

1 October 1947

UNITED STATES)

v.)

Case No. 000-50-2-86

Franz Rudolf FROESCHL, et al)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, on 9 July 1947 before a General Military Government Court.

II. CHARGES AND PARTICULARS:

FIRST CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Franz Rudolf Froeschl and Fritz Alois Hredilek acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, willfully, deliberately, and wrongfully encourage, aid, abet and participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such civilian nationals being unknown but aggregating many thousands who were then and there in the custody of the German Reich in exercise of belligerent control.

SECOND CHARGE: Violation of the Laws and Usage of War.

Particulars: In that Franz Rudolf Froeschl and Fritz Alois Hredilek acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did at or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, willfully, deliberately and wrongfully encourage, aid, abet and participate in the subjection of members of the armed forces of nations then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such prisoners of war being unknown, but aggregating many hundreds.

III. SUMMARY OF EVIDENCE: The accused were, by their own admissions, members of the SS at Camp Dachau or its outcamps for considerable periods of time between the times alleged and were shown to have participated to a substantial degree in the Dachau Concentration Camp

mass atrocity. Prosecution's exhibit, marked P-Ex 4, R 8, is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp Case (United States vs. Weiss, et al., OOO-50-2, March 1946, hereinafter referred to as the "Parent Case", see Section V, post).

IV. EVIDENCE AND RECOMMENDATIONS:

1. FRANZ RUDOLF FROESCHL (The surname is actually spelled "FRÖSCHL, R 7; P-Ex 3)

Nationality:	German
Age:	58
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Staff Sergeant
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; NG Charge II
Sentence:	2½ years, commencing 28 May 1945

Evidence for Prosecution: The accused served as a guard at Mauthausen Concentration Camp from 1 May 1942 to March 1943; at Dachau Concentration Camp as an armorer from February 1943 to March 1944; at the canteen at outcamp Allach from March 1944; and at the canteen at outcamp Kaufering from September 1944 to April 1945 (R 7; P-Ex 3).

A former inmate of outcamp Kaufering testified that the accused mistreated inmates while he was director of the canteen by beating them with his hands and a stick on the head or body wherever he could hit them, which often left the victims bleeding (R 9, 10, 11, 12, 23).

The inmates included Hungarians, Poles, Lithuanians, Estonians, Latvians, Dutch, French and German (R 23). The witness further testified that some things which arrived for the inmates' canteen were delivered to the SS canteen (R 12). In an extrajudicial unsworn statement a former inmate of outcamp Kaufering said that he saw the accused beat Jewish prisoners with heavy square logs and kick them until they broke down. Together with the chief of the SS kitchen, the accused admitted

pot dirty (R 60). He saw inmates mistreated by one SS guard on several occasions (R 61, 62).

Evidence for Defense: The accused did not participate in any movements of inmates (r 7; P-Ex 3). He testified that he did not ever beat or mistreat any inmates and that his canteen was so small that, if he had beaten inmates with a stick, he would have pushed all the merchandise down (R 60, 61, 62). On one occasion he told one of the men to keep shampoo for later because of the shortage of supply (R 63).

Sufficiency of Evidence: The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendations: That the findings and sentence be approved.

2. FRITZ ALOIS HRADILEK

Nationality:	Czechoslovakian
Age:	41
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	SS Private First Class
Plea:	NG Charge I; NG Charge II
Findings:	NG Charge I; NG Charge II
Sentence:	3 years, commencing 8 May 1945

Evidence for Prosecution: The accused served as a guard at Dachau Concentration Camp from 25 January 1943 to 22 September 1944 and as a medic at outcamp Kaufbeuren from 23 September 1944 to 8 May 1945. He participated as a medic in an inmate evacuation transport of 300 inmates with 25 guards from outcamp Kaufbeuren to outcamp Allach on 10-11 April 1945 (R 7; P-Ex 2).

A former inmate of outcamp Kaufbeuren testified that on one occasion in the fall of 1944 he became ill but the accused forced him to go to work and he collapsed on roll call square (R 16, 19, 20). The accused was in charge of the dispensary and either refused to admit or turned

out sick inmates, but admitted healthy inmates for bribes (R 17, 19, 28, 39). On one occasion the accused took a sick French inmate's shoes (R 31). A second witness testified that the accused attacked him for his acts of kindness to inmates (R 28, 29, 31, 32). The accused embezzled medicine that belonged to the inmates (R 28, 33, 38, 42, 45, 46). In some cases the accused overruled the prescriptions and diagnoses of the inmates' doctor until the camp commander stopped him (R 34, 35).

Evidence for Defense: A prosecution witness testified that there were no deaths of inmates at outcamp Kaufbeuren between June 1944 and June 1945 (R 25, 45). The accused testified that he was drafted into the SS (R 64). He denied keeping well inmates in the hospital or sending sick ones out, or selling medical supplies (R 65, 66, 67). He testified that there were no mistreatments in outcamp Kaufbeuren and that he received and carried out a direct order from the camp commander that the sick inmates would be turned over to the hospital or a convalescent block (R 66). He denied that he conducted any physical examination or assisted the doctor. There was a great shortage of medicine and the prison doctor divided it between the inmates and the SS men (R 72, 73). The accused testified that he purchased milk for ill inmates at his own expense (R 73). He did not beat the prosecution witness but pushed him once during an argument because the witness, as a clerk in the labor commitment office, sent sick inmates to work (R 67, 68). He further testified that he did not know or ever see the prosecution witness who testified that the accused had sent him to work while he was sick (R 71, 72). He did not take away any inmate's shoes (R 75). Three witnesses testified that the accused either gave or encouraged the giving of extra food to inmates (R 51, 54, 55, 56, 57).

Sufficiency of Evidence: The findings of guilt are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendations: It is recommended that the findings and sentence

V. QUESTIONS OF LAW:

Jurisdiction: The jurisdiction of the Court to try accused HRADILEK, a former Czechoslovakian national, cannot be questioned on the ground that Czechoslovakia is a member of the United Nations. War criminals, brigands, and pirates are the common enemies of all mankind and all nations have equal interest in their apprehension and punishment for their violations of international law. Concerning this question, it is stated in "Whiston's International Law", Volume I, Sixth Edition, at page 269, that every independent state has the judicial power to punish "piracy and other offenses against the common law of nations, by whomsoever and wheresoever committed". Nationals of other United Nations were sentenced, which sentences have been approved and carried into execution, in the Mauthausen Concentration Camp case (United States vs Altfuldich, et al., February 1947); and in the Belsen Concentration Camp case, British Army of the Rhine, December 1945. Apparently, all concerned with the reviews and approvals in those cases considered the universality of jurisdiction over war crimes to be so well recognized that discussion was not necessary. Military Government Courts have jurisdiction over the nationals of any country who are in the United States Zone of Occupation, except as to certain classes of American and other nationals, e.g., military personnel, which are not pertinent to the jurisdiction over war crimes, no limitation is imposed. (See Sections 5-300.2 and 5-300.3, Title 5, "Legal and Penal Administration", of "Military Government Regulations", published by Headquarters, US Forces, European Theater, 30 November 1945.) Concerning the general question of universality of jurisdiction over war crimes see "Universality of Jurisdiction Over War Crimes", by Cowles, California Law Review, Volume XXXIII, June 1945, No. 2, pp. 177-218.

It is clear that the Court had jurisdiction of the persons of the accused and of the subject matter.

Application of Parent Case: The Court was required to take cognizance of the decision rendered in the Parent Case, including the

criminal in nature and that the participants therein, acting in pursuance of a common design, subjected persons to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO, subject:

"Trial of War Crimes Cases", 14 October 1946, and the Parent Case).

Both of the accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the Parent Case or in this subsequent proceedings, in concluding as to them that they not only participated to a substantial degree but the nature and extent of their participation were such as to warrant the sentence imposed.

Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

VI. CONCLUSIONS:

1. It is recommended that the findings and sentences be approved.
2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

/s/ William C. Craft
/t/ WILLIAM C. CRAFT
Attorney
Post Trial Branch

Having examined the record of trial, I concur,
this 21st day of October 1947.

/s/ C. E. Straight
/t/ C. E. STRAIGHT
Lieutenant Colonel, JAGD
Deputy Judge Advocate
for War Crimes