

Adam Dziurok

The Specific Character of Prosecuting Nazi Crimes in the Borderlands

(on the Example of the Special Criminal Court
in Katowice in 1945-1946)

Upper Silesia, on the Polish-German borderland, was a difficult region in terms of dealing with German war crimes. Many regulations, often improvised for the purpose, proved excessively draconian, and judicial decisions had to take into account not only the complex issues attendant on legitimate national affiliations of defendants, but also the historical-legal autonomy of Upper Silesia.

The prosecution of German crimes on Polish territories was regulated by the Polish Committee of National Liberation (PKWN) Decree of 31 August 1944 “concerning punishment of fascist-Nazi criminals” and “traitors to the Polish Nation”. This piece of legislation, known as the *August Decree* (colloquially called in Polish *Sierpniówka*), introduced the charge of “(acting) for the benefit of the (enemy) occupier’s regime” which was understood to cover murder, the abuse and repression of civilians and POWs, and, to be sure, any other forms of ill-treatment devised by that regime. A separate kind of court was created specifically for trying “fascist-Nazi criminals” – which existed until November 1946.¹ The reason behind the creation of this new judicial authority was primarily that the political judiciary was connected to Sanacja, the ousted pre-war regime, and, therefore, in line with the nostrums of the new regime, was not to be trusted by society. Courts appointed during the

1 Journal of Laws of the Republic of Poland (further: JoL) 1944/4/16; the PKWN (Polish National Liberation Committee) Decree of 31 August 1944 on penalties for fascist-Nazi criminals responsible for murder, abuse of civilians and POWs, and traitors to the Polish Nation; JoL 1944/4/21, PKWN Decree of 12 September 1944 on special criminal courts for fascist-Nazi criminals.

war (on liberated territory) were to take preventive action – namely to stop further German crimes in those parts of Poland still under occupation. Special criminal courts shared certain characteristics with military courts. These included obligatory arrest, shortened time for judicial procedures (indictments had to be submitted within fourteen days of arrest, and hearing dates had to be set within forty-eight hours of indictment) and the lack of appeal mechanisms. There were no preliminary inquiries into cases, only investigations, with sentences issued immediately after the hearings. Sentences were final and not subject to appeal. Only those sentenced to death had the right of personal appeal for pardon to the President of the Home National Council (KRN). Additionally, an unprecedented and exceptionally severe sanction was the confiscation of property of those found guilty. Courts consisted of one professional judge and two jurors. The participation of the ‘civic factor’ (jurors were called “representatives of the people”) was supposed to be proof of the ‘democratization’ of the judiciary. By design, this special judiciary was focused on the fast and rough dispensation of justice, which in some way mirrored the principles the Nazi criminals who were wont to subscribe to themselves before the tables were turned. Now, they were in the dock supposedly being tried by the Polish Nation.²

The PKWN Decree of 12 September 1944 established Special Criminal Courts (SSKs – *Specjalne Sądy Karne*), one for every appeal court district. In mid-February 1945, a fortnight or so after the Red Army entered Katowice, a Special Criminal Court was established in the city. It was the fourth court of its type in Poland (the first three were in Warsaw – temporarily based in Siedlce; Kraków – based in Rzeszów; and Lublin). In the end, nine such courts were established altogether. The Katowice court differed from the others in the number of its subordinate local branches – in Bytom, Cieszyn, Racibórz, and Sosnowiec.³

The rulings delivered by the Special Criminal Court in Katowice were influenced by the fact that its jurisdiction covered three areas constituting a mixed ethnic bag of inhabitants. First, there was Opole Silesia, i. e. that part of Upper Silesia that belonged to Germany before the war and whose inhabitants were Germans, Poles, and ‘autochtons’ referring to themselves simply as Silesians; second, pre-war Silesia, which belonged to Poland and consisted of parts of Upper Silesia and Cieszyn Silesia – lands of the former Prussian Partition; third, Dąbrowa Basin – which was part of the Kielce region with a nationally conscious and committed Polish population. These lands, except

2 Adam Dziurok, *Śląskie rozrachunki: Władze komunistyczne a byli członkowie organizacji nazistowskich na Górnym Śląsku w latach 1945-1956* (Warsaw, 2000), 145-6, 168-9.

3 Ibid., 171.

for Opole Silesia, were incorporated into the Reich in 1939. The German ethnic list (*Volksliste*) was introduced in these areas. In Upper Silesia, registration was compulsory and covered 90% of the population. These people were classified as constituent members of the German nation,⁴ but recognized by the German authorities as 'Polonised'. In Dąbrowa Basin, where the population was more evidently Polish, the attitude of the new German authorities was different.

The Special Criminal Court in Katowice presiding over this diverse area (by November 1946) examined 1,665 cases, of which seven hundred and seventy (46%) ended in acquittals, eight hundred and thirty-eight in prison sentences and fifty-seven in death sentences (over 3%). In 1945 alone, the Special Criminal Court in Katowice sentenced thirty-eight people to death.⁵ To be sure, the Katowice court was not the most severe – the Special Criminal Court in Gdańsk sentenced sixty-nine out of three hundred defendants to death.⁶

An analysis of the five hundred and twenty-seven cases tried by the Special Criminal Court of Katowice (not counting those tried by its outlying local branches), four main categories of charges (which constituted 90% of all kinds of crimes examined by this court) can be extracted:

1. affiliation to the SA – three hundred and twenty-three persons, namely 61% of all cases;
2. providing information to the German authorities – eighty-five cases (16%);
3. abuse of civilians or POWs – thirty-nine cases (7%);
4. affiliation with the SS – twenty-eight cases (5%).⁷

The defendants usually tended to be 'relatively unimportant', as most of the criminals that committed the worst and most numerous crimes either escaped or managed to hide out of fear of severe punishment. According to press reports, "small-time criminals, various confused or stupefied individuals" who had betrayed their homeland by serving the German occupier

4 See Ryszard Kaczmarek, *Górny Śląsk podczas II wojny światowej: Między utopią niemieckiej wspólnoty narodowej a rzeczywistością okupacji na terenach ucielonych do Trzeciej Rzeszy* (Katowice, 2006).

5 Adam Dziurok, 'Działalność Specjalnego Sądu Karnego w Katowicach w latach 1945-1946 w świetle prasy', *Studia i materiały z dziejów Śląska*, 25 (2001), 174.

6 Dariusz Burczyk, 'Specjalny Sąd Karny w Gdańsku (1945-1946)', *Przyczynek do monografii, Przegląd Archiwalny Instytutu Pamięci Narodowej*, 7 (2014), 289-312, 304, 308.

7 Other categories put on trial included members of the NSDAP (seven persons), Gestapo informers (5 persons), so-called Freikorpsists (three persons). Some people faced several charges; these were not included in the statistics relating to four major crime categories (they were included in other groups of charges).

were the most common. Journalists mockingly wrote that there were no individuals among these defendants who stood their ground with dignity and could be described as acting “due to wrong, but ideological motives”.⁸ A profile of the average Silesian criminal was created by one of the prosecutors of the Special Criminal Court in Katowice; according to him, it was often a hard-working Polish miner or steelworker with a large family, claiming to have joined the SA under the pressure of his superior and against his own will (‘could not avoid joining without the danger of severe persecution’), and his activity in the organisation was limited to paying subs.⁹

As indicated above, the following charges applied to over half of the defendants before the Special Criminal Court of Upper Silesia: “cooperating with the German occupation regime ... operating to the detriment of the Polish State and civilians by taking part, as a member of the Nazi-fascist S. A., in a criminal association aiming at committing the crimes enumerated in the decree of 31. 08. 1944.” From 1945-1946, merely the formal affiliation to the SA should have carried a three year prison sentence or more at the Special Criminal Court in Katowice. However, Silesian courts were extraordinarily lenient in imposing these penalties, arguing that these crimes were committed due to an “excusable lack of knowledge of the illegality of the act”. After mid-1946, only proven active members of the SA were sentenced.¹⁰

Most judges took note of the special ethnic character of Upper Silesia and took into account that the conditions there differed from those in other parts of the country. The Court concluded that in what formerly constituted the Silesian and Pomeranian regions, under the “forcible and effective” duress of the authorities, people joined the SA *en masse*, mainly in an effort “to protect their property, jobs, and freedom, or to improve their living conditions”. Furthermore, the inhabitants of these regions did not typically perceive joining the SA or NSDAP as “a great offence from the point of view of state or nation.” Thus, judges took the view that one should always bear in mind the territory where the members of SA, SS or NSDAP were put on trial because the situation was different in Silesia and Pomerania, as opposed to other lands incorporated into the Reich (where there was less pressure during recruitment to Nazi organizations), and completely different to what obtained

8 ‘Bilans działalności Sądów Specjalnych w woj. śląsko-dąbrowskim’, *Dziennik Zachodni*, 344 (1946).

9 Juliusz Niekraś, ‘Odniemczenie Śląska po drugiej wojnie światowej’, *Strażnica Zachodnia*, 10-12 (1947), 314-5.

10 Adam Dziurok, ‘Die Abrechnung mit deutschen Kriegsverbrechen in Oberschlesien am Beispiel der Strafprozesse ehemaliger SA-Angehöriger’, in Adam Dziurok, Piotr Madajczyk, and Sebastian Rosenbaum (eds), *Die Haltung der kommunistischen Behörden gegenüber der deutschen Bevölkerung in Polen in den Jahren 1945 bis 1989* (Gleiwitz-Opeln, 2015), 56-66.

in the General Government (where prior to accepting applicants, careful selection took place and only trusted applicants were accepted).¹¹ The Criminal Court took into consideration the fact that Silesians, “as a result of their specific living conditions, have a vaguer sense of their national identity than people in other districts”. The “general ambiance” of Silesia was treated as a mitigating circumstance, which, due to its vague sense of societal identity, accepted membership of the SA all the more readily.

The question of “vague national awareness” (i.e. the indeterminate national identity of many Upper Silesians) is connected to the argument that defendants were not aware of “the illegality of their acts”. It has been argued that they lacked the necessary degree of “national consciousness” that would make it obvious to them that such actions constituted acts of treason against the nation. In many court rulings, this was accepted as a credible explanation for formal affiliation with Nazi organizations. When the court concluded that the defendant, in joining a Nazi organization, did not realise that it was a criminal organization on which “the Nazi system was based”, extraordinary mitigating circumstances were recognized. In one case, the court concluded that the defendant operated in the “partially understandable ignorance of his actions”, as he was not aware that Polish citizens, even nationally neutral ones, were forbidden to belong to any organization hostile to the Polish nation. Another defendant was exonerated by the fact that he was a simple labourer uninitiated into the arcana of German policy. He had no knowledge of the SA’s criminal nature since, as a musician in the SA’s orchestra, he was released from the duty to participate in the formation’s exercises and other activities.¹² However, in many situations, we also come across different interpretations – e.g. one judge who ruled that SA members could not claim to be unaware of what they were in for because SA activities, in his opinion, were generally known, especially in Silesia, “where each family had friends or relatives in the Reich, and where awareness of SA goals had to exist and was much greater than in central Poland”.¹³ Different judges also asserted that at the turn of 1941/1942, even children and the mentally challenged were aware of the criminal goals of this organization.¹⁴

In considering responsibility for SA affiliations, the Special Criminal Court of Katowice applied different standards depending on the defendant’s area of operations. It was admitted that though affiliation to the SA “on Polish territory” always constituted treason against Poland (specifically in

11 Archive of the Institute of National Remembrance in Katowice [further: AIPN Ka], *Specjalny Sąd Karny w Katowicach*, 559/166, 30.

12 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/539, 32.

13 Dziurok, *Śląskie rozrachunki*, 201.

14 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/541, 49.

that part of Upper Silesia that had been part of Poland before the war, and in Dąbrowa Basin), it did not constitute treason against the nation in the case of German citizens. In so-called German Silesia (Opole Silesia), the principles applied to SA members were initially unbending. They were, for example, applied to members of “Stahlhelm”, an ex-servicemen’s organization who, in 1935, were automatically conscripted into the ranks of the SA. In this way, “the inhabitants of Opole – Poles, often even pro-Polish activists, who in this way became members of the SA, were treated as war criminals”. In these complicated situations, courts tended to be quite lenient.¹⁵ Defendants from Opole Silesia – erstwhile citizens of the Reich – could count on the understanding of the courts that, as for instance in the cases of SA members from Zabrze, “defendants played out their parts as German citizens, trying to support, albeit in this criminal manner, their own (Polish) nation”.¹⁶ SA members from Dąbrowa Basin, on the other hand, were punished most severely. There, joining this organization was considered to be a “great crime”.¹⁷ Thus, there was a direct correlation – the greater the proportion of Poles in the given area (which was equated with the degree of national consciousness), the greater the guilt of the defendant. Courts treated affiliation to Nazi organizations one way in towns where the “rotten atmosphere of Nazism” exerted influence on less aware individuals (e. g. in Bielsko, Chorzów and Pszów), and less leniently in places where “Polishness” was strong and deep-rooted (for instance, in the “purely Polish and highly national” village near Pszczyna where only 2 out of 800 inhabitants were members of the SA).¹⁸

The Issue of Defendants’ Nationality / National Affiliation

In the examination of criminal cases of people from the Polish-German borderlands, courts faced the difficult task of determining the nationality of the defendants. These decisions had a significant impact on the judicature.

The situation was even more complicated if the evidentiary documentation was incomplete or questionable. This was the case with an inhabitant of Katowice county when the Special Criminal Court of Katowice stated that it could not tell who the defendant was – a Reichsdeutscher, member of the third group on the *Volksliste*, or a Pole who had not been accepted for registration on the *Volksliste*. The first point of indictment accused him

15 Niekrasz, ‘Odniemczenie Śląska po drugiej wojnie światowej’, 315.

16 Dziurok, *Śląskie rozrachunki*, 192.

17 ‘Bilans działalności Sądów Specjalnych w woj. śląsko-dąbrowskim’, *Dziennik Zachodni*, 344 (December 14, 1946).

18 Dziurok, *Śląskie rozrachunki*, 199-200.

of declaring in the questionnaire of the Pharmaceutical Society that he was “of German blood”. The court concluded that the local population in Upper Silesia, and, indeed, even in the General Government, often provided incorrect data regarding nationality to different German institutions in order to save their property. It was even easier for the defendant, as he had a German-sounding surname: Reinholz. As a result, he had saved his entire business. The court concluded that applications for “Volksdeutschen” status were common in Silesia, obtained by means of coercion, and, hence, did not constitute a denial of Polish nationality.¹⁹ In another case, that of an NSDAP member from Rybnik, the court treated the fact that the defendant always considered himself German and lived the life of a German as a mitigating circumstance. The incriminating factor in the opinion of the court was that before the war the defendant had been a Polish citizen and was thus obliged to at least act passively, and not in a hostile manner towards the state he was a citizen of.²⁰ In the case of an accused SA member from Pszczyna County, the court took into consideration that he was German (before the war he belonged to the *Jungdeutsche Partei*), and “these crimes [namely SA membership] are much greater crimes for a Pole than for the German he considered himself to be even before the war”.²¹

Prosecutors sometimes got carried away with cheap flights of absurd rhetoric. Such was the case of a prosecutor who stated that the defendant, Wilczek [whose surname translates as “little wolf”], was “fed upon the Polish soil of Upper Silesia with Polish milk”, but when Poland was in danger, “he truly became a dangerous Germanic wolf [...] attacking Poland, biting and scratching the breast which had fed him.”²² At another trial, the court described the defendant as a “latent German” during the days of Polish rule, who became “entirely, overtly German” the moment the German army entered Poland.²³

It would be easy to imagine that, in the case of the inhabitants of the pre-war Silesian Region, Germans from the highest group on the *Volksliste* would prevail among those accused of collaboration. According to the Special Criminal Court prosecutor in Katowice, however, the greatest number of defendants that came to stand before his court belonged to the third group of the *Volksliste*, and not the first or second groups.²⁴ Furthermore, as we

19 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/474, 78.

20 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/961, 45.

21 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/262, 2, 25.

22 Dziurok, ‘Działalność Specjalnego Sądu Karnego w Katowicach w latach 1945-1946 w świetle prasy’, 173.

23 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/544, 119.

24 Niekrasz, ‘Odniesienie Śląska po drugiej wojnie światowej’, 312.

see in the reasoning behind one judgment, erstwhile post-First World War pro-Polish Silesian insurgents were frequently among the defendants, who “tarnished themselves by cooperating with Germany, causing greater harm to the Polish people than German SA members”.²⁵

As already mentioned, Third Reich citizens were treated more leniently in Upper Silesia. Though the *August Decree* was also binding in the “regained lands” (such as Opole Silesia), in the opinion of the chairman of the Special Criminal Court of Katowice, the provisions of the Decree had to be applied prudently, as those being judged were not Polish citizens and, therefore, not obliged to be loyal to the Polish state or subordinate themselves to its nostrums. For these people, the German state authorities were not an imposed alien regime, but a sovereign authority. In practice, the only criminals to be punished were those who had committed specific crimes against humanity or held higher-ranking positions in the SA or NSDAP. Judges, however, had to cope with cases like that of the NSDAP *Ortsgruppenleiter*, who was adjudged to have been a war criminal by the Special Criminal Court, but who was also recognized as Polish by the verification commission.²⁶

In the acquittal of one SS member, the court took into consideration the fact that he declared himself to be a German who was “subject to expulsion from the regained lands”. However, the deciding factor was the fact that he was coerced into enlisting in the SS in 1944; he served for six months (but on active service for four weeks having spent the rest of his time in hospital due to an injury incurred while playing soccer).²⁷ This, to some extent, depicts the importance of cases that the Special Criminal Court of Katowice had to deal with.

The liberal treatment of SS members in Opole Silesia, however, did not extend to their counterparts in Cieszyn Silesia. There, particularly in Bielsko, the court treated service in the SS more rigorously; it took into account the engagement of its members in the campaign to expel Polish people from Żywiec and the Bielsko counties.²⁸

Courts clarified the prosecution of certain acts, explaining that in the practice of the prosecutors’ offices and special courts, as well as in the interpretation of the Nuremberg Tribunal, participation in certain organizations that the Special Criminal Court recognized as criminal organizations was not considered an offence. The issue concerned the *Reichsluftschutzbund* (Anti-Aircraft Organization), whereas the court of Katowice concluded that

25 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/265, 22.

26 Niekrasz, ‘Odniesienie Śląska po drugiej wojnie światowej’, 307.

27 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/167, 40.

28 ‘Bilans działalności Sądów Specjalnych w woj. śląsko-dąbrowskim’, *Dziennik Zachodni*, 344 (December 14, 1946).

belonging to this organization was “neutral in terms of nationality and politics” (a charge of affiliation with this organization having been included in the original indictment). However, affiliations with the NSV (*Nationalsozialistische Volkswohlfahrt* – National Socialist Care for the Needy) or BDO (*Bund Deutscher Osten* – Association of the German East) were not subject to penalty, and could only “constitute the illustration of other crimes”. The Court additionally argued that, “a BDO card shows that the definitive (total) number (of members) was 655,956, so again, affiliation to the BDO was not a rare phenomenon in Silesia.”²⁹ The dispute with the Special Criminal Court prosecutor’s office was justified to the extent that prosecutors referred to the court many questionable cases by extending the interpretation of the term “fascist-Nazi criminal”.

The high number of acquittals typical for the special judiciary³⁰ of the Special Criminal Court of Katowice was also the result of the specific nature of the borderlands, where charges of pro-German activities were very easy to produce. There were cases of false accusations, often resulting from venal motives or personal animosities (such as in the case of the Special Criminal Court of Katowice’s acquittal of a defendant who was accused by his own daughter).³¹ The substantiation of one judgment made it clear that the entire case hinged on a vendetta between the witnesses and the defendant.³² Courts dealt with cases that could not be treated as war crimes. For instance, workers accused their superiors of bullying or of being given excessive work loads. In some situations, as seen in the case of the acquittal of a mine supervisor – a *Reichsdeutscher* from Bytom – the defendant explained that beating Polish workers did not imply some form of national reprisal, but stemmed from nerves, and could not be treated as a crime of “collaboration with the German occupation regime”.³³ In a similar case, where the court acquitted a defendant charged with harming Polish workers through increasing work efficiency standards, it was argued that his actions did not bear the hallmarks of a crime as defined by the *August Decree*, and were rather the result of the over-zealous and vociferous nature of the defendant. In another case, it was stated that the defendant – a person of Silesian identity, who was a department manager at a factory in Klucze (outside of Upper Silesia) and consid-

29 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/474, 79.

30 To compare the number of acquittals by the Special Criminal Court in Katowice (46%), the SSK in Gdańsk acquitted 231 people, which constituted more than 38% of the defendants (Buczyk, ‘Specjalny Sąd Karny w Gdańsku’ [1945-1946], 304), and the SSK in Toruń acquitted 42% of its defendants (Janina Wojciechowska, *Przestępcy hitlerowscy przed Specjalnym Sądem Karnym w Toruniu [1945-1956]* [Toruń, 1965], 23.)

31 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/477, 31.

32 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/8, 57-8.

33 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/261, 56.

ered by Polish workers to be German – was extremely exigent, ambitious and not very understanding towards some workers not used to the German work system (“to the system to which the defendant, as an inhabitant of Silesia, was accustomed to”).³⁴

Thus, judges openly distinguished between “fascist-Nazi crimes” and persecution or harassment in wartimes for reasons other than the desire “to collaborate with the occupier regime”. There is also the interesting case of a ticket collector from Pszczyna County who confiscated food purchased by Poles from Dąbrowa Basin. While the court admitted that the accused operated for the benefit of the German occupier and insulted Poles, it ultimately acquitted the defendant, recognizing that bootlegging cases in courts were most often related to settling old scores.³⁵

Analysing the substantiations of Special Criminal Court judgments in Katowice, we come across a spectrum of behaviour that did not fully correspond to the decreed charges of collaboration or treason. There was the case of an SA member who made his apartment available for meetings of young Polish resistance fighters;³⁶ another who was commonly considered Polish and delighted in news of German armies losing battles.³⁷ In many cases, the court concluded that they did not harm Poles and spoke in the Polish language. For instance, the court acquitted a defendant who had signed a declaration to join the SA under the influence of alcohol, but then never acted against Poles (moreover, he even paid contributions to help the widows of those killed by Germans).³⁸

The Court of Katowice was quite lenient even with those charged with serious crimes. Of the fifty-seven death sentences that were delivered, thirty-two were executed. This is not surprising as, in at least several cases, after sentencing a defendant to death, the court would express its opinion in favour of acquittal. It also suggested, which to some extent undermined its own previous decisions, that a convict deserved commuting the capital punishment to temporary imprisonment, by grace.³⁹ In several cases, fif-

34 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/5, 138-40.

35 The court saw it as its obligation to submit files to initiate compulsory rehabilitation proceedings (the accused was in the third group on the *Volksliste*, so he was not subject to standard proceedings), AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/14, 1, 75.

36 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/468, 68.

37 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/540, 41.

38 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/256, 55.

39 For instance in Knurów, for the SA man convicted as one of those who participated in making arrests, the President of National Council applied the right of clemency and commuted the death sentence to 15 years in prison, AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/957, 78-9.

teen-year prison sentences were deemed to be punishments adequately fitting the crimes.⁴⁰ Rigid legal regulations did not allow the courts to hand down anything other than the death penalty; however a sense of justice led judges to apply for clemency – which was the only method of circumventing this implacable legal provision.

An interesting situation occurred during the hearing of two defendants accused of assisting in catching fugitive Soviet prisoners. The two jurors expressed a dissenting opinion to that of the judge. The judge explained that acting through fear, as was the case here, did not exempt one from criminal responsibility.⁴¹ The jurors, being aware that this could only spell the death sentence, overruled the judge to return a verdict of not guilty. Similar cases were recorded in the Special Criminal Court in Kraków, where jurors, deeming the provisions of the *August Decree* to be excessively rigid, opted for acquittals due to the severity of the minimum statutory penalties.⁴²

* *

Although the special judiciary was intended to fight “active collaboration” (passive collaboration was understood to be registration on the *Volksliste*), it can be said that the majority of trials related to passive collaboration. For instance, cases of SA membership which did not involve criminal activities were formally acts of treachery, but treated more leniently as passive siding with the enemy.

Court practices demonstrated a significant understanding of the specific nature of Upper Silesia, which was characterized by weak national identity. The court of Katowice did not punish defendants implacably or with excessive severity, which was not in line with what was envisaged by the legislators; the latter promulgated regulations designed to dispense summary justice based on draconian penalties. Very rarely were defendants dangerous people who formally fitted the definition of “fascist-Nazi criminals”. In the early post-war years, the brunt of retributive justice was aimed at cases of lesser importance, which in the conditions in Upper Silesian meant the punishment of a considerable group of SA members.

40 In *Pszczyna*, upon delivering its judgment, the court issued an opinion on pardoning the defendant, arguing that although he is “a degenerate” and “truly harmful and hostile to the Polish Nation”, the penalty of fifteen years in prisons should correspond to the degree of his culpability. This time, the President of the Home National Council (KRN) did not agree – and refused to exercise his right of clemency, AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/13, 76, 78.

41 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/9, 59.

42 Adam Lityński, *O prawie i sądach początków Polski Ludowej* (Białystok, 1999), 67.

Criminal responsibility was nuanced depending on the background of the defendants. Consideration was given to the differences in the policies of the German authorities in Silesian Opole, Cieszyn Silesia, Dąbrowa Basin, and the lands of the former Prussian Partition, which made up part of the pre-war Silesian province. Taking into consideration the socio-ethnic complexities of the borderlands, the Special Criminal Court of Katowice did not settle for one rigid approach in dealing with all individual responses to the former Nazi occupier regime, but rather tried to see the actions of defendants within the wider context of national identity issues. At the same time, it recognized the snares associated with charges laid against pro-German attitudes that made for easy retributive personal score-settling in this territory. For various reasons (due to false or unconfirmed charges, lack of evidence, etc.) nearly half of the cases examined by the Special Criminal Court of Katowice ended in the acquittal of the defendants.