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SUMMARY OF INFORMATION

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THE TILLESSEN TRIAL.

[This trial was briefly mentioned in War Crimes News Digest No. XX, page 3. In view of the importance and possible implications of the affair, a fuller account, compiled from radio-transcripts from studios in Germany is now circulated.- R.O.]

On November 29th, 1946, Heinrich TILLESSEN was charged before a German court at Freiburg in Breisgau as a participant in the murder, in 1921, of the German Chancellor, ERZBERGER, who was regarded as responsible for the acceptance of the armistice and the Treaty of Versailles.

The assassination was organised by a German nationalist society. A man named SCHULZ, alleged to be one of the murderers, was arrested at Wiesbaden on November 18th, and is now awaiting trial; a third person implicated was the late German Ambassador in Bucharest, von KILLINGER, a leading Nazi, who killed himself before the German retreat from Roumania.

At his trial, TILLESSEN did not deny his guilt, but he pleaded that he was absolved by Hitler's amnesty of March 21st, 1933, and, moreover, that he had acted on a patriotic impulse. The prosecution, demanding the death penalty, maintained that this amnesty was indisputably among those Nazi laws which a decision of the Berlin Control Commission had rendered null and void. The presiding judge, Landsgerichtsdirektor Dr. GOERING, upheld the legality of the amnesty, and refused to pass judgment. TILLESSEN was released, but was rearrested by the French authorities on leaving the Court. It was announced that he would be retried. The French Military Government then dismissed Judge GOERING from his office and instituted an enquiry.

On December 5th, 1946, it was announced that Dr. ZUERCHER, head of the Baden judicial organisation, had sent in his resignation to the French Military Government on November 30th in connection with the dismissal of Dr. GOERING. "Inspired by the need of judicial independence in a democratic State based on law and the requisite Constitutional guarantees," he said in his resignation, "I feel unable, in view of the measures taken by the Military Government, to continue to head the Baden judicial administration."

In an interview with the Press, Dr. ZUERCHER said he regarded the Tillessen acquittal as a judicial error for moral and political reasons, since the amnesty could not be regarded as legally valid. Although the judgment was the result of an ultra-positivistic interpretation of the law, it had nothing to do with Nazi doctrine. A more realistic interpretation and application of law should have led to a different result. Landsgerichtsdirektor Dr. GOERING had never been a member of the NSDAP or of one of its branches. The judgment could not be imputed to the judges as a crime.

Dr. ZUERCHER added that it was contrary to the principle of

judicial independence to apply sanctions against a judge for decisions based on judicial error. "The building up of a democratic State based on the rule of law is bound to be jeopardised by such measures. No judge could feel that he was unfettered in his decisions, because he would always have to reckon with similar reprisals. The courts would thus be reduced to administrative authorities acting on instructions, and justice must necessarily become political in character. Public confidence in judicial independence and the development of a democratic State based on the rule of law would be seriously shaken."

French Reactions to the Acquittal.

The Times of 3.12.46 reported from Paris: Protests from various German professional organisations to-day reached the French Military Government at Baden-Baden against the acquittal.

French opinion has been much stirred by what is reported to be the openly sympathetic hearing which TILLESSEN received when he came before a German court. The acquittal is considered a dangerous precedent.

(6.12.46) The French Military Government stated (6.12.46): "There was no need for ZUERCHER to notify the French authorities of his intention to resign, for the simple reason that the Military Government had already rejected him as head of the Baden Ministry of Justice in view of the Freiburg trial of TILLESSEN. The new Baden Government which assumed office on 1st December, no longer counts former Ministerialrat ZUERCHER among its members. If ZUERCHER holds that Dr. GOERING'S dismissal was a violation of the independence of justice, Military Government believes that it is significant of his mental attitude that, barely two years after the collapse of Nazism, he, one of the highest officials in the country, should have seen fit to cover by his gesture the acquittal of a political criminal on the strength of a Nazi law of 1933. Fortunately for democratic Germany it appears that ZUERCHER'S attitude is not shared by the most eminent German jurists, who, at the Wiesbaden Congress, unanimously expressed their disapproval of the Freiburg verdict. These jurists at the same time were convinced that they had not shown any lack of respect for the independence of justice by protesting against a decision which, in the circumstances, was nothing short of a glorification of murder. The investigation ordered by Military Government in view of the scandalous acquittal of TILLESSEN has already indicated that among the German officials in the Provincial Administration there are suspect elements who could have retained their posts only with the assistance of the highest responsible officials of the Baden judicial administration. The investigation will be continued until the matter is completely clarified, and Military Government is firmly resolved not to be influenced in this work by rhetorical gestures like that of ZUERCHER."

German Reactions to the Acquittal.

Dr. Hans MAIER, broadcasting from Berlin on 29.11.46, said: An extraordinary thing took place in Freiburg to-day. TILLESSEN, the Erzberger murderer, was dismissed under the HITLER amnesty of 21st March, 1933, which has been issued precisely for the benefit of people like TILLESSEN, for the murderers of RATHENAU and PAASCHE and for traitors like ROEHM. After his crime, TILLESSEN had fled. The

HITLER amnesty enabled him to return to Germany as a national hero. This amnesty, made for the murderers of the Republic and the Republicans, must have been a truly excellent one—or else how could it have survived the Third Reich and serve to this day? If such products of Hitlerite justice are still used in November 1946, we shall soon see little country judges applying the Nuremberg Laws, and people despatched to concentration camps. This is not meant as an exaggeration. The Freiburg judges were even unable to convict TILLESSEN under the indictments of the Nuremberg Trial. Are we to experience the decline of our judiciary all over again? Is it possible for the forces of yesterday, of reaction and militarism, helped by an obedient judiciary, once more to sabotage Germany's rejuvenation? Not long ago, some Bremen judges merrily applied the Hitlerite decree against deserters as if nothing had happened; a high judge in Frankfurt circulated a memorandum praising the Stahlhelm as a nucleus of reconstructive elements. The recent Stuttgart bomb plot has shown that the Tillessens are still alive and kicking, and the judges of Freiburg have shown the same evil spirit which inspired our judiciary in the past. A purge is clearly overdue.

Neues Deutschland (30.11.46) called the quashing of the proceedings against TILLESSEN "an enormous political scandal". HITLER's 1933 amnesty could not justify the release of a political murderer. The quashing of the proceedings was so provocative that the German and the world public could not be expected to remain silent. The denazification scandal in Bavaria and other States in the West had shown that reaction was again taking liberties, but the Freiburg case topped all this. The judiciary had begun, once more, to undermine democracy.

A broadcast from Berlin (7.12.46) said: Berlin's judges and lawyers to-day protested against the Freiburg dismissal of the TILLESSEN case. STRUCKSBERG, President of the Berlin Court of Appeal, showed that the Nazi amnesty was no longer applicable. The judges had wanted to sanction political murder. He was supported by Dr. Vergin, Kuehnast, the Public Prosecutor, and Melsheimer, Vice-President of the Central Administration for Justice.

Soviet Zone.

A broadcast from Leipzig on 30.11.46, under the title: "Tillessen Case could not happen in Soviet Zone", said: The judge who acquitted TILLESSEN held that the Hitler amnesty was still law, because Control Council Law No. 1, which repealed Nazi legislation, had failed to mention it. But no reasonable man could assume that the amnesty would survive National Socialism by one day, quite apart from the fact that Control Council Law No. 10 provides for the punishment of crimes against humanity, which covers the Erzberger murder. It is inconceivable that a judge in the German East would have passed this judgment. This is only possible in Western Germany where, just as in the past, administration and judiciary remain reactionary. Reactionary judges admitted HITLER's oath that his movement was legal, but sent to gaol men like OSSIETZKI who protested against criminal rearmament. The judge who acquitted TILLESSEN belongs to this group. Such men must be severely punished regardless of rank.

A broadcast from Leipzig on 7.12.46 said: **TILLESSEN's** acquittal shows the failure so far of denazification. The Hesse Cabinet's instruction to its Minister of Justice that the case should be discussed at the inter-zonal lawyers' conference with a view to establishing uniformity of law and preventing a repetition of this shameful occurrence was commendable. Beyond this, the new German constitution must provide for the training of people's judges and for lay judges in criminal proceedings, to stop activities of reactionary judges.

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