

Notes

**RESTRICTED**

**HANDBOOK**  
**FOR**  
**KREIS RESIDENT OFFICERS**

**PART II**  
**(Technical)**

**PAMPHLET No. 8**

**LEGAL**

## CONTENTS

|                                                |    |
|------------------------------------------------|----|
| I. General . . . . .                           | 1  |
| II. Control Commission Courts . . . . .        | 2  |
| III. Ministry of Justice Control . . . . .     | 5  |
| IV. Administrative Tribunals Control . . . . . | 9  |
| V. Legal Advice and Drafting . . . . .         | 12 |
| VI. Penal Branch . . . . .                     | 12 |

## LEGAL DIVISION

### I. GENERAL

1. The administration of the technical legal aspect of Military Government in the British Zone is the responsibility of the Legal Division of the Control Commission. The functions of the Division fall under five heads :

- (a) Control Commission Courts.
- (b) Ministry of Justice Control (German Ordinary Courts).
- (c) Administrative Tribunals Control.
- (d) Legal Advice and Drafting.
- (e) Penal Administration.

2. Legal Officers are located at R/B Detachment Headquarters and Regional Headquarters. There is a Chief Legal Officer at each Regional Headquarters.

3. Military Government Legal Officers are responsible for the following main functions at their particular level :—

- (a) The staffing of Control Commission Courts and the Review of decisions of such Courts. Preparation and prosecution in Summary Courts is undertaken by Public Safety Officers.
- (b) The supervision of German Courts and Administrative Tribunals, including the consideration of cases to be removed to Control Commission Courts ; supervision of Regional and local agencies and the former Reich Ministry of Justice ; supervision of all Court officials, bar associations and notaries.
- (c) Arranging for the posting of Proclamations, Ordinances, Directions and Notices, and maintaining a record thereof.
- (d) Legal advice to the Senior Military Government Officer at the respective Headquarters.

4. Penal Officers will be found at H.Q. Regions and R/B level as is considered convenient. These officers are responsible for the supervision of German administration of prisons, penitentiaries and other Penal institutions and for the supervision of Civilian internment camps. They work directly under the Director, Penal Branch, Zonal Executive Offices, on whose establishment they will be borne in future.

## II. CONTROL COMMISSION COURTS

### 5. Jurisdiction of Control Commission Courts

#### (i) *Persons*

Control Commission Courts have jurisdiction over all persons in occupied territory excepting those other than civilians who are subject to Naval, Military or Air Force law and are serving under the Commander of any Forces of the United Nations.

#### (ii) *Offences*

Control Commission Courts have jurisdiction over all offences under any Allied Control Council or any Military Government Proclamation, Law, Ordinance, Notice or Order, all offences under German Law or any part thereof, and all offences against the laws and usages of War (War Crimes) but it is anticipated that War Crimes will be tried by the German Courts after April, 1947.

(iii) Control Commission Courts try all offences against Control Council and Military Government legislation and all criminal cases under any applicable Law where Allied Nationals are accused of or involved in the offences in any way. Where only German or former enemies or neutrals are involved and the offence is against German Law, the matter is left to the German Courts. Any case, however, may be removed to and tried in a Control Commission Court if such a course is deemed advisable.

### 6. Grades of Courts

(i) On the 1st January, 1947, an evolutionary change was effected in the character of the Courts in the British Zone by the Control Commission Courts Ordinance No. 68; from Military Courts they became purely civilian.

(ii) The Courts now are :—

- (1) The Supreme Court, divided into—
  - (a) The Court of Appeal,
  - (b) The High Court.
- (2) The Summary Courts.

(iii) The Court of Appeal consists of the Chief Judge and either one or two Judges of the High Court who consider all cases in which a sentence of death has been inflicted, all appeals from the High Court and

such Summary Court cases as are certified by the Chief Legal Officer of the Region as fit for review.

(iv) There are six other Judges of the High Court; three at Land Niedersachsen (including Hamburg), two at Land North Rhine/Westphalia and one at Land Schleswig Holstein.

High Court Judges may impose the following sentences :—

- (a) death;
- (b) penal servitude or imprisonment for life or for a term or, in the case of a young person or juvenile, for an indeterminate period;
- (c) detention or Jugendarrest of juveniles;
- (d) fine, either alone or combined with any of the sentences specified in sub-paragraph (b) and (c).

(v) In addition to Judges, there is a number of Commissioners of the High Court who try such cases as are assigned to them by a Judge.

The punishment which may be imposed by a Commissioner is limited to penal servitude or imprisonment for a term of five years, or a fine of £1,000 (R.M. 40,000), or both penal servitude or imprisonment and fine.

(vi) Magistrates in Summary Courts hear all cases in the first instance and remit those which are beyond their jurisdiction to the High Court, in which case they will take depositions of all witnesses.

Their powers of punishment are limited to imprisonment for a term of twelve months or a fine of £250 (R.M. 10,000) or both; in the case of juvenile offenders to Jugendarrest to a period not exceeding four weeks or detention for an indeterminate period not exceeding three years.

(vii) A Summary Court has jurisdiction to try and sentence a British civilian charged with an offence for which imprisonment not exceeding one month or a fine not exceeding £25 (R.M. 1,000) would in the opinion of the Court be adequate punishment. In every other case the Court shall remit the case to the High Court.

(viii) A British subject charged with a capital offence will be tried by a Judge and a jury comprised of seven British subjects.



## 7. Powers of Courts

In addition to the powers of punishment mentioned in the foregoing paragraphs, Control Commission Courts may :—

- (i) Make appropriate Orders affecting money, property, premises or businesses connected with any offence tried by the Court.
- (ii) Impound money or chattels.
- (iii) Grant bail and accept and forfeit security therefor.
- (iv) Order arrest.
- (v) Compel the attendance and order the detention of witnesses.
- (vi) Administer oaths.
- (vii) Punish for contempt of Court.
- (viii) Exercise any other necessary and appropriate powers.
- (ix) Recommend the deportation of a British subject.

It is to be noted that where an offence is charged under German Law in a Control Commission Court, the Court is not bound by the maximum penalty provided by the German Law. In all cases of homicide the Court has power to impose the death sentence.

8. All Control Commission Court Sentences (except death) are effective as soon as they are pronounced by the Court. Death sentences are not carried out unless and until they have been confirmed by the Commander-in-Chief.

9. All Summary Court cases are subject to review by the Chief Legal Officer of the Region who may certify a case for review by the Court of Appeal.

High Court Cases are reviewed by the Court of Appeal.

The Reviewing Authority may order a new trial, find the accused guilty of another offence in substitution for that in which he was convicted, quash the sentence or substitute another in lieu thereof, provided that it shall not be more severe except where the accused has appealed against the sentence, or make any order it may deem appropriate.

When the appeal is considered frivolous the Reviewing Authority may order the sentence to run from the date when the decision of the Reviewing Authority is given.

10. Any convicted person may petition the Reviewing Authority against finding or sentence. His petition must be

lodged in the Court Office at the place of trial or at the nearest Military Government Office within 10 clear days after sentence. If a petition is handed to the Kreis Resident Officer, he should forward it to Trial Judge who adds any necessary remarks and forwards the petition to the Chief Legal Officer at Regional Headquarters.

11. Allied Nationals who are officials or other personnel of UNRRA operating in occupied territory with the consent of Military Government are deemed to be British subjects for the purposes of prosecution and trial.

12. Ordinance No. 72 contains further information as to the rights of accused persons, evidence and procedure in Control Commission Courts. The majority of charges in Control Commission Courts are laid under Ordinance No. 1.

## III. MINISTRY OF JUSTICE CONTROL

13. On the occupation of Germany the REICH MINISTRY OF JUSTICE ceased to exist. Its functions as regards the British Zone have been assumed by the MINISTRY OF JUSTICE CONTROL BRANCH OF THE LEGAL DIVISION. (Short title M.O.J. Branch.)

14. The work of M.O.J. Branch falls into three sections :

(a) *German Ordinary Courts Control Section.*

(i) Deals with all questions relating to judicial administration and proposals for amending German Law. It also promotes the return from abroad of lawyers and legal Civil Servants previously domiciled in Germany.

(ii) *German Courts Inspectorate*—Visits Regions in turn and inspects a proportion of German Courts in each Region according to a fixed programme.

(b) *Denazification Section.* Hears cases of Germans who are interned for security reasons.

15. **The German Legal Administration**

(a) The main German Courts before the occupation were the REICHSGERICHT (Supreme Court of Appeal sitting in Leipzig), the OBERLANDESGERICHTE, the LANDGERICHTE and AMTSGERICHTE. All



of these were closed, but the majority of Amtsgerichte and *all* Landgerichte and Oberlandesgerichte have now been re-organised and re-opened. Comparative numbers in the British Zone are:

|                                            |             | Usual abbreviation |
|--------------------------------------------|-------------|--------------------|
| Oberlandesgerichte                         | 8           | OLG                |
| Landgerichte                               | 35          | LG                 |
| Amtsgerichte                               | 422 in 1939 | AG                 |
| (of which 318 have so far been re-opened). |             |                    |

(b) *German Courts*

**JURISDICTION**

AMTSGERICHT (AG) Serves on area with about 35,000 population. It hears:

- (i) Criminal cases: Maximum punishment five years imprisonment or two years penal servitude.
- (ii) Civil cases where amount at issue is not more than RM. 2,000.
- (iii) Certain civil cases irrespective of amount at issue.
- (iv) Non-contentious cases e.g. Land register (Grundbuch), Register of Companies (Handelsregister), filing and verification of wills, appointment of guardians, enforcement of judgements bankruptcy, Legal Advice Bureaux, costs etc.

LANDGERICHT (LG) Serves an area of about 400,000 population. It tries all the more serious criminal cases and hears civil cases for which the AG is not competent. It is also a Civil and Criminal Court of Appeal for cases from AGs. It has Criminal and Civil Chambers and Senior Judge is called Landgerichtspräsident (LG Präs). Attached to every Landgericht is a Prosecutors' Department (Staatsanwaltschaft). The Chief Prosecutor is called Oberstaatsanwalt (OSta). Prosecutors are all Civil Servants of the Höherer Dienst (highest grade of Civil Service). They prosecute in criminal cases both in the LG and in AGs which are subordinate to that Court i.e. through the LG district.

OBERLANDESGERICHT (OLG) Highest Court of Appeal in the British Zone. Hears appeals from LG in civil and criminal cases. Chief Officials are: the Oberlandesgerichtspräsident (OLG Präs) (Senior

Judge) and Generalstaatsanwalt (Senior Prosecutor) (GSta). OLG Präs is responsible for judicial administration throughout the area. GSta. is responsible for penal administration and also administration of the Public Prosecutor's Office (Staatsanwaltschaft).

(c) *Land Ministries of Justice*

By Mil. Gov. Ordinance No. 67, Land Ministries of Justice have been established in LAND NORTH RHINE/WESTPHALIA, LOWER SAXONY and SCHLESWIG HOLSTEIN, as part of the Land Governments. The Land Minister of Justice is responsible for the administration of the German Ordinary Courts and prisons within the land. He appoints all legal Civil Servants of the Höherer Dienst except those reserved to the Central Legal Office (see para. (d) (iii) below).

(d) *The Central Legal Office*

- (i) The Central Legal Office, established on 1 October, 1946, in Hamburg by Mil. Gov. Ordinance No. 41, exercises the functions of a Ministry of Justice for the British Zone, subject to the approval of M.O.J. Branch.
- (ii) It consists of a Presidential Department, a Criminal Department and a Civil Department.
- (iii) The functions of the Central Legal Office are to recommend to M.O.J. Branch:
  1. Amendments to German Law in the field of Criminal, Civil and Commercial Law.
  2. Suitable persons for appointment to the highest positions in the legal Civil Service through the British Zone, i.e.

Oberlandesgerichtspräsidenten  
Senatspräsidenten  
Landgerichtspräsidenten  
Amtsgerichtspräsidenten  
Generalstaatsanwälte  
Oberstaatsanwälte

- (iv) The subjects for which the Central Legal Office is responsible are reserved from the competence of Land Governments under Military Government Ordinance No. 57. When legislation

proposals submitted by the Central Legal Office have been approved by Legal Division (and other Divisions where appropriate), they are promulgated by the President or Vice President of the Central Legal Office in the form of German Ordinances and become effective for the whole of the British Zone.

- (v) A close liaison is maintained between the Central Legal Office and the Land Ministries of Justice, in order to ensure that the views of the Land Governments in the sphere of criminal, civil and commercial law are represented and to assist in maintaining uniformity in the Administration of Justice throughout the British Zone.
- (vi) The Central Legal Office can be used as a medium to promulgate legislation on other reserved subjects, in addition to those for which it has a special responsibility, provided the approval of the appropriate Divisions of the CCG and other German Zonal Authorities which may be concerned is obtained.
- (e) *Appointment of Germans to Legal Office or practice*  
All members of the Höherer or Gehobene Dienst (which includes Judges and Prosecutors) and all Lawyers and Notaries in private practice have to be approved in writing by a Legal Officer designated by the Chief Legal Officer at Headquarters, Military Government, Länder before they are allowed to practise or hold office. They are previously screened in the usual way—Control Council Directives Nos. 24 and 38 and Z.E.I. Nos. 3 and 54 apply.
- (f) *Court Records :*  
All German Courts submit monthly returns to Region HQ. (Mil. Gov.) (which are then forwarded to M.O.J. Branch) showing details of all business conducted and cases heard during the previous month.

#### 16. Denazification Section

This section is responsible for the administration of seven British Review Boards situated in the six Civilian Internment Camps and in 2233 POW Camp in the British Zone which

hear and determine the categorisation of civilian internees held in Category II as security suspects. Each Review Board consists of a Legal Chairman and two lay members.

#### 17. Trial of Members of Organisations declared Criminal by the International Military Tribunal at Nuremberg

M.O.J. Branch is responsible for the trial of members of organisations which were declared criminal by the International Military Tribunal at Nuremberg. For this purpose German Special Tribunals are being set up in the neighbourhood of the CICs where these persons are held as Category I Nazis.

#### 18. K.R.O. and German Legal Administration

The K.R.O. has no responsibilities with regard to the Administration of German Justice and the German Courts. If approached by German Legal Officials with requests for instructions or advice, the K.R.O. should inform them that they must pursue the matter through German legal channels.

#### IV. ADMINISTRATIVE TRIBUNALS CONTROL BRANCH

19. Administrative Tribunals Control Branch deals with administrative and public law and the various courts and tribunals which administer it.

20. These courts and tribunals are very numerous and few of them are likely to affect the work of Kreis Resident Officers to any great degree. For purposes of reference, however, the following Special Courts and Special Tribunal may be noted :—

- (1) Labour Courts (*Arbeitsgerichte*), and various industrial tribunals and councils.
- (2) Insurance Courts (*Spruchausschüsse* and *Spruchkammern* of the *Versicherungsämter*).
- (3) Finance Courts (*Finanzgerichte*).
- (4) Agricultural Courts (*Marktgerichte*).
- (5) Maritime Courts (*Seeämter*).
- (6) Various professional tribunals; for example, the Civil Service Disciplinary Courts (*Dienststrafkammern*), Medical tribunals, Dentists Tribunals, and the like.



21. Most of these special tribunals and courts are in the process of being re-established and are not yet necessarily in operation. The immediate responsibility for their re-establishment rests with Divisions other than Legal Division. Administrative Tribunals Control Branch only gives those Divisions technical advice and assistance regarding them as required.

22. The Housing Appeal Tribunals (Schlichtungsstelle) established under Control Council Law No. 18, are of more immediate importance to Kreis Resident Officers since accommodation remains a major problem of administration.

23. The general Administrative Courts (Verwaltungsgerichte) are of special importance to Kreis Administrations. There are many local variations in the jurisdiction of these courts; but in general theory, they exercise jurisdiction in disputes of administrative and public law which are not specifically assigned to the jurisdiction of one of the special courts or special tribunals already referred to. One of their main functions is to hear claims by private citizens that their rights or liberties have been infringed by an illegal act of the German administration at Kreis or any other level. (Alleged illegalities committed by Military Government cannot be made the subject of proceedings in the Courts).

24. The Verwaltungsgerichte are also given jurisdiction as laid down by paragraphs 31 and 113 of the new Deutsche Gemeindeordnung.

25. Kreis Resident Officers are advised, normally, to leave Germans with grievances against the administrative authorities to seek redress in these courts.

26. It will be found that under the law now in force in most parts of the British Zone, the Verwaltungsgerichte are called upon to deal with certain non-contentious business which, before 1933, was handled by the Kreisausschüsse or Stadtausschüsse. This business consists mainly of applications for licences of various kinds. It is intended to remove it from the Verwaltungsgerichte and to transfer it to the Kreis or Gemeinde Councils. Appeal will lie from their decisions to the Verwaltungsgerichte.

27. Administrative Tribunals Control Branch is now engaged in implementing a scheme for removing the restrictions on jurisdiction of the Verwaltungsgerichte which exist in many parts of the Zone, and for making their procedure and

organisation uniform. The results of this scheme will probably not be seen before 1948. It is possible that the jurisdiction now exercised by some of the special administrative tribunals referred to in paragraph 2 will pass under this scheme to special chambers of the Verwaltungsgerichte.

28. The Verwaltungsgerichte are directly supervised by Administrative Tribunals Control Branch. Their situation and areas of jurisdiction are as follows:

| <i>Court</i>                     | <i>Area of jurisdiction</i> |
|----------------------------------|-----------------------------|
| <i>Land Nord Rhein/Westfalen</i> |                             |
| Düsseldorf . . . .               | R/B Düsseldorf              |
| Aachen . . . . .                 | R/B Aachen                  |
| Köln . . . . .                   | R/B Köln                    |
| Münster . . . . .                | R/B Münster                 |
| Arnsberg . . . . .               | R/B Arnsberg                |
| Minden } . . . .                 | R/B Minden and Land Lippe   |
| Detmold* }                       |                             |
| <i>Land Niedersachsen</i>        |                             |
| Hannover . . . . .               | R/B Hannover                |
| Aurich . . . . .                 | L/B Aurich                  |
| Osnabrück . . . . .              | R/B Osnabrück               |
| Stade . . . . .                  | R/B Stade                   |
| Lüneburg . . . . .               | R/B Lüneburg                |
| Hildesheim . . . . .             | R/B Hildesheim              |
| Oldenburg** . . . .              | former Land Oldenburg       |
| Braunschweig* . . .              | former Land Braunschweig    |
| <i>Land Schleswig Holstein</i>   |                             |
| Schleswig } . . .                | Land Schleswig Holstein     |
| Lübeck }                         |                             |
| <i>Hansestadt Hamburg</i>        |                             |
| Hamburg . . . . .                | Hansestadt Hamburg          |
| <i>British Sector, Berlin</i>    |                             |
| Berlin-Charlottenburg .          | British Sector, Berlin      |

\* These Courts are not yet in operation but should open by 1st March 1947.

\*\* At present there are also Kreis Courts in the Stadtkreise and Landkreise of former Land Oldenburg which will disappear when non-contentious business is transferred to the administrative authorities (see para. 25).



## V. LEGAL ADVICE AND DRAFTING

29. The functions of the Legal Advice and Drafting Branch in the British Zone are :—

- (a) To advise Divisions of C.C.G. (B.E.) and Regional Headquarters on questions of law and procedure including British, German and International Law.
- (b) To assist in drafting and to approve all Military Government Legislation applicable to the whole of the British Zone.
- (c) To assist in or arrange for the carrying out of Legal Research.

## VI. PENAL ADMINISTRATION

30. **Responsibility.** Penal questions are the responsibility of the Penal Branch of the Legal Division, CCG. (BE).

### 31. Staffing of Civil Prisons

All institutions are staffed by Germans of the German Prison Service with Directors (Governors) of appropriate rank. There are no British staffs except in the case of four institutions where, for special reasons, there is a British Governor with a small supervisory staff of British Prison Officers. German Prisons function under the administrative supervision of the Generalstaatsanwalt of the Oberlandesgericht in which they are situated.

32. **Control** is exercised by the Control Commission through Penal Branch and Generalstaatsanwälte and regular inspection is carried out by British Penal Control Officers in each Land and in Hamburg, assisted by a number of Inspectors located at convenient centres. In Berlin there is control by the Allied Kommandatura with a British Penal Inspector located at H.Q. British Troops.

### 33. Duties of Kreis Resident Officers in regard to Prisons

Kreis Resident Officers will only visit prisons with the approval of, and preferably accompanied by Penal Central Officers, but they should know where they are and in an emergency must be prepared to assist Prison Directors and other officials of whose identity they should be aware. This can be ascertained by reference to the Senior Penal Officer at Regional H.Q. Any difficulties coming to the notice of the

Kreis Resident Officers should be referred to the Penal Control Officer at the Land H.Q. or to the nearest Inspector if one is located in the district. German Prisons are not intended for and must not be used as lock-ups by Military or Civil police except in an emergency when no other accommodation is available and only then for short periods which should not normally exceed 48 hours. Valid authority for holding a prisoner must be given to the prison Governor in writing at the time of handing over custody.

34. **Civilian Internment Camps and Settlements** are established for the safe custody of civilian internees and security suspects. Each Camp has a British Commandant who is directly responsible for the proper administration and security of his establishment to the Director, Penal Branch, Legal Division. H.Q.s of Regions are responsible for this administration, e.g., the provision of rations, fuel and other consumable stores, material for maintenance work assistance in educational scheme etc. Committal and release of internees is a matter for the Intelligence Division which has a local staff in each Camp. K.R.O.s should visit these camps from time to time.