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## **The sentencing of Dutch WWII perpetrators.**

Jantien Stuifbergen

### *Introduction*

Empirical quantitative research on Dutch World War Two (hereafter WWII) war criminals is scarce. Little is known about the question to what extent they were engaged in criminality before being sentenced and whether the circumstances of war encouraged them in committing crimes. Similarly, little is known about how their lives and criminal careers developed after the war in a post-war society that – depending on the role they played – considered them to be traitors or collaborators. For this reason I have made an analysis of the life course and criminal career of Dutch WWII war crimes perpetrators who were convicted in the Netherlands. Based on unique material from several historical (closed) archives a database with information on each of these perpetrators is built. Besides a lot of personal information on the perpetrators a part of this database is built on information/material about the legal procedures and court reports which can also be found in the archives.

In this presentation I will share some first results on this research. I will start with a general introduction on the special legislation which was written already during the war and show how the Dutch government and Dutch judiciary system dealt with these perpetrators in order to accommodate the ruling moral in society of retaliation for what was being done during the war. In the second part I will present the empirical data from the database focusing on sentencing practices.

### *Special legislation, special tribunals and special courts*

Already in 1943 the Dutch government in exile designed special ‘emergency legislation’ with the aim to bring collaborators to trial for crimes committed during the war. For this matter Tribunals and Special Courts were established (Severijn, 2017). In order to judge the most serious collaborators. The Tribunals were established based on the ‘Tribunal Decree of 17 September 1944’, specifying what special measures could be taken in respect of Dutch citizens who had in - any way - granted support to "*the enemy or his accomplices.*" What was punishable and how to punish these criminal acts was laid down, inter alia, in the Criminal Code and offered the judiciary power a set of rules and regulations on how to deal with collaborators or so called ‘Political Delinquents’ which meant - among other things - those persons who were suspected of collusion with occupying forces or for instance persons who were a member of the National Socialistic movement (NSB) (Faber and Donker, 2000). A distinction was made between different type of offences; ‘less serious offences’ were to be tried by the tribunals, the more serious crimes by Special courts. (Noach, 1948; Faber and Donker, 2000). A less serious offence in this remark could be a suspected NSB-membership but whether a person had collaborated with the occupying forces could not have been determined. Many Dutch citizens were a member of the NSB during the war, some of them

out of conviction with the nationalistic ideas of the movement, some of them simply because membership offered possibilities for certain jobs or the opportunity to study (Slaa en Klijn, 2009). Persons who acted in violation with the extraordinary criminal law, and the act which set the rules and legislation for the special courts were tried in front of a special court (Noach, 1948; Belifante, 1978; Liempt, 2002; Faber and Donker, 2000). It was in these courts where the perpetrators who committed the more severe crimes during the war, were convicted. Nowadays we could label them as perpetrators of international crimes (more on this later). Five special courts were established each consisting out of three civilian lawyers/judges and two military representatives. These special courts were located in Amsterdam, Arnhem, Leeuwarden, Den Haag and Den Bosch. The special courts could allocate significantly higher penalties than was possible under the Penal Code, and even the death penalty was (temporarily) re-introduced (Belifante, 1978; Romijn, 1989). Appeal was initially only possible if the special court granted permission. This policy changed in 1947; in all cases in which imprisonment of more than six years or the death penalty was imposed, appeal became a possibility (Belifante, 1978). After conviction by a special court appeal could be lodged by the Special Council of appeal who had jurisdiction to review cases/judge on two grounds; when the law was wrongly applied or If the punishment imposed did not correspond to the seriousness of the crime, the circumstances under which it was committed or the person and the personal circumstances of the convicted person. Almost all perpetrators filed an appeal to this special council.

### *Perpetrators of international crimes*

Currently, we would qualify many of the individuals who were convicted by the special courts as 'perpetrators of international crimes'. Articles 26, 27 and 27a of the extraordinary criminal law from right after WWII (Dutch: Besluit Buitengewoon Strafrecht or BBS) contained descriptions that are very similar to the descriptions contained in the (current) International Crimes Act in the Netherlands, which uses the same definitions as the Rome Statute. In particular, Article 27a of the BBS is relevant in this regard, because it explicitly refers to war crimes and crimes against humanity.

### *Empirical data on sentencing*

In October 1945, the Dutch government faced 96,000 cases of political delinquents (Faber and Donker, 2000). Around 2,000 of them were sentenced by one of the Special courts (of which 57 women). 704 were convicted for 'international crimes'. This presentation will focus specifically on prosecutions and sentences of these 704 perpetrators. The sentences of these severe cases varied from at least 10 years of imprisonment or forced labor in a so-called state labor institution, to the death penalty which was imposed in 157 cases and executed 43 times. I will highlight the sentencing practices of these special courts, such as the length of sentences, special measures that could be taken against the perpetrators, I will discuss

some of the sentencing motivations, the trends in sentencing length and severity and discuss the differences and similarities between sentencing practices of the special courts after World War Two in the Netherlands. I will conclude with some remarks on the rules and policies on pardon for these perpetrators and the following reintegration into society.

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