DEPUTY JUDGE ADVOCATE'S OFFICE 770% MAR GRIMES GROUP EUROPEA COMMAND APO 407

1 December 1947

UNITED STATES

v .

Case No. 000-Flossenburg-3

Johann VICAN

REVIE AND RECOMMENDATIONS

- I. TRIAL DATA: The accused was tried at Dachau, Germany, on 2 October 1947, before a General Military Government Court.
- II. CHARGES AND FARTICULARS:

CHARGE I: Violation of the Lews and Usages of War.

Particulars: In that Johann VICAN, an Austrian national, did, at or in the vicinity of Lengenfeld, Germany, in or about December 1944, wrongfully encourage, aid, abet and participate in the killing of an unknown Russian national, an inmate of Flossenbuerg Concentration Camp, who was then in the custody of the then German heigh.

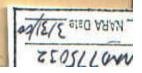
ChalGE II: Violation of the Laws and Usages of War.

Particulars: In that Johann VICAN, an Austrian national, did, at or in the vicinity of Lengenfeld, Germany, in or about December 1944, wrongfully encourage, aid, abet and participate in the killing of an unknown Polish national, an inmate of Flossenbuerg Concentration Camp, who was then in the custody of the then German Reich.

CHARGE III: Violation of the Laws and Usages of War.

Particulars: In that Johann VICAR, an Austrian national, did, at or in the vicinity of Lengenfeld, Germany, in or about January 1945, wrongfully encourage, aid, abet and participate in the killing of an unknown Polish national, an inmate of Plossenbuerg Concentration Camp, who was then in the custody of the then German Reich.

III. <u>SUMMARY OF EVIDENCE</u>: The accused, an Austrian national, was an inmate and capo, at Lengenfeld, a subcamp of Plossenbuerg Concentration Camp, from August 1944 to April 1945. Between November 1944 and February 1945 the accused beat one Russian and two Polish inmates to death.



IV. EVIDENCE AND RECOMMENDATIONS:

Johann VICAN

Nationality: Austrian

Age: 34

Civilian Status: Weaver

Party Status: None

military Status: None

Pleas: G Charge I; G Charge II; G Charge III

Findings: G Charge I; G Charge II; G Charge III

Sentence: 20 years, commencing 1 May 1945

Evidence for Prosecution: One witness stated in an extrajudicial sworn statement that the accused, in December 1944, told him, "I just killed a Russian"; that this witness saw the deed body of the Russian inmate in the morgue and that this killing occurred in Lengenfeld (R 9; P-Ex 7). Another witness stated in an extrajudicial sworn statement that in December 1944, the accused beat a Polish inmate with a stick; that this inmate died a few hours later; that in January 1945 the accused beat another Polish inmate; that this inmate died in the camp hospital the next day; and that these inmates were killed in Lengenfeld (R 9; P-Ex 6).

Evidence for Defense: The accused did not testify in Court.

In an extrajudicial sworn statement the accused admitted that he was a cape from January 1945 until the end; that he beat insectes on about 50 occasions; and that such beatings were for violations of camp regulations (R 10; P-Ex 8). It was stipulated between the accused, defense attorney and prosecution attorney that the accused was sent to Dachau Concentration Camp as an inmate on 15 October 1940 for anti-Nazi activities; that after his release from Dachau on condition that he join the SS, the accused was sent back to Dachau three days later for failure to join the SS. It was further stipulated that one witness, if present, would testify that the accused beat inmates only for the purpose of maintaining order of the accused beat inmates only for the purpose of maintaining order of the accused beat inmates only for the purpose of maintaining order of the accused beat inmates only for the purpose of maintaining order.

witness, if present, would testify that the Polish inmates at Lengenfeld were incorrigible (R 11; D-Ex 1).

<u>Sufficiency of Evidence</u>: The findings of guilty are warranted by the evidence. The sentence is not excessive.

Patitions: No Patitions for Review nor Patitions for Clemency were filed.

Encommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW

Jurisdiction: The Court had jurisdiction of the person of the accused and of the subject matter.

Plea: The Court was not in error in accepting the plea of guilty by the accused. The accused was advised of his rights by the Court. The plea of guilty was accepted by the Court only after the Court had satisfied itself from the nature of the case and evidence adduced that the punishment of death would be clearly excessive and that a lesser punishment which is within its power to impose would suffice. (Section 5-328, Title 5, "Legal and Fenal Administration" of "Military Government Regulations", Change 1, published by Office of Military Government for Germany (U.S.)).

Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

VI. CONCLUSIONS:

- 1. It is recommended that the findings and the sentence be approved.
- 2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

GEORGE A. McDONOUGH Attorney Post Trial Branch

Having examined the record of trial, I concur, this _____ day of ______ 1948.

