

Roman Gieroń

Institute of National Remembrance, Branch in Cracow

ORCID 0000-0003-0608-026X

**BETWEEN “CAPTURE” AND “ACTING TO THE DETRIMENT.”
A VOICE IN THE DISCUSSION ON POST-WAR RECKONING
WITH INDIVIDUALS WHO PARTICIPATED IN THE SO-CALLED
THIRD PHASE OF THE HOLOCAUST. A LEGAL AND HISTORICAL
PERSPECTIVE**

Summary

The article examines the context and rationale behind the Supreme Court’s decision of 18 October 1949, which broadened the definition of “capture” and influenced the legal treatment of individuals convicted in the late 1940s and early 1950s for various forms of involvement in the capturing of Jews between 1942 and 1945. This issue is primarily illustrated through the post-war criminal case of Adolf Kogut and Józef Szczepan, who were accused of informing the so-called Blue Police in Radgoszcz during the German occupation about the capture of four Jewish women in the village of Gruszów Wielki. They then transported three Blue Policemen by cart to the location, where the women were executed on the spot. The article explores the post-war legal proceedings and provides a microhistorical analysis of the deed committed by Kogut and Szczepan. This method

aims to shed light on the distinctive nature of trials concerning this category of wartime crimes and the complex issue of the appropriate punishment for individuals who, under occupation, were compelled to participate in various activities related to the capture of people fleeing the Holocaust.

Keywords

August trials • Adolf Kogut • General Governorate • Józef Szczepan • Supreme Court's decision of 18 October 1949 • post-war reckoning • trials • third phase of the Holocaust • capture • acting to the detriment of

In post-war Poland, under communist rule, the basis for prosecuting crimes committed during World War II was the Decree of the Polish Committee of National Liberation (*Polski Komitet Wyzwolenia Narodowego*, PKWN), announced on 13 September 1944, and commonly referred to as the “August Decree.”¹

Under this legal act, prosecutions were initiated against a range of individuals, including officials of the occupation-era administration and police forces, concentration camp personnel, members of the *Polnische Polizei* (commonly known as the Blue Police), informers, and even soldiers and activists from the Polish underground and independence movements – accused of collaborating with the German occupiers. The newly established authorities employed wartime retribution not only as a means of asserting their legitimacy, but also as a tool to suppress political opposition, often by discrediting their rivals.²

¹ Its full name is the Decree of the Polish Committee of National Liberation of 31 August 1944 concerning “The Punishment of Fascist-Hitlerite Criminals Guilty of Murder and Ill-Treatment of the Civilian Population and Prisoners of War, and the Punishment of Traitors of the Polish Nation” (*Dziennik Ustaw* [hereinafter *Dz.U.*] 1944, no. 4, item 16). Although this act lacked a legal basis and was issued by an unauthorised body, it nonetheless remains part of Polish law and continues to serve as the foundation for prosecuting war criminals. See L. Nowakowski, “Zasady odpowiedzialności za zbrodnie wojenne i zbrodnie przeciwko ludzkości,” in *Zbrodnie przeszłości. Opracowania i materiały prokuratorów IPN*, ed. R. Niedzielko, vol. 2: *Ludobójstwo*, Warsaw, 2008, p. 100.

² A. Machnikowska, *Wymiar sprawiedliwości w Polsce w latach 1944–1950*, Gdańsk, 2008, p. 311; P. Machcewicz and A. Paczkowski, *Wina, kara, polityka. Rozliczenia ze zbrodniami II wojny światowej*, Cracow, 2021, p. 255; A. Dziurok, *Osądzenie przestępstw okresu II wojny światowej przez Specjalny Sąd Karny w Katowicach w latach 1945–1946*, Katowice–Warsaw, 2024, pp. 357, 382.

The trials also encompassed individuals charged with crimes against the Jewish population. While recent years have seen a growing body of literature addressing the post-war reckoning in Poland with the Holocaust, a comprehensive account of this complex issue has not yet been written.³ Existing research indicates that, in addition to informers and extortionists, former so-called village officials – such as village leaders, their deputies, members of peasant guards, hostages, messengers, and individuals assigned to provide transport – were frequently prosecuted in group trials. These individuals had, several years earlier, carried out duties imposed by the German occupiers, which included various activities connected with the search for or capture of Jews. The exact proportion of those tried for crimes against the Jewish population who belonged to this category of village functionaries remains unknown, though it appears to have been considerable.⁴

To understand and evaluate the post-war trials of individuals involved in rounding up Jewish fugitives, one must examine how the interpretation of the

³ These are mainly regional works and case studies, recent works include, among others, A. Kornbluth, „Jest wielu Kainów pośród nas”. Polski wymiar sprawiedliwości a Zagłada, 1944–1956,” *Zagłada Żydów. Studia i Materiały* 9 (2013), pp. 157–172; M. Szpytma, „Zbrodnie na ludności żydowskiej w Markowej w 1942 roku w kontekście postępowań karnych z lat 1949–1954,” *Zeszyty Historyczne WiN-u* 40 (2014), pp. 39–66; T. Domański, „Proces z dekretu sierpniowego policjantów granatowych z Wodzisławia oskarżonych o popełnienie zbrodni na Żydach,” *Polish-Jewish Studies* 1 (2020), pp. 77–105; R. Gieroń, *Półmrok. Procesy karne w sprawie przestępstw okupacyjnych popełnionych przez chłopów wobec Żydów w województwie krakowskim*, Cracow, 2020; M. Roth, „Urzednicy przed sądem – ekstradycja nazistowskich zbrodniarzy z Niemiec i ich procesy w Polsce,” *Zagłada Żydów. Studia i Materiały* 19 (2023), pp. 259–276; D. Libionka, „Zaprowadzanie sprawiedliwości. Śledztwa i postępowania sądowe wobec funkcjonariuszy aparatu okupacyjnego i Polaków w służbie niemieckiej z Kreis Miechów,” *Zagłada Żydów. Studia i Materiały* 19 (2023), pp. 277–324; A. Bikont, „W sprawie zamordowania rodziny mojej...”. Jak Icek Lerner z Komarówki Podlaskiej szukał sprawiedliwości i jej nie znalazł,” *Zagłada Żydów. Studia i Materiały* 19 (2023), pp. 355–376; M. Korcuć, „„Tak przyznaję się do winy”. Zabójstwo we wsi Rogów 1 lutego 1943 r. Studium przypadku,” in *Martyrologia wsi polskich w pamięci historycznej*, eds. T. Sikora et al., Kielce, 2021, pp. 73–101; it is also worth mentioning an article by Andrzej Rzepliński, „Ten jest z ojczyzny mojej? Sprawy karne oskarżonych o wymordowanie Żydów w Jedwabnem w świetle zasady rzetelnego procesu,” in *Wokół Jedwabnego*, vol. 1: *Studia*, eds. P. Machcewicz and K. Persak, Warsaw, 2002, pp. 353–459. Against this backdrop, the works of Gabriel FINDER and Aleksander Prusin (G.N. FINDER and A.V. Prusin, *Justice behind the Iron Curtain. Nazis on Trial in Communist Poland*, Toronto, 2018), and Andrew Kornbluth (A. Kornbluth, *The August Trials. The Holocaust and Postwar Justice in Poland*, Cambridge, 2021), which aspire to monographic status, stand out. The first publication, a study of post-war trials of German war criminals in Poland, provides readers with information on, among other things, the contribution of Polish Jews to these proceedings, while the second publication focuses on the prosecution of crimes committed by non-Jewish Polish citizens against Jews during the German occupation.

⁴ Cf. R. Gieroń, *Półmrok. Procesy karne*, p. 190.

term “capture” (as used in Article 1(2) of the August Decree)⁵ evolved after the war and influenced judicial decisions. Leszek Kubicki and Andrzej Pasek pointed to three periods of interpretation of this term, which were characterised by: (1) a strict interpretation, (2) a broad interpretation, and (3) a so-called moderate interpretation.⁶ The conclusion of the first period – namely, the era of strict interpretation – was associated with a decision issued on 18 October 1949 by the Supreme Court, sitting in an extended panel of seven judges, during a closed session in Łódź. In that ruling, it was acknowledged, inter alia, that “The concept of capture includes not only activities aimed at physically apprehending a person, but also all subsequent activities taken to transfer the captured individual to the occupying authority.”⁷

This article explores the circumstances and rationale behind the decision mentioned above, along with its impact on the trials of individuals convicted in the late 1940s and early 1950s for various forms of involvement in the persecution of Jews between 1942 and 1945. The issue is illustrated primarily through the post-war criminal case of Adolf Kogut and Józef Szczepan, who were accused of informing functionaries of the so-called Blue Police in Radgoszcz – during the German occupation – about the capture of four Jewish women in the village of Gruszów Wielki. They then transported three Blue Policemen to the site by cart,⁸ where those functionaries executed the women on the spot. This case is worth a detailed

⁵ The final wording of the provision referred to as Article 1(2) was established on 10 December 1946: “Article 1(2): Any person who, acting to the benefit of the authorities of the German state or any ally, by denunciation or capture acted to the detriment of persons sought or persecuted by the authorities for political, national, religious, or racial reasons shall be subject to the death penalty” (Dz.U. 1946, no. 69, item 376). It is worth adding that in the first version of the August decree, in Article 1(b), “capture” was linked to “transport” – “Any person who, acting to the benefit of the German occupying authorities, acted or acts to the detriment of persons residing in the territory of the Polish State, in particular through the capture or transport of persons sought or persecuted by the occupying authorities for whatever reason (excluding the pursuit of common crimes), shall be subject to the death penalty” (Dz.U. 1944, no. 4, item 16); in the February amendment, the phrase “denunciation, capture or transport” was used (Dz.U. 1945, no. 7, item 29), and it was not until the December decree that the phrase “denunciation and capture” was used.

⁶ With regard to the first period, Leszek Kubicki wrote about a “particularly narrow interpretation” or a “restrictive interpretation” (L. Kubicki, *Zbrodnie wojenne w świetle prawa polskiego*, Warsaw, 1963, pp. 115–120). Cf. A. Pasek, *Przestępstwa okupacyjne w polskim prawie karnym z lat 1944–1956*, Wrocław, 2002, pp. 75–80.

⁷ *Archiwum Narodowe w Krakowie* (National Archives in Cracow, hereinafter AN Kr), 29/439/1362, Decision of the Supreme Court, Łódź, 18 October 1949, pp. 54v–55.

⁸ I will write more about the functionaries who murdered the Jewish women later in this article.

analysis,⁹ because it was during these criminal proceedings that a legal question arose, leading to the aforementioned decision of 18 October 1949 containing the extended interpretation of the term “capture.”

This article examines the post-war reckoning through the lens of criminal justice, offering a microhistorical perspective on the crime committed by Kogut and Szczepan. By reconstructing the events that took place in Gruszów Wielki – with the use of the available sources – it becomes possible to highlight the moral and practical dilemmas faced by members of the rural community within the broader framework of mechanisms established by the German occupiers in the General Governorate (GG) to “catch” Jews in hiding. My focus lies in understanding how the defendants became entangled in these imposed circumstances and how their deeds were judged in the post-war legal process. This approach aims to shed light on the distinctive nature of trials concerning this category of wartime crimes and to explore the issue of adequacy in sentencing individuals who, under occupation, were compelled to engage in activities involving Jewish fugitives. Ultimately, it seeks to address the question of whether Polish perpetrators of crimes against Jews were treated with exceptional leniency by the courts.¹⁰

In this article, I have used archival materials found in the Archives of the Institute of National Remembrance and the National Archives in Cracow, as well as court rulings from the period under analysis.

The Third Phase of the Holocaust

In 1942, with the start of deportations to extermination camps and the liquidation of successive ghettos (as part of Operation “Reinhardt”)¹¹ in the General

⁹ Although the reference number of this case (the old reference number K 40/50) was included in the list of sources used in Jan Grabowski’s work on Dąbrowa County, there is no description of this story in the book (J. Grabowski, *Judenjagd. Polowanie na Żydów 1942–1945. Studium dziejów pewnego powiatu*, Warsaw, 2011, p. 247).

¹⁰ Cf. A. Kornbluth, *The August Trials*, pp. 274–275. The author of this work argues that the courts were exceptionally lenient towards the perpetrators of these crimes. It is worth noting that he did not present the realities of the occupation in the General Governorate in great detail. See a critical review of this publication: A. Dziurok, “Temida w służbie ideologii, narodu polskiego czy sprawiedliwości? Sądownictwo polskie wobec zbrodni na Żydach popełnionych w okresie II wojny światowej: Andrew Kornbluth, *The August Trials. The Holocaust and Postwar Justice in Poland*, Cambridge, Massachusetts, London 2021,” *Polish-Jewish Studies* 5 (2024), pp. 432–449.

¹¹ Operation “Reinhardt” formed a component of the *Endlösung der Judenfrage* (Final Solution to the Jewish Question). It was implemented by the German occupying authorities within the General Gov-

Governorate, a large group of Jewish fugitives appeared in rural areas, trying to survive. German authorities were aware of this and implemented measures aimed at “rounding them up.” In addition to German police functionaries and auxiliary services mobilised for action in the ghettos, the “rounding up” of fugitives also involved, as Dariusz Libionka wrote, local administration, namely “mayors, village leaders and firemen, and in some areas of the Cracow District, members of the Baudienst.”¹² The researcher added: “The roundups of Jews who had escaped during the operation – carried out with the forced involvement of the rural population – were organised not only by the police, but also by certain starosts.”¹³ Along with the deportation operations, special police pursuit groups (punitive expeditions mobilised from members of the military police and the Blue Police functionaries) were also sent out into the field to track down Jewish fugitives.

It should be noted that this period also saw an intensification of repressive measures against those who aided the Jewish population. In November 1942, a few months after the launch of Operation “Reinhardt,” the *Verordnungsblatt für das Generalgouvernement* published police regulations issued by the Higher SS and Police Commander Friedrich Wilhelm Krüger. These regulations stated that any form of assistance to Jews would be punishable by death and imposed on the inhabitants of the General Governorate a mandatory obligation to report Jewish fugitives.¹⁴ Failure to comply with this obligation was to be met with the so-called police security measures. Information about all show executions and collective responsibility for rescuing Jews caused a great stir among local communities, especially among rural residents.¹⁵ These measures aimed to establish

ernorate and the Bezirk Bialystok. The operation is generally regarded as having commenced with the deportations from the Lublin ghetto in mid-March 1942.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Polizeiverordnung über die Bildung von Judenwohnbezirken in den Distrikten Warschau und Lublin. Vom 28. Oktober 1942 (Police Regulation of 28 October 1942 concerning the creation of Jewish residential quarters in the Warsaw and Lublin Districts), *Verordnungsblatt für das Generalgouvernement* 1942, no. 94, p. 666; Polizeiverordnung über die Bildung von Judenwohnbezirken in den Distrikten Radom, Krakau und Galizien. Vom 10. November 1942 (Police Regulation of 10 November 1942 concerning the creation of Jewish residential quarters in the Radom, Krakau, and Galizien Districts), *Verordnungsblatt für das Generalgouvernement* 1942, no. 98, pp. 683–686.

¹⁵ For results of research conducted to date (as part of the “Index” project) on the scale and type of persecution for providing help to Jews, see *Represje za pomoc Żydom na okupowanych ziemiach polskich w czasie II wojny światowej*, vol. 1, eds. M. Grądzka-Rejak and A. Namysło, Warsaw, 2019.

a situation where Jewish fugitives would be perceived as a danger to the safety of local communities.

The systematic pursuit and capture of Jewish fugitives continued for many months after the deportations had ceased, lasting until the end of the German occupation. In rural areas, the German military police, along with local police stations operating under their command, played a central role in executing this operation. Individuals from local communities – referred to as rural functionaries, including members of the night watch, village guards, and hostages – were also drawn into actions targeting Jews. Their role was to identify unfamiliar individuals and transfer them to village leaders, who were then responsible for notifying the police.¹⁶ This had tragic consequences for Jews in hiding.

It is important to remember that, beyond those coerced into pursuing Jewish fugitives, there were also individuals who exploited their suffering for personal gain and committed crimes against them. In the aftermath of the war, Polish judges were tasked with evaluating the conduct of both groups during criminal proceedings. When imposing penalties on persons forced to participate in the hunting down of Jews in hiding (for example, because it was a part of their duties), the assessment of their zeal was important. As we will read later in this article, it was often difficult to classify a given act under the specific provisions of the August decree.

The Capture of Hanka Erlich, Róża Barb, and her Daughters Ester and Eti

The judgment of the District Court in Tarnów of 13 January 1949 states that “in March 1944, in the *gromada* of Gruszów Wielki, Dąbrowa Tarnowska County, the inhabitants of the village captured four persons of Jewish origin and brought them to the village leader. Under pressure from residents fearing for their lives, the village leader ordered the defendants to go to Radgoszcz to fetch the police. Following the village leader’s orders, the defendants travelled by horse-drawn cart to Radgoszcz, from where they brought back three policemen who shot the

¹⁶ For more on the subject of forcing the Polish population (including village leaders and “guards”) to participate in the implementation of the German anti-Jewish policy, see T. Domański, “Niemiecka administracja gminna w Generalnym Gubernatorstwie i jej pozostałość aktowa do badań nad relacjami polsko-żydowskimi. Przykład dystryktu radomskiego,” *Polish-Jewish Studies* 4 (2023), pp. 147–176.

four captured individuals.¹⁷ For the deed they committed, the defendants were sentenced to two years in prison.¹⁸ They were Adolf Kogut, aged 24, and Józef Szczepan, four years his senior. At the time of the crime, they were 19 and 23 years old. They were born and lived in Gruszów Wielki. The above excerpt from the grounds for the verdict – signed by District Court Judge Władysław Szajna and lay judges Stanisław Adamus and Jan Adamczyk – is notably terse and fails to convey the full scope of the dramatic events that transpired several years prior. A more comprehensive understanding emerges only through examining the minutes of witness, suspect, and defendant testimonies preserved in multiple post-war criminal case files,¹⁹ along with other relevant sources.

The village of Gruszów Wielki is located more than three kilometres north-east of Dąbrowa Tarnowska, a town which in mid-1942 was designated in Tarnów County (*Kreishauptmannschaft Tarnow*) as one of the places of concentration for the local Jewish population.²⁰

The first deportation to the Bełżec extermination camp occurred in mid-June, during which approximately 500 individuals were transported, and several dozen were executed on the spot. The operation was repeated two months later, on 17 July, with a significantly higher toll: around 100 people were murdered immediately, and roughly 1,800 were deported to Bełżec. The remaining Jewish residents of the ghetto were slated for extermination on 18 September – estimates suggest this group numbered between 500 and 1,500. A small number of

¹⁷ AN Kr, 29/439/1362, Judgment of the District Court in Tarnów, Tarnów, 13 January 1949, pp. 41–41v.

¹⁸ Furthermore, pursuant to Article 7 of the August decree, the court ruled that they would suffer “forfeiture of property and loss of public and honorary civil rights [...] for a period of three years” (*ibid.*, p. 41v).

¹⁹ The reference is made to the documents related to the following cases: *Oddziałowe Archiwum Instytutu Pamięci Narodowej w Krakowie* (Archives of the Institute of National Remembrance Branch in Cracow, hereinafter AIPN Kr), 502/3743, Files related to the case: Jan Osika is suspected of participating in the murder of a Jewish family in 1943, i.e., of acts under Article 1 of the Decree of 31 August 1944; AN Kr, 29/439/1362, Files related to the criminal case: Józef Szczepan, Adolf Kogut, residing in Gruszów, charged under Article 1 of the Decree of 31 August 1944; AN Kr, 29/747/IV K 211/52, Files related to the criminal case of Franciszek Kogut charged under Article 1 (2) of the Decree of 31 August 1944; AN Kr, 29/1304/533, Files of the District Court in Tarnów’s Prosecutor related to the case of Franciszek Kogut and the defendants.

²⁰ This is where Jews living in Gruszów Wielki were resettled, including the Weit family. See Yad Vashem Archives (hereinafter YVA), O3/2020, Testimony of Abram Weit, Kirjat Tiwon, 4 February 1962, pp. 4–5.

individuals were left behind in the so-called Jewish quarter to tidy up and sort the belongings of those who had been deported.²¹ In December 1942, they were transferred to Tarnów.²²

Both before and during the aforementioned deportation operations, a group of Jews sought refuge on the so-called Aryan side of the town and tried to survive.²³ We do not know their exact number. As I have already mentioned, the German occupiers implemented measures aimed at capturing them. Sometimes the captured Jews were killed on the spot, along with those who had helped them. This was the case for Jadwiga Noyman and Wojciech Cieślak,²⁴ Szya Grintzman, members of the Kmiec and Sołtys families,²⁵ Anna Gruchała, and the members of the Szifra family she was hiding.²⁶ Particularly active in conducting such operations in the area in question was the German military police functionary Engelbert Guzdek.²⁷ We know that at least several Jews survived in Gruszów Wielki until the end of the war. Thanks to the help of Zofia and Stanisław Pagos, as well as other residents (Józef Łabos, Mieczysław Rutyna, and a certain Kogut),²⁸ Abram and Awigdor Weit, who came from this village, survived.²⁹ Michał Pinkas also found

²¹ Karolina Orszulak, a resident of Wola Mędrzechowska, was most likely among those persecuted for maintaining contact with Jews confined to the ghetto in Dąbrowa Tarnowska – an act strictly prohibited under the laws of the occupation. On 16 October 1942, she was reportedly executed by German police functionaries for engaging in trade with Jewish individuals. Her death was documented in the School Chronicle of Wola Mędrzechowska, which also noted that she was the mother of Zofia and Roman, who were in the fourth and third grades, respectively (see K. Struziak, “Eksterminacja ludności żydowskiej na wsi powiatu dąbrowskiego na przykładzie gminy Mędrzechów,” <https://ksszczucin.prv.pl/zydmed.htm> [accessed 3 September 2024]). The body of the murdered woman was buried in the cemetery in her native village (“Karolina Orszulak,” <https://straty.pl/szukaj-osoby.php> [accessed 3 September 2024]; J. Hera, *Polacy ratujący Żydów. Słownik*, Warsaw, 2014, p. 343).

²² E. Rączy, *Zagłada Żydów w dystrykcie krakowskim w latach 1939–1945*, Rzeszów, 2014, pp. 289, 293.

²³ According to Jan Grabowski, 38 Jews survived in the Dąbrowa Tarnowska County area (J. Grabowski, *Judenjagd*, p. 148). However, Krystyna Samsonowska and Bogdan Musiał stated that the number of survivors was much higher; see K. Samsonowska, “Dąbrowa Tarnowska – nieco inaczej,” *Więź* 7 (2011), p. 81; B. Musiał, “Judenjagd – „umiejętne działanie” czy zbrodnicza perfidia?,” *Dzieje Najnowsze* 43, no. 2 (2011), p. 162.

²⁴ T. Domański, “Stępień Władysław, Cieślak Wojciech,” in *Represje za pomoc Żydom*, pp. 296–297.

²⁵ M. Grądzka-Rejak, “Kmiec Bronisław, Kmiec-Wójcik Zofia, Sołtys Janina, Sołtys Bronisława,” in *ibid.*, p. 185–186.

²⁶ M. Grądzka-Rejak, “Gruchała Anna, Gruchała Julia,” in *ibid.*, pp. 157–158.

²⁷ See A. Musiał, *Krwawe Upiory. Dzieje powiatu Dąbrowa Tarnowska w okresie okupacji hitlerowskiej*, Tarnów, 1993.

²⁸ I was unable to determine whether he was a member of Adolf Kogut’s family.

²⁹ YVA, O3/2020, Testimony of Awigdor Weit, Kirjat Amal, 7 February 1962, pp. 7–13.

refuge here, but in his post-war testimony, he did not give the name of the man who saved his life.³⁰

The group of Jewish fugitives who tried to survive in this area also included sisters Róża (Rozia) Barb, née Erlich³¹ (born in 1902), and Hanka Erlich³² (born in 1914). Their parents were Mojżesz and Sprinca. We know that they had a brother named Berisch (born in 1904). Before the outbreak of the war, the family lived in Dąbrowa Tarnowska. Most likely, after the German authorities carried out deportations from this town, Róża and Hanka hid on the so-called Aryan side with eleven-year-old Ester and seven-year-old Eti (also referred to in sources as Elta and Jenta),³³ who were Róża's daughters.³⁴ The family stayed in the vicinity of Dąbrowa Tarnowska, including in Gruszów Wielki, where they were probably hidden for some time by one of the local farmers.³⁵

At this stage of my research, I have not been able to find out more about the circumstances of their hiding (or being hidden) on the so-called Aryan side and their relations with the local population. None of the four women mentioned in this text survived the German occupation. In light of the available sources, I do not know the details of the act of capturing the Jewish women or the motives of those who committed this act. Witness testimonies collected during post-war investigations allowed for a detailed reconstruction of the events that took place after the Erlich sisters, and the girls were brought to the village leader in Gruszów Wielki. What makes this case stand out is that, beyond establishing the exact date, I was also able to estimate the timing of individual moments – something rarely achievable in such cases. Investigators conducting such proceedings often struggled to determine precise dates for the acts committed.

³⁰ *Archiwum Żydowskiego Instytutu Historycznego w Warszawie* (Archives of the Jewish Historical Institute in Warsaw, hereinafter AŻIH), 301/767, Testimony of Michał Pinkas, n.p., 7 September 1945, p. 2.

³¹ See “Roza Barb,” <https://collections.yadvashem.org/en/names/337089> (accessed 29 August 2024).

³² See “Chana Erlich,” <https://collections.yadvashem.org/en/names/315549> (accessed 29 August 2024).

³³ AN Kr, 29/747/IV K 211/52, Minutes of the interrogation of Berisch Erlich, Tarnów, 4 June 1947, p. 13.

³⁴ Her husband was Mates Matatiah Barab, see “Mates Matatiah Barab,” <https://collections.yadvashem.org/en/names/355882> (accessed 29 August 2024).

³⁵ AN Kr, 29/747/IV K 211/52, Minutes of the interrogation of Berisch Erlich, Tarnów, 4 June 1947, p. 13.

On 15 March 1944, at around 8 p.m., the Erlich sisters and the girls hiding with them were brought by several men to the house of Franciszek Kogut, the village leader of Gruszów Wielki. The village leader was not at home – he had been summoned to the Blue Police station on charges of failing to deliver a quota. After the war, Maria, Franciszek Kogut's wife, who was at home at the time, described these events as follows:

After 8 p.m., several men entered my house, bringing with them two Jewish women and two children. One of them asked me where the village leader was. I replied that he was not there, as he had gone to the village on business. I did not recognise the volunteers who entered because it was dark – there was no light in the room – and I do not know who went to fetch the village leader, as I was chased out to another house so that I would not scream, given my heart condition. The commotion they caused in my home left a profound and distressing impression on me.³⁶

As time went on, a large group of people gathered at the village leader's house, including several teenage children.³⁷ In her testimony, Maria did not indicate any persons who could have been responsible for the capture of the Jewish women or who participated in these events. Did she really not recognise anyone, or did she not want (or was afraid) to reveal the identity of the residents of the village where she lived? During post-war interrogations, her son Mieczysław identified the people who were supposed to guard the women who had been brought there:

I cannot say anything about the bringing of four Jewish women to our house because at that time I was at my neighbour's, but when I arrived, I found that

³⁶ AN Kr, 29/747/IV K 211/52, Minutes of the interrogation of Maria Kogut, Radgoszcz, 24 March 1947, pp. 11–12.

³⁷ Franciszek Kogut testified: "I would like to mention that when I came home, there were mostly adolescents there." (AN Kr, 29/439/1362, Copy of the minutes of the interrogation of Franciszek Kogut, Tarnów, 1 December 1947, pp. 3–3v). A few years later, during his hearing before the Voivodeship Court in Cracow, he stated that, apart from Chmura, Pudełko and Urban, the following people were also present in the room: Leon Żelazny, Antonina and Franciszek Rokocz, his wife Franciszka, and his son Mieczysław (AN Kr, 29/747/IV K 211/52, Minutes of the main hearing before the Voivodeship Court in Cracow, Cracow, 6 December 1952, p. 243).

the Jewish women were being guarded by Józef Chmura, Stanisław Pudełko and Władysław Urban, all residents of Gruszów Wielki, Radgoszcz Municipality. The aforementioned demanded that they not be released and that the police be called, which they did, and there is no doubt that they were the ones who detained the Jewish women.³⁸

Franciszek Kogut, who returned home when the women had already been captured, testified as a defendant during his trial on 6 December 1952 that they had been brought there by the aforementioned Chmura, Pudełko, and Urban:³⁹

Returning from the police station in the evening, I was approached by a boy who told me that there were Jews in my house. When I entered the house, it was full of people, including four Jewish women, two adults and two children. I asked the Jewish women who had brought them there, and they pointed to Józef Chmura, Stanisław Pudełko and Władysław Urban. I should mention that there were about 50 people in the room. Because I was scared at the time, I did not remember who else was present. I told the Jewish women that I would have to report their presence to the authorities for fear of repression, and they replied that they were sick and tired of life. I did not speak to Chmura,

³⁸ *Ibid.*, Minutes of the interrogation of Mieczysław Kogut, Radgoszcz, 27 June 1947, pp. 15–16.

³⁹ It is worth noting that five years earlier, Kogut did not initially mention the involvement of the local population in the events he described. When interrogated on 24 March 1947, he testified only that Jewish women had come to him and told him to report their presence to the Blue Police. He testified at the time: “In 1943 or 1944, I don’t remember exactly, in the spring, I was away from home. And at that time, as to the then village leader of the *gromada* of Gruszów Wielki, four Jewish women – two adult sisters and two daughters of one of the adults, under the age of 10 – came to me. When I came home, I asked them why they had nowhere else to go but to me, the village leader. You know what the times are like now, that I have to report to the police. Then one Jewish girl named Hanka replied to me: “We are sick and tired of life. We know that you will not give your life for us. Just don’t report us to the German police, only to the Polish Police Station in Radgoszcz.” Which is what I did [...] (*ibid.*, Minutes of the interrogation of Franciszek Kogut, Radgoszcz, 24 March 1947, pp. 9–1). It was only during the next interrogation, on 27 June, that he admitted that the Jewish women had been brought to him and that Stanisław Pudełko, Władysław Urban and Józef Chmura were supposed to guard them. He said: “I do not know about the matter of bringing four Jewish women to my house in March 1943, because I was not at home at that time, but when I arrived home, it is known to me that the Jewish women were being guarded by Stanisław Pudełko, Władysław Urban and Józef Chmura, all res[iding] in the *grom[ada]* of Gruszów Wielki. The aforementioned demanded that they not be released and that the police be called, and it is suspected that they were the ones who detained them” (*ibid.*, Minutes of the interrogation of Franciszek Kogut, Radgoszcz, 27 June 1947, p. 17).

Pudełko and Urban because they were angry with me about the quota. At one point, I told the Jewish women that I had to report them to the Gestapo, to which Chmura replied: "I am a Gestapo officer here."⁴⁰ Chmura told me I had to hand over the Jewish women to the Gestapo, and if I didn't, he would hand me over to the Gestapo himself. Józef Chmura was the one who spoke the most. Then the Jewish women turned to me and asked me to report them to the "Blue Police."⁴¹

It seems that the last part of the defendant's testimony should be treated with caution. It cannot be ruled out that he wanted to show that his intention was not to "act to the benefit of the authorities of the German state."

As I mentioned earlier, the available documentation does not provide many details about the capture of the Jewish women or the motives behind those who committed this act. According to Franciszek Kogut, they were captured while walking down the road.⁴² Pudełko and Urban, when interrogated after the war, denied any involvement in the capture of the Jewish women.⁴³ The investigation conducted against them did not prove their guilt. Could Józef Chmura have been responsible for their capture? He was not interrogated during the aforementioned proceedings because he was hiding.⁴⁴ According to the case files, charges were brought against

⁴⁰ In a statement made several years earlier, on 1 December 1947, Franciszek Kogut claimed that Chmura had said to the Jewish women: "Today, I am a Gestapo officer to you" (AN Kr, 29/439/1362, Copy of the minutes of the interrogation of Franciszek Kogut, Tarnów, 1 December 1947, pp. 3–3v).

⁴¹ AN Kr, 29/747/IV K 211/52, Minutes of the main hearing before the Voivodeship Court in Cracow, Cracow, 6 December 1952, pp. 239–243.

⁴² This is what Franciszek Kogut testified during his trial (*ibid.*, p. 242).

⁴³ The first explained that: "On that critical day, I recall a boy approaching me and saying, 'You know what, Pudełko? The village leader's house is full of Jews.' I turned to my wife and said, 'I'm going to check on the village leader.' I went over and stayed for about five minutes. Inside, I saw two Jewish women I recognised from Dąbrowa – they used to run a bar there. I'm not sure if the village leader himself was present; the only person I saw was his lame son. I entered the room briefly, then left. I don't know whether Chmura and Urban were there. What I do know is that I saw Chmura walking down the road roughly an hour earlier – he was drunk at the time. I don't know anything more about this matter" (AN Kr, 29/747/IV K 211/52, Minutes of the interrogation of the suspect Stanisław Pudełko, Tarnów, 15 November 1947, pp. 29–30). Władysław Urban, on the other hand, claimed: "I only found out about the whole thing the day after [that day?], that some Jewish women had been shot. I don't know anything more about it, because I take no interest in such matters" (*ibid.*, Minutes of the interrogation of the suspect Władysław Urban, Tarnów, 15 November 1947, pp. 31–32).

⁴⁴ *Ibid.*, Letter from the Commander of the Citizens' Militia (*Milicja Obywatelska*, MO) Station to the Prosecutor's Office of the District Court in Tarnów, Radgoszcz, 14 November 1947, p. 23.

only one of the individuals mentioned above, Franciszek Kogut.⁴⁵ He was accused of “informing the Polish Police [*sic!*] that four Jewish women were staying at his place, while at the same time sending a cart, as a result of which the police arrived and shot the women on the spot.”⁴⁶ By the end of 1947, both Pudełko and Urban had been released from prison in Tarnów.⁴⁷

According to the prosecutor’s files, the proceedings against Chmura were suspended at the same time, and he was placed under surveillance.⁴⁸ At this point in my research, I have not been able to determine what happened to him afterwards.

Although proceedings had begun, a verdict in the case of Gruszów Wielki’s former village leader was not reached until the early 1950s. After posting bail on 17 March 1948,⁴⁹ Franciszek Kogut left prison and went into hiding.⁵⁰ He was not apprehended until several years later.⁵¹ On 8 December 1952, the Voivodeship Court in Cracow sentenced him to three years in prison, but pursuant to the amnesty act of 22 November 1952, the court reduced the sentence to one year and six months in prison.⁵² The court convicted him because he “informed the so-called ‘Polish Police’ about the capture of four women of Jewish nationality, as a result of which they were shot by the Blue Police.”⁵³

⁴⁵ *Ibid.*, Indictment against Franciszek Kogut, 5 December 1947, pp. 55–56.

⁴⁶ *Ibid.*, s. 55.

⁴⁷ Pudełko and Urban were released from prison in Tarnów on 9 December 1947 (AN Kr, 29/1304/533, Decision to Discontinue the Investigation, Tarnów, 6 December 1947, n.p.; *ibid.*, Release Notification for Investigative Prisoner Władysław Urban, Tarnów, 9 December 1947, n.p.; *ibid.*, Release Notification for Investigative Prisoner Stanisław Pudełko, Tarnów, 9 December 1947, n.p.).

⁴⁸ Pursuant to the decision of 16 December 1947, the investigation against Józef Chmura was suspended, and surveillance was ordered in the case ref. no. “Sp: 579/47” (*ibid.*, Reference, Tarnów, 29 December 1947, n.p.).

⁴⁹ AN Kr, 29/747/ IV K 211/52, Bail Receipt, Tarnów, 17 March 1948, p. 137; *ibid.*, Release Order, Tarnów, 17 March 1948, p. 141.

⁵⁰ *Ibid.*, Report by Jan Sajdak, Commander of the Citizens’ Militia Station in Radgoszcz, to the Appellate Court in Cracow, Radgoszcz, 7 November 1949, p. 175; *ibid.*, Arrest Warrant, Cracow, 10 December 1949, p. 185.

⁵¹ He was apprehended only in 1952 (*ibid.*, Letter from the Commander of the Citizens’ Militia in Dąbrowa Tarnowska County to the Voivodeship Prosecutor’s Office in Cracow, Dąbrowa Tarnowska, 25 November 1952, p. 201).

⁵² *Ibid.*, Judgment of the Voivodeship Court in Cracow, Cracow, 8 December 1952, pp. 255–258.

⁵³ *Ibid.*, p. 255.

Notification of the Blue Police Functionaries in Radgoszcz About the Capture of Jewish Women

During World War II, village leaders were officials of the occupation administration responsible for implementing the objectives set by representatives of the German Reich. They were responsible for registering every stranger. Tomasz Domański noted: “the village leader (or his deputy) became a central figure in the security system created by the Germans as a representative of the German authorities and the man responsible for physically delivering the captured person to the police unit.”⁵⁴ Once deportations to extermination camps began, Jewish fugitives also became targets of these operations.

Initially, village leader Franciszek Kogut decided to appoint a person who was supposed to hand over Jewish women to German police functionaries.⁵⁵ At around 9 p.m., Franciszek Kogut’s son, Adolf, arrived at the farm of Jan Dzedzic in Gruszów Wielki. Dzedzic lived with his wife Stefania, his mother Maria and eight children, the youngest of whom was 2 years old and the oldest 10.⁵⁶ Stefania’s brother, Józef Szczepan, who worked with horses, was also staying at the farm at the time.⁵⁷ Adolf brought Dzedzic a note with instructions written down by his father:

To Eng[ineer] Jan Dzedzic. By directive of the village leader, you are required to go and take two Jewish women to the police station in Dąbrowa and [you will

⁵⁴ T. Domański, “Niemiecka administracja,” pp. 166–167.

⁵⁵ During the trial, Franciszek Kogut defended himself, saying: “I would like to add that a few months earlier, in Bagienice, the Germans set fire to a house and shot a man for hiding Jews. If I hadn’t been afraid of Chmura, I would have let the Jewish women go. [...] Chmura, Pudelko and Urban demanded that I hand the Jewish women over to the Gestapo, which I did not do” (AN Kr, 29/747/IV K 211/52, Minutes of the main hearing before the Voivodeship Court in Cracow, Cracow, 6 December 1952, p. 243). It is also worth noting that Kogut repeatedly emphasised that the Jewish women had no grievances against him. For example: “I wasn’t at home at the time, and when I came back, Chmura and Pudelko were both arguing with these Jewish women, of whom there were four. So I asked the Jewish women why they had come to me, and they replied that they had no grievances against me, only against those who had brought them there, those traitors. So I decided to report it to the police station in Radgoszcz, where I sent a cart which Szczepan Józef drove” (AIPN Kr, 010/7072, Minutes of the interrogation of Franciszek Kogut, Dąbrowa Tarnowska, 14 April 1948, p. 10).

⁵⁶ AN Kr, 29/439/1362, Copy of the minutes of the interrogation of Jan Dzedzic, Dąbrowa Tarnowska, 5 January 1948, p. 5.

⁵⁷ *Ibid.*, Minutes of the interrogation of the suspect Józef Szczepan, Tarnów, 26 October 1948, pp. 17–17v.

be liable to a penalty of – RG] 1,000 zlotys, if you fail to go, you will be arrested.
Gruszów Wielki, 15 March 1944 [signature:] Kogut.⁵⁸

Upon entering the kitchen, Adolf relayed the message to Stefania. She proceeded to the bedroom, where her husband lay asleep, and informed him that, by order of the village leader Kogut, he was to go to Dąbrowa Tarnowska together with the Jewish women who had been detained in the village. Jan replied that he would not go. Approximately half an hour later, Stefania went to the village leader's house and conveyed her husband's decision. There she saw the Jewish women and a dozen or so people gathered around. When the village leader learned that Dziejdzic had refused to transport the Jews, he appointed Stefania's brother, Józef Szczepan. After the war, he testified:

My sister returned, saying that the village leader had categorically ordered that if Jan Dziejdzic could not go, then I had to go, as I worked at his farm with the horses. I went to the village leader and told him that I would not go alone because night had fallen and I was afraid to go, to which the village leader replied that his son Adolf Kogut would go with me, which is what happened; Kogut and I went to Radgoszcz in a cart and when we arrived, we informed the police about the fact that the Jewish women had been detained and together with the police we went to Gruszów Wielki. When we arrived in Gruszów, I went home. There were three policemen, but I did not know them and cannot give their names.⁵⁹

This version of events was also confirmed by Adolf Kogut. He also mentioned the names of the functionaries who accompanied them to Gruszów Wielki:

Since it was night and Józef Szczepan was afraid to go alone, I went with him.
When we arrived in Radgoszcz, outside the police station, the officer on duty

⁵⁸ As proof of the order he had been given, Jan Dziejdzic presented investigators with a piece of paper that had been brought to him by the village leader's son. It was added to the files related to the criminal case, allowing us to know its exact content (*ibid.*, Note from the leader of the *gromada* of Gruszów Wielki to Mr Jan Dziejdzic, Gruszów Wielki, 15 March 1944, p. 4).

⁵⁹ *Ibid.*, Minutes of the interrogation of the suspect Józef Szczepan, Tarnów, 26 October 1948, pp. 17–17v.

asked us why we had come, and we explained that some Jewish women were being held at the village leader's house. Three policemen, Koń Wojciech, Rogacki, and Kapusta, got into the cart and went with us to Gruszów Wielki. I do not know what happened to those Jewish women – I only know that the police shot them.⁶⁰

The policemen who went to Gruszów Wielki⁶¹ from the Blue Police station in Radgoszcz were Szczepan Kapusta,⁶² Wojciech Koń,⁶³ and Jan Rogacki.⁶⁴ Most likely, with their arrival, the people gathered in the room began to disperse. The policemen interrogated the captured Jewish women in a separate room and conducted a personal search. The village leader was ordered to assign two villagers to assist the functionaries. The individuals who were most likely assigned at around eleven p.m. were Stanisław Urban and Władysław Taraska.⁶⁵ On the orders of the

⁶⁰ *Ibid.*, Minutes of the interrogation of the suspect Adolf Kogut, Tarnów, 26 October 1948, pp. 16–16v.

⁶¹ See AIPN Kr, 502/3743, Petition to Discontinue the Investigation, Tarnów, 6 September 1947, pp. 23–24.

⁶² On 6 September 1951, Szczepan Kapusta (born on 29 April 1892) was sentenced by the Voivodeship Court in Cracow, pursuant to Article 1 of the August Decree, to 12 years in prison. From 6 June 1951, he was imprisoned in Płock. He was released on parole on 4 August 1954. Despite searches in the Archives of the Institute of National Remembrance and the National Archives in Cracow, I have not been able to find the files related to this case. I am unable to determine whether the aforementioned sentence also concerned the murder of the Erlich sisters and the daughters of one of them (AIPN, 2911/1, General information card-index; AIPN Kr, 010/3538, Index-card concerning the prisoner Szczepan Kapusta, Płock, 4 August 1954, p. 10).

⁶³ Wojciech Koń (born on 4 April 1915) was arrested on 25 April 1945 by functionaries of the County Public Security Department (*Powiatowy Urząd Bezpieczeństwa Publicznego*, PUBP) in Dąbrowa Tarnowska in connection with his service in the Blue Police. His name was not listed in the register of convicted persons (AIPN Kr, 080/1, Destroyed files card-index).

⁶⁴ Jan Rogacki arrived in Radgoszcz from the pre-war Poznań Voivodeship in 1940. A butcher by trade, according to witness accounts, he initially resided on a "Jewish farm," where he was to engage in poultry trading and pig slaughtering. Beginning in either 1942 or 1943, he served in the Blue Police, reportedly using his position to accept bribes. According to Władysław Kmieć, Rogacki was responsible for shooting Jewish women in Gruszów Wielki, resulting in the deaths of three of them (AIPN Kr, 010/7072, Minutes of the interrogation of Władysław Kmieć, Dąbrowa Tarnowska, 13 April 1948, p. 8; *ibid.*, Minutes of the interrogation of Franciszek Kogut, Dąbrowa Tarnowska, 14 April 1948, p. 10; *ibid.*, Minutes of the interrogation of Józef Kruk, Dąbrowa Tarnowska, 13 April 1948, p. 11). After the war, he was wanted by the PUBP in Dąbrowa Tarnowska. According to a report dated 5 March 1948, his whereabouts had not been established (*ibid.*, Letter from the head of the PUBP in Dąbrowa Tarnowska to the Voivodeship Public Security Department [*Wojewódzki Urząd Bezpieczeństwa Publicznego*, WUBP] in Cracow, Dąbrowa Tarnowska, 5 March 1948, p. 14).

⁶⁵ AIPN Kr, 502/3743, Minutes of the interrogation of the witness Władysław Taraska, Radgoszcz, 12 April 1947, p. 8; AIPN Kr, 010/7072, Minutes of the interrogation of Franciszek Kogut, Dąbrowa Tarnowska, 14 April 1948, p. 10.

policemen, they dug a pit 50 to 150 metres away from the village leader's house. There, the functionaries executed Hanka, Róża, and her two daughters.⁶⁶ Earlier, Jewish women had been ordered to undress. After the murder, the policemen took the clothes belonging to the woman who was shot and drove away. The village leader added, "They did not drink vodka. No report was drawn up."⁶⁷ Taraska and Urban covered the bodies of the murdered women with earth and returned to their homes.⁶⁸

The Problem of the Legal Classification of the Act Committed by Adolf Kogut and Józef Szczepan

In 1946, on the initiative of Erlich Berisch, an investigation was launched into the murder of his family members. During the interrogation, the brother of the murdered victims testified:

In March 1946, I returned from Soviet Russia to Tarnów. Upon arrival, I learned from people in Dąbrowa Tarnowska that my sister Rozia Barb, née Erlich, and my other sister Hanka Erlich, Ebla Barb, and Jenta Barb, Rozia Barb's daughter, had been shot during the German occupation in March 1944 in the village of Gruszów Wielki, 50 metres away from the house of the former village leader Franciszek Kogut. I therefore went to Gruszów Wielki to exhume the bodies, as they had been buried at the scene of the crime. When I arrived in Gruszów, I found out from a boy where the bodies were buried, and I dug them up myself and confirmed that they were indeed the bodies of my sisters and their children. I did not find the former village leader Kogut at home, but his wife informed me that these people had indeed been shot, and that the people mentioned above had been brought to her husband Franciszek Kogut, but she did not say

⁶⁶ AIPN Kr, 502/3743, Minutes of the interrogation of Berisch Erlich, Tarnów, 29 December 1946, pp. 1–1v; AN Kr, 29/439/1362, Copy of the minutes of the interrogation of Franciszek Kogut, Tarnów, 1 December 1947, pp. 3–3v.

⁶⁷ AN Kr, 29/747/IV K 211/52, Minutes of the interrogation of Franciszek Kogut, Radgoszcz, 24 March 1947 r., pp. 9–10; *ibid.*, Minutes of the interrogation of Franciszek Kogut, Radgoszcz, 27 June 1947, p. 17; *ibid.*, Minutes of the main hearing before the Voivodeship Court in Cracow, Cracow, 6 December 1952, p. 242.

⁶⁸ AIPN Kr, 502/3743, Minutes of the interrogation of the witness Władysław Taraska, Radgoszcz, 12 April 1947, p. 8.

who had brought them. In any case, people from the village had brought them to the village leader.⁶⁹

During the interrogation, Berisch testified that the person responsible for their execution was Jan Osika, a Blue Police functionary from Radgoszcz: "As I was informed, Jan Osika shot my sisters and their children on the spot, while the policeman Koń did not fire a single shot and even refused to participate in the execution."⁷⁰ However, the investigation conducted by the District Prosecutor's Office in Tarnów (ref. no. VI Ds 73/47) did not prove Osika's guilt. Although he was indeed a member of the Blue Police in Radgoszcz, he did not participate in the execution of Jewish women. The testimony gathered during this investigation led to the initiation of further proceedings against several residents of the village of Gruszów Wielki. Based on the evidence collected, the case involving four individuals (Franciszek Kogut, Józef Chmura, Stanisław Pudełko, Władysław Urban) was referred to separate proceedings (under ref. no. VI Ds 1088/47).⁷¹ On 15 November 1947, the prosecutor of the District Court in Tarnów issued a decision to arrest the suspects temporarily.⁷² As I have already mentioned, ultimately, only the former village leader was charged in these proceedings. Criminal proceedings against Adolf Kogut and Józef Szczepan were initiated in connection with these proceedings only in 1948 and were conducted under the reference number VI Ds 171/48.⁷³ In this case, the prosecutor had to determine the legal classification of the deeds of two young men, residents of the village of Gruszów Wielki, who, acting on the orders of the village leader, a functionary of the German occupation administration, reported the capture of four Jewish women.

⁶⁹ *Ibid.*, Minutes of the interrogation of Berisch Erlich, Tarnów, 29 December 1946, pp. 1–1v.

⁷⁰ *Ibid.*

⁷¹ AN Kr, 29/747/IV K 211/52, Official record, Tarnów, 10 September 1947, p. 3.

⁷² *Ibid.*, Decision on the Temporary Detention of Stanisław Pudełko, Tarnów, 15 November 1947, p. 33; *ibid.*, Decision on the Temporary Detention of Władysław Urban, Tarnów, 15 November 1947, p. 35; *ibid.*, Decision on the Temporary Detention [of Franciszek Kogut], Tarnów, 15 November 1947, p. 37.

⁷³ Prosecutor Teofil Patroński, when sending the indictment against Józef Szczepan and Adolf Kogut to the District Court in Tarnów, requested that this case be "treated jointly" with the case of Franciszek Kogut, former village leader of Gruszów Wielki, against whom an indictment had been brought 11 months earlier (VI Ds 1088/47). However, these cases were not consolidated for joint hearing (AN Kr, 29/439/1362, Letter from the Prosecutor's Office of the District Court in Tarnów to the Sixth Criminal Division of the District Court in Tarnów, Tarnów, 9 November 1948, n.p.).

On 26 October 1948, the day of Kogut's and Szczepan's interrogation, the prosecutor of the District Court in Tarnów issued a decision to arrest the suspects temporarily.⁷⁴ A few days later, on 4 November 1948, prosecutor Marian Fischer brought charges against them, stating:

On 15 March 1944, in Radgoszcz, Dąbrowa County, acting to the benefit of the authorities of the German state, they acted to the detriment of persons of Jewish nationality, sought by the German authorities on racial grounds in a manner whereby they notified the police in Radgoszcz about the capture of four Jewish women in Gruszów Wielki, whereupon they brought three Blue Policemen to Gruszów Wielki by cart, who shot the captured women.⁷⁵

According to the prosecutor, this act was governed by the provisions of Article 1(2) of the Decree of 31 August 1944,⁷⁶ namely by "denunciation or capture" of persons sought or persecuted. It should be added that, in the event of conviction for this crime, the decree stipulated the death penalty – which could, of course, be commuted to imprisonment if the court applied the extraordinary mitigation of punishment described under Article 5 of the Decree.⁷⁷

However, the District Court in Tarnów, in its judgment of 13 January 1949, did not find that the defendants' deed constituted an offence under Article 1(2) of the August Decree and found that they had committed the offence of "acting to the detriment" described under Article 2⁷⁸ – in this case, the Decree provided for the following alternative penalties: death penalty, life imprisonment or a fixed

⁷⁴ *Ibid.*, Decision on the Temporary Detention, Tarnów, 26 October 1948, p. 18.

⁷⁵ *Ibid.*, Indictment, Tarnów, 4 November 1948, p. 25.

⁷⁶ *Ibid.*

⁷⁷ "Article 5 (1). An act or omission committed under the influence of a threat, order or command does not exempt a person from criminal liability. (2). In such cases, the court may exercise extraordinary mitigation of punishment, taking into account either the characteristics of the perpetrator or the specific circumstances of the deed" (Dz.U. 1946, no. 69, item 376). The amendment to the Decree of 3 April 1948 introduced a new paragraph: "(3). The provision under (2) shall apply *mutatis mutandis* in cases referred to in Article 1(2), provided that special mitigating circumstances exist" (Dz.U. 1948, no. 18, item 124).

⁷⁸ "Article 2. Anyone who, acting to the benefit of the authorities of the German state or its ally, acted in a manner or under circumstances other than those provided for under Article 1, to the detriment of the Polish State, a Polish legal entity, members of the civilian population, or military personnel, or prisoners of war, shall be subject to a prison term of no less than three years or life imprisonment or the death penalty" (Dz.U. 1946, no. 69, item 376).

term imprisonment (the minimum term was set at three years). Since the court exercised extraordinary mitigation of punishment, taking into account either “the characteristics of the perpetrator or the specific circumstances of the deed” stipulated under Article 5(2), Kogut and Szczepan were sentenced to two years’ imprisonment.⁷⁹ In its grounds for the decision, the court stated that the defendants were young people raised “in a godforsaken village” who, “having received an order from the village leader to bring the police, believed that they could not disobey the authority represented by the village leader [and] that they did not act out of racial hatred.”⁸⁰

To sum up, the court hearing the case disagreed with the legal classification of the deed indicated in the indictment, because it found that:

persons of Jewish origin had already been denounced and captured by other persons and brought to the village leader, i.e. an official body serving the occupier, and the defendants, acting on the orders of that body, only brought the police and that was the end of their activities; they did not denounce or capture anyone, because someone else had already done so, therefore, the defendants acted in a different manner and under different circumstances than those stipulated under Article 1 of the Decree.⁸¹

The above-mentioned non-uniform legal classification of the same state of affairs by different procedural bodies shows the partial scale of the difficulties faced by lawyers after the war. It should be noted that Article 1(2) of the August Decree did not refer to “taking part in a capture,” but to the “capture” itself, which led to the doubts of lawyers described above, boiling down to the question: could this term be understood only as activities related to the physical capture of a person, or also other activities performed by other persons in connection with the captured person. Andrzej Pasek, a scholar specialising in German occupation crimes, pointed out that the concepts of capture (and denunciation) – found in Article 1(2) of the August Decree – were new in criminal law, and that there were

⁷⁹ AN Kr, 29/439/1362, Judgment of the District Court in Tarnów, Tarnów, 13 January 1949, pp. 41–41v.

⁸⁰ *Ibid.*, p. 42.

⁸¹ *Ibid.*

problems with their interpretation. He wrote that their interpretation remained strict until the turn of 1948. This was related to the severity of the punishment for the commission of the crime under Article 1(2) – namely, the death penalty.⁸² This position of the Supreme Court, leaning towards a strict interpretation, was negatively assessed in the legal literature of the time, as Pasek wrote, due to its failure to take into account the forms of committing a crime through “aiding” and “inciting,” which existed in the 1932 Criminal Code.⁸³ Since 1947, the meaning of “capture” has been increasingly broadened.⁸⁴

Likely informed by the aforementioned trends in case law, Prosecutor Fischer concluded in November 1948 – while drafting the indictment – that the deeds of the defendants from Gruszów Wielki met the criteria of Article 1(2) of the August Decree. Yet the verdict issued two months later by the District Court in Tarnów reflected a more stringent interpretation. Such divergence between the prosecutor’s and the judge’s views on whether the offence fell under Article 1(2) (denunciation or capture) or Article 2 (acting to the detriment) was a common occurrence in the post-war era.⁸⁵

Decision of Seven Judges of the Supreme Court Issued on 18 October 1949

More than two months after the District Court in Tarnów issued its judgment of 13 January 1949, both the defence counsel for the defendants, Tadeusz Krężel, and the prosecutor, Fischer, filed a cassation appeal against it.⁸⁶ On 6 July 1949, at an away session in Cracow,⁸⁷ three judges of the Supreme Court (in a panel headed

⁸² A. Pasek, *Przestępstwa okupacyjne*, p. 75.

⁸³ *Ibid.*, p. 76.

⁸⁴ *Ibid.*, pp. 75–95. See also L. Kubicki, *Zbrodnie wojenne*, pp. 114–115.

⁸⁵ See A. Pasek, *Przestępstwa okupacyjne*, pp. 94–95.

⁸⁶ AN Kr, 29/439/1362, Letter from Attorney Tadeusz Krężel to the District Court in Tarnów, 17 January 1949, p. 38; *ibid.*, Letter from Assistant Prosecutor M. Fischer to the Regional Court in Tarnów, Tarnów, 19 January 1949, p. 39; *ibid.*, Order granting leave to examine the prosecutor’s cassation appeal against the judgment delivered on 13 January 1949, Tarnów, 24 March 1949, p. 45; *ibid.*, Order granting leave to examine the cassation appeal filed by defendants Józef Szczepan and Adolf Kogut against the judgment delivered on 13 January 1949, Tarnów, 28 March 1949, p. 48.

⁸⁷ For information on the away session centres of the Supreme Court’s Criminal Chamber, see A. Be-reza, *Sąd Najwyższy w latach 1945–1962. Organizacja i działalność*, Warsaw, 2012, pp. 64–69.

by Józef Zembaty), upon examining the cassation appeals of the defendants and the prosecutor, adjourned the case and referred the following legal issue to an enlarged panel of the Supreme Court for resolution:

Whether the term “capture” under Article 1(2) of the Decree of 31 August 1944, item 377/46, should be interpreted as referring exclusively to the act of physically capturing the individuals specified in that legal provision, or also as encompassing subsequent acts performed by others following the initial capture – such as guarding the captured individuals, transferring a Jew to the Blue Police or a German police station after they have already been captured and brought to the village leader, or transporting them to the authorities for formal handover.⁸⁸

On 18 October 1949, the Supreme Court, sitting in a panel of seven judges at a closed session in Łódź (presiding judge: Emil Stanisław Rappaport and Supreme Court judges: Marian Sokalski, Julian Potępa, Mieczysław Szerer, Alfred Eimer, Zygmunt Sitnicki, and acting judge Jan Dorsz), examined the legal question referred to it and formulated new rules for interpreting “capture,” which were entered into the book of legal principles. The decision issued at that time states that “capture” within the meaning of Article 1(2) of the August Decree is a continuing offence ending, in particular, with the cessation of the perpetrator’s actual control over the captured person. However, cooperation or aid during the commission of this offence justified liability for complicity or aiding. In view of this, the Supreme Court ruled that “capture” should be understood not only as acts consisting in the physical capture by the perpetrator of the persons referred to under that provision, but also as subsequent acts committed by another perpetrator, aimed at handing over the captured persons to the German authorities, and punishable either as complicity or as aiding, depending on the factual circumstances.⁸⁹

⁸⁸ AN Kr, 29/439/1362, Excerpt from the hearing list and the minutes of the closed hearing of the Supreme Court’s Criminal Chamber at its away session in Cracow on 6 July 1949 in the case of Szczepan Józef and Kogut Adolf, Cracow, 6 July 1949, n.p..

⁸⁹ *Ibid.*, Decision of the Supreme Court, Łódź, 18 October 1949, p. 51v.

The justification states:

Each moment during which a person is deprived of liberty following their capture constitutes a committed criminal offence. However, the offence concludes either upon the release of the captured individual or when the perpetrator loses the capacity to exercise control over them. This loss of control also occurs when the individual is handed over to the authorities, thereby eliminating the perpetrator's actual dominion over the person. Consequently, anyone who, up to that point, participated in the perpetrator's actions *cum animo auctoris sive socii* is liable to a penalty under Article 1(2) of the Decree, provided they were aware that the individual was being sought or persecuted for the reasons specified therein. In accordance with these principles and within their defined scope, the term "capture" encompasses not only acts directed at the physical capture of a person, but also, following such an act of capture, any acts intended to transfer the individual to the occupying authority, thereby excluding the perpetrator's control of them. The severity of criminal penalties resulting from this interpretation, especially in cases where an individual knowingly provided only minimal or indirect assistance far removed from the deed of "capture or denunciation," may be mitigated solely through the provisions of paragraph 2 or paragraph 3 of Article 5 of the Decree. This mitigation is contingent upon the Court's determination that the perpetrator acted under the influence of a threat, order, or command (paragraph 2), or that "special mitigating circumstances exist" (paragraph 3). Such mitigation must not be achieved by misclassifying the deed under Article 2 of the Decree, which would constitute a legally incorrect requalification.⁹⁰

Following the above ruling, on 4 January 1950, the Supreme Court – convening in Cracow during an away session with a panel of three judges (Presiding Judge Alfred Eimer, along with Judges Józef Zembaty and J. Lewicki) – reversed the judgment issued by the District Court in Tarnów on 13 January 1949, which had sentenced Kogut and Szczepan to two years imprisonment. The case was remitted

⁹⁰ *Ibid.*, pp. 54v–55.

to the Appellate Court in Cracow for reconsideration,⁹¹ as, following changes to the criminal procedure introduced on 1 July 1949, the Appellate Court had jurisdiction to hear cases under the “August Decree” at first instance.⁹²

Upon retrial, on 21 April 1950, the defendants were found guilty of committing an offence under Article 1(2) of the August Decree and each was sentenced to six years imprisonment.⁹³ Thus, they received a much harsher sentence (three times higher than the previous sentence of January 1949). Of course, apart from the change in the classification of the act and the severity of the criminal sanction in the case of Kogut and Szczepan, the effects of the above-mentioned ruling of 18 October 1949 were broader.

Harsher Penalties Imposed on Those Involved in Acts Related to Captured Jews

Under the revised interpretation, individuals deemed responsible for the acts described in Article 1(2) of the August Decree – an offence subject to the most severe penalty – may include those who were compelled to transport or guard previously captured Jewish fugitives, such as guards, hostages, or persons burdened with the duty to provide transportation. A few months before the new interpretation was published, on 31 January 1949, the District Court in Tarnów heard the case of several men accused by the prosecution that in April 1943, in Świebodzin (a village located about 10 km north-west of Gruszów Wielki), “acting to the benefit of the authorities of the German state, acted to the detriment of persons sought and persecuted by the German authorities on racial grounds, participated in the capture of the Jew Józef Adler.”⁹⁴ The prosecutor charged them with violat-

⁹¹ *Ibid.*, Judgment of the Supreme Court delivered at an away session in Cracow, Cracow, 4 January 1950, pp. 57–58.

⁹² Act of 27 April 1949 amending the provisions of criminal procedure, Dz.U. 1949, no. 32, item. 238. See also A. Machnikowska, *Wymiar sprawiedliwości...*, p. 307.

⁹³ In addition, the court decided upon the deprivation of their public and honorary civil rights for a period of three years, and upon forfeiture of all of their property. Furthermore, the Court applied the period of their temporary detention – from 23 October 1948 to 21 April 1950 – as time served against the custodial sentence imposed on the defendants (AN Kr, 29/439/1362, Judgment of the Appellate Court in Cracow delivered at an away session in Tarnów, Tarnów, 21 April 1950, pp. 88–88v).

⁹⁴ AN Kr, 29/439/1356, Indictment, [Tarnów], 15 May 1948, pp. 59–59v. Barbara Engelking wrote about the history of Józef Adler’s capture, see B. Engelking, “„Po zamordowaniu udaliśmy się do domu”. Wydawanie i mordowanie Żydów na wsi polskiej w latach 1942–1945,” in *Zarys krajobrazu. Wieś polska wobec zagłady Żydów 1942–1945*, eds. B. Engelking and J. Grabowski, Warsaw, 2011, p. 277.

ing Article 1(2) of the August Decree. Among the accused were individuals who had been on night duty that day and were instructed to escort the captured Adler to the Blue Police station in Mędrzechów. The individuals in question were Piotr Mastalerz, Józef Mastalerz and Henryk Czupryna:

at night, while on guard duty on the road, they were summoned at some point by Alojzy Łazarz [who was the commander of the night guard – RG] to go to the house of the defendant Kaczówka, informing them that a Jew had been caught there. When the defendants arrived at Kaczówka's house, they found Józef Adler sitting, locked in a room, with the door handle tied with wire from the outside.⁹⁵

The former members of the guard did not deny that they had taken part in transporting Adler to Mędrzechów. Moreover, the following defendants appeared before the District Court in Tarnów: village leader Stanisław Czupryna (accused of ordering Adler's transport), Stanisław Magiera (summoned to provide a horse and a cart), and Władysław Kaczówka. The aforementioned guard commander Alojzy Łazarz was not among the defendants. The court, presided over by Stanisław Król,⁹⁶ disagreed with the legal classification of the defendants' deeds (as indicated by the prosecutor) and convicted all those named in the indictment under Article 2, finding that they had acted to the detriment of Józef Adler.⁹⁷ Władysław Kaczówka was sentenced to 8 years in prison, and Stanisław Magiera to 3 years in prison. However, the court applied extraordinary mitigation of punishment under Article 5(2) to Stanisław Czupryna, Piotr Mastalerz, Józef Mastalerz, and Henryk Czupryna and sentenced them to one year in prison.⁹⁸

⁹⁵ AN Kr, 29/439/1356, Judgment of the District Court in Tarnów, Tarnów, 31 January 1949, p. 177.

⁹⁶ In this case, the lay judges were Julian Rubacha and Jan Bochenek.

⁹⁷ "Since there was no evidence that any of the defendants had captured Józef Adler or participated in his capture, and in particular that the defendant Kaczówka had done so, the Court finds sufficient grounds to reject this legal classification of the defendants' acts. The Court took the view – in accordance with the jurisprudence of the Supreme Court – that since the offence under Article 1(2) of the aforementioned decree is punishable by only one criminal sanction, namely the death penalty, the attribution of this offence to anyone on this legal basis must be based on a criminal act that is significant beyond any doubt" (AN Kr, 29/439/1356, Judgment of the District Court in Tarnów, Tarnów, 31 January 1949, p. 175v).

⁹⁸ *Ibid.*, p. 178

In December 1949, nearly a year later, the Supreme Court convened in Cracow for a cassation hearing and, applying a newly adopted interpretation of the term “capture,” determined that the prosecutor’s appeal was well-founded. Consequently, the case was remanded to the Appellate Court in Cracow for reconsideration.⁹⁹ The sentence was passed on 27 March 1950 at an away session in Tarnów. One of the defendants was acquitted,¹⁰⁰ and the remaining five were convicted under Article 1(2) of the August Decree. They received higher sentences than those imposed in the judgment issued on 31 January 1949. The highest sentence, that is nine years in prison, was imposed on Władysław Kaczówka, who, according to the court’s findings, “held the Jew Józef Adler under lock and key in his flat.”¹⁰¹ Stanisław Magiera, who, on the orders of the guard commander, provided a cart and transported the captured man together with the members of the guard, was sentenced to 6 years in prison.¹⁰² The former members of the guard, Piotr Mastalerz, Józef Mastalerz, and Henryk Czupryna, were

⁹⁹ The Supreme Court ruled that “the term ‘capture’ used in Article 1(2) of the Decree of 31 August 1944 should be understood to mean that the act constituting the content of this term should be considered to have been committed only when the detained person was actually handed over to the competent authority. In view of the above interpretation, it must be concluded that the defendants, who through their actions contributed to the surrender of Józef Adler – wanted by the German authorities on racial grounds, to the police[m]en of the Blue Police, committed an offence under Article 1(2) of the Decree of 31 August 1944, and not an offence under Article 2 of that Decree” (AN Kr, 29/439/1356, Judgment of the Supreme Court at an away session in Cracow, Cracow, 14 December 1949, p. 209).

¹⁰⁰ This time, the former village leader Stanisław Czupryna was acquitted. Previously, the District Court in Tarnów had convicted him of committing an offence under Article 2 of the August Decree (*ibid.*, Judgment of the Appellate Court in Cracow at an away session in Tarnów, Tarnów, 27 March 1950, p. 236). This time, former village leader Stanisław Czupryna was acquitted. He had earlier been found guilty by the District Court in Tarnów for violating Article 2 of the August Decree. During the appeal, Piotr Mastalerz – who had initially accused Czupryna of ordering Adler’s transfer to the police – revised his statement, identifying the then commander of the guards as the one who issued the order. He testified: “The defendant clarifies that it was Łazarz who ordered the provision of the cart, not the village leader, and affirms that today’s testimony is accurate, since he now remembers the events clearly” (*ibid.*, Minutes of the main hearing before the Appellate Court in Cracow at an away session in Tarnów, Tarnów, 27 March 1950, p. 228).

¹⁰¹ *Ibid.*, Judgment of the Appellate Court in Cracow at an away session in Tarnów, Tarnów, 27 March 1950, p. 235v.

¹⁰² As the Appellate Court’s judgment lacked any accompanying justification, I am unable to determine the reasoning behind the imposed sanction. It can be inferred that Magiera received a harsher sentence than the guards because he, along with Łazarz, entered the house where Adler was confined and, together with the guard commander, escorted the captured Jew out (*ibid.*, Minutes of the main hearing before the Appellate Court in Cracow at an away session in Tarnów, Tarnów, 27 March 1950, p. 228).

sentenced to 5 years and 6 months in prison for carrying out the order to escort Adler to the police station in Mędrzechów.¹⁰³ This sentence was five times higher than the previous one (a few months earlier, the District Court in Tarnów had sentenced them to one year in prison). The court applied extraordinary mitigation of punishment to all those convicted. The criminal case mentioned earlier is not an isolated incident. The broad interpretation outlined in the Supreme Court's decision issued on 18 October 1949 led to harsher criminal sanctions being imposed on some of the defendants.

The Issue of the Varied Nature of Acts Related to Physical "Capture"

In establishing new rules for interpreting "capture," the Supreme Court failed to consider that many acts associated with physical capture can differ greatly in nature and may actually result from it.¹⁰⁴ The case of the defendants from Bieniaszowice (Gręboszów Municipality), a village located only about 20 km north-west of Gruszów Wielki, clearly illustrates this problem. On 19 March 1944, Karol Motyka¹⁰⁵ and Teofil Cabaj brought Pajka Kapelner and Jakub, known as "Czarny," to the village leader, Franciszek Olbrycht. The village leader ordered Jan Gawel to take them to Gręboszów at that time; it was his "turn to perform personal services for the municipality."¹⁰⁶ Olbrycht appointed Jan Moryl and Jan Cira as transport guards.¹⁰⁷ Upon arrival in Gręboszów, Moryl and Cira, following the village leader's instructions, went to the police station and handed the Jews over to the Blue Police functionaries.¹⁰⁸ The prosecutor of the District Court in Tarnów, Władysław Kossowski, in accordance with a broad interpretation, in the indictment issued on 28 January 1950, accused the two designated transport

¹⁰³ *Ibid.*, Judgment of the Appellate Court in Cracow at an away session in Tarnów, Tarnów, 27 March 1950, p. 235.

¹⁰⁴ Cf. L. Kubicki, *Zbrodnie wojenne*, pp. 117–119; A. Pasek, *Przestępstwa okupacyjne*, p. 78.

¹⁰⁵ Jan Grabowski provided the incorrect name: "Martyka," see J. Grabowski, *Judenjagd*, p. 113.

¹⁰⁶ AN Kr, 29/439/1366, Judgment of the Appellate Court in Cracow at an away session in Tarnów, Tarnów, 27 April 1950, p. 178v.

¹⁰⁷ *Ibid.*

¹⁰⁸ It is worth mentioning that, according to the court, while passing through the village of Bieniaszowice, Moryl and Cira "signalled to Jan Gawel to stop the horses. Gawel then turned to the Jews sitting in the back and told them to get off the cart and run. But they responded that they didn't want to escape – they just wanted to go to work" (*ibid.*, p. 179).

guards and the then coachman of committing an offence under Article 1(2) of the August Decree.¹⁰⁹

The Appellate Court in Cracow, in its judgment issued on 27 April 1950 during a session in Tarnów, found that Jan Moryl and Jan Cira had committed the act specified in Article 1(2) of the August Decree. Since they had acted on the orders of the village leader, the court applied an extraordinary mitigation of punishment. Each of them was sentenced to 5 years and 6 months in prison.¹¹⁰ By contrast, Jan Gaweł, who had been obliged to provide a horse and a cart, was not convicted. The court gave the following justification:

The defendant, Jan Gaweł, was subject to a general and commonly enforced obligation to provide personal and material services to the village, including the provision of a horse and a cart. On the day the Jewish individuals were brought to the village leader, it was Gaweł's turn to fulfil this duty. At the request of the village leader, Olbrycht, Gaweł provided the horse and cart. Initially, he was unaware that his services would be used to transport the Jews. His acts, upon becoming aware, do not constitute guilt under Article 1(2) of the August Decree. The defendant did not take part in the capture of the Jews, but since he was assigned the duty of supplying a means of transport, he fulfilled the duty of providing a necessary complement to a mechanical means of transport – in this case, a horse and a cart. Defendants Moryl and Cira, acting as transport guards, were responsible for escorting the captured individuals and delivering them to the German authorities. While Moryl and Cira maintained control over the detainees, Gaweł's role was confined to managing the horses. There is little indication that he assisted his companions in the actual handover of the captives to the Germans.¹¹¹

In the cited judgment, the court found that the defendant Gaweł “fulfilled the duty of providing a necessary complement to a mechanical means of transport –

¹⁰⁹ *Ibid.*, Indictment, Tarnów, 28 January 1950, pp. 107–108.

¹¹⁰ *Ibid.*, Judgment of the Appellate Court in Cracow at an away session in Tarnów, Tarnów, 27 April 1950, p. 180v.

¹¹¹ *Ibid.*, p. 178v.

in this case, a horse and a cart.”¹¹² This line of reasoning was also found a few days later in a Supreme Court ruling that, in a different case, stated that the liability for “capture” did not extend to coachmen performing only the so-called mechanical tasks related to the operation of the vehicle.¹¹³ Thus, the court departed from the strictly defined legal principle.

The Final Revision of the Term “Capture”

The departure from the new interpretation was finalised on 2 February 1951,¹¹⁴ when, through a resolution of the Criminal Chamber of the Supreme Court, it was determined that the act of “capture” – understood as depriving an individual of their “freedom of movement” – constituted a criminal offence. The state of “capture” was deemed to have ended once the individual no longer retained “the ability to dispose of themselves.” Any subsequent actions of the perpetrator(s), including maintaining the victim’s deprivation of liberty and handing them over to representatives of the German occupying authorities, were considered consequences stemming from the initial act of “capture”.¹¹⁵

“Capture,” as defined in Article 1(2) of the Decree of 31 August 1944 (*Dziennik Ustaw RP 1946, no. 69, item 377*), constitutes an offence involving the deprivation of freedom of movement of a person covered by the aforementioned legal provision. This offence is considered complete when the individual is effectively deprived of the ability to exercise personal autonomy.

Whether the “capture” has been completed – i.e., whether the person has in fact been deprived of their freedom of movement before any perpetrator’s acts – depends on the specific circumstances of the case and is subject to the adjudicating court’s assessment.

If the court determines that the perpetrator’s acts occurred before the completion of the “capture” and were intended to deprive the individual of their freedom

¹¹² *Ibid.*

¹¹³ This refers to the judgment of the Supreme Court of 6 May 1950, ref. no. K 165/50. As cited in: A. Pasek, *Przestępstwa okupacyjne*, p. 79.

¹¹⁴ Cf. *ibid.*, p. 79; L. Kubicki, *Zbrodnie wojenne*, p. 119.

¹¹⁵ A. Pasek, *Przestępstwa okupacyjne*, p. 80.

of movement definitively, this finding may justify a conviction for complicity or aiding in the commission of the offence.

Subsequent acts intended to transfer the captured individual to the German authorities may be punishable under Article 2 of the aforementioned decree, depending on the nature of the act and the perpetrator's intent. Other acts committed against the victim after the capture may warrant separate charges under the Decree of 31 August 1944 or other applicable criminal laws, based on the factual findings in the case.¹¹⁶

The resolution stipulated that persons who, only after the "capture" had been completed, took actions aimed at surrendering the captured persons, could be held liable under Article 2 of the decree on "acting to the detriment of persons," and thus offences for which it was possible to impose milder sanctions than those stipulated for the offences described under Article 1(2). The result of the new interpretation was a relaxation of repression, including against persons convicted of participating in various activities related to Jewish fugitives.

More than four months later, at the end of June 1951, attorney-at-law Tadeusz Krężel, based on the changes in case law described above, filed a request on behalf of the convicted Józef Szczepan and Adolf Kogut for an extraordinary revision of their sentences.¹¹⁷ On 5 October 1951, the Supreme Court (composed of Adolf Dąb, presiding judge, along with judges Zygmunt Sitnicki and Jan Haber), after considering the extraordinary revision of the First President of the Supreme Court,¹¹⁸ overturned the judgment of the Appellate Court in Cracow of 21 April 1950 and upheld the earlier judgment of the District Court in Tarnów of 13 January 1949.¹¹⁹ The defendants Kogut and Szczepan received lower sentences. The justification stated:

¹¹⁶ As cited in *Orzecznictwo Sądu Najwyższego z zakresu materialnego prawa karnego (1945–1957). Zbiór analityczny w ujęciu przedmiotowym i artykułowym*, ed. G. Auscaler, Warszawa, 1958, pp. 536–537.

¹¹⁷ AN Kr, 29/439/1362, Request by convicts Józef Szczepan and Adolf Kogut for an extraordinary revision in their favour to be submitted to the First President of the Supreme Court in Warsaw, Cracow, [date of receipt: 23 June 1951], n.p. For information concerning the extraordinary revision, see A. Bereza, *Sąd Najwyższy*, pp. 182–188.

¹¹⁸ In a request for an extraordinary revision, submitted to the Supreme Court, he requested that the contested judgment be overturned with regard to the legal classification of the acts attributed to Adolf Kogut and Józef Szczepan and the penalties imposed on them, and that they be convicted under Article 2 of the August Decree and given lower penalties.

¹¹⁹ At the same time, it overturned the part of the judgment concerning the forfeiture of the property of both defendants.

An extraordinary revision is justified. The findings of both courts confirm that the defendants did not capture or denounce the individuals persecuted by the occupier. Rather, they reported the capture to the police station solely under the directive and threat of the village leader and subsequently guided the policemen to the location where the individuals had been detained. In light of the Full Chamber of the Supreme Court's ruling dated 2 February 1951, such conduct constitutes an offence under Article 2 of the Decree of 31 August 1944. Consequently, the contested judgment of the Appellate Court should be overturned, and the District Court's ruling should be upheld, as it correctly classified the legal nature of the act and imposed a fair sentence. Considering the defendants' social circumstances and financial condition, the Supreme Court deemed it both possible and appropriate to forgo the confiscation of their property.¹²⁰

In accordance with the ruling of the District Court in Tarnów on 13 January 1949, Kogut and Szczepan were each sentenced to two years in prison. By the time the Supreme Court upheld the extraordinary revision, both had already been deprived of their liberty for nearly three years.¹²¹ They were ultimately released in the second half of October 1951.¹²²

Based on an analysis of judgments issued – both by the Appellate Court in Cracow and by other appellate courts adjudicating during the period under review – in cases brought under the August Decree, I conclude that, following the final change in the interpretation of the term “capture,” the legal classification of certain acts committed in connection with captured Jews was revised in 1951 as a result of appeals. Specifically, some convictions were reclassified from Article 1(2) (denunciation or capture) to Article 2 (acting to the detriment of persons), result-

¹²⁰ AN Kr, 29/439/1362, Copy of the judgment of the Supreme Court, Warsaw, 5 October 1951, n.p.

¹²¹ By its judgment dated 13 January 1949, the District Court in Tarnów applied the period of temporary detention commencing on 23 October 1948 as time served against the custodial sentence imposed on the defendants (*ibid.*, Judgment of the District Court in Tarnów, Tarnów, 13 January 1949, p. 41v).

¹²² Adolf Kogut was released from the Labour Centre in Brzeszcze on 22 October 1951. Józef Szczepan was released from the Central Prison in Warsaw seven days later, on 29 October 1951 (*ibid.*, Notification from the Voivodeship Prosecutor's Office in Cracow to the Sixth Criminal Division of the Voivodeship Court in Cracow, Cracow, 1 November 1951, n.p.).

ing in the imposition of lighter sentences.¹²³ This reclassification may have led, as in the case of Kogut and Szczepan, to the release of convicted individuals prior to the enactment of the 1952 amnesty law.¹²⁴

Closing Remarks

Many of the most contentious issues in legal theory and practice revolve around the interpretation of law. The criminal trial of Adolf Kogut and Józef Szczepan – examined in detail – illustrates the post-war challenges of classifying acts committed under German occupation within the framework of the August Decree. This case also highlights how a shift in the interpretation of the term “capture” in 1949 temporarily led to harsher criminal penalties for certain individuals prosecuted for wartime offences, at least until a revised interpretation was issued on 2 February 1951. Among those affected were individuals convicted of various forms of involvement in crimes against the Jewish population, such as relaying information about the capture of Jews (in the role of messengers) or guarding detainees as hostages or members of a guard unit.

Although the process of reckoning in Poland largely stalled in the late 1940s and early 1950s, a significant number of judgments were nonetheless issued during that period in cases involving individuals who had participated in activities related to Jews during the German occupation. In some of these cases, a shift in the interpretation of the term “capture” may have led to the imposition of considerably harsher sentences – later mitigated, first through the appeal mechanisms referenced in the article, and subsequently by the 1952 amnesty act.

A thorough examination of this issue would require foundational research, particularly into the archival records generated by the Supreme Court, appellate

¹²³ The same applied to the other convicts mentioned in this article. On 3 March 1951, the Supreme Court, acting in extraordinary revision proceedings, reclassified the offence committed by Jan Cira and Jan Moryl from Article 1(2) to Article 2 of the Decree of 31 August 1944, and sentenced them to one year and six months imprisonment (AN Kr, 29/439/1366, Judgment of the Supreme Court, 3 March 1951, pp. 197–197v). At the revision hearing on 26 May 1951, the Supreme Court also revised the classification of the acts committed by Piotr Mastalerz, Józef Mastalerz, Henryk Czupryna, and Stanisław Magiera. For acting to the detriment of persons residing in the territory of the Polish state, they were sentenced to between two and three years in prison (AN Kr, 29/439/1356, Copy of the judgment of the Supreme Court, Warsaw, 26 March 1951, n.p.).

¹²⁴ Act of 22 November 1952 on amnesty, Dz.U. 1952, no. 46, item 309.

courts, and voivodeship courts that adjudicated such cases during the relevant period, along with comparative analysis. It would also be worthwhile to explore the following question: in judicial practice, did the broad interpretation of the law – and the resulting difficulty in classifying certain acts under Article 2 of the August Decree (acting to the detriment of persons) – lead to instances in which such individuals were acquitted? Such an analysis would significantly enhance our understanding of post-war judicial responses to Holocaust-related cases in Poland, particularly in evaluating the severity of the imposed penalties. As previously noted, the cases of Kogut and Szczepan – as well as others cited in this article – illustrate that certain criminal proceedings saw a temporary intensification of sanctions due to a shift in the interpretation of the term “capture.” This shift affected individuals prosecuted for acts involving Jews who had been captured. It would also be valuable to undertake a thorough investigation into the broader, extra-legal factors that contributed to this interpretive change.

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Polish Normative Acts

Dekret Polskiego Komitetu Wyzwolenia Narodowego z dnia 31 sierpnia 1944 r. o wymiarze kary dla faszystowsko-hitlerowskich zbrodniarzy winnych zabójstw i znęcania się nad ludnością cywilną i jeńcami oraz dla zdrajców Narodu Polskiego, *Dziennik Ustaw* 1944, no. 4, item 16.

Dekret z dnia 16 lutego 1945 r. o zmianie dekretu Polskiego Komitetu Wyzwolenia Narodowego o wymiarze kary dla faszystowsko-hitlerowskich zbrodniarzy winnych zabójstw i znęcania się nad ludnością cywilną i jeńcami oraz dla zdrajców Narodu Polskiego, *Dziennik Ustaw* 1945, no. 7, item 29.

Dekret z dnia 10 grudnia 1946 r. o zmianie dekretu z dnia 31 sierpnia 1944 r. o wymiarze kary dla faszystowsko-hitlerowskich zbrodniarzy winnych zabójstw i znęcania się nad ludnością cywilną i jeńcami oraz dla zdrajców Narodu Polskiego, *Dziennik Ustaw* 1946, no. 69 item 376.

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