court, examining the case within the scope of the appeal and based on the results of the appeal proceedings, accepted the appeal of the defendants, in as much as it aimed at crediting them with the entire period of imprisonment towards the imposed sentence, as justifiable. According to an official document, namely a police report of 15 December 1939, the defendants Perec Fuks and Chaim Machtyngier, had been already in police custody on that day, and their detention was in connection with the theft from Moshe and Frymeta Kochen.^b The defendants remained and still [remain] in police custody in this case – without a formal judicial order on detention – pending further police investigations and only after the police authorities presented the investigation files to the appropriate prosecutor of the Regional Court in Kielce on 4 June 1940, the same prosecutor, on 11 June 1940, applied to the investigating judge in Kielce for the pre-trial detention. On 22 June 1940, the investigating judge in Kielce made a formal decision on pre-trial detention and^c delivered it to the defendants.

^b *Originally: Kochenowi. Handwritten correction in black ink.*

^c *The word: dołączył struck through.*

Although the provision of Article 58 of the Criminal Code mentions the possibility of crediting the period of “temporary detention” towards the sentence, while Article 164 of the Criminal Code provides that “temporary detention” can be only imposed by court order, nonetheless, the lawmaker’s intention was to enable the court to credit towards the punishment the whole period the defendant was deprived of liberty before he was formally sentenced by the court. This also transpires from motives of the Codification Committee^e as regards Article 171 of the Criminal Code which stipulates that the two-month term provided for under this article^f runs from the date of the deprivation of liberty, and not from the date the court officially issued a ruling in the case. Moreover, taking into account that in the case under discussion the period from the actual deprivation of liberty to the judge’s decision lasted more than half a year, and this was not caused by the defendants, failure to credit towards the sentence such a long period of time would be unfair for the defendants, the Appellate Court accepted the appeal in this matter and accordingly changed the judgment.

Fuks’ further application for leniency the Court found unjustified^g. The Court of First Instance imposed the sentence duly substantiated according to Article 54 of the Criminal Code and the Appellate Court refers in this regard to the pertinent motives of the judgment, and fully agrees with the Court of First Instance.

The ruling on the costs of the proceedings was based on Article 598 of the Code of Criminal Procedure.

[^h]

Source: APK, Regional Court in Kielce 1939–1945, 759, pp. 33–35v, transcript in Polish.

^e Originally: komisji kodyfikacyjnej. *Handwritten correction in black ink.*

^f Originally: artykułu. *Handwritten correction in black ink.*

^g Originally: Nieuzasadnionem. *Handwritten correction in black ink.*

^h *Handwritten correction in black ink: artykułu. Below, in black ink, three handwritten illegible signatures.*