DOI: 10.14746/sh.2016.23.2.002

Sensus Historiae
ISSN 2082–0860
Vol. XXIII (2016/2)
s. 37-62

Szymon Pietrzykowski
Adam Mickiewicz University in Poznań

Legal Ramifications and Historical Impact of the Frankfurt Auschwitz Trial (1963–1965)

The main purpose of this paper is to present and to analyze the so-called Frankfurt Auschwitz Trial, which took place before the State Court in Frankfurt am Main from December 20, 1963 to August 19, 1965, containing a number of 183 sessions, carried out almost daily for over a year and covered meticulously in German as well as in international press,[1] radio, television and other communication sources. Due to enormous interest on the part of journalists, commentators along with more "regular" audience, the proceedings were removed from rather cameral courthouse to the more capacious Frankfurt City Council chambers. The Frankfurt Trial is alternatively known as "the second Auschwitz Trial." This is because the previous procedures examining various crimes and atrocities committed in the area of the Nazi concentration and extermination camps in Auschwitz-Birkenau did happen in Kraków, Poland, from November 24 to December 22, 1947, before the Polish Supreme National Tribunal. The Frankfurt Trial is one of several such events regularly held in West Germany at least from the early sixties of the twentieth century, in which the former crew members of various *Konzentration-* and *Vernichtungslagers*, representing different ranks and honors, including camp inmates appointed as prisoner functionaries (the so-called *Kapos*), were called to bear responsibility for their wrongdoings, both in legal and moral terms.[2] There were plenty other trials

[1] By German press I understand newspapers released at that time in the Federal Republic of Germany (FRG, commonly referred as West Germany before the reunification in 1990) and former German Democratic Republic (GDR, East Germany).

[2] However, various solutions which these two dimensions offer appear to be highly insufficient and unsatisfying in dealing with such specific, exceptional issue. As Hannah Arendt aptly noted in the context of Nuremberg Trials: "The Nazi crimes, it seems to me,

associated with Auschwitz, such as the one held again in Frankfurt in 1977[3] or five years earlier in Vienna.[4] Instead of treating the Frankfurt Auschwitz Trial in years 1963–1965 as one of the many previous ones and those which occurred afterwards, particular emphasis is put here on its uniqueness: in terms of legal preconditions that distinguished it from trials outside West or East Germany (with the exception of Nuremberg, as will be explained later), and largely formed its presence in the media thus overall perception, and historical importance — rather overlook while the proceedings took place, realized some time after the final verdict was announced.

* * *

According to Rebecca Wittmann, "of approximately 100,000 people investigated in Germany [firstly in the four occupation zones, then both in

explode the limits of the law; and that is precisely what constitutes their monstrousness. For these crimes, no punishment is severe enough ..." (*Hannah Arendt — Karl Jaspers Correspondence, 1926–1969*, eds. L. Kohler, H. Saner, R. and R. Kimber [trans.], Harcourt Brace & Co., New York, San Diego and London 1992, p. 54). She expands her thoughts in subsequent works. As written in the 1964 essay *Personal Responsibility under Dictatorship*: "For the moral point of this matter is never reached by calling the thing by the name of *genocide* or by counting the millions of victims — extermination of the whole peoples has happened before in antiquity, as well as in modern colonization — it is reached only when we realize that this happened within the frame of a legal order, and that the cornerstone of this *new law* consisted of the command, *Thou shalt kill*, not the enemy but people who were not even potentially dangerous [although depicted in such way by the Nazi propaganda — Sz.P.], and not for reason of necessity but, on the contrary, even against all military and other utilitarian considerations" (H. Arendt, *Personal Responsibility under Dictatorship*, [in:] Hannah Arendt. Responsibility and Judgment, ed. J. Kohn, Schocken, New York 2003, p. 42). For more about troublesome relations between judicial justice, morality and Holocaust crimes, see for example: H. Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil*, Penguin Classics, London/New York 2006, pp. 253-298; H. Arendt, *Auschwitz on Trial*, [in:] Hannah Arendt, Responsibility and Judgment, pp. 227-256; L. Douglas, *The Memory of Judgment: Making Law and History in the Trials of Holocaust*, Yale University Press, New Haven/London 2001, pp. 1-7, 39-40, 152-154; D.O. Pendas, *Eichmann in Jerusalem, Arendt in Frankfurt: The Eichmann Trial, the Auschwitz Trial, and the Banality of Justice*, "New German Critique" 2007, No. 1, pp. 77-109.

[3] The one concerning the Auschwitz satellite camp of Łagisza (Lagischa) and death march that set off from the nearby town of Goleszów (Goleschau) to Wodzisław Śląski (Loslau) in Upper Silesia. Bernhard Schlink used this trial as a background for his best-selling novel *The Reader* (primarily released in Germany in 1995 under the title *Der Verleser*, translated into English two years later, the first Polish edition was released in 2001), filmed in 2008 by Stephen Daldry with an Oscar-winning performance by Kate Winslet.

[4] See, for example: M.T. Allen, *Realms of Oblivion: The Vienna Auschwitz Trial*, "Central European History" 2007, Vol. 40, No. 3, pp. 397-428.

Western and Eastern Germany — SZ.P.] and suspected of committing mass murder or participating in the machinery of the *Final Solution*, only about 6,500 were actually brought to trial, and the large majority of them before 1949."[5] Wittmann refers here mainly to such events as the Trial of Major War Criminals held before the International Military Tribunal in Nuremberg in years 1945–1946 and the subsequent proceedings lasting till 1949, as well as divergent trials conducted independently by the occupying forces, like those focused on the functioning of Dachau, Mauthausen-Gusen or Bergen-Belsen concentration camps — first two held by the Americans, the last one by the British[6] — or the denazification[7] processes which had their close equivalents also in other countries, to mention épuration (the so-called "purge trials"[8]) in France. These estimations are corroborated by other scholars: Devin O. Pendas assumes that "more than 6,000 ... trials ... took place between 1945 and 1980 in Germany,"[9] while Donald Bloxham rather safely insists that "the number of proceedings held in postwar Europe runs to several thousands, and the number of individual convictions to tens of thousands."[10]

[5] R. Wittmann, *Beyond Justice: The Auschwitz Trial*, Harvard University Press, Cambridge/London 2005, p. 5. Also see: R. Wittmann, *Holocaust on Trial? The Frankfurt Auschwitz Trial in Historical Perspective*, Graduate Department of History, Toronto 2001 [A Thesis submitted for the Degree of Doctor of Philosophy], http://www.collectionscanada.gc.ca/obj/s4/f2/dsk3/ftp04/NQ63679.pdf [30.12.2015]; R. Wittmann, *The Wheels of Justice Turn Slowly: The Pretrial Investigations of the Auschwitz Trial 1963–1965*, "Central European History" 2002, Vol. 35, No. 3, pp. 345-378; R. Wittmann, *Indicting Auschwitz? The Paradox of the Frankfurt Auschwitz Trial*, "German History" 2003, Vol. 21, No. 3, pp. 505-532.

[6] See, for example: D. Bloxham, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust Memory and History*, Oxford University Press, Oxford/London 2001.

[7] See: F. Taylor, *Exorcising Hitler: The Occupation and Denazification of Germany*, Bloomsbury Press, London 2011; F. Graham-Dixon, *Allied Occupation of Germany: The Refugee Crisis, Denazification and the Path to Reconstruction*, I.B. Tauris Co Ltd, London 2013; K.H. Jarausch, *After Hitler: Recivilizing Germans*, 1945-1995, Oxford University Press, Oxford/London 2006, pp. 19-98.

[8] The frequent subject of such "purification" were intellectuals (journalist, publicists, novelists, musicians, academics and others) accused of collaboration with the Germans during the occupation of France, see: A. Caplan, *The Collaborator: The Trial and Execution of Robert Brasillach*, University of Chicago Press, Chicago/London 2000; P. Watts, *Allegories of the Purge: How Literature Responded to the Postwar Trials of Writers and Intellectuals in France*, Stanford University Press, Stanford, CA, 1998; É. Conan, H. Russo, *Vichy: An Ever-Present Past*, University Press of New England, Hanover/London 1998, pp. 74-123; Y. Beigbeder, *Judging War Crimes and Torture: French Justice and International Criminal Tribunals and Commissions* (1940–2005), Martinus Nijhoff Publishers, Leiden/Boston 2006, pp. 167-198.

[9] D.O. Pendas, *The Frankfurt Auschwitz Trial, 1963–1965: Genocide, History, and the Limits of Law*, Cambridge University Press, Cambridge 2006, p. 1.

[10] D. Bloxham, *op. cit*., p. 3.

Moreover, he divides them into two mayor categories: "directed ... against those defined, often arbitrarily, as traitors or collaborators [denazification and French purge trials both seem to fit to this subsection — Sz.P.] and "enacted ... to prosecute manifestly illegal acts committed both by domestic and foreign nationals" [the so-called "war crimes trials" — Sz.P.].[11] In accordance with the statement given earlier by Wittmann, that the judicial activity was most frequent between 1945 and 1949, Jeffrey Herf discloses that the number of convictions decreased over the time in both German states: from 800 in 1950 to slightly over 200 in 1951, slightly less than 200 in 1952, about 125 in 1953, between 25 and 50 a year for the decade from 1954 to 1964 in Western Germany, and from 331 in 1951 to 140 in 1952, 85 in 1953, 35 in 1955 and at most ten convictions and as few as one in years 1955–1964 in Eastern Germany.[12] Correspondingly, Laura Bilsky observes that over the years the very nature of these trials changed drastically: the vast majority of them, including the most famous ones, such as already mentioned Nuremberg Trials (1945–1949), Adolf Eichmann's Trial in Jerusalem (1961–1962),[13] the now-discussed Frankfurt Auschwitz Trial, Klaus Barbie Trial in Lyon (1987)[14] and Ivan Demjanjuk's Trials in Jerusalem (1987–1988) and Munich (2009–2011)[15] were mostly criminal proceedings, focused on individual intent and limited by national bounds. However, the legal treatment of the Holocaust has recently switched to civil litigations; transnational in its essence, enabling a broader perspective on various issues, as shown in fiercely-debated lawsuits against Swiss banks in the late nineties.[16]

The Frankfurt Auschwitz Trial, which is commonly considered as one of the most important, ground-breaking trials that ever occurred, falls

[11] *Ibid.*, pp. 3-4.

[12] J. Herf, *Politics and Memory in West and East Germany since 1961 and in Unified Germany since 1990*, [in:] After Eichmann: Collective Memory and the Holocaust since 1961, ed. D. Cesarani, Routledge, London/New York 2005, pp. 41-42.

[13] See: H. Arendt, *Eichmann in Jerusalem*, *ed. cit.*; D.E. Lipstadt, *The Eichmann Trial*, Enigma Books, New York 2011; H. Gouri, M. Swirsky, *Facing the Glass Booth: The Jerusalem Trial of Adolf Eichmann*, Wayne State University Press, Detroit 2004; D. Cesarani, *Becoming Eichmann: Rethinking the Life, Crimes, and Trial of a 'Desk Murderer'*, Boston 2006; L. Douglas, *op. cit.*, pp. 97-184.

[14] See: *ibid.*, pp. 187-196; A. Finkielkraut, *Remembering in Vain: The Klaus Barbie Trial & Crimes Against Humanity*, New York 2013; Y. Beigbeder, *op. cit.*, pp. 204-208,

[15] See: L. Douglas, *op. cit.*, pp. 196-207; J. Garfinkel, *The Trials of John Demjanjuk: A Holocaust Cabaret*, Playwrights Canada Press, Toronto 2005.

[16] See: L. Bilsky, *The Judge and the Historian: Transnational Holocaust Litigation as New Model*, "History & Memory" 2012, Vol. 24, No. 2, pp. 117-156.

into the former category. Even though it was not the first such event after 1949,[17] a year in which the legal abilities to prosecute and sanction past crimes or offences committed by the German citizens was re-handed by the Allied forces to the German domestic courts, certainly it constituted most compound and time-consuming legal endeavor till the trial of the officials of Majdanek concentration- and extermination camp in Düsseldorf.[18] Pretrial investigations in Frankfurt started five years since 1963, including, among others, collecting and consolidating the testimony of witnesses for defense and persecution, seeking for information on potential perpetrators/offenders, prescribing extradition warrants, gathering historical data in regard to the background of the Auschwitz-Birkenau camp or ascertaining formal and legal limitations for the forthcoming trial. As stated by Rebecca Wittmann, "the wheels of justice were turning slowly," though quite effectively.[19] The official indictment was a seven-hundred-page document largely based on the testimony of 254 witnesses, both survivors and former SS officers from Auschwitz, plus a three-hundred-page of the history of the camp written by historians Hans Buchheim, Martin Broszat and Helmut Krausnick, all of them appointed in the Institute of the Contemporary History in Munich established in 1947.

During the Nuremberg Trials, both prosecution and the judges committee had recognized the legal superiority of documentation sources over both oral and written testimonies of direct observers/participants. In the not-so-distant Eichmann Trial (1961–1962), cautiously observed in FRG and GDR, where the Israeli state prosecutor Gideon Hausner took a different

[17] To mention, among others, the 1958 *Einsatzkommando* Trial in Ulm surrounded by a significant institutional resolution, i.e. the creation of the Central Office of the Judicial Authorities for the Investigation of National Socialist Crimes in Ludwigsburg in the same year, see: P. Tobin, *No Time for 'Old Fighters: Postwar West Germany and the Origins of the 1958 Ulm 'Einzatzkommando' Trial*, "Central European History" 2011, Vol. 44, No. 4, pp. 684-710, Information Sheet: Office of the Judicial Authorities for the Investigation..., http://www.zentrale-stelle.de/pb/site/jum/get/documents/jum1/JuM/import/zentrale%20stelle%20ludwigsburg/pdf/in/Informationsblatt-ZSt_Dez12-en.pdf [30.12.2015].

[18] As recounted earlier, the Frankfurt Trial consisted of 183 sessions. For comparison, the trail in Düsseldorf lasted 6 consecutive years from 1975 to 1981 and took the overall number of 474 sessions. The Düsseldorf Trial is alternatively known as the "Third Majdanek Trial," while the former proceedings took place in Poland: the first one arranged before the Soviet-Polish Special Court from November 27 to December 2, 1944, several trials in years 1946–1948 held in various cities — Lublin, Warszawa, Kraków, Katowice, Radom, Świdnica, Wadowice, Toruń — are referred collectively as "Second Majdanek Trial," see, for example: E. M. Koslow, *Proces członków załogi Majdanka przed sądem w Düsseldorfie*, "Zeszyty Majdanka" 2005, Vol. XXIII, pp. 71-96.

[19] R. Wittmann, *Beyond Justice: The Auschwitz Trial*, pp. 54-94; R. Wittmann, *The Wheels of Justice Turn Slowly*..., pp. 345-378.

direction and favored the witnesses.[20] In Frankfurt the main attention was directed rather on the latter source, although every testimony was closely examined by the court and defense attorneys in order to exclude hearsays or individual opinions, and had to be corroborated by at least few recollections made by the others. As noted by Witold Kulesza in his introduction to the polish translation of Hermann Langbein's fundamental work entitled *People in Auschwitz*[21] (orig. 1980, Polish edition: 2011), a compilation of selected, most compelling testimonies, it was the amount of witnesses what justifies considering this trial as "historical" or "significant:" a total number of 360, among which there were 185 men and 26 women who were former Auschwitz prisoners (the testimony of further 39 victims were read during its course), 10 former inmates of other camps, 54 SS-officers from Auschwitz and 37 another SS-officers, policemen or functionaries.[22] Susanne Karstedt formulates the opinion that in the context of collective memory the most important consequence of major trials that started in the sixties was the phenomenon of "bringing back" the victims — completely absent in the imminent postwar period, despite the fact that certain number of Jews, including Langbein, Simon Wiesenthal, Victor Klemperer or Anna Seghers, as well as other groups of people that survived from the Nazi genocide[23] decided to stay in their *Vaterland* after the war was over.[24] If, according to Karstedt,

> … the main impact of the Nuremberg Tribunal on contemporaries was not to offer a venue for the victims to symbolically revenge themselves, but instead

[20] See: G. Hausner, *Justice in Jerusalem*, Herzl Pr, New York 1968; T. Segev, *The Seventh Million:* The Israelis and the Holocaust, Picador, New York 2010; L. Douglas, *op. cit*., pp. 97-113; A. Wieviorka, *The Era of the Witness*, Cornell University Press, Ithaca/London 2006, pp. 56-95.

[21] *People in Auschwitz*, ed. H. Langbein, Chapel Hill, NC, 2005 (H. Langbein, *Auschwitz przed sądem. Proces we Frankfurcie nad Menem 1963–1965 — dokumentacja*, oprac. H. Langbein, IPN, Warszawa/Oświęcim/Wrocław 2011).

[22] W. Kulesza, *Przedmowa do polskiego wydania*, [w:] *ibid.*, p. 12 [trans. — Sz.P].

[23] Term, a combination of Greek word *genos* — family, tribe, or race and Latin *cide* — killing, invented by Polish Jewish lawyer Rafał Lemkin who emigrated to the Unites States in 1941, it was adopted in the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, commonly referred as Genocide Convention, see, for example: R. Lemkin, S.L. Jacobs (eds.), *Lemkin on Genocide*, Lanham, MD, 2012; *The Origins of Genocide: Raphael Lemkin as Historian of Mass Violence*, eds. D. J. Schaller, J. Zimmerer, Routledge, London/New York 2013.

[24] See: Z.W. Mankowitz, *Life Between Memory and Hope: The Survivors of the Holocaust in Occupied Germany*, Cambridge University Press, Cambridge 2002; S. Wiesenthal, *Justice, Nor Vengeance*, Mandarin Paperbacks, London 1989; T. Segev, *Simon Wiesenthal: His Life and Legends*, Schocken, New York 2012; F. Stern, *The Return to the Disowned Home: German Jews and the Other Germany*, "German Critique" 1996, Issue 67, pp. 57-72.

> to provide the possibility for the nation of the perpetrators vicariously to take revenge on their leadership through the victorious Alies …[25]

then

> … the Auschwitz Trial in Frankfurt … was the key event … and watershed experience for the German society. It illuminated the horror of the death camps and the Holocaust in all graphic detail, the victims had a real presence in Germany for the first time, and the media coverage was extensive. It became a defining moment for the identity of the younger generation — she continues — who were not directly involved, and it allegedly shaped the students' movement in Germany [the May 68' revolts broke out less than 3 years after its end — Sz.P].[26]

Karlstedt's opinion coincides with the one stated by Annette Wieviorka, that starting from the early sixties the Holocaust testimonies ceased to be only a part of private memory shared within a small, isolated groups of survivors. Since then, they no longer were perceived solely as victims but as witnesses, kind of public figures, whose voice ought to be heard. The very act of bearing witness gained a religious-like significance.[27]

The largest amount of the prosecution witnesses in Frankfurt came from Poland — nearly 60 of them, including persons such as Dr. Tadeusz Paczuła, Dr. Stanisław Kłądziński or Stanisław Głowa. Paczuła was a Polish surgeon who was incarcerated in Auschwitz from December 1940 till September 1944 and as an employee of the documentation office (*Schriebstube*) and subsequently the main report writer in the prisoners' hospital (Häftlingskrankenbau — HKB) has (a dubious) opportunity to directly observe the atrocities committed there by the staff of the camp, especially the hospital personnel whose members repeatedly conducted lethal experiments on various prisoners and executions before the infamous Black Wall, situated in the surrounding of Block 21, where Paczuła has his office.[28] Kłądziński, "fellow orderly," corroborated the vast majority of facts delivered by Paczuła.[29] Głowa, prisoner #20017, in Auschwitz from August 1941 to August 1944, most time employed as caregiver of sorts, once witnessed a discrete murder on a group of children, most probably from Zamość[30] — accident confirmed both by Paczuła, Kłądziński and Langbein,

[25] S. Karstedt, *The Life Course of Collective Memories: Persistency and Change in West Germany between 1950 and 1970*, "Polish Sociological Review" 2009, Vol. 165, No. 1, p. 32

[26] *Ibid.*, p. 35.

[27] A. Wieviorka, *op. cit.*, pp. IX-XV.

[28] R. Wittmann, *Beyond Justice: The Auschwitz Trial*, pp. 70-75.

[29] *Ibid.*, pp. 76-77.

[30] *Ibid.*, pp. 77-78.

who as a detainee of several camps (Auschwitz, Dachau, Neuengamme), head of the *Internationales Auschwitz-Komitee* in Vienna (IAK) was deeply involved in the pretrial investigation and took part as witness of the prosecution. The fact that most of the witnesses were citizens of countries behind the Iron Curtain not only hindered their availability and possible arrival to Frankfurt. Simultaneously, it became a subject of massive criticism from the anticommunist-oriented audience representing various shades of the political spectrum: from moderate center to far-right radicals. Progressive beliefs manifested by Hermann Langbein, former member of the International Brigades during the Spanish Civil War, involved in the activity of the Communist underground in Auschwitz and other camps during his incarceration, were received rather unkindly for the very same reasons.[31] The Cold War differentiation on East and West, the Communistic bloc and liberal capitalist democracies became mandatory in late forties, somewhat affecting the interpretation of the recent past.[32]

Furthermore, the witnesses of the prosecution in Frankfurt were mostly political prisoners[33] — the highest ratio of Holocaust survivors came from this particular group. In consequence, their testimonies referred primarily to the reality of Auschwitz concentration camp[34] (or subordinate sub-camps), not Birkenau death camp located about two kilometers westbound from Auschwitz I (that is why this proceeding is commonly described as Frankfurt Auschwitz Trial and not as Frankfurt Auschwitz-Birkenau Trial). As reminded by Rebecca Wittmann:[35] "the vast majority of Jews were marched straight to gas chambers without being given numbers or tattoos," the frail chance of survival was left to "only healthy men and women" obtaining "most grinding and agonizing jobs, which usually led to quick death." They had less than vestigial possibilities of being political

[31] On Hermann Langbein, see: *ibid.*, pp. 147-151; D.O. Pendas, *The Frankfurt Auschwitz Trial, 1963–1965*, p. 40; *idem*, *People in Auschwitz*, pp. XII-XVI; P. Levi, *The Drowned and the Saved*, [in:], The Complete Works of Primo Levi, ed. A. Goldstein, Liveright, Slp edition, New York 2015, 4882,8-4884,5 [mobi]; *Foreword to 'People in Auschwitz' by Hermann Langbein*, [in:] The Complete Works of Primo Levi, 5363,0-5371,0 [mobi].

[32] See, for example: A.D. Kahn, *Experiment in Occupation: Witness to the Turnabout, Anti-Nazi War to Cold War, 1944–1946*, The Penn State University Press, Philadelphia 2004.

[33] R. Wittmann, *Beyond Justice: The Auschwitz Trial*, pp. 144-145.

[34] In his interview with Ferdinando Camon, Primo Levi — Holocaust survivor incarcerated in years 1944–1945 in Auschwitz-Monowitz camp (the so-called Auschwitz III), author of *Is This a Man* (1947), *The Truce* (1961) or *The Periodic Table* (1975) — depict Auschwitz as a "hybrid concentration camp, or rather a hybrid-concentration camp *empire*: extermination plus exploitation, or rather extermination through exploitation," see: P. Levi, F. Camon, *Conversations with Primo Levi*, Northwestern University Press, Evanston, IL, 1989, p. 30.

[35] *Ibid.*, p. 83.

prisoners, "did not work closely with the SS guards and therefore did not supply much eyewitness evidence." Several Jewish Women who worked as secretaries (*Schreiberinnen*) in the Political Department, and thus were available for interrogations (Maryla Rosenthal, Dounia Wassertstrom or Raja Kagan), should be considered as rare exemptions. Wittmann lists exceptionally high level of their educational attainments — "reading, writing, typing skills, knowledge of more than one language, including very often German,"[36] as well as relatively propitious attitude shown by their supervisors from SS as most likely conditions for survival of these women. However, in opposite to the early postwar years, the Holocaust was widely discussed in the courtroom. This seems understandable after the Eichmann Trial in which the Jewish martyrdom was designed as crucial focus of the persecution and separate kind of criminal charge — crimes against the Jewish people — has been introduced to the Israeli law.[37] Polish, Ukrainian or German prisoners talked about the fate of their Jewish companions occupying the lowest levels of the camp hierarchy. The Jewish perspective was partly expressed by above-mentioned DP secretaries. "Soft-spoken" Austrian Jewish doctor Otto Wolken — prisoner of Auschwitz #128,828, who, thanks to his medical qualifications, managed to avoid selections and undertook numerous works in the HKB, witnessing the mass extermination of fellow Jews from Greece and Hungary — delivered one of the most emotional testimonies.[38] In this regard, Devin O. Pendas is right defining the trail in Frankfurt as a Holocaust trial, "concerned at its core with the Nazi genocide."[39] The prosecution attorneys were able to correct the omissions committed, rather unconsciously, by their predecessors in Nuremberg — the U.S. chief of counsel for the prosecution Robert H. Jackson and his assistant Telford Taylor — who put insufficient attention on atrocities committed against the Jews.[40] Thanks to extensive analysis provided by Buchheim, Broszat, Krausnick and other historians, they fully recognized the differences between *Konzentration-* and *Vernichtungslager*, insufficiently understandable shortly after 1945. After years of being overshadowed by camps liberated by the Western Allies (Bergen-Belsen, Dachau, Buchenwald, Sachsenhausen, Mauthausen-

[36] *Ibid.*.

[37] See, for example: H. Arendt, *Eichmann in Jerusalem*, pp. 273-279.

[38] R. Wittmann, *Beyond Justice: The Auschwitz Trial*, p. 145-147; D.O. Pendas, *The Frankfurt Auschwitz Trial, 1963-1965*, pp. 156-158.

[39] *Ibid.*, p. 1-2.

[40] See: D. Bloxham, *op. cit.*, pp. VIII-IX, 57-90, 109-128, 185-220, 222; L. Douglas, *op. cit.*, pp. 4-6, 22-23, 23-37, 48-53, 65-66, 78-80.

Gusen[41]), or instrumentally treated by the Communistic authorities in Poland as a symbol of anti-imperialist propaganda[42] or sanctuary of Polish suffering,[43] the overall perception of Auschwitz has finally returned to its "right" proportions — a place of all-embracing evil.

There are two other definitions of the Frankfurt Trial suggested by Devin O. Pendas which will be discussed, at least fragmentary, on the following pages: ordinary criminal trial and political trial.[44] As observed by Lawrence Douglas, such distinction refers to an inherent conflict "between the legal and the extralegal, between the rule of law and the interests of collective instruction,"[45] present in most of the postwar proceedings dealing with the crimes and/or atrocities committed by mayor/minor war criminals and/or their collaborators, especially the recently analyzed Holocaust trials, filled with infinite traumatic stories. This first meaning (the ordinary criminal trial) implies that, in spite of exceptional historical background, that lies behind the activity of the accused, and numerous horrors coming out from the mouths of prosecution witnesses, the court's solely task was simply to try the defendants, on the basis of existing documentation within obligatory procedure. The fact that the Frankfurt Trial, very much like many other cases waged against the Nazi war criminals in Western Germany since the emancipation of domestic courts in 1949, was conducted under ordinary statutory law — which, in opposition to the international law enacted during the Nuremberg Trials, did not contain retroactive legislation (Rückwirkungsverbot) — was deeply problematic given the overall nature of discussed topics. Thus the Allied Control Council Law No. 10 from December 20, 1945,[46] submitting crimes against peace,[47] war crimes and crimes against

[41] D. Bloxham, *op. cit.*, 97-100, 123-124, 127, 135.

[42] See, for example: J. Huener, *Auschwitz, Poland, and the Politics of Commemoration, 1945–1979*, Ohio University Press, Athens, OH, 2003, pp. 79-107.

[43] Exposed in various crises, exemplarily during the so-called "Encyclopeadist Affair" in years 1966–1968 concerning the entry "concentration camps" in a further volume of *Encyklopedia Powszechna* scheduled to release by Polskie Wydawnictwo Naukowe PWN, see: A. Plocker, *'Zionists to Dayan': The Anti-Zionist Campaign in Poland, 1967–1968*, Stanford University, Ann Arbor, MI, 2009, pp. 109-133.

[44] D.O. Pendas, *The Frankfurt Auschwitz Trial, 1963–1965*, pp. 2-3.

[45] L. Douglas, *op. cit.*, p. 2.

[46] See: The Avalon Project: Documents in Law, History and Diplomacy: Nuremberg Trial Final Report Appendix D, Council Control Law No. 10, http://avalon.law.yale.edu/imt/imt10.asp [30.12.2015].

[47] The conception of "planning, preparation, initiation or waging a war of aggression, or a war of violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing," assigned by the

humanity,[48] was prohibited as *ex post facto* solution charging individuals with crimes that allegedly were not illegal when committed. Instead, the accused in Frankfurt were tried under the long-standing German penal code of 1871 (*Strafgesebzbuch* — StGB), not repealed even by the Nazis, in which ordinary homicide, *Mord* or *Totschlag* (paragraph 211 and 212, StGB[49]), were considered as the most stringent accusations.[50] Therefore, after *Totschlag* fell under the statute of limitations after 1960 (henceforth it was no longer judged), the defendants can be held accountable either as perpetrators[51] (Täter/Mittäter, in the wording of paragraph 47), instigators[52] (*Anstifter*, paragraph 48) or accomplices[53] (*Gehilfe*, paragraph 49).

The prosecutors did their best in order to charge the accused as immediate perpetrators of particular kind of murder, i.e. the one committed due to

legislators to the paragraph containing crimes against peace, was recognized in Nuremberg as the most serious, fundamental charge put against the Nazi defendants, around which the general narrative was set:, see: *ibid.*; D. Bloxham, *op. cit.*, pp. 69-75; L. Douglas, *op. cit.*, pp. 14-16, 73-75.

[48] "Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated," see: http://avalon.law.yale.edu/imt/imt10.asp [30.12.2015].

[49] Paragraph 211 defines *Mord* as follows: "A murderer is anyone who kills a human being out of blood lust, in order to satisfy their sexual desire, out of greed or other base motives, maliciously (*grausam*) or treacherously (*heimtückisch*) or by means dangerous to the public at large or in order to enable or conceal another crime." The *Totschlager* was more simplistically explained as: "anyone who kills another person without being a murderer under the above definiotion," see: D.O. Pendas, *'I didn't know what Auschwitz was': The Frankfurt Auschwitz Trial and the German Press, 1963–1965*, "Yale Journal of Law & the Humanities" 2000, Vol. 12, Issue 2, p. 408, http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1231&context=yjlh [30.12.2015].

[50] Both scarcely resemble first and second degree murder in American law, according to Devin O. Pendas (*ibid.*, p. 408).

[51] Paragraph 47 defines four types of principal perpetrators, all of whom would receive a life sentence if convicted: the immediate perpetrator (*unmittelbarer Täter*), the perpetrator who acts through the agency of another (*mittelbarer Täter*), the co-perpetrator (*Mittäter*), and the collateral perpetrator (*Nebentäte*), see: R. Wittmann, *Beyond Justice: The Auschwitz Trial*, p. 38.

[52] An instigator is the one who have accasioned "the perpetrator's intent and resolve," which is less serious that perpetration as well as aiding and abetting, see: *ibid.*

[53] An accomplice is a person engaged in aiding and abetting, i.e. someone who "intentionally renders assistance to enable another to intentionally commit an unlawful act," see: *ibid.*, pp. 38-39.

"blood lust"[54] or other "base motives" (*Grundgesetz*), including hatred against the Jews and other races considered as adequately reflecting the nature of Holocaust.[55] According to Alfred Bongard, German lawyer involved in the pretrial investigations, during the "Final Solution," in Auschwitz and countless other places, Germans (and their collaborators) imperiously made themselves "Lords over life and death, while believing that those over whose life they decided were less worthy, not even humans."[56] Abnormally malicious, treacherous or blood-lusting behavior of the defendants had to be confirmed in the testimonies of the prosecution witnesses, thoroughly examined by the court. Holocaust survivors who agreed to appear in the Frankfurt courtroom and share their traumatic stories in front of their former oppressors — at times openly hostile, such as *Oberscharf*ührer Wilhelm Boger who used to interrupt spoken testimonies in sudden and aggressive way — faced the possibility of being dismissed as unreliable witness on a specific matter. Christopher R. Browning harshly criticizes this requirement imposed on the witnesses to demonstrate almost eidetic memory regarding traumatic events experienced much about twenty years ago, which many of them would rather try to forget than accurately remember — a feature he considers as characteristic for most of the Holocaust trials in West Germany, including the trial of Walther Becker, accused for his role in the liquidation of Wierzbnik ghetto on October 27, 1942,[57] held in Hamburg in 1972, with which he become familiar with by studying remaining documentation.

> I have worked in the German court records of trials of accused Nazi criminals for more than thirty-five years — he declares in the epilogue — … I must say that in those thirty-five years I have read scores of trial verdicts, and many I found disheartening. But never have I studied a case in detail and encountered a verdict that represented such a miscarriage of justice and disgrace to the German judicial system as that in the trial of Walther Becker.[58]

[54] Blood lust was defined by the German High Court of Appeals (*Bundesgerichtshof* — BGH) as follows: an act done "on the basis of an unnatural joy at the destruction of human life," see: D.O. Pendas, *'I didn't know what Auschwitz was'…*, p. 409.

[55] R. Wittmann, *Beyond Justice: The Auschwitz Trial*, pp. 45-48; D.O. Pendas, *'I didn't know what Auschwitz was'*, pp. 408-411.

[56] R. Wittmann, *Beyond Justice: The Auschwitz Trial*, p. 45.

[57] Ch.R. Browning, *Remembering Survival: Inside a Nazi Slave-Labor Camp*, W.W. Norton & Company, New York 2011, p. 277.

[58] *Ibid.*, pp. 287-288.

On the pages of his 2010 monograph entitled *Remembering Survival: Inside a Nazi Slave-Labor Camp*, almost entirely based on varied recollections delivered by former prisoners of the slave-labor camp in Wierzbnik/Starachowice, Browning, taking advantage of historian's privilege to emphasize and correct oversights made by judges or prosecutors, seeks to redress injustice made to his heroes. While Browning's plea may easily refer to many other proceedings, the second Auschwitz Trial does not deserved such criticism — despite being cross-examined and frequently dismissed as unreliable, the survivors' voices were heard loud and clear within and outside the Frankfurt's courtroom.

If one pays close attention to the length and overall character of the final sentences, it may be assumed that the efforts of the prosecution to charge the accused as strict as possible did not succeed. Among 22 defendants whose name appeared in the indictment — differing in ranks and scopes of authority, from *Haupsturmführer* Robert Mulka to Emil Bednarek who originally was one of the inmates later upgraded to the function of *Kapo* — 20 of them make it to the verdict announced on December 20, 1963 by the presiding judge, Dr. Hans Hofmayer. The last commander of the Auschwitz I concentration camp from May 1944 to January 1945, Richard Baer died on June 17, 1963. Hans Nierzwicki had his case separated due to health reasons, and died on May 15, 1967. Heinrich Bishoff and Gerhard Neubert died due to natural causes when the proceedings were still in progress. Three defendants were acquitted as result of insufficient evidence (Johann Schobert, Arthur Breitweiser, Dr. Willi Schatz). Less than half — 7 defendants — were convinced fur murder (Wilhelm Boger, Hans Stark, Franz Hoffmann, Oswald Kaduk, Stefan Bratelski, Josef Klehr, Emil Bednarek). The majority — 10 defendants — were convinced for aiding and abetting murder (Robert Mulka, Karl Höcker, Klaus Dylewski, Perry Broad, Dr. Bruno Schlange, Dr. Franz Lucas, Dr. Willi Frank, Dr. Viktor Capesious, Herber Scherpe, Emil Hantl). The length of these convictions varied significantly: from life imprisonment (Boger, Hoffman, Kaduk, Bartelski, Klehr, Bednarek) to forcible detention lasting from about 3 (Lucas — 3¼, Hantl — 3½) to more than 10 years (Mulka — 14, Klehr — life sentence plus 15).[59] The preponderance of aiding and abetting over other charges finds confirmation in research made by Dick de Mildt. According to de Mildt, of approximately 103,823 German citizens investigated for Nazi crimes up to year 1992, "only" 6,487 were prosecuted and convinced, 5,513 (85 percent) of them for "nonlethal" crimes of National Socialism — generally,

[59] For charges, final verdicts, length of sentences and other statistical data, see: D.O. Pendas, *The Frankfurt Auschwitz Trial, 1963–1965*, pp. 99, 101, 102, 235, 241; R. Wittmann, *Beyond Justice: The Auschwitz Trial*, pp. 231-232, 279-286.

aiding and abetting. What is more, "little over 7 percent [of convictions — Sz.P.] actually related to mass killing of Jews," mostly because racial hatred, identification of the ethnicity of the victims, and the program of racial annihilation were not perceived as central elements.[60] Hessian State Attorney Fritz Bauer, Langein, prosecution attorneys involved in pretrial investigations and subsequent proceedings (to mention Joachim Kügler, Georg Friedrich Vogel, Gerhard Wiese Heinz Düx and others),[61] along with significant part of the public opinion expressed signs of dissatisfaction with judge Hofmayer's final verdict.

* * *

The limitations of the West German law have at least two further consequences. The very fact that it was unable at that time to recognize, perhaps fragmentary, a condition in which the state prepares and implements organized crimes against individuals — exact opposite of what is written in nearly every penal code, punishing crimes committed by certain individuals against the security or moral well-being of the society and state[62] — heavily affected the somehow distorted representation of Auschwitz (and Holocaust in general) disclosed during the Frankfurt Trial. Because, adhering to existing circumstances, murder seemed to be the most appropriate charge for the former Nazi officials who served in Auschwitz, and the subjective motivations of every individual suspect had to be thoroughly examined, the courtroom was filled with painstakingly detailed relations on rapes, tortures, *quasi*-medical experimentations and other examples of "useless violence."[63]

[60] R. Wittmann, *Beyond Justice: The Auschwitz Trial*, p. 31.

[61] For closer details regarding the work of mentioned lawyers, see, for example: J. Wagner, *The Truth about Auschwitz: Prosecuting Auschwitz Crimes with the Help of Survivor Testimony*, "German History" 2010, Vol. 28, No. 3, pp. 243-357.

[62] Ch.R. Browning, *op. cit*., pp. 270-272.

[63] In *The Drowned and the Saved* (1978) Primo Levi writes of a phenomenon has personally experienced and described as follows: "Now, I think that the violence of Hitler's twelve years had something in common with that of many other historical times and places, but that Hitler's era was characterize by a widespread violence that was *useless*, an end in itself, designed solely to create pain; sometimes for a purpose but always redundant and always disproportionate to that purpose" (P. Levi, *op. cit*., 4995,7 [mobi]). "The ENEMY was supposed not only to die but to die in agony" — as he assumes in other part of the book (*ibid*., 5022,1 [mobi]). Levi lists the following examples of "useless violence:" mass shootings highly exceeding the limits of retaliation; over-crowded cattle cars on the way to Auschwitz (or other places) without food, water, designated places to sleep or to urinate; forced nudity; shortage of spoons among the prisoners while tens thousands of them were collected in magazines discovered after the liberation; quasi-military drill and extended (up

The prosecution witnesses spoke, for example, about the infamous "Boger swing" (*Boger Schaukel*)[64] or numerous executions of political prisoners held before the Black Wall between Blocks 10 and 11[65] (nearby the any less ominous "Kaduk's chapel"). The emphasis gave by the prosecution attorneys on documenting various cases of sadism or animal-like cruelty was legally useful. It did not serve, however, the extralegal, didactic function assigned to this trial by Fritz Bauer — "putting the entire Auschwitz complex before the court"[66] — thereby confirming the internal conflict between those two sectors indicted by Lawrence Douglas. Atrocities single-handedly done by Boger or Kaduk were significant, although they represent only the most direct, small-scale aspects of Auschwitz's reality, overly exaggerated on behalf of proceedings and was rather mindlessly replicated by the press. As noted by Rebecca Wittmann:

> … the killing of millions in the gas chambers — the main murder in Auschwitz, after all — become a lesser crime, calling for a lighter sentence,

to 24 hours) appeals; tattooing, forbidden in Judaism and thus being a „pure offence" for the orthodox Jews; meticulous, usually senseless and counter-productive work — flipping peat or crushing stones; atrocious, pseudoscientific experiments on humans; disrespect for human corpses, see: *ibid.*, 4994,0-5032,0 [mobi]. Bearing in mind the fact that Levi was deeply interested in the situation of postwar Germany and very likely knew about the Frankfurt Trial (as well as other proceedings), it can be assumed that the witnesses' testimonies may inspire him to wrote the above-mentioned fragments.

[64] Primitive, although lethally effective, instrument of torture — alternatively known as "talking machine" — invented by Wilhelm Boger, which he frequently used during the interrogations. According to the testimony of Raja Kagan "Boger swing" consists of "a low trestle … with an iron rod on its back; there was a person tied to the rod by his hands, and his head was hanging down" (R. Wittmann, *Beyond Justice: The Auschwitz Trial*, p. 91). Another witness, Frau Bauer describes it as "It was a meter-long iron bar suspended by chains hung from the ceiling." As he related: "A prisoner would be brought in for 'questioning,' stripped naked and bent over the bar, wrists manacled to ankles. A guard at one side would shove him — or her — off across the chamber in a long, slow arc, while Boger would ask QUESTIONS, at first quietly, then barking them out, and at the last bellowing. At each return, another guard armed with a crowbar would smash the victim across the buttocks. As the swinging went on and on, and the wailing victim fainted, was revived only to faint howling again, the blows continued — until only a mass of bleeding pulp hung before their eyes. Most perished from the ordeal — some sooner, some later. In the end a sack of [*sic!*] bones and flayed flesh and fat was swept along the shambles of that concrete floor to be dragged away" (J. Kessler, *Frau Braun and The Tiger of Auschwitz*, http://calitreview.com/33/frau-braun-and-the-tiger-of-auschwitz/ [30.12.2015]).

[65] R. Wittmann, *Beyond Justice: The Auschwitz Trial*, pp. 71-76.

[66] *Ibid.*, p. 191.

than the murder of one person carried out without orders from superiors.[67]
This was the information that the public got about the Auschwitz ... [68]

In comparison with the earlier Eichmann Trial, where the Third Reich was convincingly presented as bureaucratic structure and the accused as serial "desk murderer,"[69] not involved directly in the killing operations, which does not relieved him of his responsibility the role played in the implementation of "Final Solution of the Jewish Question" (*Endlösung der Judenfrage*)[70] — Frankfurt Trial seems like a giant step backwards.

Such distorted depiction of Auschwitz has been eagerly spread by the leading media and reproduced in numerous novels, radio auditions, theatrical plays or feature/documentary movies. The media coverage of the Frankfurt Trial may be characterized by two particular features — political bias,[71] resulting from the post-war rivalry between Federal Republic of

[67] The very fact that transgressing the Nazi law was one of the basis for accusation — as if the law that was in force in years 1933–1945 was itself legal and there were certain rules which one had to obey in places such as Auschwitz-Birkenau or Treblinka — was highly paradoxical. The prosecution makes use of the testimonies delivered Konrad Morgen, former SS judge, sent by Himmler and the police court in Munich to Auschwitz and other destinations in order to investigate alleged misbehaviors. Morgen investigated and/or convicted certain Nazi officials (including Odilo Globocnik, Maximilian Grabner, Karl-Otto Koch, Waldemar Hoven),in most part ineffectively because of the protection by their hierarchical superiors. However, certain officials were tried by the Nazi courts, to mention Amon Göth, commandant of the Kraków-Płaszów concentration camp, who was charged by the SS with theft of Jewish property (which belonged to the state, according to Nazi legislation), failure to provide adequate food to the prisoners under his charge, violation of concentration camp regulations regarding the treatment and punishment of prisoners, and allowing unauthorized access to camp personnel records by prisoners and non-commissioned officers, see: *ibid.*, pp. 160-174.

[68] *Ibid.*, p. 7.

[69] Although it must be remembered that the prosecution had accused Eichmann of killing a Jewish boy during his service in Budapest in 1944 — an allegation which was dropped by the court's committee. This demonstrates that incumbent Israeli state attorney Gideon Hausner and his co-workers urged to portray Eichmann also as a sadist, see: L. Douglas, *op. cit.*, pp. 133-134, 179-181.

[70] The result was the death penalty ordered in the final judgment and executed on May 31, 1962 — for the second and final time within the Israeli law

[71] In his comprehensive analysis on how the Frankfurt Trial was related in West German press, Devin O. Pendas notes that practically every newspaper title representing varied political options — from radical left and right to rather moderate, centrist positions — focus on different aspects of the proceedings or interpret the same facts in a quite dissimilar way. In Pendas's opinion, the most dominant attitude within the communist-oriented newspapers, such as "Neues Deutchland," "Braunbuch," "Der Morgen" published in the GDR and fellow-traveler titles like Düsseldorf-based "Begegnung mit Polen," was "cynical historicism." Editors often expressed their disappointment that the prosecution did not pay enough attention on the representatives of I.G. Farben and other industrial companies from the FRG, "almost

Germany (FRG) and German Democratic Republic (GDR), both established in 1949, and lust for sensation, perhaps more adequately related to the former than the latter country. Focusing solely on four major West German newspapers ("Die Welt," "Frankfurter Allgemaine Zeitung," "Frankfurter Rundschau," "Süddeutsche Zeitung") there were 933 articles about the trial published between November 1963 and September 1965, while the overall number of press releases on this specific topic exceeds 1,400 articles from about 70 periodicals, both regional (434 articles in 44 such newspapers) and nationwide.[72] This means that, in reference to the opinion expressed by Devin O. Pendas, "almost every newspaper in the Federal Republic of Germany carried at least sporadic coverage of the trial's 183 sessions."[73] Unfortunately, such enormous quantity did not equal quality. The legal constitution of the trial as a criminal case where murder, not genocide, was the most severe conviction; as well as its integral dependence on the testimony of Auschwitz survivors, depicting numerous cases of malicious behavior on the part of former camp supervisors (mostly in excessive detail)

---

solely responsible for Auschwitz and the crimes committed there." In turn, nationalistic publicists gathered around "National-Zeitung" chose the strategy of "cynical legalism." Sharing their doubts regarding the actual number of people killed in the Nazi concentration and extermination camps, calling into question the accuracy of witness testimony, paralleling Auschwitz with the bombing of Dresden, they did their best in order to "relativize and trivialize the Nazi crimes," and took advantage of almost every single opportunity to undermine the legitimacy or general usefulness of the Frankfurt Trial. Furthermore, by cynically using "the law against itself," i.e. by arguing that due to numerous obstacles — twenty-year gap separating the presence from the events in question, difficulties in gathering the full evidence, shortcomings in memory of both defendants and witnesses — it would be rather impossible to "achieve the kind of precision and objectivity to serve justice." Hence, they called for a general amnesty of all crimes, including those of Allies, which, in fact, "was simply a pretense to demand a general amnesty for German war crimes" and an "acquittal for the perpetrators of the greatest crime in human history." Mainstream media, including liberal journals — "Tegespiegel," "Hamburger Abendecho," "Frankfurter Neue Presse" — and conservative ones — "Frankfurter Allgemaine Zeitung," "Ruhr-Nachrichten" — shared their political presuppositions in a less intrusive way, although not without some drawbacks. The former ones perceived the Frankfurt Trial through the prism of "didactic moralism," while the latter "repeatedly emphasized the inviolate nature of the *Reichstaat*." The liberals "sought to generalize the lesions of the Auschwitz Trial, but in ways that abstracted the crimes from their context, effectively decoupling them from the individual defendants, as well as from postwar Germans in general." On the other hand, the conservatives were "clinging to a narrow understanding of the rule of law" but, on the same way, they "denigrated the public dimension of the trial and the Holocaust itself, and thereby provided their audience with no reason to pay any more attention to this trial than to any other *ordinary* criminal case," see: D.O. Pendas, *'I didn't know what Auschwitz was'*..., pp. 420-446.

[72] *Ibid.*, pp. 399, 421.

[73] *Ibid.*, p. 399.

also affected the general method in which the Frankfurt Trial was portrayed by the media. Cold-blooded bestiality, as demonstrated by Boger and others, gave the impression of something profoundly demonic. A closer examination of newspapers' headlines seems to fully support this observation. Martin Walser — novelist, playwright, one of the leading German intellectuals and moral authorities after the catastrophe of 1945 — opposed against converting the Holocaust into a close equivalent of Dante's Inferno (allusion often made by the press) and/or conventional (thus comforting) horror story. In his renowned article "Unser Auschwitz" ("Our Auschwitz") published in 1965 in the FGR journal Kursbuch he writes as follows:

> For over a year we have read headlines of this sort: Women Thrown Alive in the Fire, Soap and Mud Stuffed into Their Mouths, Deathly Ill Gnawed on by Rats, Chicken and Vanilla Ice Cream for the Executioners, The Dead Shot during Breakfast Break, In the Gas Chambers the Victims Cry for at Least Fifteen Minutes, Alcohol Flowed Freely at Auschwitz, Shots to the Neck at the Black Wall, The Torture Swing of Auschwitz, The Devil Sits on the Defendants' Bench, Just like Beasts of Prey … The newspapers like best to describe Kaduk and Boger … The more horrible the particulars, the more minutely they will be shared with us … And the more horrible the Auschwitz quotations, the more pronounced our distance from Auschwitz becomes. We have nothing to do with these events, with these atrocities; we know this for certain. The similarities [with the defendants] aren't shared here. This trial is not about us.[74]

There were few noteworthy exceptions — to mention the "Frankfurter Allgemeine Zeitung" reporter Bernd Naumann, whose specific writing style "very wisely refrains almost completely from analysis and comment to confront the reader all the more directly with the great drama of court proceedings in the original form of dialogue,"[75] using the words of Hannah Arendt, one of his many admirers. In Devin O. Pendas' opinion, Neumann's "masterful" use of irony effectively ridicules various explanations of the defendants, usually referring to the so-called Befehlnotstand (the defense strategy based on the assumption that the defendants were obliged to follow their superiors' orders, overthrown by the Nuremberg judges) or recurring claims that they "did not know what Auschwitz is" or "have never set foot" inside the camp.[76] However, as it was already pointed out, major FRG publishers were seeking for sensational content in order to sell the biggest

[74] R. Wittmann, *Beyond Justice: The Auschwitz Trial*, pp. 176-177.

[75] H. Arendt, *Auschwitz on Trial*, [in:] Hannah Arendt. Responsibility and Judgment, pp. 238-239.

[76] D.O. Pendas, *'I didn't know what Auschwitz was'*…, pp. 441-442.

number of copies (a tendency condemned by Heinrich Böll in his 1974 novel *The Lost Honour of Catherine Bloom*). In the context of forthcoming *Vergangenheitsbewältigung* (coming to terms with the Nazi past), two most important consequences of the Frankfurt Trial among the German society, reinforced by its media coverage, were: the distancing from the more actual meaning of Auschwitz, in which the concentration/extermination camp should be perceived rather as a place of all-embracing, industrial-like killing/slave laboring[77] than another horror dome; and the fact that various criminal and sadists who sat on in the dock overshadowed the silent majority — "ordinary people," not brutes or ideological fanatics, who found themselves in Auschwitz and similar places, deliberately or not, and transformed there into willing/unwilling executioners, in reference to the title of Daniel Jonah Goldhagen's controversial book.[78]

With this in mind, Devin O. Pendas is right stating that Dr. Franz Lucas — *SS-Obersturmführer*, physician, member of the Medical Service in spring and summer of 1944 (the most "exhaustive" period in the camp's history due to the arrival and immediate extermination of the Hungarian Jews[79]), one of the very few defendants praised by the witnesses for his "kindness and desperate eagerness to help,"[80] the only one who participated in the court delegation to Auschwitz on December 14, 1964 — was a "far more typical"[81] embodiment of a Nazi perpetrator than aforementioned Wilhelm Boger. Lucas was sentenced to 3¼ years imprisonment for his attendance in the selection of victims for the gas chambers which took place either in-camp or on the rail ramp (classified in the final verdict as "aiding and abetting

[77] The relationship between Auschwitz and capitalism were often emphasized in the antifascist rhetoric that gained dominant position in several countries from the Communist bloc, especially the GDR, and which it was instrumentally used in frequent propaganda actions against the West. The more general, abstract meaning to which is referred here is Auschwitz as *Zivilizationsbruch* (civilizational fracture) demonstrating the perils of late modernity in a way described among others by Detlev Peukert or Zygmunt Bauman, see: K. Bachmann, *Długi cień Trzeciej Rzeszy. Jak Niemcy zmieniali swój charakter narodowy*, Oficyna Wydawnicza Atut, Wrocławskie Towarzystwo Oświatowe, Wrocław 2005, p. 116; D. Peukert, *Inside Nazi Germany: Conformity, Opposition and Racism in Everyday Life*, Yale University Press, London/New York, Z. Bauman, *Modernity and the Holocaust*, Cornell University Press, Ithaca/London 1989.

[78] See: D.J. Goldhagen, *Hitler's Willing Executioners: Ordinary Germans and the Holocaust*, Vintage, New York 2007.

[79] See, for example: R.L. Braham, *The Nazis' Last Victims: The Holocaust in Hungary*, Wayne State University Press, Detroit 2002; M. Kovacs, *Liberal Professions & Illiberal Politics: Hungary from the Habsburgs to the Holocaust*, Oxford University Press, Oxford/New York 1994, pp. 101-127.

[80] H. Arendt, *Auschwitz on Trial*, p. 234.

[81] D.O. Pendas, *'I didn't know what Auschwitz was'*..., p. 439.

the murder of at least 1,000 people on 4 separate occasions"[82]), a type of crime which, according to Pendas was "one of the central activities in the genocidal killing process,"[83] much more substantial than executions, tortures and other examples of physical violence on at least 114 separate occasions for which Boger received 114 concurrent life sentences, a punishment much harsher that "only" two concurrent sentences of 4 and 3½ years for his role as accomplice in the selections.[84]

> What the two cases reveal, above all, is that the efficient functioning of the apparatus of murder in Auschwitz did not centrally depend on sadists like Boger — claims Pendas — It could function equally well with the help of *good Germans* like Lucas. But the striking disparity in their sentences, unavoidable given to the German law of perpetratorship [the latter one was involved, albeit indirectly, in the death of approximately 10 times more people than the former, about 1,000 to 114 — Sz.P.], obscures this fact.[85]

In the article published in year 2000 the American historian insists on the thesis that both persons were "functionally interchangeable,"[86] in his 2006 book however he changes his mind quite significantly:

> Indeed, as a physician he [Dr. Lucas — Sz.P.] was far more centrally involved in that process [the process of selections — Sz.P.] than Boger, since it was the camp's medical personnel who regularly supervised the ramp and hospital selections. In that sense — he concludes — Lucas was indispensable to the killing operation in a way that Boger was not.[87]

One of the most fundamental traits that characterized the Nazi "machinery of destruction" (term invented by Raul Hilberg[88]), besides its complexity, impersonal character or outstanding efficiency, was the systematically increasing gap between those entangled in the multi-layered bureaucratic structures and the final "effect" of their "work" — the act of (mass) killing. Therefore, even the most distinctive senior or average-level functionaries, whose hands were not covered with blood (or even could not bear the sight

[82] R. Wittmann, *Beyond Justice: The Auschwitz Trial*, p. 285.

[83] D. O. Pendas, *'I didn't know what Auschwitz was'*, p. 439.

[84] *Ibid.*, p. 440.

[85] *Ibid.*.

[86] *Ibid.*.

[87] D.O. Pendas, *The Frankfurt Auschwitz Trial…*, p. 247.

[88] See: R. Hilberg, *The Destruction of the European Jews*, Holmes & Meier, New Haven/ London 2003.

of it, just to mention Adolf Eichmann[89]) share a similar responsibility with the ones placed at the end of this very specific "chain production."

During the Frankfurt Trial, in which much more attention was directed at the latter group of people instead of the former (with whom Dr. Lucas shares some puzzling similarities);[90] such distressing conclusion was easy to conceal. In fact, by "focusing on certain limited group of perpetrators" such trials have often played an "alibi function" (as described by Jörg Friedrich). In doing so, i.e. in accusing "*small clique* of antisocial elements who were *really* responsible for Nazi crimes," they "implicitly exculpate the remainder of the German society."[91] This regularity can be recognized in the previously signaled distinction between Boger ("the sadist") and Dr. Lucas ("the good German"). It should not be surprising that the audience identified themselves with the one depicted as "the good German" rather than the villain. This was deepened by the legal ramification of the trial — with special emphasis on the defendants' individual motivations, which meant that meticulous descriptions of gruesome crimes outweighed its equally important background, and the characteristics of modern media: the personification of political and historical messages, exemplification of often complicated contexts through concise biographies, concentration on one particular person or small group, the ability to transform complex narration into low-brow TV series or human interest stories (as result excessively individualistic direction took by media).[92] Because the roles have been rigorously divided ("the defendants became devils [Boger] or angels [Lucas] rather than men"[93]), Lucas's conviction distorted such order. "When it turned out that, in fact, his role was something quite different, the drama itself splintered"[94] — reports Pendas. Nevertheless, this pleasant discovery was subsequently lost in the sheer volume of mostly worthless news or

[89] As he recollected in his autobiography *Götzen* (*False Goods*) written shortly before the execution: "My sensitive nature revolted at the sight of corpses and blood ... Personally I had nothing to do with this [with the extermination of the Jews in the death camps — Sz.P.]. My job was to observe and report it," quoted from: M. Marchione, *Consensus and Controversy: Defending Pope Pius XII*, Paulist Press, New York/Mahwah, NJ, 2002, p. 71; H. Arendt, *Eichmann in Jerusalem*, p. VIII.

[90] Hannah Arendt asserts that the defendants "... were no desk murderers. Nor — with a few exemptions — were they even not regime criminal who execute orders. Rather, they were the parasites and profiteers of a criminal system that had made mass murder, the extermination of millions, a legal duty" (H. Arendt, *Auschwitz on Trial*, p. 228).

[91] D.O. Pendas, *'I didn't know what Auschwitz was'*, p. 406.

[92] K. Bachmann, *op. cit.*, p. 120.

[93] D.O. Pendas, *The Frankfurt Auschwitz Trial, 1963–1965*, p. 263.

[94] *Ibid.*, p. 262.

revelations with occasional emergence of genuinely valuable pieces, such as numerous witnesses' testimonies, public statements arranged by Fritz Bauer or Hermann Langbein (who, as a matter of fact, frequently broke the rule of sub judice, considering as inappropriate to comment publicly on cases that are "under judgment"), Martin Walser's critical comment or Bernd Naumann's accurate, oftentimes ironic judicial reportages.

* * *

Devin O. Pendas revealingly insist that the vast majority of German society on the western side of the river Elbe was willing to plunge in an "inner resistance" or other defense strategies against the discussed trial. While this event was extensively covered by divergent media sources, although, as it was already noted, the quality of such coverage raises reasonable doubts (due to space limitations, main attention is directed here only to the West German press), "the most crucial aspect of the Frankfurt Auschwitz Trial — he assumes — was the paradoxical antithesis (if not antipathy) between the PUBLISHED and the PUBLIC reaction to it," as if "the trial seemed to interest journalist far more than the readers."[95] Its noticeable unpopularity,[96] especially among senior Germans between 35- and 54-year-olds, direct eye-witnesses of the Second World War, calls to mind quite similar opposition in relation to the Nuremberg Trials and the denazification process. Au contraire to early postwar years, in which miscellaneous political, legal or administrative solutions were mostly recognized by the German society as externally imposed by the occupying forces, the Frankfurt Auschwitz Trial took place in radically different circumstances. It was one of the many legal proceedings since 1949 in which the Germans are allowed to try other Germans under independent courts, referring to the title of the chapter contained in Michael J. Bazyler's and Frank M. Turkheimer's book.[97] If the Nuremberg Trials were based on a set of charges established by the Allied Control Council Law Number 10, including crimes against humanity (which potential has not been fully exploited, as stated by Lawrence Douglas[98]),

[95] D.O. Pendas, *'I didn't know what Auschwitz was'*, p. 406.

[96] Unpopularity which should not be confused with indifference, while the overwhelming part of the FRG population at least heard of it throughout media, approximate number of 22,000 attendants gathered in the Frankfurt auditorium during the almost two hundred sessions lasting over a year, largely students or various school groups — a confirmation that the Frankfurt Auschwitz Trial played a pedagogical function (*ibid.*, p. 406).

[97] See: M.J. Bazyler, F.M. Turkheimer, *Forgotten Trials of the Holocaust*, NYU Press, New York/London 2014, pp. 227-246.

[98] L. Douglas, *op. cit*, pp. 38-64.

in Frankfurt there was another legal foundation, the German penal code (*Strafegesetzbuch*, StGB) from 1871.

Because the retroactive laws became prohibited in West Germany, Nazi crimes had to be prosecuted and judged not as crimes against humanity but as ordinary homicide. As it turned out, such specification led to a significant distortion in the perception of the Holocaust and the Auschwitz-Birkenau camp — associated rather with varied kinds of macabre (tortures, executions, acts of "useless violence") committed by sadist functionaries, who often exceeded their powers and/or disobeyed orders, than with selections and numerous other phases that make up the "twisted road to Auschwitz" (the title of the book of a functionalist historian Karl A. Schleunes[99]), supervised, rather indirectly and from a further distance, by completely normal, often reluctant accompliances without whom "the machinery of destruction" could not work so effectively. Furthermore, in reference to Rebecca Wittmann, such turn of events reveal another paradox, namely that

> … the prosecution initially attempted to put Auschwitz on trial, but instead had to use some of the laws of the Nazi regime — particularly camp regulations — to show the personal initiative of the defendants and convict them to murder.[100]

This helped to create a somewhat ridiculous situation where "the Nazi orders were *acceptable* and *legal*,"[101] and "gassings became *supreme acts beyond justice*"[102] that did not interest the proceeding judge. In effect, there was an accumulation of frightening stories delivered out of the Frankfurt courtroom and captured by the press, stories that "nobody actually wants to read, certainly not those most in need to," as recounted in 1965 by attentive observer.[103] Perhaps this partly explains the social phenomenon described by Devin O. Pendas.

Despite all the shortcomings, it is difficult not to appreciate the historical significance of the Frankfurt Auschwitz Trial. Fritz Bauer, the man commonly referred as its "mastermind," played a crucial role in tracing down Adolf Eichmann, the head of RSHA Sub-Department IV-B4 responsible for implementing the "Final Solution of the Jewish Question." Bauer, aware of rather unfavorable attitude among high-ranked FRG officials for the

[99] See: K. Schleunes, *The Twisted Road to Auschwitz: Nazi Policy toward German Jews*, University of Illinois Press, IL/Chicago 1990.

[100] R. Wittmann, *Beyond Justice: The Auschwitz Trial*, p. 96.

[101] *Ibid*., p. 11.

[102] *Ibid*., p. 173.

[103] Namely, Emmi Bonhoeffer, widow of anti-Nazi martyr Dietrich Bonhoeffer (D.O. Pendas, *'I didn't know what Auschwitz was'…*, p. 404).

possibility of trying Eichmann in Western Germany, decided to hand over the case to the Israelis who managed to capture Eichmann and put him on a trial in Jerusalem (1961–1962). Few years later, when Bauer's office was in possession of rich documentation incriminating several dozen of former Auschwitz crew members, he found it necessary to conduct similar trial before a German court. As demonstrated before, the Frankfurt Trial faced serious difficulties. Its overall course and presence in media were far from expected. However, the prosecutors managed to distribute extensive indictment, gather large amount of witnesses' accounts (many of whom appeared personally before the Frankfurt court and gave oral testimonies) and disclose certain revelations not widely known before. Like in a snow-ball effect, this gave rise to multiple subsequent repercussions. The resonance it provoked was noticed by the West German parliament during the second Verjährungsdebatte (a series of debates in 1960, 1965, 1969 and 1979 over extension of the statute of limitations on crimes or murder committed during the Nazi era), which took place just before the final verdict. The Bundestag deputies, aware of the systematically growing documentation and alarming number of suspects still uninvestigated,[104] passed in the act of extension by an overwhelming majority of votes (344 voted for, 96 against, 4 abstained their vote[105]). Such decision allowed conducting further trails and prosecutions. On 3 July, 1979 — after a heated debate and by a slight margin of votes (253 to 238[106]), the Bundestag decided to finally abolish the statute of limitations. As observed by Klaus Bachmann, such switch of attitude among the society was caused, to a larger extent, by a "more intellectual than emotional"[107] reaction to two specific events occurring at the same time: the Düsseldorf Majdanek Trial and the emission of four episodes-long American television movie entitled *Holocaust*.[108] While the former one would be much

[104] According to Jeffrey Herf: „At the time of the 1965 debate, … 13,892 persons were still the subjects of judicial proceedings, while proceedings against 542 persons had been stopped because the accused were abroad or in unknown locations. Cases against 41,212 persons had been closed without convictions. If West Germany were to allow the statute of limitations on crimes of murder to remain at 15 years, and if the 100,000 figure was a plausible number of potential defendants, then clearly the great majority of those involved in the Final Solution would never face prosecution," see: J. Herf, *op. cit*., p. 42. The prospect of enacting such a law hastened the work of the Hessian prosecutors. As noted by Rebecca Wittmann: "for time constraints were the a large part of the reason that out of eight hundred investigated, only twenty were brought to trial in 1963," see: R. Wittmann, *Beyond Justice: The Auschwitz Trial*, p. 51.

[105] J. Herf, *op. cit*., p. 44.

[106] *Ibid*., p. 45.

[107] K. Bachmann, *op. cit*., p. 117.

[108] On public reaction to the TV movie *Holocaust* in West Germany (and elsewhere), see, for example: *ibid*., pp. 117-119; T. Cole, *Selling the Holocaust: From Auschwitz to Schindler,*

harder to carry out (if not impossible) without various legal resolutions and historic precedence of the previous trial (two factors I tried to analyze in this paper) the latter shows the ever-increasing role of media in transmitting and assimilating the past, an issue which I also encounter. After year 1979, the process of confrontation with the Nazi past, considerably accelerated in Frankfurt, could no longer be stopped. It took a lot of time and a generational change to perceive this heavy burden not as a chore, like back in the mid-sixties, but rather as irrevocable moral obligation.

Szymon Pietrzykowski

Legal Ramifications and Historical Impact of the Frankfurt Auschwitz Trial (1963–1965)

Abstract

The Frankfurt Auschwitz Trial in years 1963–1965, alternatively described as the "second Auschwitz trial," is widely regarded to be a fundamental event which, in fact, inaugurated the so-called *Vergangenheitsbewältigung* [overcoming/coming to terms with the Nazi past]. In contrast to the immediate postwar period, where the necessity to judge and punish/atone, at least symbolically, certain wrongdoings committed during the twelve-years-long National Socialist regime was forced outwardly, by the Allied powers, the Frankfurt trial did occur due to enormous determination of few people, West Germany residents — to mention Hessian State Attorney Fritz Bauer; prosecutors involved in pretrial investigations as well as the central proceedings or Holocaust survivor Hermann Langbein — who were guided by rather moral than strictly juridical obligation "to put the entire Auschwitz complex on trial" (Bauer). Unfortunately, the very fact that the Frankfurt Trial was based on West German statutory law (within the general meaning given the by penal code of 1871) re-established after 1949, not recognizing the term *Genocide* or crimes against humanity, undermined the realization of that plan. Instead of delineating a highly

How History is Bought, Packed and Sold, Routledge, New York 1999, pp. 12-13; J. Shandler, *While America Watches: Televising the Holocaust*, Oxford University Press, Oxford/New York 1999, pp. 155-178; W. Sollors, *'Holocaust' on West German Television: The (In)Ability to Mourn?*, "The Massachusetts Review" 1979, Vol. 20, No 2, pp. 377-386; A. Huyssen, *The Politics of Identification: 'Holocaust' West German Drama*, "New German Critique" 1980, Issue 19, pp. 117-136; G. Custance, S. Zieliński, *History as Entertainment and Provocation: The TV Series 'Holocaust' in West Germany*, "New German Critique" 1980, Issue 19, pp. 81-96; T. Dreisbach, *Transatlantic Broadcasts. 'Holocaust' in America and West Germany*, "Penn History Review" Vol. 16, Issue 2 , pp. 76-97, http://repository.upenn.edu/cgi/viewcontent.cgi?article=1007&context=phr [30.12.2015].

detailed, horizontal picture of industrial-like extermination, judges were merely focused on examining individual cases of 22 defendants, former crew members of Auschwitz concentration camp. The trial's legal ramifications (discussed in the article) deeply affected its public reception: while under such circumstances homicide (*Mord/Totschlag*) was the most strident accusation, most newspapers or TV channels competed in publishing countless blood-thrilling stories given by the witnesses and prosecutors in order to incriminate each defendant. According to certain scholars, whose publications I extensively quote (Wittman, Pendas, Arendt and others), such turn of events led to a rather invalid assumption that in its essential part Holocaust was the work of sadists, it overlooked the role of *ordinary men* entangled (often against their will) in the "machinery of destruction" (Hilberg). However, plentiful inaccuracies do not invalidate the overall historical significance of the Frankfurt trial (second essential part of my considerations) — more than fifty years after the final verdict was told it should be considered as a giant step in the above-mentioned Vergangenheitsbewältigung process, that prepared the way for the following ones: 1968 revolt, the emission of Holocaust TV series in 1979, the discussion over the war crimes of Wehrmacht in the mid nineties *etc*.

Keywords: Holocaust, Auschwitz, West Germany, legal proceedings, memory, public opinion, Vergangenheitsbewältigung [overcoming/coming to terms with the Nazi past].