

The First International Expert Meeting on War Crimes, Genocide, and Crimes against Humanity, organized by International Criminal Police Organization – Interpol General Secretariat (IPSG), was held in Lyon, France from 23 to 25 March 2004.

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Prosecution of Nazi Crimes in Poland in 1939-2004

I.

Nazi crimes in Poland have been prosecuted almost from the beginning in view of mass war crimes committed in September/October 1939 by the Wehrmacht and Luftwaffe troops, by the various police units that followed them, then by the occupation administration installed.

As early as 15 December 1939, the Polish Government in Exile based in London adopted a resolution on “retortion measures to be taken by the Polish state for innocent victims against the Germans, especially against their leadership”^[1]. Under the Government’s resolution of 16 April 1940, “hood courts” were established as special criminal courts attached to Commanders of the main underground anti-German armed organisation – the Union of Armed Struggle (*Zwi’zek Walki Zbrojnej*). The remit of the courts, which passed secret and summary sentences, was to impose penalties for crimes including “inhuman persecution and maltreatment of the Polish population”. If a person was found guilty, the only punishment the “hood court” could impose was the death penalty^[2]. Prosecution was based on the violation of international agreements on warfare and occupation^[3].

In the Polish territories (within the present Eastern borders) liberated from Nazi occupation starting in July 1944, the Communist-controlled government issued a decree of 31 August 1944 on punishments for Nazi criminals guilty of murders and tortures inflicted upon civilians and prisoners and for traitors of the Polish Nation^[4]. The main provision of the decree (Article 1 point 1)^[5], which is still in force in Poland, states that: “Anyone who, being supportive of the German state or any of its allies participated in killing people, whether civilians or military or prisoners of war, shall be liable to the death penalty”^[6].

The decree made it possible to prosecute war crimes and crimes against humanity committed between 1 January 1939 and 9 September 1945^[7]. The prosecution and punishment of war crimes and crimes against humanity, committed by German military, police and civilian occupation authorities proceeded briskly and it was seen as one of the instruments of winning a neutral attitude of the general public, who took a clearly anti-Communist stance, particularly so in the face of the increasing Communist terror.

II.

Special Criminal Courts were established on 12 September 1944, each composed of a professional judge and two lay judges, to try Nazi crimes, which were called in Poland, until late 1990s, “Hitlerite crimes”. Those were summary courts. On 17 October 1946 their powers were taken over by common courts, but they continued to sit as summary courts. On 22 January 1946, the single-instance Supreme National Tribunal (*Najwyższy Trybunał Narodowy - NTN*) was established to try the main perpetrators of crimes committed in the territories of Poland occupied by the Third Reich, who were captured in Poland or extradited by the powers occupying Germany.

Seven trials were brought before the NTN in 1946-1948:

1. The trial of Artur Greiser, who was first the chairman of the Senate of the Free City of Gdańsk, and during the occupation the governor (*gauleiter*) of the so-called Warthegau. The trial was held in Poznań between 21 June and 7 July 1946; sentenced to death penalty.
2. The trial of Amon Leopold Göth. The trial was held in Kraków between 27 August and 5 September 1946; sentenced to death penalty.
3. The trial of Ludwig Fischer, former head of the Warsaw District; Josef Meisinger, former commander of Security Police (K d S) in Warsaw; Max Daume, police colonel, former department head in the Order Police (Orpo) headquarters in Warsaw, and Ludwig Leist, former governor of Warsaw. The trial was held in Warsaw between 17 December 1946 and 24 February 1947. L. Fischer, J. Meisinger and M. Daume were sentenced to death penalty, L. Leist to eight years' imprisonment.
4. The trial of Rudolf Höss, former commandant of the Auschwitz concentration camp from 1 May 1940 to October 1943. The trial was held on 11-29 March 1947 in Warsaw; sentenced to death penalty.
5. The trial of 40 members of former members of the Auschwitz-Birkenau concentration camp, headed by the former commandant Artur Liebehenschel. The trial was held from 24 November to 16 December 1947 in Kraków. 23 of the defendants were sentenced to death, 6 – to life imprisonment, 7 – to 15 years' imprisonment, 3 to 3 to 10 years' imprisonment. One defendant was acquitted.
6. The trial of Albert Forster, former governor of the Danzig-West Prussia province of the Reich. The trial was held on 5–27 April 1948 in Gdańsk: sentenced to death penalty.
7. The trial of Josef Bühler, Government General State Secretary. The trial was held in Kraków from 17 June to 5 August 1948; sentenced to death penalty^[8].

Two of the above trials were completed even before the sentence was passed by the International Military Tribunal in Nuremberg on 30 September 1946. It should be noted that in the second of those trials Amon Leopold Göth, born on 11 December 1908 in Vienna **was convicted of homicide, the first such case in the history of prosecution of state criminals**. Göth was found guilty of the charge that “as member of the NSDAP in Austria and the German Reich from 1932 and as member of *Waffen* SS from 5 March 1940 to 13 September 1944 within the territory of the Republic of Poland, he belonged to the party, a criminal organisation which, under the leadership of Adolf Hitler set itself the goal of waging violence through offensive wars and by means of other crimes – in which the genocide of Poles and Jews played a prominent role – in order to gain control of the world and established the National Socialist system, where the accused Amon Göth personally ordered imprisonment, tortures and extermination of individuals and entire groups of population, and also himself killed, maimed and tortured a substantial, albeit unidentified, number of people, both Jews and Poles, as well as other nationals, in particular...”^[9].

Let us add that the term “genocide” was used for the first time in legal literature in 1944 by the Polish lawyer, Rafał Lemkin, who defined it as follows: “Genocide is the crime of destroying national, racial or religious groups”^[10].

III.

Initiating the prosecution and the actual prosecution of Nazi crimes in Poland was mainly the

domain of the Chief Commission for the Examination of German Crimes in Poland (GKZNwP). The Commission was established by the government decree of 10 November 1945^[11]. In 1950 its name was changed to the Chief Commission for the Examination of German Crimes in Poland, by the Act of 6 April 1984 it was renamed as the Head Commission for the Examination of Crimes against the Polish Nation – Institute of National Remembrance (*GKBZpNP-IPN*)^[12]. The Commission existed to the date of entry into force of the Act (19 January 1999)^[13] on the Institute of National Remembrance – Chief Commission for the Prosecution of Crimes against the Polish Nation (*IPN-KŒZpNP*), which created the monopoly of the specially established IPN prosecutor's office to prosecute Nazi crimes, Communist crimes, other crimes being crimes against peace, humanity, or war crimes^[14] committed in the Polish territories during 50 years – from the invasion of Poland by the Third Reich on 1 September 1939 to the transition from the Communist political system to a democracy under the Constitutional Act of 31 December 1989.^[15]

Polish authors calculate that the prosecution of Nazi crimes in Poland involved by the end of the summer of 1980 between 80,000 and 100,000 people, and by the end of December 1977 at least 17,919 persons^[16] were convicted under the decree of 31 December 1944. About 1/3 of the convicts were Germans, Austrians and the so-called Volksdeutsche (1900 of them were extradited to Poland by the Allies for trial)^[17]. In the following years, mainly investigations were conducted in different cases, without presenting charges to suspects. Investigations into Nazi crimes (including crimes of homicide, war crimes and crimes against humanity committed by officers of the Third Reich and by persons acting on their behalf or inspired or tolerated by them) led to the establishment of the above-mentioned separate prosecutor's office within the IPN structure. The prosecutor's office was officially established in September 2000, and started intensive work in 2001.

At the end of February 2004, IPN prosecutors conducted 1295 investigations, including 335 (25.9%) in Nazi crime cases, 878 (67.8%) in Communist crime cases, and 82 (6.3%) in cases concerning other crimes: war crimes and crimes against humanity.

About 95 % of all investigations into Nazi crimes and other war crimes concern victims of Polish nationality.

Investigations into Nazi crimes, the continuation of which requires foreign legal assistance, are referred to the do Investigation Centres for National Socialist War Crimes in Ludwigsburg and in Dortmund. In particular, this concerns investigations which have disclosed that the perpetrators live in the territory of the Federal Republic of Germany. The Polish side also receives requests for legal assistance from both German Centres, necessary to continue investigations conducted by German prosecutors. It should be emphasized that co-operation with the prosecutors of the Ludwigsburg Centre is based on permanent, substantive contacts.

This rather intensive co-operation with the prosecutors of the German Central Offices for the Prosecution of National Socialist Crimes (*Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung Nationalsozialistischer Verbrechen*) in Ludwigsburg and in Dortmund arises mainly from the fact that several thousand investigations initiated in Poland before 1998 by the former *GKBZpNP-IPN* and referred to the German authorities with a continuation request have not been formally completed by the German prosecutor's offices. Since 2000, IPN prosecutors have been reviewing the files of those investigations and successively send requests to the Central Office for the Prosecution of National Socialist Crimes in Ludwigsburg for delivery of decisions of German prosecutor's offices to close such proceedings. In a large proportion of cases, the German prosecutor's offices discontinued proceedings referred to them by Polish authorities on grounds of failure to disclose the perpetrators of Nazi crimes or the inability to identify their place of residence, or due to their death. In some of the decisions of German prosecutor's offices, the reasons for discontinuation are based on legal opinions that differ from those adopted by Polish prosecutors. This concerns, in particular, crimes committed by the Wehrmacht and Luftwaffe in

September/October 1939 in Poland against civilian population, which were classified by the German prosecutors (with some exceptions) as acts other than war crimes, deemed to fall within the combating of partisans, which is permitted by the Hague Convention of 1907^[18]. Owing to the number of investigations pending, the German prosecutor's offices will be consistently requested to present justifications of final decisions in all investigations previously transferred to them by the Polish side.

Legal assistance requests were also sent by the IPN prosecutor's office, during the reporting period, to law enforcement agencies and justice administration in Austria, Lithuania, Canada, the United States of America, the United Kingdom, and Israel.

In four cases, at the request of the US Department of Justice Special Investigation Unit, proceedings are currently pending with the IPN prosecutor's office aimed to check whether sufficient evidence is in hand for a request for extradite perpetrators of Nazi crimes, to stand trial in Poland. The perpetrators have been stripped of US citizenship due to the fact that in their applications for the award of citizenship they concealed their involvement in crimes committed during World War II.

In the years 2000-2003, the IPN prosecutors approached the law enforcement agencies in Germany, Israel, the Russian Federation, Belarus, and Lithuania with dozens of appeals for legal assistance in the form of interrogation of witnesses and submission of documents providing evidence of crimes falling within the scope of the proceedings pursued by the Commission.

IV.

Major investigations into Nazi crimes currently conducted by the IPN prosecution branches.

The first large-scale investigation into Nazi crimes by the IPN prosecutors was the case^[19], initiated on 5 September 2000, concerning the Gestapo-inspired mass murder in Jedwabne on 10 July 1941, of at least 340 Polish citizens of Jewish nationality, whom at least 40 Poles (men) gathered and guarded in the market square, and then led nearby a barn, where they killed a group of at least 40 people in an unidentified way, and burned alive a group of at least 300 people of both sexes, having closed them inside a barn, and also, over the preceding fortnight – i.e. from the moment the German occupation of the locality started – they committed individual killings under unknown circumstances^[20]. In view of the death of the suspected perpetrators of the crime, the investigation was discontinued on 9 July 2003.

The clarification of all historic and legal aspects of the Jedwabne crime was initiated by the *Neighbours. The Destruction of the Jewish Community in Jedwabne, Poland* by Jan T. Gross, which was first published in Poland in 2000, and then in several other countries. The subsequent multilateral historical research as well legal circumstances and causes of that homicidal crime and the prosecution of its perpetrators in several trials in the years 1949-1953 are dealt with in a two-volume work by the IPN^[21].

Investigation into crimes committed in the Gestapo prison in Bielsko Podlaskie between 1942 and 1944^[22], initiated in 11 September 2001. In July 1943, the Germans shot 50 people there, including woman and 16 children. The Gestapo interrogated several survivors as witnesses. According to information obtained from the Ludwigsburg Centre, German prosecutor's offices closed investigations concerning a number of war crimes committed in the Bielsko Podlaskie county on grounds of a lack of sufficient proof of the suspects' guilt. As regards police commandant Lampe, his case was closed in Germany due to his death.

Investigation into mass murders committed in the years 1941-1944 in Ponary near Vilnius by

members of the German police and the collaborating Lithuanian Police. Ponary was the site of the most numerous executions of Polish citizens in those territories. The perpetrators of the crimes were members of special operating groups consisting of the German police, the security service, the Gestapo, and the Lithuanian special detachment "Ypatingasis Burys". Based on the results of exhumations made on the crime scene and investigations conducted by law enforcement agencies of different states, it is estimated that the total number of the victims may be about 100,000. Most of the victims were Jews and Poles^[23].

Investigation into the kidnapping of Polish children for "Germanization" at the *Lebensborn* establishment at Poźczyn Zdrój between 1939 and February 1945. The IPN prosecutor's offices have already established the identity of the managers of the establishment and the fact that its personnel were brought from Bavaria. The IPN prosecutor has also determined that children were sent to the establishment, who had previously been qualified for „Germanization” based on the results of racial, health and psychological tests. There were three departments: pregnancy, maternity and small child. The *Lebensborn* personnel changed the children's persona data, giving them a new identity – issuing a new birth certificate containing untrue data. Therefore it is extremely difficult to reach the harmed persons, as most of them are unaware of the descent. At the establishment, the use of the Polish language and contacts with parents or relatives were strictly prohibited. A system of penalties was also introduced. After some time the children who have made sufficient progress in the „Germanization” process were taken away to special centres inside Germany, and subsequently (or immediately) referred to German families. The „Germanization” process involved small children. Identical procedures were also applied there to Ukrainian children^[24].

Investigation into the deportation of some 20,000 inhabitants of the Ływiec Area (Cieszyn Silesia) to the General Government province in 1940, under the so-called *Saybusch Aktion*, which was designed to Germanize the areas incorporated in the Third Reich. Most of the displaced persons were removed from their places of residence at a very short notice, usually within minutes. As a rule, they were allowed to take 25 kg (10 kg for children) of the most necessary things. They were loaded on freight cars in such numbers that they were often only able to stand inside, and they were supplied with no food or water for many days' transport, nor were they let outside to relieve themselves. Altogether, the IPN prosecutors heard 485 persons. In view of the fact that the masterminds of the expulsions were convicted in the Nuremberg trials and the inability of identifying the immediate enforcers, the most important goal of the investigation is to establish the identity of the harmed persons and collect complete documentation explaining the circumstances of the crime^[25].

Investigation into the homicide of about 30 persons of Polish and Jewish nationality by German police and military on 9 September 1939 in Będzin (Upper Silesia). The Germans set fire to the synagogue and a number of houses in the neighbourhood, and then started shooting at all those who tried to escape from the burning houses. A large group of Jews managed to reach an area nearby a Catholic church. The parish priest opened the gate in the wall surrounding the church and enabled them to flee to the nearby castle hill. The Germans did not allow the synagogue fire to be extinguished. On the same night they arrested and detained on the county administration premises a group of about 30 persons of Polish and Jewish nationality. All those persons were then shot on the county administration yard, where the town's military headquarters was situated. The IPN prosecutor has determined that the commander of the operation was probably a SS officer by the name of von Hattko; he also identified the addresses of witnesses of those events, living in Israel^[26].

Investigation initiated on 23 September 2002 at the request of the Director of the Simon Wiesenthal Centre, Efraim Zuroff, into the crimes committed in 1943 in Lysiec (presently in western Ukraine) by Bohdan Koziy, a Ukrainian policeman who killed Polish Jews. On 26 October 1943 a German military policeman and Bohdan Koziy shot five women and a child, who were previously arrested. A

moment later the same two perpetrators shot two men. A few days later Koziy tore a girl from a woman's arms and shot her in the head. In the summer of 1943, Bohdan Koziy and two other Ukrainian policemen shot a baker's family – a married couple and their two daughters aged 9 and 12. Having captured the hiding family, they drove them to the Jewish cemetery, where they shot them in the back of the head. He did the same to 12-year-old Lusina Rosiner. He found the hiding girl in a barn nearby the precinct and shot her on the spot.

After the war Koziy left Europe for the USA, where he was granted residence in 1957. Twenty years later the criminal was uncovered there. The subsequent story of B. Koziy is symptomatic and thus worth a longer note. Let us quote the author of a press report published in Poland in 2003:

“ ‘In 1942-1944 he committed cruel and inhuman acts of violence against civilian population, including children, such as arresting, beating and killing, and thereby helped the German authorities to persecute the civilian population during World War II’ - this is what the [US] indictment says about o Koziy. The charges included also forging data and concealment in his visa documents and in the application for the United States citizenship of the fact that he lived in Lysiec and was a member of the Ukrainian police, and that he belonged to the Ukrainian Nationalist Organization, which collaborated with the German occupying forces. Koziy's attorneys intended to prove that the Organization opposed both Germans and Soviets, and that the accused, being an active member of the resistance movement, was hiding from the occupying forces and was often forced to wear a beggar's rags or skirts, but never a police uniform.

In 1981, the Washington administration earmarked funds to send lawyers from the Department of Justice to Warsaw, and to Lysiec, then in the Soviet Union. The evidence they brought back left no doubt - Bohdan Koziy was the same man who had murdered people in a police uniform. Videotaped testimonies by witnesses described his criminal activity in detail.

In a large courtroom of the Federal Court of West Palm Beach, seating 500 and full to capacity, the observers of the trial, many of them victims of concentration camps, were listening horrified to the witnesses' testimony displayed on monitors. The inhabitants of Lysiec talked about Koziy's brutality, re-experienced the death of Monika Singer and the shots fired at bandage-wrapped Lusina Rosiner. Everybody pointed at him, always picking the right photograph. Koziy was stubbornly repeating: 'I've never killed any Jew... I'm a loyal citizen of this country...' His defence declined to hear witnesses.

'Bohdan Koziy's American citizenship has to be revoked. He obtained it by concealing and intentionally falsifying his past', stated judge James C. Paine. And he added firmly that he was convinced that Koziy was a murderer: 'The accused killed doctor Singer's daughter! When the child was begging to be set free, Koziy shot and killed her in cold blood! '

It was clear that Koziy had to return the American passport and wait for expulsion from the United States. However, appeal procedures and visits to courts of higher instances enabled him to win two and half years. In October 1984, the United States Supreme Court confirmed the verdict of judge Paine. Koziy was no longer a US citizen and could expect prompt deportation.

But where should a Ukrainian be deported if Ukraine does not exist as a state, and he committed his crimes in a territory that passed from the jurisdiction of Poland to the USSR. Besides, no state demanded the extradition of Bohdan Koziy! The government of the West Germany, approached by the US administration of justice, refused to request extradition of the criminal. Attempts to interest Israel in the case also failed, as the country was then involved in costly suits and preferred to limit itself to prosecuting the 'big fish'. Finally –

albeit reluctantly – the American wrote to Moscow. The response from the Soviet Union was positive. In April 1985, the USSR officially applied for extradition of Koziy. However ... the criminal had already managed to flee from the US.

He found a country that agreed to host him without any passport, and that had not signed an extradition treaty with the Soviet Union – Costa Rica. (...) The authorities in San José were interested in having retired rich people from America settle in their country. This is the reason for privileges, such as no requirement for US citizens to hold a passport when entering Costa Rica. First of all, however, a special *rentista* status was established for them, whereby citizenship privileges were granted without a formal award of citizenship, which would deprive a American of US pension benefits. This was a perfect solution for the Koziy family. Bohdan's wife, Yaroslava, landed in San José first and soon became a *rentista*. Koziy, being a stateless person, had no chance to be granted such status, but he was entitled to a permanent residence card as a *rentista*'s husband. He went to the Costa Rican consulate in Miami and based on an expired document he received, for 30 dollars, a Costa Rican visa, in which an under-informed consul wrote that Koziy was a citizen of Ukraine, which then did not exist as a state. He flew undisturbed by the Costa Rican airlines LACSA. He felt safe again. A spacious *hacienda*, dazzling nature, pleasant climate, and complete anonymity were waiting for him. He again started to build the life of a decent citizen, Costa Rican this time.

When the Costa Rican authorities found out that they gave shelter to a war criminal, they expressed 'profound concern with the fact', but it soon turned out they were completely helpless. The United States were no longer interested in Koziy and extradition to the USSR was out of question, as the countries had relevant agreement. While with good will of both parties a lack of such treaty does not necessarily prevent deportation, Costa Rica wanted to show at all costs that, as a democratic country, it gives priority to human rights over justice and decided to protect the murderer from capital punishment that could be imposed on him in Moscow. Although the Soviet government gave their assurance that no such penalty was taken into consideration, democratic Costa Rica did not believe Communists.

However Koziy had to stay in custody pending a decision of the Costa Rican court. When the police came to his house, he did not even open the door. He stood on the porch, put a gun to his head and screamed he would rather die on the free Costa Rican soil than go back to Communism. The police went away empty-handed. Unprecedented negotiations started between the police and prosecutors and the criminal's lawyers. This may sound absurd, but Koziy allowed himself to be arrested only after he was assured by the authorities that they would not send him to the USSR. He spent less than two months in custody, until the Soviet extradition request was rejected.

If it were not for the Jewish community, which was largely of Polish descent, the Koziy case would have ceased to exist. Jacobo Milgram was born in Costa Rica, but most of his family were killed in Nazi camps in Poland. The awareness of the fact did not allow him to consign Koziy's crimes to oblivion. He opens a fat file with documents inside: 'This is testimony to nearly 20 years of our stubborn struggle', he shows. 'But it was worth it', he adds. Owing to the efforts of Jacobo and a dozen of other members of the Jewish commune there, in 2000 the San José court issued an order to expel the criminal from the country.

However, a problem arose again – where to? The USSR no longer exists, unofficial signals come from Ukraine that the whole affair is part of a global Jewish conspiracy, and Polish authorities have other problems to deal with. However, at the beginning of the year the Costa Rican press breaks the news that a young Institute of National Remembrance in

Warsaw intends to request extradition of the criminal. The case gains momentum. However, the Polish prosecutors are not yet sure whether Koziy is still staying in Costa Rica and even if he is still alive.

Pressed by journalists, the Costa Rican Minister of Public Security Rogelio Ramos gives and affirmative answer and gives them the address where Koziy lives. I go there with a group of journalists. The only person present is a gardener, who explains that the fine *hacienda* had been sold by the Koziys a long time ago, and that they moved to a more urban neighbourhood. He gives us their address. The new place turns out to be a small cottage of two rooms at the most. The cottage seems deserted. We knock on the door, but nobody answers. In the door, we find unpaid electricity bills made out to Yaroslava Koziy. The neighbour explains that the Koziys were not living there long, and he has not seen them for several months. They seemed ready to move. Where to? Nobody knows. It seems then that the former policeman from Lysiec has escaped justice again.^[27]

At the end of November 2003, the Costa Rican court agreed to arrest B. Koziy and extradite him to Poland. The local police were not looking very seriously for Koziy, who was hiding in Costa Rica. The 81-year-old Ukrainian, Bohdan Koziy, finally escaped responsibility for his involvement in the Holocaust on his own terms – he will never appear before an earthly court, as he died in Costa Rica on 1 December 2003^[28].

Investigation into the shooting at an unidentified date between 1 February 1944 and 31 March 1944 of at least fifty people of Polish nationality at P³otycz Ma³a in the Tarnopol county (presently in western Ukraine). An IPN prosecutor has determined that the crime could be committed by soldiers of the Ukrainian SS *Galizien*, on the instigation of local Ukrainian nationalists, or by German soldiers. The prosecutor will hear members of the families of the victims and eyewitnesses of the crime, who are now living in Lower Silesia^[29].

Investigation into mass killings of Polish citizens of Jewish nationality during the liquidation of the so-called Lublin Ghetto II in the district of Majdan Tatarski, between April 1942 and November 1942, in Lublin. From March 1941, the Nazis exterminated about 40,000 Jews crowded in that area, some of them brought from Germany and Holland. Nazis shot those people on the spot or killed them in gas chambers in extermination camps, mainly in Be³zec. On 17-20 April 1942, a part of the Jewish population, who survived the liquidation of Ghetto I, about 6,000 in all, mostly craftsmen, were moved by the Germans to Majdan Tatarski, an eastern district of Lublin. On 20 April 1942, some 2,000 selected persons, who were unable to provide services useful to the German army – including women and children – were shot in the woods, and another 3,000 were shot in the ghetto on 8 November 1942. Several hundred Jewish survivors were rushed to the nearby concentration camp in Majdanek. The IPN prosecutor has obtained from the Ludwigsburg Centre 13 volumes of files from a trial held before the Regional Court in Wiesbaden, in which three of several dozens of perpetrators of the crime were convicted. Currently the prosecutor is establishing the personal data of the victims^[30].

Investigation into the killing by Wehrmacht soldiers of 54 to 68 persons – Poles and about 18 Polish citizens of Jewish nationality, on 13 September 1939, who were burned alive, having been put in a barn and set on fire, in the village of Cecylówka G³owaczowska, in the Mazowsze Province^[31].

Investigation into the killing by Wehrmacht soldiers of 43 inhabitants of the village of Karpiówka in the Lublin Province, by burning them alive and in other ways, on 31 December 1943. The soldiers drove selected persons to one of the farm buildings, tortured six women, and then shot at all those people and set the building on fire. The whole village was then burned to the ground, and the other inhabitants of Karpiówka were taken to the Majdanek concentration camp. The IPN prosecutor

determined that the soldiers were under the command of Maks Ehrle^[32].

Investigation in crimes committed in 1942-1944 by German and Belarusian police – members of the personnel of the extermination camp in Ko³dyczew near Baranowicze (presently in western Belarus), against prisoners of the camp. The camp personnel were servicemen of the 4th Company of the 13th SS Special Battalion. In the camp, Germans detained civilians (sometimes whole families with children), soldiers of the Polish underground, Soviet partisans and clergymen. Every now and then they took groups of prisoners to a nearby forest by trucks, where they shot, gassed or clubbed them death. One of the methods of killing were gas chambers, similar to those used later in the immediate extermination camp in Che³mno on the Ner. On 27-28 June 1944 the Nazis liquidated the camp. They took the prisoners (several hundred to a thousand people) to the forest and shot, then burned the camp buildings and bulldozed the entire area. Altogether, the SS troops killed about 22,000 prisoners in the camp. The camp documentation was destroyed. The purpose of the investigation is to collect information on how the camp operated and on the crimes committed there, from all sources possible. In the course of the proceedings witnesses are heard whose relatives died in Ko³dyczew, and the few who have survived the camp. A review is in progress of multiple-volume files of criminal cases against camp guards convicted for their crimes in post-war lawsuits. Based on those files and other archival documents, the names of the officers are being established, who have not been punished for the crimes committed^[33].

Investigation into mass killings of Polish citizens of Jewish nationality, committed between June 1941 and July 1944 by German members of different formations, assisted by members of paramilitary formations and Belarusian, Lithuanian and Latvian police detachments, within the territory of the Nowogródek Province (presently in western Belarus). Owing to the large scale of executions, it is impossible to estimate the number of the victims. In that area, the Nazis did not prepare any list of people murdered. In the course of the investigation, the number of victims and their identity are established solely on the basis of witnesses of the crime. To give an idea of the scale of the homicide, approximate numbers of victims in each town can be provided. And so, in Dereczyn the Nazis murdered about 5,500 people, in Lida about 5,600, in Nowogródek – between ten and twenty thousand, in Wo³o¿yn and Niecøwie¿ – about 3,000 each, in Ejszyszki – about 2,500, in ³o³udek – about 1,500, in Iwie – about 1,700. The testimony given by witnesses interrogated in the course of the investigation is shocking. This is how the witness Regina £. recalls the homicide of Jews in Szczuczyn: “[...]Being at home about 10:00 am, I saw the airport area through the window. I saw about 3,000 Jews there, kneeling in rows, their heads down. There were men, women, and children. They were surrounded by Nazis [...] Nearby the place where the Jews were kneeling, there were trenches some ten to twenty meters long. Every quarter of an hour or so, the Jews kneeling in a row had to get up, get undressed, and run a ditch. When they reached it, they were machine gunned to death. This way the Jews kneeling in all the rows ran to the ditches. By about 6:00 pm they had all been murdered [...]”. The IPN prosecutor intends to identify the persons who witnessed the crime, and whose testimony may help to identify the perpetrators who have not yet been punished for their crimes^[34].

Investigation into mass killings of Polish citizens, committed in the summer of 1943 by members of the Gestapo, the German military police, and other German formations, as well as the police and members of Belarusian, Lithuanian and Latvian detachments collaborating with the Germans during the pacification of a number of localities in the Nalibocka Forest region (presently in western Belarus). The Nazis committed the murders during the pacification of about 60 villages, colonies, settlements and granges. Persons suspected of co-operating or supporting partisans, members of partisans' families and persons who refused or were unable (due to old age or illness) to leave their homes were shot on the spot or collected in different buildings, which the Nazis then set on fire. In the Orthodox church in the village of Dory, Pierszaje commune, between 100 and 500 people (according to different testimonies) were burned alive. The investigation conducted by the IPN prosecutor also deals with killings of representatives of the intelligentsia, gentry, and priests. Based on the investigation findings so far, in view of the mass nature of the crime, the exact number of the

victims cannot be determined. The IPN prosecutor has heard 37 witnesses. What poses a difficulty in the investigation is the arduous process of looking for current addresses of witnesses of the crime, living throughout Poland and outside the country^[35].

Investigation into large-scale killings of Polish citizens of Romany nationality, committed during World War II in the ghetto in Piotrków Trybunalski (the Wielkopolska region) by members of the German occupation authorities. Those detained in the ghetto suffered starvation and extremely harsh living conditions. The Germans organized selections of the Romanys^[36].

Interrogation into the involvement of eight Poles, prisoners of the Gestapo, in the crimes of genocide committed in the years 1941-1944 in the extermination camp in Chełmno on the Ner (Wielkopolska). In this matter, the IPN prosecutor accused Henryk M. that "between 8 December 1941 and April 1943, in Chełmno on the Ner, acting jointly and in concert with others in support of the Nazi occupying forces, he participated in the crimes of genocide committed in the local extermination camp on Jewish population and on groups of people of other nationalities, by beating the detainees, taking away their valuables, clothes and personal belongings, and leading people sentenced to death to mobile gas chambers". The court arrested the suspect Henryk M. by decision of 6 July 2001, the District Court in Poznań found M. guilty of the charges and sentenced him – by applying extraordinary mitigation of punishment – to 8 years^[37] imprisonment. On 5 February 2002, the Court of Appeal in Poznań sustained the ruling, and on 8 April 2003 the Supreme Court dismissed a last resort appeal by the defence. He is the first person convicted for a Nazi crime in 25 years. Henryk M., who is now 81 years old, is not serving the sentence of 8 years' imprisonment. Owing to the condition of his health, the court has postponed the penalty.

The camp in Chełmno on the Ner was set up in a forest in December 1941 and it was the first place of mass extermination of Jews in Europe. The camp was established on the initiative of Heinz Rolf Hoepner, head of the Warthegau security service in order to "definitively solve the Jewish issue in the Warthegau region annexed to the Reich". It is estimated that Germans murdered 300,000 Jews there. The Nazis killed the victims with exhausts in customised trucks. At first they had the bodies buried in collective graves, and from 1942 burned them in crematoriums. In the next year they liquidated all facilities of the camp. Only a few Jews survived, who managed to escape. The Museum of Martyrdom has existed there for 14 years^[38].

Investigation into the homicide of patients of mental hospitals by the Germans in the so-called Warthegau in the years 1939-1945. Under the euthanasia programme for mentally ill persons, the Nazis killed several thousand people in the area. The killing campaign by *Sonderkommando SS* was led by commissioner Herbert Lange. The extermination campaign was conducted in consultation with the management of mental hospitals, who drew up lists of patients for what was referred to as "evacuation". The IPN prosecutor has identified, based on the evidence collected, the members of hospital personnel who collaborated with *Sonderkommando Lange* in the patient killings campaign^[39].

Investigation into crimes against Polish forced labourers committed in the territory of the Third Reich. The labourers were submitted to the jurisdiction of police courts, including so-called „special treatment" (*Sonderbehandlung*), which allowed the police to promptly kill individuals or even groups of people on grounds of having found them to have "posed a serious threat to the Reich". On this basis the Nazis hanged many Poles, e.g. for contacts with Germans. The police "judges" also sentenced people to death for abandonment of work, refusal to perform work, and for other misdemeanours. Exact data on the number of death sentences has not been established to date. The IPN prosecutor has heard several dozens of witnesses^[40].

Investigation into the internment by the German authorities in Szczecin on 22 June 1941 of 127 seamen of the Soviet merchant fleet from Leningrad, and subsequent probable killing them by the Gestapo. Some of the seamen were transferred on 16 July 1941 to a police prison in Berlin. The

others remained in Szczecin. Their fate is unknown, but there is a justified suspicion that all were murdered^[41].

Investigation into the shooting by the SS Cavalry Regiment 2 Einsatzgruppe B in August 1941 in Łohiszyn (presently in western Ukraine) of 270 – 300 people of Jewish nationality. Information obtained from the Ludwigsburg Centre confirmed that the operation against the Jewish population was started by the SS immediately after the city of Pińsk was taken. On 5 August 1941 German soldiers shot the first group of Jews (5000-6000 men aged 18 to 60). A few days later, between 7 and 9 August 1941, they murdered another group of about 200 women and children. Subsequent executions of Jews were carried out by the Nazis in the Pińsk region in August 1942 under the “solution of the Jewish problem” campaign^[42].

Investigation into crimes committed by Germans against Polish citizens of Jewish population, in the vicinity of Lwów in 1941-1943. The investigation concerns the following crimes: (1) the shooting of an unidentified number of Jews in the summer of 1943 at Brzuchowice (outskirts of Lwów), in the Jewish ghetto set up there; (2) the shooting in 1943 at Sokolniki of an unidentified number of Jews brought from the vicinity of Lwów; (3) the shooting at Borki Dominikańskie of an unidentified number of Jews, who escaped in the summer of 1943 at that locality from wagons that carried them from Lwów to a extermination camp; (4) the shooting in 1942 of several dozens of Jews living in Lwów, including members of the Stark family; (5) mass shooting of Jews in 1942-1943 in Lwów in the Piaskownia and Czartowskie Ska³y area; (6) the shooting of about 50 Jews in 1941 or 1942 at a Posada Nowomiejska grange in Miasto Ma³opolskie in the former Dobromil county; (7) the shooting in 1943 of Helena Kempner-Lubowiecka in Dobromil in the former Lwów Province. The IPN has heard 32 witnesses, including identified victims. According to their testimony, the crimes described above were committed by German personnel from different formations. However, the witnesses heard do not indicate any individual perpetrators. The IPN prosecutor has reviewed the Polish archives: the Central Military Archive, the Archive of New Files, the State Archives in Kraków and Rzesów, the Jewish Historical Institute, and in the Archives of the Institute of National Remembrance^[43].

Investigation into the killing by the Germans of 25 professors of Polish schools of higher education, members of their families and persons living in the same household, in Lwów in July 1941. The evidence collected so far reveals the following picture of the crime. In the evening of 3 July 1941, the Gestapo arrested 25 professors, who were brutally interrogated at night, and then shot at dawn on 4 July. Several persons saw the execution from the nearby buildings, but they would not attempt to identify the perpetrators. For reasons undisclosed to this day, one of the professors was released. It is suspected that this was due to his family connections. Servants were also released. In order to destroy any traces of the crime, the professors' bodies were exhumed and then burned by members of a “death team”. The IPN prosecutor has found documents of significance to the investigation and potential witnesses of the crime^[44].

Investigation into the homicide of about 350 people by German soldiers on 8 August 1944 in the ruins of the Grand Theatre in Warsaw. In the early days of the Warsaw Uprising, German troops removed civilian population from residential buildings in the vicinity of the Grand Theatre, and then put the people in the ruins of the opera building. They were split into two groups. One consisted of women with small children and the other of men and teenage boys. Then the women and children were expelled by the Nazis from Warsaw to a transit camp in Pruszków. Meantime, about 350 men detained in the ruins of the Grand Theatre were shot by German soldiers on 8-9 August 1944, and their bodies were incinerated. In the course of the investigation only 33 victims of the crime were identified, despite extensive efforts. An IPN prosecutor heard witnesses and persons exercising the rights of the deceased victims^[45].

V.

While 59 years have passed from the end of World War II, new cases keep appearing of Nazis who are still alive and unpunished. These are often people who have obtained citizenship by false representation or fraud from one of the American states, concealing their Nazi past.

On 27 January 2004, the Simon Wiesenthal Centre requested the IPN to apply to the United States for extradition of 84-year-old Jack (Jacob) Reimer, who is suspected of involvement in murdering Jews during World War II. IPN prosecutors have been taking "intensive measures with a view to filing a request for extradition of Reimer. The evidence we have gathered so far is insufficient to convict him in Poland". In the opinion of the director of the Centre, Efraim Zuroff, J. Reimer is a Nazi who committed numerous crimes in Poland for nearly four years during WW II. In January 2004 Reimer, a German born in Ukraine, was stripped of his American citizenship by the US authorities (district federal court in New York). "As disclosed by Lawrence N. McKenna, a Manhattan judge, Jack Reimer settled in New York in 1952 and was selling chips in Brooklyn. However, according to the judge, he played a support role in the liquidation of the Czêstochowa ghetto. The indictment filed in September 2002 by the US Government states that Reimer served at Czêstochowa from 19 September to 6 November 1942, that is during the largest-scale deportations of Jews to the Treblinka extermination camps. He was also believed to have served as a guard in the Trawniki concentration camp near Lublin and participated in the liquidation of the Warsaw ghetto"^[46]. He himself is said to have claimed that he used to shoot "over the heads" of Jews as they were waiting for death in pits^[47].

The case is handled by the ŁódŹ prosecution branch of the Institute of National Remembrance. "We have come into possession of information about Reimer owing to good contacts with the US Special Investigation Unit", says prosecutor Zygmunt Kasprzak of the Chief Commission for the Prosecution of Crimes against the Polish Nation. "However, in the USA only an administrative procedure was launched. The resulting materials can only have an auxiliary function in a criminal trial in Poland. To be able to request extradition of Reimer, we must collect evidence. Prosecutor Kasprzak promises he will also look for documents abroad, including Ukraine, where Reimer was born"^[48].

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[1] *Monitor Polski*, Paris, 23 December 1939.

[2] Leszek Gondek, *Polska karz'ca*. Warsaw 1988.

[3] Czes³aw Pilichowski, Udzia³ Polski w badaniu i œciganiu zbrodni hitlerowskich [in:] *Zbrodnie i sprawcy. Ludobójstwo hitlerowskie przed s'adem ludzkoœci i historii*. Czes³aw Pilichowski (ed.). Warsaw 1980, pp. 23-87.

[4] *Journal of Laws* 1944 No 4, item 16, as subsequently amended.

[5] Article 5 § 1 point 3 of the Act of 6 June 1997 – Provisions implementing the Penal Code (*Journal of Laws* No 88, item 554).

[6] As of the entry into force on 1 September 1998 of the Penal Code of 6 June 1997, the death penalty is replaced by the penalty of life imprisonment.

[7] Cf. chapter „Zbrodnie wojenne z lat 1939-1945 w polskim orzecznictwie s'adowym i doktrynie prawa” the book by Leszek Kubicki, *Zbrodnie wojenne w œwietle prawa polskiego*. Warsaw 1963, pp. 79-155.

[8] Janusz Gumkowski, Tadeusz Ku³akowski, *Zbrodniarze hitlerowscy przed Najwy¿szym Trybuna³em Narodowym*. 2nd edition. Warsaw 1965.

[9] Case file NTN 406/46. Quoted from: Tadeusz Cyprian, Jerzy Sawicki, *Siedem procesów przed Najwy¿szym Trybuna³em Narodowym*. Poznañ 1962, pp. 24-25.

[10] Raphael Lemkin, *Axis Rule in Occupied Europe*. Washington 1944. Carnegie Endowment for International Peace. Two years later Lemkin added: “Genocide does not at all mean direct destruction of a nation. It is rather a plan of diverse measures aimed to destroy substantial foundations of the life of national groups with a view to destroying them. The perpetrator seeks to achieve this goal by breaking down political and social institutions, culture, language, national and religious feelings, the ability of economic existence of national groups, and by depriving individuals who belong to such groups of personal safety, freedom, health, respect, or even life. Genocide is aimed against groups as a whole” – Le genocide. *Revue Internationale de Droit Pénal* 1946 No 3-4, pp. 371.

[11] *Journal of Laws* of 1945, No 51, item 293. The Commission has district branched. The activities of GKZNwP involved mainly (1) collecting information throughout the territory of the country, concerning Nazi crimes, conducting investigations concerning camps, mass executions and extermination; (participation in preparing materials – collecting and supplying evidence of guilt for the extradition from Germany of wanted war criminals (about 7000 cases); (3) conducting major cases against leading extradited war criminals – cf El¿bieta Kobierska-Motas, *Ekstradycja przestêpców wojennych do Polski z czterech stref okupacyjnych Niemiec 1946-1950*. Part 2. Warsaw 1992, p. 17.

[12] *Journal of Laws* of 1984, No 21, item 98. By the Act of 4 April 1991, the responsibilities of GKBZpNP-IPN were expanded by including the prosecution of Stalinist crimes committed in Poland in the years 1944-1956 (*Journal of Laws* of 1991, No 45, item 195, as subsequently amended).

[13] *Journal of Laws* of 1998, No 155, item 1016, as subsequently amended.

[14] Article 1 point 1 (a) in conjunction with Article 45 of the Act.

[15] Act on the amendment of the Constitution of the Republic of Poland of 29 December 1989, *Journal of Laws* of 1989, No 75, item 444.

[16] El¿bieta Kobierska-Motas, *Ekstradycja przestêpców wojennych...*, *op.cit.*, p. 19.

[17] *Informacja o dzia³alnoœci Instytutu Pamiêci Narodowej – Komisji Œcigania Zbrodni przeciwko Narodowi Polskiemu w okresie 1 lipca 2001 r. – 30 czerwca 2002 r.* Warsaw, September 2002, p. 25.

[18] The incredibility of this statement is demonstrated by the investigations conducted by IPN prosecutors, which are presented in Part IV of this paper.

[19] Branch Commission for the Prosecution of Crimes against the Polish Nation (OKœZpNP) in

Bia³ystok, case No S 1/00/Zn.

[20] *Informacja o dzia³alnoœci Instytutu Pamiêci Narodowej – Komisji Œcigania Zbrodni przeciwko Narodowi Polskiemu w okresie 1 lipca 2002 r. – 30 czerwca 2003 r.* Warsaw, November 2003, pp. 40-46.

[21] *Wokó³ Jedwabnego*. Vol.. 1 and 2. Piotr Machcewicz, Krzysztof Persak (ed.) Warsaw 2002 IPN: 525 + 1035 s. Cf also: *The Neighbors Respond. The Controversy over the Jedwabne Massacre in Poland*. Antony Polonsky, Joanna B. Michlic (eds.). Princeton 2004 Princeton Univ. Press.

[22] Branch Commission in Bia³ystok, case No 38/01/Zn. This and all subsequent descriptions of the cases come from (unless stated otherwise): *Informacja o dzia³alnoœci Instytutu Pamiêci Narodowej – Komisji Œcigania Zbrodni przeciwko Narodowi Polskiemu w okresie 1 lipca 2002 r. – 30 czerwca 2003 r.* Warsaw, November 2003, pp.. 46-184.

[23] Branch Commission in Gdañsk, case No S 1/00/Zn.

[24] Branch Commission in Gdañsk, case No S 119/01/Zn.

[25] Branch Commission in Katowice, case No S 5/00/Zn.

[26] Branch Commission in Katowice, case No S 9/02/Zn.

[27] Dorota Wysocka, Zbrodnia bez kary. *Rzeczpospolita*, 2003-01-27, No 22, pp. A5.

[28] Branch Commission in Katowice, case No S 45/02/Zn. Cf. also *Gazeta Wyborcza* of 02/12/2003, No 280, pp. 11.

[29] Branch Commission in Krakow, case No S 63/02/Zn.

[30] Branch Commission in Lublin, case No S 7/00/Zn.

[31] Branch Commission in Lublin, case No S 106/02/Zn.

[32] Branch Commission in Lublin, case No S 94/02/Zn.

[33] Branch Commission in ŁódŹ, case S 1/00/Zn.

[34] Branch Commission in ŁódŹ, case S 52/01/Zn.

[35] Branch Commission in ŁódŹ, case S 76/01/Zn.

[36] Branch Commission in ŁódŹ, case S 27/03/Zn.

[37] For this crime, only one penalty is envisaged – life imprisonment, cf. footnote 6.

[38] Branch Commission in Poznañ, case S 1/00/Zn. Cf also: Micha³ Rembas, Piotr Zab³ocki, OskarŹony o zbrodnie hitlerowskie. *Gazeta na Pomorzu*, 2000/11/04-2000/11/05, No 258, pp. 1.

[39] Branch Commission in Poznañ, case S.3/00/Zn.

[40] Branch Commission in Poznań, case S.4/00/Zn.

[41] Branch Commission in Poznań, case S.31/01/Zn.

[42] Branch Commission in Poznań, case S. 99/02/Zn.

[43] Branch Commission in Rzeszów, case S 3/00/Zn.

[44] Branch Commission in Rzeszów, case S 5/03/Zn.

[45] Branch Commission in Warsaw, case S 19/01/Zn.

[46] Zbrodniarz z Czêstochowy. *Gazeta Wyborcza-Czêstochowa*, 29/01/2004 No 24, p. 4.

[47] *PAP*, 28.01.2004.

[48] IPN na tropie. Kim by³ Jack Reimer. *Gazeta Wyborcza-Czêstochowa*, 30/01/2004 No 25, p. 4.