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## Nazi Crimes on People with Disabilities in the Light of International Law – a Brief Review

**Abstract:** The cruelty of crimes committed by the Nazis during World War II is beyond belief. Ethnic cleansing focused mainly on the Jewish community and has been spoken of the loudest since the end of the war, but this was not the only course of eugenic thought. People who had been harmed by birth – the disabled and mentally ill, were not spared the torturers wearing German uniforms. This article presents the circumstances involved relating to the activities of Aktion T4 in Germany and the territories under German occupation, and performs a legal analysis of these activities in the light of international law in the so-called Doctors' Trial, the first of the follow-up processes to The Nuremberg Trial. The author introduces the legal bases of the sentences issued in the trial and highlights the process of shaping the responsibility of individuals in international law. The participation of Polish law enforcement agencies in prosecuting crimes against humanity committed on the patients of psychiatric hospitals and care centers in Poland, is also addressed. The proceedings in this case have been ongoing to this day, now conducted under the auspices of the Institute of National Remembrance.

**Key words:** Nazi crimes, World War II, crimes against humanity, international law, Nuremberg trial, Doctors' Trial, disability, Aktion T4.

The history of the world is marked by tragic events caused by military conflicts. For millennia people have waged wars and killed in order to achieve material and territorial gains, however, the *casus belli* of World War II lay in a different direction and the number of victims it consumed is unprecedented. Victims, who did not die on a battlefield bearing arms, but ordinary people who were brutally murdered in the name of Nazi ideology. The development of eugenic thought and desire in preserving the German race led to the mass murder of millions of innocent civilians. Unfortunately, people with disabilities and mental illnesses accounted for a notable

percentage of these pointless deaths.<sup>1</sup> It is the phenomenon of elimination of imperfect individuals that is the authors focus of attention in the conducted research.

Central to this issue is Aktion T4, the T4 representing Tiergartenstasse 4,<sup>2</sup> the address of the Chancellery department set up early in 1940 to support the Aktion T4 programme. The purpose of the programme was the complete elimination of "life unworthy of life" (Ger. *Vernichtung von lebensunwertem Leben*), in other words, individuals with different kinds of defects and disabilities, developmental disorders and, above all, mental disorders.<sup>3</sup> People classified to this group were recognised as useless in society and as economic burden on the state which, in the face of intensive military operations underway, was unwarranted from the viewpoint of the Nazi government.

The beginnings of the intellectual trend called eugenics took root in Germany as early as in the 1920s. At that time two medical doctors, Alfred Hoche and Karl Binding, brutally interpreted Darwin's evolutionary theory in a booklet entitled "Permission for the destruction of a life deprived of value" (Ger. *Die Freigabe der Vernichtung lebensunwerten Lebens*).<sup>4</sup> According to their beliefs, humanitarianism manifested by saving every human life contradicts with natural law, where weak individuals die as a result of so-called natural selection. Therefore, it is justified to eliminate all disabled people by way of involuntary euthanasia, because the natural environment would in any event not provide them with the chance of survival.<sup>5</sup> Such ideas grew in German society, most of all among nationalists, and eugenics even became a scientific field. The Nazis began to realise the vision of societal "purgation" as soon as they took power in Germany. In 1933, on 14th of July, the Act on Preventing an Inheritably Burdened Progeny (Ger. *Gesetz zur Verhütung erbkranken Nachwuchses*) entered into force, under the power of which, individuals with inheritable diseases such as: mental retardation, schizophrenia, psychosis, epilepsy, and alcoholism, were involuntarily sterilised. The estimated number of people who fell victim to this procedure was in the region of 350,000.<sup>6</sup> A few years later, on 18 August 1939, the Reich Committee for the Scientific Registering of Hereditary and Congenital Illnesses was established, its

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1 G. Aly, *Die Belasteten. Euthanasie 1939-1945: eine Gesellschaftsgeschichte*, Frankfurt am Main 2013, pp. 9-22.

2 D. Rubisia, Poligon doświadczalny Holocaustu, Portal edukacyjny IPN „pamięć.pl”, <http://pamiec.pl/pa/tylko-u-nas/14192,POLIGON-DOSWIADCZALNY-HOLOKAUSTU-artykul-Daniela-Rubisia.html> (11.09.2018).

3 E. Burdett, *The Continent of Murder: Disability and the Nazi "Euthanasia Programme in the Euthanasia Debates of Britain and the United States, 1945-Present*, Unpublished doctoral dissertation, London: University College London, p. 39.

4 A. Hoche, K. Binding, *Permission for the destruction of a life deprived of value*, 1920.

5 R.J. Lifton, *The Nazi Doctors: Medical Killing and the Psychology of Genocide*, New York 1986, pp. 45-47.

6 Z. Jaroszewski, *German Extermination of Psychiatric Patients in Occupied Poland 1939-1945*, <http://www.projectinposterum.org/docs/Jaroszewski1.htm> (access 11.09.2018).

purpose being the registration and classification of newborns with unwanted health issues.<sup>7</sup>

Further, and far more drastic actions, were implemented by Hitler after the outbreak of World War II. In October 1939, the leader of the Reich signed an act (backdated to 1 September of that year), sanctioning the ultimate elimination of all disabled people from society. Initially, mass extermination in the territory of Germany concerned only children, mainly those staying in medical facilities. It is estimated that up to 1941, more than 5,000 German children were brutally murdered.<sup>8</sup> Doctors inspired by ideas propagated by eugenic thought did terrible things to implement their ideas. There were frequent cases in which the parents of hospitalised children received notification of the transfer of their child to a special center where they were to undergo diagnostic tests. After a few weeks, however, the parents would be informed that their child had died and typically pneumonia was given as the reason for death. In reality the children were injected with a lethal dose of toxic fluid, usually phenol.<sup>9</sup>

Exterminations were not just conducted on German territory but also in countries under occupation or otherwise annexed by Germany.<sup>10</sup> At the beginning of 1940, six official centers for the extermination of disabled adults were founded labelled “A”, “B”, “Be”, “C”, “D” and “E”. However, beyond these centres there were many unofficial sites that focused on the eradication of juveniles.<sup>11</sup> These clinics, as they were referred to, played a key role in the further development and evolution of extermination procedures during the Holocaust.<sup>12</sup> Patients of “special treatment centers” and psychiatric hospitals, were tested with different methods of killing – the most efficient and the least expensive. Initially patients were killed by lethal injection but later they were simply shot. As a progression and in the interests of efficiency, it was thought more efficient to kill people in number rather than one at a time,

7 R.N. Proctor, *Racial Hygiene: Medicine under the Nazis*. Cambridge 1988, pp. 8-10.

8 C. Browning, *The Origins of the Final Solution: The Evolution of Nazi Jewish Policy, September 1939 – March 1942*, Jerusalem 2004.

9 R.J. Lifton, *The Nazi Doctors: Medical Killing and the Psychology of Genocide*. New York 2000, p. 60.

10 D. Rubisia, *op. cit.* As the first victim of “euthanasia” was Richard Kretschmar’s son. The father of the child wrote a letter to the Fuhrer himself, asking for the possibility of the legal murder of his child, which was born blind and physically deformed. Hitler sent to the family his personal physician, Dr. Karl Brandt, who supported the father’s request and on July 25, 1939, the boy was killed. As the official cause of death, however, a heart defect has been given. R. Stockton, *Aktion T4, The Nazi Program That Slaughtered 300,000 Disabled People*, <https://allthatsinteresting.com/aktion-t4-program> (access 15.09.2018)

11 H. Friedlander, *The Origins of Nazi Genocide: From Euthanasia to the Final Solution*, Chapel Hill 1995.

12 P.R. Breggin, *Psychiatry’s role in the holocaust*, “International Journal of Risk & Safety in Medicine” 1994, no. 4, p. 135.

experiments began using lethal gases such as: carbon monoxide, hydrogen oxide and hydrogen cyanide. The first experiments involving gas as a lethal agent were carried out in Poznań, where hundreds of prisoners were killed in an improvised gas chamber. The solutions used on a huge scale in Nazi concentration and extermination camps were mainly tested on people qualified for inclusion in the Aktion T4 programme.<sup>13</sup> Frequently, the brains of the deceased were removed and used as samples for medical examination.<sup>14</sup>

Following a series of protests from German and Austrian society and church authorities, the programme was officially suspended on 24 August 1941, however, it continued to be carried out in secret.<sup>15</sup> On 30 October 1942, a new unofficial directive was released and issued to psychiatric hospitals, which ordered the introduction of a "special diet" for "hopelessly ill patients", a diet based on malnutrition and starvation slowly leading to their demise.

Due to the semiofficial character of the extermination programme for deficient persons, it is difficult to assess the number of victims involved with any degree of certainty. However, according to researchers, in Germany and Austria alone, the number exceeded 200,000 people,<sup>16</sup> while in the occupied European territories a further 100,000 individuals were believed to have been murdered.<sup>17</sup> The last victim of the Aktion T4 programme, was a four-year-old boy, killed by lethal injection on 29 May 1945, in a hospital near Monachium, three weeks after the Third Reich's capitulation.<sup>18</sup>

Looking at the Aktion T4 programme from a legal perspective, we can see that the legal classification of mass murder on civilians is extremely simple in the light of contemporary international law. However, the question is how it appeared in the light of law at the time?

The aforementioned sterilisation procedure (at the initial stage) and the involuntary euthanasia of the mentally ill and disabled people which followed, had been sanctioned under the national law of the Third Reich. Hitler's decrees and decisions acquired that in the light of domestic law, all actions taken by the

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13 C. Browning, *op. cit.*, pp. 185-189.

14 Z. Jaroszewski (red.), *Zagłada psychicznie chorych w Polsce 1939-1945*, Warszawa 1993.

15 M. Burleigh, *Between Enthusiasm, Compliance and Protest: The Churches, Eugenics and the Nazi 'Euthanasia' Programme*, "Contemporary European History" 2008, no. 3, pp. 253-264.

16 H. Jenner, *Quellen zur Geschichte der "Euthanasie"- Verbrechen 1939-1945 in deutschen und österreichischen Archiven. Ein Inventar*, [https://www.bundesarchiv.de/geschichte\\_euthanasie/Inventar\\_euth\\_doe.pdf](https://www.bundesarchiv.de/geschichte_euthanasie/Inventar_euth_doe.pdf) (15.09.2018)

17 *Euthanasie im Dritten Reich. Hinweise zu den Patientenakten aus dem Bestand R 179 Kanzlei des Führers, Hauptamt II b*, <https://www.bundesarchiv.de/DE/Content/Artikel/Ueber-uns/Aus-unserer-Arbeit/euthanasie-im-dritten-reich.html> (access 15.09.2018)

18 D. Stafford, *Ostatni rozdział 1945*, Warszawa 2009, s. 352-357. On October 2, 2014, the German authorities set out to commemorate the scientific victims of "euthanasia" in the form of a monument. <https://www.t4-denkmal.de> (15.09.2018)

Nazi authorities until August 1941, were theoretically legal. On the other hand, international law lacked a universal system for the protection of human rights both during World War II and before its outbreak. The League of Nations, created in 1919 as a response to the atrocities conducted in the First World War, was to ensure peace and respect for the inherent rights of the individual, but it did not establish universally binding norms, and its activity is now described as inept.<sup>19</sup> Only after the end of hostilities in Europe in 1945, did the actors on the international stage set out to take decisive steps in order to more effectively counteract cruelty and arbitrariness in the treatment of civilians by individual states. To this end, on 26 June 1945, at the conference in San Francisco, the United Nations (UN) was established.<sup>20</sup> The culmination of its activities was the adoption in 1948 of the Universal Declaration of Human Rights – an act binding the parties signing it, which many aspects of natural law made the law obligatory universally<sup>21</sup>.

The world had no doubts that Nazi criminals should be punished, but there were no international rules at that time that would allow those amenable for the mass murders of civilians to be held responsible. What's more, there were also no institutions competent to deal with such cases, not to mention that there was not even a name for the crimes committed on such a large scale. The first act introducing the previously unknown responsibility of individuals for war crimes was the Moscow Declaration of 1943. It assumed the extradition of Nazi war criminals to the state in which they committed their deeds in order to bring them to justice in accordance with the national law in force therein.<sup>22</sup> It was an innovative solution, but in practice it turned out to be insufficient due to the territorial extent of the crimes committed by German commanders. Four world powers – the United States of America, Great Britain, France and Union of Soviet Socialist Republic – undertook to remedy this situation and on 8 August 1945, they signed the international agreement on the prosecution and punishment of major war criminals of the European Axis. Under this agreement, the International Military Tribunal (IMT) was set up to judge war criminals whose crimes could not be clearly classified territorially.<sup>23</sup> Although Berlin was designated as the permanent headquarters of the IMT, the first hearing took

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19 N. Baranowska, T. Chłopecki, Kilka słów o kształtowaniu się praw człowieka w okresie XVIII-XX w., (w:) J. Mazurkiewicz (red.), *Księga dla naszych kolegów*, Wrocław 2013, p. 55.

20 *Ibidem*.

21 M. Gawlik, *Krótkie dzieje praw człowieka*, Wrocław 2006, p. 8.

22 W. Góralczyk, S. Sawicki, *Prawo międzynarodowe publiczne w zarysie*, Warszawa 2009, p. 175.

23 Agreement on the prosecution and punishment of major war criminals of the European Axis, art. 1, 8 August 1945, London, [http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2\\_Charter%20of%20IMT%201945.pdf](http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2_Charter%20of%20IMT%201945.pdf) (access 15.09.2018)

place in Nuremberg. Hence the colloquial name of the largest trial in history against Nazi war criminals – The Nuremberg Trial.<sup>24</sup>

The relevant text of the agreement was accompanied by the annex – Charter of the International Military Tribunal, which not only defined the system of IMT and the rules of its functioning, but also introduced to international law definitions of concepts that were hitherto unknown and which became permanent on the canvas of the international legal order. These concepts were: crimes against peace, war crimes and crimes against humanity. For the purpose of this study, the author will focus on the crimes referred to in the enumeration as the last – crimes against humanity.

From the Charter:

*“Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”*<sup>25</sup>

It is quite clear that the norm contained in this provision penalises all behaviours aimed at causing physical suffering to people, not only through murder or torture, but also by deprivation of liberty or forced relocation to a place of residence far away from their homeland. This standard is extremely important also for other reasons. This is the first legally sanctioned order to prosecute crimes committed, not only during the war but following it, against civilians. Until now, international agreements only referred to victims in the form of combatants (for example, the Geneva Conventions). It is also extremely important that sanctions dictated by the newly appointed tribunal were imposed irrespective of whether the internal law of the state in which the crime was committed recognised the behaviour as legal or not. In the light of the aforementioned legal acts adopted by the Nazis, this was a key provision.

It is also worth paying attention to the fact that the text of the agreement does not specify a minimum number of people who had to fall victim to behavioural conduct bearing the character of crimes against humanity. However, it is clearly emphasised that these activities were directed to people as a group, not as individuals. Moreover, all people involved in the planning of such activities and those who cooperated in their implementation were deemed to be responsible before the Tribunal. Acting under official or government orders did not exempt and individual from responsibility, but it could serve to alleviate the degree of punishment.<sup>26</sup>

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24 TNA LCO 2/2980, Rough Notes, Meeting with Russians, 25 June 1945, (w:) B. Worden, Hugh Trevor-Roper: The Historian, London-New York 2016.

25 *Ibidem*, Charter of the International Military Tribunal, art. 6.

26 *Ibidem*, art. 7 and art. 8.

Defendants who had directly participated in the Aktion T4 programme were tried separately, the first of the so-called follow-up processes, after the trial of the most prominent Nazi criminals. In the literature, the first of these follow-up trials is commonly referred to as The Doctors' Trial or Euthanasia Trials. It was held before the American Military Tribunal No. 1 and bore the official title "United States of America v. Karl Brandt, et al.". Of the 23 accused of participation, or at least direct connection with the implementation of the Aktion T4's activities, 20 were doctors. They were charged with involvement in Nazi experiments on people and mass murder under the guise of euthanasia. On 20 August 1947, after a trial lasting 140 days, the hearing of 85 witnesses and the submission of some 1,500 documents, the American judges found 16 of the defendants guilty, seven of whom were sentenced to death with the remainder received prison sentences ranging from ten years to life. Those who had received death sentences were executed on 2nd June 1948.<sup>27</sup>

As mentioned above, actions aimed at the extermination of the disabled and the mentally ill were also carried out in countries under Nazi occupation, which included Poland. Importantly, it was in Poland that the first mass murders of disabled adults occurred, and this practice spread from Polish territories to others that had fallen to Germany.<sup>28</sup> Unfortunately, not everyone guilty of murdering almost 30,000 sick and disabled Poles were brought before the Nuremberg tribunal, which is why the prosecution of these crimes was taken up by Polish law enforcement agencies. On the basis of a decree of the Council of Ministers of 10 November 1945, the Main Commission for the Investigation of German Crimes in Poland was established and its branch commissions, spanned the country<sup>29</sup>.

One of the first proceedings initiated in relation to the activities of Aktion T4 in Poland, was conducted in 1946-1947 by the Branch Commission in Krakow regarding the liquidation of patients in the hospital for the mentally ill in Kobierzyn. As a result of this atrocity around 1,000 helpless people lost their lives.<sup>30</sup> Despite the

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27 As indicated by the title of the trial, Karl Brandt was the personal physician of Adolf Hitler. Through the Nuremberg Tribunal he was found guilty and hanged along with six other defendants condemned to death. Unfortunately, Joseph Mengele, arguably the cruelest and most morally depraved of the doctors involved, evaded capture. The Doctors Trial: The Medical Case of the Subsequent Nuremberg Proceedings, Holocaust Encyclopedia, <https://encyclopedia.ushmm.org/content/en/article/the-doctors-trial-the-medical-case-of-the-subsequent-nuremberg-proceedings> (access 15.09.2018).

28 B. Bojarska, Eksterminacja polskiej ludności powiatu tucholskiego w okresie działalności Selbstschutzu, „Biuletyn Głównej Komisji Badania Zbrodni Hitlerowskich w Polsce” 1968, vol. XIX, p. 7-14.

29 Dekret z dnia 10 listopada 1945 r. o Głównej Komisji i Okręgowych Komisjach Badania Zbrodni Niemieckich w Polsce (Dz.U. 1945 No. 51 item. 293), <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19450510293> (access 15.09.2018)

30 M. Szpytma, Z archiwów bezpieki – nieznane karty PRL, F. Musiał, J. Szarek (red.), Od Września do Norymbergi, Kraków 2012, vol. 18, p. 50-57.

fact that investigations lasted for over 30 years, they failed to bring those guilty of this particular crime to justice. However, it has not been forgotten and the Polish state has not ceased activities in this regard. Indeed, the role of the Chief Commission in 1998, was taken over by the Commission for the Prosecution of Crimes against the Polish Nation in the Institute of National Remembrance (IPN). Proceedings conducted by prosecutors of the IPN, cover crimes committed during and after the cessation of World War II and the pursuit of those responsible for such crimes continues to this day. Since the subject of their endeavours is largely crimes against humanity, they bear signs of internationality and do not undergo prescription. Moreover, their investigations involve accessing a vast range of data and the author intends to devote a separate study to the details of investigations into the extermination of people with disabilities, in line with the IPN's work in this field.

The fact that broadly understood human rights were developed only as a result of the devastating experiences of global armed conflicts brings a bitter conclusion to the state of humanity. World War II showed that international society was not prepared for the cruelty it suffered – both in its mental and strictly legal aspects. Today, having learned this difficult lesson, we have created a structure of regulations that severely sanction bestial behaviour of the type described herein, but let us hope that they will never have to be used. Especially for those as innocent and vulnerable as disabled people.

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