

The Trial of Max Merten in the Changing Mirrors of Time and Place¹

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Who is Max Merten and why is he relevant to our topic today? He is one of the very few German war criminals ever brought to trial (in Greece or in Germany) for crimes committed in Greece during the Holocaust—and the only one tried for crimes against Greek Jews.

It is important for us to differentiate between the acts that he committed and the fact that he symbolizes to many of us a miscarriage of justice by Greece and Germany alike.

There is very little mention of Max Merten in the body of Holocaust literature—nothing in the “Pinkas Ha-Kehillot” of the Greek community, and nothing in Constantopoulou’s new volume of documents pertaining to Greek Jews. The impression is that the topic is avoided...

Maximilian Merten was born in 1911. He obtained a law degree and was appointed to a German court. Between July-August 1942 and 1944 he was Kriegsverwaltungsrat (military administration counselor) in Salonika, replacing the Greek Administration (Ministry of Northern Greece) in the regions under his jurisdiction, which included Salonika.

The three major accusations against him with regard to the Jews are as follows:

- a. His (alleged) participation in the events of July 11, 1942 at Eleftherias Square, when the Jews of the city were gathered to be registered for forced labor.
- b. His negotiations with the Jewish community over an exemption from forced labor in exchange for 25,000 gold sovereigns and the remnants of Salonika’s destroyed Jewish cemetery (to be used for building materials).
- c. The expulsion of Salonika Jews in February-August 1943 (several of the orders bear his signature, as shown in Molho and Nehama’s work).

After the war, Merten was arrested by the U.S. authorities, who requested that he be transferred to Greece to stand trial. The Greek Legation in Germany (headed at the time by Gen. Ypsilantis) was not interested.

Merten went on to build a career in the new Federal Republic of Germany (Fleischer claims he even applied to become consul in Athens; the person actually appointed became West Germany’s first Ambassador to Greece shortly thereafter...). He was among the co-founders of Gustav Heinemann’s Gesamtdeutsche Volkspartei, which in 1952 proposed a united but demilitarized Germany as a counter to Konrad Adenauer’s pro-U.S. policies.

¹ My thanks to Karen Gold for her assistance in preparing this paper for publication.

In 1957 Merten came to Greece on business (some Greeks say that he came in pursuit of his lost treasures...) and was called to testify at the trial of his wartime interpreter, Meissner. During this testimony, he was arrested by Prosecutor Toussis. According to Spiliotis, this was in response to the fact that the German authorities had never taken action against any individuals suspected of war crimes in Greece. In fact, Greece had proposed an amnesty for German war criminals in exchange for reparations from Germany. (Note that Greece was still trying to recover from the consequences not only of World War II but also of a bloody civil war, which meant that reconstruction efforts in Greece were undertaken five years later than in other European countries. As with Israel during this period, the money from German reparations was more than necessary for Greece.) Bonn refused the offer. This is, of course, where the Greek and German narratives contradict each other: Germans speak of a Greek attempt to blackmail Germany, whereas Greeks speak of Germany's total lack of interest in prosecuting war criminals for acts committed against Greece.

West Germany protested strenuously against Merten's arrest. He was kept in jail for almost two years and finally brought to trial on February 11, 1959 (the trial lasted until March 5 of that year). Greek public opinion at the time questioned the relationship between certain members of Karamanlis' government and the German wartime administration. Spiliotis notes that negotiations took place between the Greek and German governments over the extradition of Merten to Germany—which would have constituted an admission of guilt on the part of more than one member of the Greek administration.

The Trial

The following charges were listed in the indictment against Merten:

1. Killing 680 Greek citizens
2. Jailing Greeks without military justification
3. Expropriations involving violence and deceit
4. Killing of Jews
5. Expropriation of Jewish property
6. Looting the home of Gen. Argyropoulos
7. Terrorizing the 9,000 Jews registering for hard labor in Eleftherias Square, Salonika.
8. Torturing the above
9. Using the 9,000 Jews for forced labor and allowing them to die of malnutrition
10. Destroying the Jewish cemetery of Salonika
11. Systematic terror against 50,000 Jews
12. Looting the property of the Jews concentrated in the Baron Hirsch ghetto.
13. Expulsion of 46,061 Jews to Poland
14. Killing of Jews in the Baron Hirsch ghetto.
15. Killing of most of the Jews sent to Poland

The president of the special court was Colonel Kokoretsas. One of the first actions taken by the court (actually recommended by the prosecutor no less) was to exclude the attorneys of the Jewish community of Salonika—Ladas, Tsirimokos and Vasilatos—because the Jewish community was not harmed by the actions of the

accused(!) Individual Jewish plaintiffs were allowed to testify, however. The real motivation seems to have been avoiding the politicization of the trial, since some of the attorneys were—at the time—considered left-wing.

The Testimony

It is impressive that Merten was able to bring to his defense such eminent witnesses as Burkhardt, Castrucio and Digkas, as detailed below.

Jewish Witnesses

Concerning the money paid in exchange for exemption from forced labor, several Jewish witnesses testified that they paid the sum in cash since Merten refused to accept a check. They also testified on the looting of the Jewish cemetery. One story that repeats itself in many forms is the transfer of Jewish business assets under torture or duress (examples include Benrubi, Alvo, Tiano, de Sigoura's three cinemas, Koen's paper business, and Natan's furniture company, among many others). In most cases, the subject was ordered to report to the German authorities and set free by Merten in exchange for payment.

Koen's case was particularly interesting in that it involved the former editor-in-chief of *Makedonia*, Nikos Fardis, known for his anti-Jewish diatribes, which played a role in fomenting the Campbell riots. Fardis tried unsuccessfully to use his contacts with Merten to free Koen when the latter was arrested as a pressure tactic to induce him to hand over his paper factory. Fardis, however, later informed him that he was set free due to Merten.

Asser Moissis, who was not in Athens during Merten's time, provided some information based on Yakoel's diary and his own contacts with the Salonika community. His testimony contains certain errors, such as the statement that Logothetopoulos resigned in protest against anti-Jewish measures and that Merten authority superseded that of Brunner and Wisliceny.

Leon Cuenca, a doctor working for the Red Cross, spoke of his abduction—described by the authorities as an escape so as to provide a pretext for further anti-Jewish measures—and the arrest of 25 hostages on the basis of an order bearing Merten's signature.

Greek (Non-Jewish) Witnesses

These witnesses included goldsmiths and moneychangers who were arrested as a means of frightening them into changing their rates. By increasing the price of the gold sovereign, they were considered indirectly responsible for the rise in the price of foodstuffs. At Merten's trial, they also spoke of their properties being looted.

Ilias Douros, the head of ODIP (Department for the Administration of Jewish Properties) spoke of Merten as a person who was harsh but honest. He did not think

that the German authorities were responsible for the deaths by malnutrition of Jews conscripted for forced labor; in his opinion, the pilfering of supplies was the cause. He did not believe that Merten pocketed the money paid by the Jews for exemptions from forced labor, nor that he benefited from the looting of Jewish properties. His services consisted of writing formal contracts for the transfer of Jewish property to new owners. Douros was asked by the Prosecutor why his present testimony differed from the one he had given in 1946, and was threatened with prosecution for perjury.

Athanasios Hrysohoou, mentioned in Fleischer's work as the person who suggested the use of Jews for forced labor, testified that the pro-Greek Merten often served as an effective balance against the pro-Bulgarian Krensky. He also helped people when asked to do so by Metropolitan Gennadios.

Digkas (a prominent Venizelist official and signatory to a declaration against the expulsion of the Jews) spoke favorably of Merten's support of Greece against Bulgarian expansion. According to him, looting was due to criminal elements, not Merten.

Vasileios Simeonidis (referred to negatively in Yakoel's diary) was Merten's predecessor as head of the Greek occupation regime. He presented a favorable view of Merten based on the latter's efforts on behalf of Greece against Bulgaria. On several occasions, he and Metropolitan Gennadios appealed successfully to Merten to block the execution of certain hostages. He testified that Merten was not in Salonika during the events at Eleftherias Square. His testimony was contradicted by numerous witnesses, including Gen. Argyropoulos, who stated that he saw him that same day (July 11, 1942) enforcing the separation between Greeks and Germans in local streetcars.

Several other witnesses testified that Merten helped cancel the executions of students and other hostages.

Foreign Witnesses

Parisius and Engel were former German military men who testified that Merten did not have the authority to sign the orders shown in Molho & Nehama's book. According to them, he did not have any military authority at all and was limited to administrative and supply-related duties. In any event, they claimed, those orders were given by superiors and only signed by Merten. Further, the 1943 anti-Jewish measures leading to the expulsion of Salonika's Jews were the responsibility of Wisliceny and Brunner and their people—and not Merten.

A German woman named Blumenwert testified that Merten tried unsuccessfully to save her Jewish husband from execution.

Giuseppe Castrucio, the Italian consul in Salonika, testified that Merten assisted him in the case of the 300 Jews who were saved by being sent from Salonika to Athens on the basis of Italian blood ties.

René Burkhardt, a Red Cross representative who was thrown out of Greece by the German authorities, testified that even if Merten had not been in Salonika, the Jews would have met the same fate. He contradicted the facts with reference to the Cuenca case, but insisted that Merten would not have signed the order for the 25 hostages if he had known Cuenca had been abducted (i.e., Merten thought Cuenca had escaped, although Burkhardt admitted that Merten told him to warn Cuenca). According to Burkhardt, following the arrival of Wisliceny and Brunner, Merten lost his authority on Jewish matters. Burkhardt testified that he suggested sending a cable to the Red Cross concerning 10,000 Jewish children to be sent to Palestine—a cable that Merten claimed could not be sent.

Apology of the Defendant

Merten pleaded non-guilty to all of the charges listed in the indictment. He claimed that he was never a member of the Nazi party (his application was rejected); that the persecution of the Jews of Salonika started before he came to that city; that he was not present at the events of Eleftherias Square; that he negotiated the release of the Jews seized for forced labor out of humanitarian concerns and did not receive a cash payment from the Jewish community. (Contrary to the testimony of the Jewish witnesses, he claimed that the payment was made in the form of a check, which he deposited in the Bank of Greece; the Bank's records were later destroyed.)

Merten also claimed that he was not involved in any of the cases in which Jewish property was impounded—this was supposedly done by other branches of the German administration such as the Propaganda Service and the Counter-Espionage Service. He stated further that the fact that he used his influence to save many individuals from arrest or execution did not mean that he was responsible for these arrests; that the measures that lead to the expulsion of the Jews in 1943 were initiated by Eichmann and the henchmen of Wisliceny/Brunner, who were sent to Greece to carry out Eichmann's orders; that his signature on a particular order did not mean that he had been involved in the decision-making process—in some cases, he argued, he affixed his signature intentionally so that people would not execute the order since it was not legal. In addition, Merten stated that he never made any false promises to the Jewish community that they would not be persecuted since he knew through a friend of his of the plan to exterminate the Jews in those countries where the plan had not yet been implemented; he thought that the Jews would be concentrated at a single location—but not that they would be exterminated. He claimed that he sought the advice of Metropolitan Gennadios as to whether he should resign in protest against the persecution of the Jews, but Gennadios told him that such a move would be cowardly. (Merten also stated that the Metropolitan, later declared a Righteous Gentile by Yad Vashem, had invited him to be present at an Easter ceremony.) Merten testified that he even tried to warn Rabbi Koretz, but that Koretz reacted with disbelief, prompting some 5,000 Jews who had fled to the mountains to return. He concluded by claiming that he recognized the fairness of the court.

The Verdict

Merten was found not guilty due to reasonable doubt on the following charges: the killing of 680 Greeks; arresting Greeks without military justification; terrorizing and torturing 9,000 Greek Jews; intentionally killing 5 Jews; murdering 46,000 Greek Jews deported to Poland; looting several Jewish shops; and looting the gravestones of the Jewish cemetery of Salonika.

He was found guilty of: incarcerating Greek citizens in the Pavlos Melas camp; confiscating the property of three (non-Jewish) Greeks; killing two Greek Jews; interning specific Jews in the Pavlos Melas camp; looting specific shops and homes; involvement in sending Greek Jews to forced labor and abandoning them to die of hunger; destroying the Jewish cemetery; terrorizing the Jews of Salonika; and expelling the Jews of Salonika to Poland.

He was sentenced to many concurrent jail terms, the longest of which was 18 years for the murder of the two Jews. This was increased to 25 years (5 years more than the term requested by the Prosecutor) due to the large number of indictments, from which 2 years and one month were deducted for time served.

Aftermath of the Trial

The Merten trial was “a case of politics and not of justice,” in the words of Suzan Spiliotis, who argues that the Greek government never intended to carry out the sentence. Greece was too dependent on tobacco exports to Germany and too much in need of an infusion of German money to be able to keep a man of Merten’s connections in jail. Intense pressure was applied by the government of West Germany and even the German parliament. Gustav Heinemann, who was later to become Justice Minister and Federal President, stated: “The economic aid requested by the Greek side makes our position stronger; the German embassy should make clear to the Greek foreign minister that German public opinion would not favor such negotiations before the Merten case is closed.”

Merten benefited from an amnesty for “war criminals” passed on Nov. 3, 1959. He was set free and sent to Germany just two days later, on November 5. Some months later, in March 1960, an economic agreement was signed between Greece and Germany stipulating the laughable sum of 115 million marks to be paid as reparations. While the German side saw the central issue as compensating victims of racial persecution (i.e., Jews), the Greek government was more concerned with paying the victims of other war crimes (executed hostages, etc.). Germany also agreed to provide a separate sum as loans to Greece (at an excessive interest rate, according to the Greek Opposition).

Merten was arrested in Germany but released a few days later. Proceedings there dragged on for 9 years, but the German prosecutor ultimately terminated the case “due to lack of evidence.” The 42-page decision concludes: “With the instruments of proof available to the court, the suspicion that he has committed crimes not falling under the statute of limitations cannot lead, with reasonable probability, to a conviction.”

Another key phrase is: “It could not be proven that he knew of the murder plan for the Jews he had helped concentrate and relocate.” Merten was dissatisfied with the fact that compensation for his court costs was awarded for only three of the eight counts in the indictment. His defense was conducted by the Heinemann-Posser firm; both Heinemann and Posser (later, Justice Minister of Nordrhein-Westfalen) are considered progressive German jurists who worked to reform the German justice system following the Adenauer Cold War era. Merten later received damages (*Heimkehrerentschädigung*) for the period he spent in jail in Greece. He died of old age in 1976.

During the 1960s, he resurfaced as a witness at the Eichmann trial (the transcript of his testimony is available in English on the Internet; see Bibliography below). In his testimony, he makes reference to a plan to send some 10,000 children to Palestine; according to Merten, Eichmann consented to the plan, which was ultimately blocked by the British. Merten acknowledges the contradictions between this testimony and his earlier statements in Greece, but blames this on his attorneys, stating that he was under oath only during the later testimony. He also cites cases where he had some success swaying Eichmann against the more rigid views of Wisliceny—with whom Merten claimed to have had no contact. Merten attempts to shift some of the blame for Eichmann’s actions onto Günther. Eichmann’s attorneys denied many aspects of Merten’s statement.

Lately, there has been some talk in Greece of a ship containing Merten’s “treasure” (valued at billions of dollars) that supposedly sank in the Messinia Gulf—but nothing has come out of it.

Merten’s German period, and particularly his trial against Adenauer’s secretary Hans Globke (who was involved in the drafting of the Nuremberg racial laws), are the subject of an unpublished thesis in Germany (being prepared under the guidance of Prof. Richter).

One cannot close without mentioning Hannah Arendt’s comment² attributing the Merten case to the indifference of the Greeks toward their Jewish fellow-citizens. (Arendt’s statement—as well as her comparison of Greece with Bulgaria—is considered unfair by Fleischer, who points out that Merten was extradited to Germany over the strenuous objections of the Greeks and that it was the German system that refused to deal with him and with many other cases of war crimes committed against the Greeks.)

² Quoted by Spiliotis from the German edition: Hannah Arendt, *Eichmann in Jerusalem: Ein Bericht über die Banalität des Bösen* (München, Zürich, 1987), p. 231.

CONCLUSION

*Αητος Κουτσατος Κουτσοποδαρατος
Περπαταει και φθινει – η Δικαιοσυνη*

Popular Greek Proverb

Although our notion of his powers may be exaggerated, Merten cannot be considered innocent in the eyes of most of us Greek Jews. He might not have participated in the most heinous of Holocaust crimes, but he was directly involved in the destruction of our community.

More distressing, however, than the case per se is the feeling that justice was not served in the case of Greece and its citizens (Jews, but also Christians ...)—which makes the Merten case a symbol. If one accepts his defense that he was not responsible for most of the crimes attributed to him, one must simultaneously acknowledge the fact that almost none of those allegedly responsible were punished either...

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