# From Gray Zones to Red Courts
## Soviet Collaboration Trials of Jewish Ghetto Functionaries from Transnistria, 1944–1949

Inauguraldissertation zur Erlangung der Doktorwürde der Philosophischen Fakultät der Universität Heidelberg, vorgelegt von:

Wolfgang Schneider

Erstgutachter: Prof. Dr. Tanja Penter
Zweitgutachter: Prof. Dr. Frank Grüner

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Für Helmut & Yogi

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# Table of Contents

# Introduction – The gray zones of Jewish ghetto administrations in Transnistria

Some day in mid-August 1941, German soldiers approached Iakov Bentsionovich Eidler on the streets of Tul'chin, a town in Soviet Ukraine's Vinnitsa oblast'.[1] German and Romanian troops had occupied Tul'chin three weeks prior as part of operation "Barbarossa", their attack on the Soviet Union. Now, the Germans asked Eidler whether he spoke German and when he said yes, they took him with them. His other credentials, such as his 57 years of age, his job as a dyer in the local kolkhoz, or the three years of primary school he had attended as a child did not interest the men. The Germans took Eidler to another local Jew, the pharmacist Rudov, and told both men that they should form a Jewish council representing the town's Jews, who numbered more than 3.000. Rudov was to head the council. The Germans handed over control of Tul'chin to their Romanian allies in early September. Tul'chin was now part of "Transnistria", an occupation zone on the territories of the Ukrainian and Moldovan Soviet republics that was primarily controlled by Romania. In Tul'chin, the Romanians left the Jewish council in place. The occupiers put some serious tasks on the shoulders of Eidler, Rudov, and the eight other men of the Jewish council, tasks that plunged them head-on into a morally ambiguous situation. The orders obviously hurt the local Jews, but non-compliance might provoke even worse consequences. The ghetto functionaries had to conduct a census of the Jewish population and ensure the Jews followed draconian rules of behavior the Romanians set for them. The occupiers also designated a ghetto and charged the council with ensuring the Jews moved, and stayed, there. Moreover, the council had to help organize forced labor to which the Romanians drafted the Jews. Besides exploiting their labor, the Romanians also expropriated the Jews' belongings and made the council members collect money, valuables, and other properties from the population. Eventually, at the end of the year, the Romanians decided to deport most of the town's Jews to the Pechora death camp, to where they marched them on foot. Among the deportees was Rudov, who had resigned from his post shortly before, and at least one other member of the council. The census lists the Jewish council had created served as the basis for selections and the Romanians excluded some 118 people from the deportation – artisans and their families deemed economically useful. In 1942, the ghetto grew with the influx of thousands of Jewish deportees from Northern Bucovina. The first Jewish council was replaced by a second one, but Eidler remained in it until the Red Army liberated the ghetto on March 15, 1944 – two years and seven months after the Germans had literally picked him off the street.

[1] The events sketched here are described in detail and fully supported with references in a case study in the second half of this book.

On August 16, 1945, four years after that fateful day, the Tul'chin branch of the People's Commissariat of State Security (NKGB) arrested Eidler for his service on the Jewish council. Soviet authorities eventually charged him under article 54-1 "a" of the Ukrainian Soviet republic's criminal code, "treason to the Motherland". Thus, the authorities made clear that they saw Eidler as a collaborator with the Germans and Romanians. Eidler stood trial together with two other former functionaries of the Tul'chin ghetto. Most witnesses in the investigation and trial were survivors of that very ghetto and the Pechora death camp. Some lauded Eidler for protecting ghetto inmates, others condemned him as a traitor. A Soviet military tribunal found Eidler guilty and sentenced him to 15 years of "katorga", i.e., especially hard labor in a specific subsection of the Soviet Gulag. After a successful appeal, Eidler's lawyer eventually managed to have his client's sentence reduced to five years in a corrective labor camp, i.e., the regular Gulag.

Eidler had gone from a gray zone to a red court – from serving as a Jewish ghetto functionary in Transnistria to being charged with collaboration by the Soviet judiciary for that very service. Eidler was one of around 200 former ghetto functionaries from that area whom the Soviets later charged with collaboration. This book is about those men. It reveals much about their time in the ghettos of Transnistria. Yet in the book's focus are the investigations and trials Soviet authorities later conducted against them.[2]

That topic is completely understudied. There is a growing literature on trials of Jewish Kapos, Jewish council members, ghetto policemen, informers, etc., a small part of which deals with Transnistria, but mostly concerning other regions. Another small but growing body of literature deals with Soviet collaboration trials.[3] One recent publication combines the two strands, examining Soviet trials of Jewish functionaries from Lithuanian ghettos.[4] Yet to date, only three historiographic articles deal with the precise topic of the present book: Soviet collaboration trials of Jewish ghetto functionaries from Transnistrian ghettos.[5] The present dissertation contributes

[2] A note on language: In the present book, we primarily latinized place and personal names from Russian. This does not entail a political attack on the sovereignty of those countries that exist in the geographical areas under discussion today, in which the same places have different names in the official languages. Rather, latinizing from Russian means to recognize that these territories were under control of the Soviet Union, the lingua franca of which was Russian. In the case of defendants' personal names, we decided to stick to the names as they are found in the investigative casefiles. The first reason for this choice is that for some individuals from Romania, there is no original version of their name available in writing, only the Russian transliteration by the Soviet investigators. Reverse engineering the original is often impossible. Moreover, the present book primarily deals with former Jewish ghetto functionaries as they appeared in Soviet courts, not with their whole life. Using only the original names would entail a false sense of holism, using the Russian transliterated version underscores the limited perspective.

[3] See the references in the respective chapters of the present book.

[4] BLUM, Alain/CHOPARD, Thomas/KOUSTOVA, Emilia: Survivors, Collaborators and Partisans?, in: Jahrbücher für Geschichte Osteuropas 2 (2021), p. 222–255. Another publication deals with similar proceedings in the Northern Caucasus. See: POLIAN, Pavel: Sumevshie utselet'. Gorskie evrei na Severnom Kavkaze, in: Mezhdu Aushvitsem i Bab'im Iarom. Razmyshlenia i issledovania o Katastrofe, Moskva (2010), p. 137–166.

[5] ALTSKAN, Vadim: On the Other Side of the River. Dr. Adolph Herschmann and the Zhmernika Ghetto, 1941-1944, in: Holocaust and Genocide Studies 1 (2012), p. 2–28. DUMITRU, Diana: The Gordian Knot of Justice. Prosecuting

both to the literature on Jewish ghetto functionaries, as wells as to the scholarship on trials of such functionaries. There is already a small but significant scholarship on the ghettos of Transnistria and their Jewish functionaries.[6] Here, the dissertation expands the existing literature. Yet the book's main contribution lies in the sphere of Soviet trials of such functionaries, where almost no research is available so far.

Roughly speaking, three sets of actors met in those trials: the defendants, that is the former ghetto functionaries themselves, the witnesses (mainly ghetto survivors), and the Soviet investigators and adjudicators handling the proceedings. The present book's analytical framework encompasses all three sets of actors. The book's guiding question is: In Soviet investigations and trials of former Jewish ghetto functionaries from Transnistria, what were the interests and goals of witnesses, defendants, and authorities, and what strategies did these actors employ to achieve these goals, and what were the outcomes?

To even begin to understand what went on in these red courts requires some background information. First, even the mere fact of the ghetto functionaries' and witnesses' survival is an unusual aberration from the almost total annihilation of Jews the Germans and their allies perpetrated on the Soviet territories they occupied. Therefore, some basic empirical information about the specifics of the Holocaust in Romania and the role Transnistria played therein is needed. Second, conceptual issues arise immediately when approaching the topic. Like many works dealing with similar issues before, the present book proposes to follow Primo Levi and view those ghetto functionaries and their actions as part of a gray zone – a fundamental moral ambiguity that limits

Jewish Holocaust Survivors in Stalinist Courts for "Collaboration" with the Enemy, in: Kritika: Explorations in Russian and Eurasian History 4 (2021), p. 729–756. SCHNEIDER, Wolfgang: From the ghetto to the Gulag, from the ghetto to Israel. Soviet collaboration trials against the Shargorod ghetto's Jewish Council, in: Journal of Modern European History 1 (2019), p. 83–97.

[6] BĂRBULESCU, Ana: The Djurin Ghetto. Official Order, Internal Structure, and Networking Strategies, in: Holocaust. Studii şi cercetări 12 (2019), p. 95–120. BURMISTR, Svetlana: Berschad – ein Ghetto in Transnistrien, in: Jahrbuch für Antisemitismusforschung (2009), p. 267–293. DELETANT, Dennis: Ghetto Experience in Golta, Transnistria, 1942-1944, in: Holocaust and Genocide Studies 1 (2004), p. 1–26. GOLBERT, Rebecca: Holocaust Sites in Ukraine. Pechora and the Politics of Memorialization, in: Holocaust and Genocide Studies 2 (2004), p. 205–233. GOLBERT, Rebecca: "Neighbors" and the Ukrainian Jewish Experience of the Holocaust, in: Lessons and Legacies VII. The Holocaust in international perspective, edited by Dagmar HERZOG, Evanston, IL 2006, p. 233–252. HAUSLEITNER, Mariana: Überleben durch Korruption. Das Ghetto Mogilev-Podol'skij in Transnistrien 1941–1944, in: Lebenswelt Ghetto. Alltag und soziales Umfeld während der nationalsozialistischen Verfolgung, edited by Imke HANSEN / Katrin STEFFEN / Joachim TAUBER (Veröffentlichungen des Nordost-Instituts, vol. 18), Wiesbaden 2013, p. 242–266. OFER, Dalia: Life in the Ghettos of Transnistria, in: Yad Vashem Studies (1996), p. 229–274. PLOSCARIU, Iemima: Institutions for survival: The Shargorod ghetto during the Holocaust in Romanian Transnistria, in: Nationalities Papers 1 (2019), p. 121–135. PLOSCARIU, Iemima: Speaking out in Times of Crisis. Differentiability in Romanian Jewish Leadership, 1938-1944, in: East European Jewish Affairs 3 (2019), p. 200–219. ROSEN, Sarah: The Djurin Ghetto in Transnistria through the Lens of Kunstadt's Diary, in: Romania and the Holocaust. Events – Contexts – Aftermath, edited by Simon GEISSBÜHLER, Stuttgart 2016, p. 131–150. TIBON, Gali: Two-Front Battle. Opposition in the Ghettos of the Mogilev District in Transnistria 1941–44, in: Romania and the Holocaust. Events – Contexts – Aftermath, edited by Simon GEISSBÜHLER, Stuttgart 2016, p. 151–170. TIBON, Gali: Am I My Brother's Keeper? The Jewish Committees in the Ghettos of Mogilev Province and the Romanian Regime in Transnistria during the Holocaust, 1941–1944, in: Dapim: Studies on the Holocaust 2 (2016), p. 93–116.

our ability to arrive at moral judgments. Such gray zones came about when Holocaust perpetrators forced some of their Jewish victims to participate in the persecution of their fellow Jews – as German and Romanian officials did in Transnistria. A related conceptual issue is that of collaboration – can we call these Jewish ghetto functionaries "collaborators"?

## Transnistria and the Holocaust in Romania

Viewed from the later trials, two primary aspects of the Holocaust in Romania and the territories it occupied since 1941 demand attention. First, the Romanian Holocaust was characterized by sharp regional differences. Second, the anti-Semitic persecutions of Ion Antonescu's regime developed along a specific trajectory, with a decisive shift in late 1942 that lead to the suspension of any plans to annihilate the Jews in the Romanian area of influence completely.

The specifics of the Romanian Holocaust shaped the later trials of Jewish ghetto functionaries in several ways. The regional differences and the policy shift explain why there were any Jews alive to put be on trial and others who could testify against them. Part of the regional differences was that in the Regat (the Kingdom of Romania) the Romanian leadership established country-wide "Judenvereinigung", the "Centrala Evreilor din Romania" ("Center of the Jews in Romania", in the following: CER). As a provider of aid to the Jews interned in camps and ghettos in Transnistria, CER was crucial for the survival of these Jews. Yet neither the Jews of the Regat nor those in Transnistria had survived if the Romanian leadership had not decided in the fall of 1942 to stop its joint plans with the Germans to murder all Jews. After that policy shift, CER could also increase its aid deliveries to the Jews in Transnistria. The survival chances of three main groups of Jews in the ghettos of Transnistria were also influenced by regional patterns of persecution (these groups were the deportees from Northern Bucovina and Bessarabia, those deported from Southern Bucovina, as well as the local Soviet Jews), again determining who could stand trial and testify.

For such trials to come about, it was also necessary that the Romanians ghettoized Jews in Transnistria and created the positions the later defendants could fill in the first place, i.e. "Judenräte" or Jewish ghetto administrations. As part of the different Romanian approaches to the three principal groups, individuals from these groups were not equally represented in the Jewish ghetto administrations. That unequal representation was just one aspect of a wider communal-class separation between the three groups that sparked social conflicts among them in the ghettos. Both unequal representation and social conflicts potentially influenced the later Soviet trials of Jewish ghetto functionaries. To understand the later Soviet trials, we need to briefly review the regional differences, the specific trajectory in the development of the Romanian Holocaust, and the way they influenced what became the topics of the later Soviet trials – Jewish ghetto functionaries' activities in Transnistria.

The regime of Marshall Ion Antonescu treated the Jews of three main areas quite differently. These areas are, first, the core Romanian territories of the Regat (the Kingdom of Romania), second, the eastern provinces of Bessarabia and Bucovina, and third, even further to the East, Transnistria, the parts of the Moldovan and Ukrainian Soviet republics Romania occupied in the summer of 1941.[7] Together, the Jewish population of these areas can be estimated at around a million in 1939, comprised of 750.000 in the Regat, Bessarabia, and Bucovina, and more than 300.00 in the Soviet areas that would become Transnistria.[8] The regime persecuted the Jews of the Regat much less intensively than those in Bessarabia, Bucovina, and Transnistria which meant a difference of life and death for hundreds of thousands of people.

Antonescu's regime targeted the Jews of the Regat by passing discriminatory laws, barring them from the countryside and concentrating them in cities, drafting many for forced labor, for which they were temporarily confined in camps with inadequate living conditions, expropriating them via astronomic taxes and curtailing their economic freedom.[9] Yet with few exceptions, Antonescu's regime from 1941 on never completely segregated the Jews of the Regat from the rest of the population, ghettoized them, deported them, or exterminated them on a mass scale.[10]

The official representative body of Jews in the Regat should also be mentioned since many Jewish ghetto administrations in Transnistria heavily depended on connections with that body and aid deliveries it organized. The Antonescu regime formally disbanded most Jewish organizations and established a new official representative body, the "Centrala Evreilor din Romania" ("Center of the Jews in Romania", in the following: CER).[11] Under the influence of both unofficial traditional

[7] On the different territories within Romania, see: ANCEL, Jean/CREANGĂ, Ovidiu: Romania, in: Camps and ghettos under European regimes aligned with Nazi Germany, edited by Joseph R. WHITE / Mel HECKER / Geoffrey P. MEGARGEE (The United States Holocaust Memorial Museum Encyclopedia of camps and ghettos, 1933–1945, vol. 3), Bloomington 2018, p. 570–584, here p. 570.

[8] Since the exact number of Soviet Jews who managed to evacuate to the Soviet rear before the occupation is unknown, the potential margin of error in the estimates of their total population in Transnistria is significant. Ibid. DELETANT: Ghetto Experience, p. 2. ARAD, Yitzhak: The Holocaust in the Soviet Union (The comprehensive history of the Holocaust), Lincoln, NE 2009, p. 238.

[9] SOLONARI, Vladimir: "Model Province". Explaining the Holocaust of Bessarabian and Bukovinian Jewry, in: Nationalities Papers 4 (2006), p. 471–500, here p. 471. BURMISTR, Svetlana: Transnistrien, in: Arbeitserziehungslager, Ghettos, Jugendschutzlager, Polizeihaftlager, Sonderlager, Zigeunerlager, Zwangsarbeitslager, edited by Wolfgang BENZ (Der Ort des Terrors, Geschichte der nationalsozialistischen Konzentrationslager / hrsg. von Wolfgang Benz u. Barbara Distel), München 2009, p. 390–416, here p. 400.

[10] The most notable of these exceptions surely was the so-called "Iaşi pogrom" of June 1941, that claimed the lives of up to 13.000 Jews. ANCEL/CREANGĂ: Romania, p. 570. IOANID, Radu: The Holocaust in Romania. The destruction of Jews and Gypsies under the Antonescu regime; 1940–1944, Chicago 2000, p. 63–90 For a iscussion of the varying numbers of Jews killed in the pogrom, see p. 86.

[11] VAGO, Bela: The Ambiguity of Collaborationism. The Center of the Jews in Romania (1942–1944), in: Patterns of Jewish leadership in Nazi Europe, 1933–1945. Proceedings of the Third Yad Vashem International Historical Conference, Jerusalem, April 4-7, 1977, edited by Israel GUTMAN / Cynthia J. HAFT, Jerusalem 1979, p. 287–316, here p. 287–289.

and official new figures, CER eventually became a decisive framework for supplying aid to Jews in Transnistria.[12]

These aid deliveries helped ensure the survival of Jews in Transnistria and thus partially explain why Soviet authorities could even put former Jewish ghetto functionaries from Transnistria on trial. However, the much more important reason was that Romanian dictator Antonescu retained partial autonomy in questions of Jewish policy and ultimately decided not to hand over the Jews under its control to the Germans for extermination. Jewish policy was a contentious topic between the Germans and the Romanian regime (which had joined the tripartite pact in 1940).[13] In 1942, Antonescu's regime began joint preparations with their German counterparts to deport the Jews of the Regat to the German death camps in Poland.[14] However, the Romanians ceased these efforts completely in the fall of 1942, of which they informed their German counterparts in October, and then denied any further German requests for delivering the Jews under their control.[15] The changing tides of the war were probably the decisive factor that brought about this policy shift – the Romanians understood that the Axis were losing and tried to bolster their negotiating position with the soon-to-be victorious Allies.[16]

Thus, Jews in the Regat faced only comparatively "mild" persecutions and the Romanian regime eventually decided to stop systematically murdering Jews in other areas as well, which partially explains how the Soviets could later hold collaboration trials of Jewish ghetto functionaries. Nevertheless, the general situation for the Jews in other areas under Romanian control looked quite different from that in the Regat. The Antonescu regime began murdering Jews on a mass scale in Bessarabia and Northern Bucovina in the summer of 1941. A year prior, Romania had lost these two territories to the Soviet Union, which annexed them on June 28, 1940.[17] When Romania attacked the Soviet Union as part of the Axis operation "Barbarossa" a year later, it reconquered these territories. Antonescu issued several orders for the "cleansing of the terrain", de-facto killing orders, that unleashed a first wave of mass murder on the Jews in these regions, lasting until

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[12] Ibid., p. 299-301, 304.

[13] ANGRICK, Andrej: Transnistrien. Nicht länger der vergessene Friedhof?, in: Arbeit in den nationalsozialistischen Ghettos, edited by Jürgen HENSEL / Stephan LEHNSTAEDT (Einzelveröffentlichungen des Deutschen Historischen Instituts Warschau, vol. 29), Osnabrück 2013, p. 297–320, here p. 300. ANCEL/CREANGĂ: Romania, p. 570. IOANID: Holocaust in Romania, p. 282.

[14] IOANID: Holocaust in Romania, p. 239–248.

[15] HAUSLEITNER, Mariana: Rettungsaktionen für verfolgte Juden unter besonderer Berücksichtigung der Bukowina 1941–1944, in: Holocaust an der Peripherie. Judenpolitik und Judenmord in Rumänien und Transnistrien 1940–1944, edited by Wolfgang BENZ / Brigitte MIHOK (Dokumente, Texte, Materialien, vol. 73), Berlin 2009, p. 113–128, here p. 123. VAGO: Ambiguity of Collaborationism, p. 303. HOPPE, Bert/GLASS, Hildrun: Einleitung, in: Sowjetunion mit annektierten Gebieten I. Besetzte sowjetische Gebiete unter deutscher Militärverwaltung, Baltikum und Transnistrien, edited by Bert HOPPE / Hildrun GLASS (Die Verfolgung und Ermordung der europäischen Juden durch das nationalsozialistische Deutschland 1933–1945, vol. 7), München 2011, p. 13–89, here p. 70.

[16] HAUSLEITNER: Rettungsaktionen, p. 123.

[17] BURMISTR: Transnistrien, p. 390.

October 1941.[18] The death toll is estimated at 45.000 to 60.000.[19] The Romanian leadership was seeking to turn Bessarabia and Bucovina into "model provinces" where it aimed to realize a project of an "ethnically pure, culturally and politically reconstructed Romania", a concept that the leadership wanted to implement in all of Romania in the long term.[20] That vision of ethnic homogenization was anti-Semitic to its core. The Jews in these provinces thus either had to die immediately or be physically removed.

Between July and November, the Romanians deported approximately 90.000 Jews from Northern Bucovina and 56.000 from Bessarabia who had survived the earlier mass murders across the Dniester river to the areas that would soon become Transnistria (literally "lands beyond the Dniester").[21] In October, the Romanians also began deporting around 18.000 Jews from Southern Bucovina – the part of the province that the Soviets had not annexed in 1940.[22] Here, we see another exception to the way the regime treated the Jews of the Regat: the leadership included some additional 13.000 Jews of the Dorohoi district in these deportations.[23] It is estimated that the Romanians deported a total of 180.000 Jews from all of these territories combined to Transnistria.[24] Several thousand more were deported mainly from Chernovtsy in 1942.[25]

Besides these deportees, the third principal group in the ghettos and the primary group of witnesses in the later trials were local Soviet Jews living in Transnistria. Germany and Romania had agreed in August 1941 that the area between the Dniester and the Bug rivers (western and eastern boundaries) and between the Black Sea and the town of Zhmerinka (southern and northern boundaries) would fall to Romania, which called it "Transnistria".[26] The area came under Romanian civil administration, although Germany retained far-reaching competencies within the territory.[27] Gheorghe Alexianu was appointed civil governor of Transnistria.[28] When German and Romanian troops invaded, a sizeable part of the population living in "Transnistria" were Jews. Soviet census

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[18] Ibid., p. 395.
[19] SOLONARI, Vladimir: Patterns of Violence. The Local Population and the Mass Murder of Jews in Bessarabia and Northern Bukovina, July–August 1941, in: Kritika: Explorations in Russian and Eurasian History 4 (2007), p. 749–787, here p. 755.
[20] SOLONARI: "Model Province", p. 482.
[21] SOLONARI: Patterns of Violence, p. 755. BAUM, Herwig: Varianten des Terrors. Ein Vergleich zwischen der deutschen und rumänischen Besatzungsverwaltung in der Sowjetunion 1941–1944, Berlin 2011, p. 486.
[22] DELETANT, Dennis: Transnistria and the Romanian Solution to the "Jewish Problem", in: The Shoah in Ukraine. History, testimony, memorialization, edited by Ray BRANDON / Wendy LOWER, Bloomington 2008, p. 156–189, here p. 167. BURMISTR: Transnistrien, p. 399–400.
[23] BURMISTR: Transnistrien, p. 400.
[24] ANCEL/CREANGĂ: Romania, p. 576.
[25] Ibid.
[26] HAUSLEITNER, Mariana: Auf dem Weg zur Ethnokratie. Rumänien in den Jahren des Zweiten Weltkrieges, in: Kooperation und Verbrechen. Formen der »Kollaboration« im östlichen Europa 1939–1945, edited by Dieckmann, Christoph et al. (Beiträge zur Geschichte des Nationalsozialismus, vol. 19), Göttingen 2003, p. 78–113, here p. 89. ANCEL/CREANGĂ: Romania, p. 575.
[27] BURMISTR: Transnistrien, p. 393. BAUM: Varianten des Terrors, p. 12, 16.
[28] BAUM: Varianten des Terrors, p. 568.

figures put their number at around 300.000 people in 1926 and 320.000 in 1939.[29] Some of these Jews evacuated at the beginning of the war and with the retreating Red Army, but estimating their number is difficult.

After the German-Romanian invasion, Einsatzgruppe D, together with Romanian units, shot tens of thousands of those local Jews – between 50.000 and 60.000 according to one estimate.[30] The Jews in the central regions of Transnistria were affected most severely.[31] Some 35.000 local Jews survived in the Northern and central parts of Transnistria, another 70.000 in the Southern regions, and an additional 100.000 in the city of Odessa, where one of the largest Jewish communities in the USSR resided.[32] However, the Romanians murdered most of the Jews from Odessa and Southern Transnistria between November 1941 and March 1942 (see chapter 14).[33]

After the initial waves of murders, the Romanians substituted ghettoization and internment in camps for organized mass murder and deportations beyond Transnistria. Thus, the Romanians created the places that later Soviet trials would be dealing with – the ghettos of Transnistria. Initially, the Romanians had planned to deport the Jews even further East, across the river Bug to the Germans (fully aware that the Jews would die there).[34] However, the Germans curtailed Romanian attempts at such deportations. The August 1941 German-Romanian "Tighina agreement" not only created Transnistria as a political entity, but also made ghettoization and internment in camps the primary anti-Jewish policy for Transnistria.[35] The system of camps and ghettos, set up as a haphazard provisory arrangement in 1941, then existed until 1944.[36] In Alexander Dallin's famous formulation, Transnistria became an "ethnic dumping ground".[37] Different estimates for the total number of camps and ghettos are available, with 150 as the minimum estimate.[38]

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[29] DELETANT: Ghetto Experience, p. 2. ARAD: Holocaust in the Soviet Union, p. 238.
[30] ANCEL/CREANGĂ: Romania, p. 575. For the estimate, see: BURMISTR: Transnistrien, p. 397. For studies dealing with the reaction of the local non-Jewish populations of Bessarabia, Bucovina and Transnistria to the deportation and murder of the Jews, see: DUMITRU, Diana: The state, antisemitism, and collaboration in the Holocaust. The borderlands of Romania and the Soviet Union, Cambridge 2016. POLIEC, Mihai I.: The Holocaust in the Romanian borderlands. The arc of civilian complicity (Mass violence in modern history, vol. 4), London 2019.
[31] ANGRICK: Transnistrien, p. 300–301.
[32] Ibid., 302, 305. ANCEL/CREANGĂ: Romania, p. 575.
[33] HOPPE/GLASS: Einleitung, p. 67. ANCEL/CREANGĂ: Romania, p. 576.
[34] HAUSLEITNER, Mariana: Großverbrechen im rumänischen Transnistrien 1941–1944, in: Rumänien und der Holocaust. Zu den Massenverbrechen in Transnistrien 1941–1944, edited by Mariana HAUSLEITNER / Brigitte MIHOK / Juliane WETZEL (Nationalsozialistische Besatzungspolitik in Europa 1939–1945, vol. 10), Berlin 2001, p. 15–24, here p. 18.
[35] BAUM: Varianten des Terrors, p. 570.
[36] ANCEL/CREANGĂ: Romania, p. 576. See the document published in: BENZ, Wolfgang/MIHOK, Brigitte (ed.): Holocaust an der Peripherie. Judenpolitik und Judenmord in Rumänien und Transnistrien 1940–1944 (Dokumente, Texte, Materialien, vol. 73), Berlin 2009, p. 248.
[37] DALLIN, Alexander: Odessa, 1941–1944. A case study of Soviet territory under foreign rule, Iaşi 1998, p. 204–212.
[38] Ancel and Creangă speak of 150 "identified camps and ghettos", other historians speak of 175. The highest estimate comes from Angrick and Mihok, according to whom there were 226 camps and ghettos (with 175 of those being

That at least some of the Jews interned in those ghettos survived until the Red Army arrived in 1944 was not only due to the Romanian policy shift of 1942. It also heavily depended on the activities of CER. Living conditions in the ghettos were abhorrent and a typhus epidemic ravaged the ghettos, killing 30-50% of ghetto inmates in the winter of 1941/1942.[39] The Romanian authorities finally allowed CER to deliver aid to Transnistria to help fight the epidemic in March 1942 but did so only because the epidemic had spread beyond the ghettos and began to affect the general population and the Romanians themselves.[40] CER eventually began to funnel aid such as food, clothing, medical supplies, and money, to the Jews in Transnistria, with aid deliveries increasing significantly after the policy shift in the fall of 1942.[41] For implementing the aid distribution in the ghettos of Transnistria, these ghettos' Jewish councils were instrumental. It was they who distributed the aid deliveries, bolstering their earlier self-organized social welfare efforts such as soup kitchens and orphanages.

It was members of these Jewish pseudo-self-representative bodies whom the Soviets later charged with collaboration. The genesis of these bodies thus deserves some elaboration. Transnistria governor Alexianu ordered the appointment of a "head" of each community "from amongst the Jews" in all camps and ghettos in his order No. 23 of November 11, 1941.[42] In this document, Alexianu decreed to confine all Jews in Transnistria in camps and ghettos, designated by the gendarmerie, and to deny them free movement without permit beyond these places of confinement at the punishment of being treated as a spy according to military law, i.e. death in the worst case.[43] The Jews were also to be registered, including their profession, which points to the main topic of the whole document: labor.

In the later Soviet trials, accusations of forced labor recruitment were a common topic in witness testimonies (see chapter 9). According to Alexianu's order, the Jews should "support themselves

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ghettos). ANCEL/CREANGĂ: Romania, p. 575. BAUM: Varianten des Terrors, p. 527. BURMISTR: Transnistrien, p. 390. ANGRICK: Transnistrien, p. 304. MIHOK, Brigitte: Orte der Verfolgung und Deportation, in: Holocaust an der Peripherie. Judenpolitik und Judenmord in Rumänien und Transnistrien 1940–1944, edited by Wolfgang BENZ / Brigitte MIHOK (Dokumente, Texte, Materialien, vol. 73), Berlin 2009, p. 71–79.

[39] OFER, Dalia: The Holocaust in Transnistria. A Special Kind of Genocide, in: The Holocaust in the Soviet Union. Studies and sources on the destruction of the Jews in the Nazi-occupied territories of the USSR; 1941 - 1945, edited by Lucjan DOBROSZYCKI, Armonk, NY 1993, p. 133–154, here p. 142. DELETANT: Ghetto Experience, p. 6.

[40] ANCEL/CREANGĂ: Romania, p. 578.

[41] ARAD: Holocaust in the Soviet Union, p. 300–301. Besides from the Jews in the Regat, international organizations such as the Joint Distribution Committee would eventually also finance such aid deliveries.IOANID: Holocaust in Romania, p. 214–218.

[42] Die Verordnung Nr. 23 des Zivilgouverneurs von Transnistrien, Gheorghe Alexianu, 11. November 1941, in: Holocaust an der Peripherie. Judenpolitik und Judenmord in Rumänien und Transnistrien 1940–1944, edited by Wolfgang BENZ / Brigitte MIHOK (Dokumente, Texte, Materialien, vol. 73), Berlin 2009, p. 249–252, here p. 250.

[43] Ibid. GLASS, Hildrun: Transnistrien in der Forschung. Anmerkungen zu Historiografie und Quellenlage, in: Holocaust an der Peripherie. Judenpolitik und Judenmord in Rumänien und Transnistrien 1940–1944, edited by Wolfgang BENZ / Brigitte MIHOK (Dokumente, Texte, Materialien, vol. 73), Berlin 2009, p. 143–150, here p. 144.

on their own account and by work".[44] For a day of work, specialists and artisans were to receive two German Marks, i.e. "Reichskreditkassenschein" (RKKS), the new currency in Transnistria, unlearned laborers one RKKS – a "miniscule daily wage" at best.[45] Thus, the document's three main points were confinement, forced labor, and the appointment of Jewish functionaries. And Alexianu made the Jewish ghetto functionaries personally responsible that the Jews remained in place, followed Romanian orders, and performed forced labor.[46]

The tasks stipulated in Order No. 23 and the aid deliveries through CER described above already show that a structural conflict plagued the Jewish functionaries' activities: on the one hand, fulfilling Romanian orders but on the other hand, also trying to serve the interests of the Jews in the ghettos. That conflict was universal across Transnistria but differed significantly in its details from ghetto to ghetto. Due to the chaotic and corrupt administration on the ground, overlapping competencies, and the strong position of the local praetors in Romanian rule over Transnistria, the guidelines of Order No. 23 were implemented quite differently from ghetto to ghetto.[47] The Romanian perpetrators on the ground often expanded the Jewish pseudo-self-representative bodies into Jewish ghetto administrations of varying sizes and involved them in activities not stipulated in Order No. 23.[48] Besides organizing Jewish forced labor, some perpetrators partially delegated the preparation and conduct of deportations to the Jewish ghetto functionaries. If the Romanian authorities allowed it, Jewish ghetto police forces were also created, tasked primarily with implementing forced labor duties but sometimes also with maintaining order in the ghettos and controlling who entered and left them.[49] Another task the Romanians often set for ghetto functionaries was confiscating Jewish property. On the other hand, the same Jewish functionaries engaged in activities such as fighting the typhus epidemic, organizing social welfare within the ghettos, bribing Romanian officials to soften persecutory policies, and distributing aid from CER, etc. Some functionaries also actively cooperated with the local Soviet underground and partisan groups.

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[44] Verordnung Nr. 23, p. 249.
[45] Ibid., p. 251. ARAD: Holocaust in the Soviet Union, p. 237.
[46] Verordnung Nr. 23, p. 250.
[47] OFER: Holocaust in Transnistria, p. 141. The Romanians had split Transnistria into 13 districts, each officially governed by a military prefect. ANCEL/CREANGĂ: Romania, p. 575. However, the praetors of the 64 raions, i.e. at the sub-district level division that the Romanians had taken over from the Soviets, were in fact more powerful in their areas than the prefects themselves. ANCEL, Jean: The Romanian Campaigns of Mass Murder in Trans-Nistria, 1941–1942, in: The destruction of Romanian and Ukrainian Jews during the Antonescu era, edited by Randolph L. BRAHAM (East European monographs Holocaust studies series, no. 483), Boulder, CO 1997, p. 87–133, here p. 89–91.
[48] For an overview of such tasks, see: OFER: Life in the Ghettos, p. 260.
[49] OFER, Dalia: The Ghettos in Transnistria and Ghettos under German Occupation in Eastern Europe. A Comparative Approach, in: Im Ghetto 1939–1945. Neue Forschungen zu Alltag und Umfeld, edited by Dieckmann, Christoph / Quinkert, Babette (Beiträge zur Geschichte des Nationalsozialismus, vol. 25), Göttingen 2009, p. 30–53, here p. 44. OFER: Holocaust in Transnistria, p. 147. DELETANT: Ghetto Experience, p. 4–5.

The accusations that witnesses later leveled at former ghetto functionaries during Soviet investigations and trials were mostly related to the structural conflict described above. Even such a broad overview of Jewish ghetto functionaries' appointment and range of activities makes it highly probable that collectively, ghetto inmates had an ambiguous stance toward these functionaries. And the potential for ambiguity was heightened by social conflicts between different groups of Jews in the ghettos, which one scholar has aptly termed a "communal-class separation" among the Jews in Transnistria.[50]

A factor exacerbating social conflicts between the groups that was directly related to the Jewish ghetto administrations was the unequal representation of Jews from the different groups in the ghettos' functionary positions. As many authors rightfully remarked, the positions were often filled by deportees from Romania.[51] Since it was the Romanian praetors who had the last say on whom to appoint to such positions, a discriminatory approach by the perpetrators is evident.[52] Romanian officials often viewed the local Jews as "latent Bolsheviks".[53] However, there was also a hierarchy among the two groups of deportees. Since they had lived under Soviet rule for a year and supposedly welcomed the Red Army in 1940, Jews of Northern Bucovina and Bessarabia were also suspected of communist sympathies.[54] That could lead to preferential treatment for deportees from Southern Bucovina in ghettos where members of both groups were confined.

During the later Soviet trials, the majority of witnesses were Soviet Jews and the majority of defendants were former deportees from Romania – so can these trials be summarized as "Soviet Jews accusing Romanian Jews"? Hardly. As the present book will show, the tendency to appoint only Romanian deportees to functionary positions is somewhat over-emphasized in current scholarship. There was no universal model for selecting the members of these Jewish councils and the ghetto administrations. Depending on the locality, different people wound up in these positions. Established community leaders from Bessarabia and Bucovina sometimes arrived in Transnistria together with the remnants of their home communities and then filled the posts of the Jewish ghetto representatives.[55] However, in ghettos with mixed populations of local Jews and deportees, functionaries whom the Germans or Romanians had designated from among the local Jews sometimes remained in place and formed joint councils with representatives of the deportees – as the example of Eidler shows (see chapter 11). What is more, the Tul'chin ghetto almost

[50] TIBON: Brother's Keeper, p. 113.
[51] ALTSKAN: On the Other Side, p. 12. PLOSCARIU: Institutions for survival, p. 124. DUMITRU: Gordian Knot, p. 735.
[52] DUMITRU: Gordian Knot, p. 735.
[53] OFER: Life in the Ghettos, p. 253.
[54] HAUSLEITNER: Weg zur Ethnokratie, p. 85. Moreover, since Bessarabia was a "'breeding ground for modern Jewish politics'", including Zionist and communist groups, Bessarabian Jews were then widely regarded as "Soviet sympathizers" in interwar Romania between 1918 and 1940. See: PLOSCARIU: Speaking out, p. 202.
[55] PLOSCARIU: Institutions for survival, p. 124. OFER: Life in the Ghettos, p. 241.

exclusively housed local Soviet Jews for over a year before any Romanian deportees arrived. During that time, the Jewish council was thus comprised exclusively of local Jews. And even in ghettos that developed along a different trajectory, such as Balta, there were local Jews in relevant functionary positions – the council was mixed, just like the population (see chapters 12 and 13). In turn, these different combinations of functionaries' and ghetto inmates' backgrounds later led to different combinations of defendants and witnesses.

On the other hand, that variety did not mean that the "communal-class separation" played no role in the trials – on the contrary (see chapter 13).[56] For that, the differences between the groups were too strong. These differences depended on longer developmental trends in the Regions of Bessarabia, Bucovina and the Soviet territories later turned into Transnistria, as well as on the different modes of persecution and deportation the three principal groups of Jews in the ghettos suffered under Romanian rule. Between 1812 and 1918, Bessarabia belonged to the Russian Empire and its discriminatory policies hindered Jews' economic, cultural and political freedom.[57] Bucovina belonged to the Austro-Hungarian Empire until 1918, where Jewish policy was remarkably tolerant, allowing the Jews there to prosper economically, culturally, and politically. [58] As part of interwar Romania, both regions saw the introduction of anti-Semitic legislation from 1938 on.[59] The 1940 Sovietization of Bessarabia and Northern Bucovina was accompanied by repressions and deportations, destroying community structures and crushing religious and political freedom.[60] Southern Bucovina was not Sovietized in 1940, and the Jews of the region thus had the most intact community structures among the deportees and were economically the most well-off segment when Romania attacked the Soviet Union in 1941.[61]

The local Jews of Transnistria had not just spent one year under Soviet rule but lived under it since the revolution. Thus, for the local Soviet Jews, one can expect a lesser role of religion, a complete lack of or only weakly developed Jewish national consciousness, a high degree of assimilation, and a comparatively strong identification with the regime stemming from Jews' gratitude for the abolition of the tsarist repressive Jewish policies.[62] As a consequence of Soviet

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[56] All available papers address that aspect: ALTSKAN: On the Other Side, p. 11–12. DUMITRU: Gordian Knot, p. 734–746. SCHNEIDER: From the ghetto, p. 94, FN 78.
[57] HOPPE/GLASS: Einleitung, p. 63.
[58] Ibid. PLOSCARIU: Speaking out, p. 202.
[59] HOPPE/GLASS: Einleitung, p. 63.
[60] OFER: Life in the Ghettos, p. 233.
[61] ROSEN, Sarah: Surviving the Murafa Ghetto. A Case Study of One Ghetto in Transnistria, in: The Holocaust and local history. Proceedings of the First International Graduate Students' Conference on Holocaust and Genocide Studies (Strassler Family Center for Holocaust and Genocide Studies, Clark University, 23–26 April 2009), edited by Thomas KÜHNE / Tom LAWSON, London 2011, p. 143–160, here p. 154.
[62] GRÜNER, Frank: Patrioten und Kosmopoliten. Juden im Sowjetstaat 1941–1953 (Beiträge zur Geschichte Osteuropas, vol. 43), Köln, Weimar, Wien 2008, p. 29, 145. GRÜNER, Frank: Jüdischer Glaube und religiöse Praxis unter dem stalinistischen Regime in der Sowjetunion während der Kriegs- und Nachkriegsjahre, in: Jahrbücher für Geschichte Osteuropas 4 (2004), p. 534–556, here p. 537.

religious policy, the absence of communal and other self-governing structures for Jews should also be mentioned here.[63] Thus, the group that was least well off economically had to absorb the influx of deportees and since the Romanians often created ghettos in places where Jews already lived, the locals had to accommodate the new arrivals, leading to overcrowding and worsening living conditions.[64]

Different modes of persecution by the Romanians added to the differences between the groups some of whose members would later become defendants and witnesses in Soviet collaboration trials. The Romanians did not murder the Jews of Southern Bucovina before deportation and deported them by train, rather than on foot, as the Jews from Northern Bucovina and Bessarabia.[65] The Romanian guards accompanying these marches shot anyone who could not keep up and together Ukrainian and Moldovan volunteers robbed, raped, and murdered the Jewish deportees at will and on a mass scale.[66] Deportation by train thus spared the Jews further loss of health or even life and meant that these Jews could more often bring valuables with them, later allowing them to buy food on the (black) market or bribe Romanian officials.[67] In turn, that made market prices soar, which put pressure on the other groups, especially the local Soviet Jews.[68]

Because of these different initial conditions at the beginning of the Holocaust and the different patterns of persecution by the Romanians, the survival rates of the various groups of Jews in Transnistria also varied greatly. Different authors provide different estimates but the consensus is that the local Soviet Jews suffered the heaviest losses.[69] Jean Ancel, the leading expert on the Holocaust in Transnistria, puts their survival rate at around ten percent.[70] Some authors also conclude that among the deportees, the Jews from Bessarabia had much worse chances of survival than those of Bucovina, with some estimates putting the survival rate of the Bucovinian Jews in 1943 at 83% and that of the Bessarabians at 25%.[71]

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[63] OFER: Life in the Ghettos, p. 249.
[64] Ibid., p. 253.
[65] BURMISTR: Transnistrien, p. 397–401.
[66] ANCEL/CREANGĂ: Romania, p. 576.
[67] BAUM: Varianten des Terrors, p. 486. VYNOKUROVA, Faina: The Fate of Bukovinian Jews in the Ghettos and Camps of Transnistria, 1941–1944. A Review of the Source Documents at the Vinnytsa Oblast State Archive, in: Golokost' I Suchasnist' 8 (2010), p. 18–26, here p. 22.
[68] OFER: Life in the Ghettos, p. 253.
[69] HOPPE/GLASS: Einleitung, p. 69. BURMISTR: Transnistrien, p. 411. ANCEL, Jean: "The New Jewish Invasion". The Return of the Survivors from Transnistria, in: The Jews are coming back. The return of the Jews to their countries of origin after WW II, edited by David BANKIER, New York 2005, p. 231–256, here p. 231. ANCEL/CREANGĂ: Romania, p. 580.
[70] ANCEL: "New Jewish Invasion", p. 231. ANCEL/CREANGĂ: Romania, p. 580. Estimating that rate is difficult because the Romanian perpetrators did not even care enough about the local Jews to properly record them in their statistics. See: HOPPE/GLASS: Einleitung, p. 69.
[71] OFER: Life in the Ghettos, p. 246. The respective numbers provided by other authors are 77% and 25%. HOPPE/GLASS: Einleitung, p. 69.

Despite the low survival rates, Transnistria acquired a paradoxical status in the history of the Holocaust. With around 330.000 Jews murdered under its aegis, the Romanian regime takes second place among Holocaust perpetrator countries right after Nazi Germany.[72] On the other hand, because of the decisive policy shift in 1942, Romania never murdered all the Jews under its control. Therefore, Transnistria became a "small island" of Jewish survival in the occupied territories of the USSR, which were otherwise "judenfrei".[73]

It has recently been suggested that the differing survival rates depended not only on the actions of the German and Romanian perpetrators but also on those of the Jewish ghetto functionaries. Allegedly, it was the ghetto functionaries from among the deportees who used their dominant position in some Jewish councils to afford preferential treatment to their own groups, going as far as sacrificing local Soviet Jews when it came to deportations to protect their own clientele.[74] The in-depth case studies in the second half of the present book critically discuss these recent claims and assess them for one of the ghettos examined in these chapters.

## The gray zones of Jewish ghetto administrations in Transnistria

The broader historiography on Jewish councils and ghetto police forces, as well as other groups of Jewish functionaries, provides helpful concepts to better understand general aspects of the specific case of Transnistria. A first interesting insight gained from that literature is that in the Romanian Holocaust the two main types of Jewish pseudo-self-representative bodies played an important role. These were "Judenvereinigungen" and "Judenräte", i.e. the central country-wide organ of CER and the local Jewish councils in the ghettos.[75] In the ideal-typical form as described by Dan Michman, "Judenräte" and "Judenvereinigungen" differed in their times of creation, modes of appointment, formal legal status, subordination into a chain of command, the realm of their competences (local/regional vs. country-wide), in the prerogatives of the respective council head (individual vs. collective decision making), and their initial realm of responsibilities (ghettoization, census, compulsory taxation and maintaining order in community vs. emigration, education and social welfare).[76] It is another feature of the regional differences in the Romanian Holocaust that the perpetrators adopted both these models, instead of just one.

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[72] DELETANT: Ghetto Experience, p. 2. Estimates of course vary for the total number of victims as well. The one cited stems from: ANCEL/CREANGĂ: Romania, p. 580.
[73] ALTSKAN: On the Other Side, p. 13–14. See also: DELETANT: Romanian Solution, p. 181. BAUM: Varianten des Terrors, p. 576.
[74] TIBON: Brother's Keeper.
[75] MICHMAN, Dan: On the Historical Interpretation of the Judenräte Issue. Between Intentionalism, Functionalism and the Integrationist Approach of the 1990s, in: On Germans and Jews under the Nazi regime. Essays by three generations of historians; a Festschrift in honor of Otto Dov Kulka, edited by Moshe ZIMMERMANN, Jerusalem 2006, p. 385–397, here p. 395.
[76] IDEM: Die Historiographie der Shoah aus jüdischer Sicht. Konzeptualisierungen, Terminologie, Anschauungen, Grundfragen, Hamburg 2002, p. 113.

For further analysis of such Jewish pseudo-self-representative bodies, it is important not to simply take them for a "Jewish leadership" during the Holocaust. In a basic sense, the ghetto Jewish administrations in Transnistria are best described as a Jewish headship rather than leadership – but this classification has limits. Quoting C.E. Gibb, from whom he borrows the concepts, Dan Michman especially points to the following element of differentiation between the two:

> "'Most basically, the two forms of influence [i.e., leadership and headship] differ with respect to the source of the authority which is exercised. The leader's authority is spontaneously accorded him by his fellow group members, and particularly by the followers. The authority of the head derives from some extra group-power which he has over the members of the group, who cannot meaningfully be called his followers. They accept his domination on pain of punishment, rather than follow.'"[77]

Another way to phrase the same differentiation is to speak of a logic of delegation (by the perpetrators) in contrast to a logic of representation (willingly afforded by the Jews).[78] As the different "paths" into the Jewish ghetto administrations described above show, there were, however, some elements of "leadership", such as the situations when established community leaders wound up in these functionary positions. Nevertheless, it is obvious that the tendency towards a headship was the more pronounced one – it was the Romanians who ultimately decided, not the Jews. The same is certainly true for CER in the initial phase of its existence. However, the traditional Jewish leadership in the Regat continued to exist, was able to influence CER as well as the regime's Jewish policy, and eventually relegated CER to "a mere façade".[79]

Both "Judenräte" and "Judenvereinigungen" have sparked many controversies already during the Holocaust, which have continued into the present day.[80] As the two principal factions in the narrower historiographic debates, Dan Michman identified

> "[…] the 'Hilberg School' which regards the councils primarily as instruments that did the bidding of the Nazi administrative system; and the 'Trunk-Weiss school' which stresses the council's positive aspect in view of their organinzational functions on behalf of the Jewish community".[81]

To wider audiences, the historiographic debates remain obscure, including historian Raul Hilberg's work. Yet many are aware of a famous public controversy in which his work played an important role.

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[77] Ibid., p. 105–106.
[78] The terms are borrowed from: KRANEBITTER, Andreas: Die permanente Gewaltsituation, in: Österreichische Zeitschrift für Soziologie S1 (2020), p. 89–111, here p. 92.
[79] VAGO: Ambiguity of Collaborationism, p. 299–301.
[80] MICHMAN, Dan: Kontroversen über die Judenräte in der jüdischen Welt 1945–2005. Das Ineinandergreifen von öffentlichem Gedächtnis und Geschichtsschreibung, in: Der Judenrat von Bialystok. Dokumente aus dem Archiv des Bialystoker Ghettos 1941-1943, edited by Freia ANDERS / Katrin STOLL / Karsten WILKE, Paderborn 2010, p. 311–317, here p. 311.
[81] MICHMAN: Historical Interpretation, p. 389.

Relying heavily on Hilberg's work, political philosopher Hannah Arendt uttered perhaps the most famous negative assessment of "Judenräte" and "Judenvereinigungen" in her book "Eichmann in Jerusalem".[82] Arendt received much criticism primarily for the following passage from

"Wherever Jews lived, there were recognized Jewish leaders, and this leadership, almost without exception, cooperated in one way or another, for one reason or another, with the Nazis. The whole truth was that if the Jewish people had really been unorganized and leaderless, there would have been chaos and plenty of misery but the total number of victims would hardly have been between four and a half and six million people."[83]

As later historiography has shown, Arendt's counterfactual claim rested on an incorrect understanding of the Holocaust. The point would have some limited merit if ghettos truly had been a necessary holding station before the eventual murder of the Jews and if some form of Jewish self-organization had been a necessary condition for the perpetrators to murder the Jews. However, as later studies have shown, ghettos, Jewish councils, and extermination were three independent strands of Nazi Jewish policy.[84] That is especially obvious in the context of the Soviet Union, where the German Einsatzgruppen murdered most Jews by shooting without confining them in camps or ghettos and without appointing any Jewish headship before the murders.[85]

Moreover, a host of detailed studies of different "Judenräte" and "Judenvereinigungen" emphasized Jewish functionaries' limited knowledge and room for maneuver and highlighted their positive activities such as social welfare – in Dan Diner's words, the reception of Jewish councils went "from careless denunciation to a far-reaching understanding".[86] A milestone study that appeared after the Arendt controversy and remains relevant today was Isaiah Trunk's 1972 book "Judenrat" – the basis of the second "school" that Dan Michman identified.[87] In a stupendous empirical effort, Trunk analyzed "405 Jewish settlements with Jewish Councils in operation" in the German-occupied areas of Poland, the Baltic countries, Belarus, and Ukraine (i.e. the different

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[82] BROWN, Adam: Judging "Privileged" Jews. Holocaust Ethics, Representation and the "Grey zone" (War and genocide, vol. 18), New York 2013, p. 20.

[83] ARENDT, Hannah: Eichmann in Jerusalem. A report on the banality of evil, New York, NY 1994, p. 169. For a discussion of some key points of the following debate, see: WILKE, Karsten: Täterschaft, das Verhalten der Opfer und Widerstand im Streit. Die Kontroverse um Hannah Arendts Prozessreport *Eichmann in Jerusalem*, in: Der Judenrat von Bialystok. Dokumente aus dem Archiv des Bialystoker Ghettos 1941-1943, edited by Freia ANDERS / Katrin STOLL / Karsten WILKE, Paderborn 2010, p. 335–352, here p. 342–345.

[84] MICHMAN, Dan: Judenräte, Ghettos, „Endlösung". Drei Komponenten *einer* antijüdischen Politik oder separate Faktoren?, in: Der Judenmord in den eingegliederten polnischen Gebieten. 1939–1945, edited by Jacek Andrzej MŁYNARCZYK (Einzelveröffentlichungen des Deutschen Historischen Instituts Warschau, vol. 21), Osnabrück 2010, p. 167–176, here p. 167–176.

[85] MICHMAN: Historiographie der Shoah, p. 114.

[86] DINER, Dan: Jenseits des Vorstellbaren – der „Judenrat" als Situation, in: "Unser einziger Weg ist Arbeit". Das Getto in Łódź 1940 - 1944; eine Ausstellung des Jüdischen Museums Frankfurt am Main, edited by Hanno LOEWY, Wien 1990, p. 32–40, here p. 33.

[87] TRUNK, Isaiah: Judenrat. The Jewish councils in Eastern Europe under Nazi occupation, Lincoln 1996. On the significance of Trunk's work and its limitations, see: MICHMAN: Judenräte, Ghettos, „Endlösung", p. 169.

German occupation units Poland was divided into as well as "Reichskommissariat Ostland" and "Reichskommissariat Ukraine").[88] Decades later, Trunk's book is still being called "the standard work on the topic".[89]

For the field of historiography, the results of the Arendt controversy amounted to a return to forgotten beginnings. Discussions about the Jewish councils did not begin only with Arendt.[90] Neither were her critics the first to put forward a more balanced assessment. Detailed scholarly analyses of Jewish councils predate the controversy around Arendt's remarks by decades. Nevertheless, even in historiography there developed a particular type of citation bias that put the controversy around Arendt's remarks at the beginning of all scholarly discussions about the Jewish councils.[91] Such summaries ignored publications dealing with the subject that appeared in Yiddish, Polish, and Hebrew already in the 1940s.[92] Moreover, significant contributions in English appeared long before the Eichmann trial.[93] Authors such as Samuel Gringauz and Philip Friedman offered quite nuanced accounts of Jewish ghetto functionaries' roles and approached the subject with a high degree of methodological reflection.[94]

Even if one takes just a selection from the literature that has appeared since 2000, it becomes clear the topic remains the focus of much historiographical research.[95] Judging by the recent

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88 TRUNK: Judenrat, p. 9–12.
89 MICHMAN: Judenräte, Ghettos, „Endlösung", p. 169.
90 BROWN: Judging "Privileged" Jews, p. 20. MICHMAN: Kontroversen, p. 311–312.
91 WAGNER, Birgitt: Jüdische Gesellschaft im Mittelpunkt. ‚Ghetto' und ‚Judenrat' als Themen der frühen englischsprachigen Holocaustforschung, in: PaRDeS. Zeitschrift der Vereinigung für Jüdische Studien e.V. (2011), p. 53–70, here p. 54.
92 Ibid., p. 55.
93 Ibid., p. 65–70.
94 Ibid.
95 ANDERS, Freia/STOLL, Katrin/WILKE, Karsten (ed.): Der Judenrat von Bialystok. Dokumente aus dem Archiv des Bialystoker Ghettos 1941-1943, Paderborn 2010. BETHKE, Svenja: Tanz auf Messers Schneide. Kriminalität und Recht in den Ghettos Warschau Litzmannstadt und Wilna (Studien zur Gewaltgeschichte des 20. Jahrhunderts), Hamburg 2015. POLIT, Monika/BÖMELBURG, Hans-Jürgen (ed.): "Meine jüdische Seele fürchtet den Tag des Gerichts nicht". Mordechaj Chaim Rumkowski – Wahrheit und Legende (Klio in Polen, vol. 18), Osnabrück 2017. BROWNING, Christopher R.: "Alleviation" and "Compliance". The Survival Strategies of the Jewish Leadership of the Wierzbnik Ghetto and Starachowice Factory Slave Labor Camps, in: Gray zones. Ambiguity and compromise in the Holocaust and its aftermath, edited by Jonathan PETROPOULOS (Studies on war and genocide, vol. 8), New York 2005, p. 26–36. DEAN, Martin: Life and Death in the "Gray Zone" of Jewish Ghettos in Nazi-Occupied Europe. The Unknown, the Ambiguous, and the Dissapeared, in: Gray zones. Ambiguity and compromise in the Holocaust and its aftermath, edited by Jonathan PETROPOULOS (Studies on war and genocide, vol. 8), New York 2005, p. 205–221. DINER, Dan: Beyond the conceivable. The Judenrat as Borderline Experience, in: Beyond the conceivable. Studies on Germany, Nazism, and the Holocaust (Weimar and now, vol. 20), Berkeley, CA (2000), p. 117–129. DINER, Dan: Den *Zivilisationsbruch* erinnern. Über Entstehung und Geltung eines Begriffs, in: Zivilisationsbruch und Gedächtniskultur. Das 20. Jahrhundert in der Erinnerung des beginnenden 21. Jahrhunderts, edited by Heidemarie UHL (Gedächtnis, Erinnerung, Identität, vol. 3), Innsbruck 2003, p. 17–34. DINER, Dan: "Rupture in Civilization". On the Genesis and Meaning of a Concept in Understanding, in: On Germans and Jews under the Nazi regime. Essays by three generations of historians; a Festschrift in honor of Otto Dov Kulka, edited by Moshe ZIMMERMANN, Jerusalem 2006. FINKEL, Evgeny: Ordinary Jews. Choice and Survival During the Holocaust, Princeton 2017. GUTMAN, Yisrael: The Judenrat as Leadership, in: On Germans and Jews under the Nazi regime. Essays by three generations of historians; a Festschrift in honor of Otto Dov Kulka, edited by Moshe ZIMMERMANN, Jerusalem 2006, p. 313–335. HAUFF, Lisa: Zur politischen Rolle von Judenräten. Benjamin Murmelstein in Wien 1938–1942, Göttingen 2014. LEVIN, Dov: How the Jewish Police of the Kovno Ghetto saw itself, in: Yad Vashem Studies (2001), p. 183–240. LOEWY,

literature, it appears that the issue remains contentious, but that "Trunk-Weiss school" had gained much ground.

That is also true for another related strand of scholarship that deals with Jewish Kapos of Nazi concentration camps and the Auschwitz "Sonderkommando" in particular, i.e. those prisoners who were forced to operate the crematoriums.[96] For the rest of the study, we summarize these quite disparate roles of Jewish council members (be it of "Judenvereinigungen" or ghetto "Judenräte"), Jewish ghetto police, and Kapos in camps into the term "Jewish functionaries". Speaking of the subgroups that were active in ghettos, we speak of "Jewish ghetto functionaries".[97]

Yet another avenue of scholarship deals with the judicial aftermath of various Jewish functionaries' actions.[98] That literature underscores the ambiguity of these functionaries' roles in the Holocaust and demonstrates how contentious its reception was already during the events and has remained until today. The literature encompasses trials of Jewish functionaries held in Austria, Belgium, Czechoslovakia, Finland, France, Germany, Israel, Italy, the Netherlands, Poland, and the USA.[99] Besides official state courts, much of the literature deals with Jewish honor courts, i.e.,

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Ronny/RAUSCHENBERGER, Katharina: »Der Letzte der Ungerechten«. Der Judenälteste Benjamin Murmelstein in Filmen 1942–1975 (Wissenschaftliche Reihe des Fritz Bauer Instituts, vol. 19), Frankfurt am Main 2011. MEYER, Beate: Tödliche Gratwanderung. Die Reichsvereinigung der Juden in Deutschland zwischen Hoffnung, Zwang, Selbstbehauptung und Verstrickung (1939 – 1945) (Hamburger Beiträge zur Geschichte der deutschen Juden, vol. 38), Göttingen 2011. PERSON, Katarzyna: Warsaw ghetto police. The Jewish Order Service during the Nazi occupation, Ithaca 2021. RABINOVICI, Doron: Instanzen der Ohnmacht. Wien 1938-1945, Frankfurt am Main 2000 (Der Weg zum Judenrat). RUBENSTEIN, Richard L.: Gray into Black. The Case of Modecai Chaim Rumkowski, in: Gray zones. Ambiguity and compromise in the Holocaust and its aftermath, edited by Jonathan PETROPOULOS (Studies on war and genocide, vol. 8), New York 2005, p. 299–310. WILKE, Karsten: Das »Archiv des Bialystoker Judenrats«. Selbstbilder jüdischer Akteure in den Quellen des geheimen Ghettoarchivs 1941–1943, in: Archiv – Macht – Wissen. Organisation und Konstruktion von Wissen und Wirklichkeiten in Archiven, edited by Anja HORSTMANN, Frankfurt am Main 2010, p. 207–220.

96 Again, just consider a by no means representative part of the most recent literature: GREIF, Gideon: We wept without tears. Testimonies of the Jewish Sonderkommando from Auschwitz, New Haven, Conn 2005. CHARE, Nicholas/WILLIAMS, Dominic: The Auschwitz Sonderkommando, Cham 2019. CHARE, Nicholas/WILLIAMS, Dominic (ed.): Testimonies of resistance. Representations of the Auschwitz-Birkenau Sonderkommando, New York 2019.

97 I am thankful to Sam Finkelman of the University of Pennsylvania for suggesting that simple terminology to me. As can be seen below, Primo Levi sometimes used similar terms.

98 In a sense, the judicial "aftermath" began already during the Holocaust, at least in some ghettos. Thus, the Jewish Combat Organization in the Warsaw ghetto assassinated Jewish ghetto functionaries and publicly legitimized these killings with "death sentences". However, it is unlikely that there was anything deserving the term "trial" behind these killings – at least it remains unclear. Thus, it is immediately apparent why David Engel mentions the killings in an article titled "Why punish collaborators?" but studies dealing with trials should not overemphasize the similarities. See: ENGEL, David: Why Punish Collaborators?, in: Jewish honor courts. Revenge, retribution, and reconciliation in Europe and Israel after the Holocaust, edited by Gabriel N. FINDER / Laura JOCKUSCH, Detroit, Michigan 2015, p. 29–48, here p. 36. On the killings in the Warsaw ghetto, see also: PERSON: Warsaw ghetto police, p. 140–143.

99 BEN-NAFTALI, Orna/TUVAL, Yogev: Punishing International Crimes Committed by the Persecuted. The Kapo Trials in Israel (1950s–1960s), in: Journal of International Criminal Justice (2006), p. 128–178. BILSKY, Leora: Judging Evil in the Trial of Kastner, in: Law & History Review 1 (2001), p. 117–160. BROT, Rivka: Julius Siegel. A Kapo in Four (Judicial) Acts, in: Dapim: Studies on the Holocaust 1 (2011), p. 65–127. BROT, Rivka: The Gray Zone of Collaboration and the Israeli Courtroom, in: Jewish honor courts. Revenge, retribution, and reconciliation in Europe and Israel after the Holocaust, edited by Gabriel N. FINDER / Laura JOCKUSCH, Detroit, Michigan 2015, p. 327–360. DINKELAKER, Philipp: Zum Umgang mit „jüdischer Kollaboration" in der frühen Nachkriegszeit. Die Ehrengerichtsverfahren der Jüdischen Gemeinde zu Berlin, in: Zeitschrift für Geschichtswissenschaft 1 (2017), p. 24–

parallel non-state justice administered by Jewish communities and organizations. Once more, Trunk's study "Judenrat" acted as a trailblazer, since he was among the first to analyze trials in Jewish honor courts and Israeli state courts.[100] Thus, different judicial actors tackled the highly contentious issue of Jewish functionaries' actions during the Holocaust and tried to make sense of the same ambiguities as historians.

Many historians and other academics approach that ambiguity with Primo Levi's concept of the "gray zone".[101] Levi primarily discussed the term in an essay chapter of his final book "The Drowned and the Saved" and that text demands close scrutiny.[102] Its essence is often reduced to the claim that passing moral judgment on Jewish functionaries of ghettos and concentration camps during the Holocaust is impossible and any such judgment should therefore be suspended.[103] However, the text is riddled with contradictions.[104]

Levi sets out to counter a "Manichean tendency" to sort people into a "friend-enemy dichotomy" since he deems it inadequate for the Holocaust.[105] According to Levi, "[t]he desire for simplification

46. DINKELAKER, Philipp: Jewish Collaboration? Honor Court Cases Against Survivors of the Shoah in Postwar Germany, in: The Journal of Holocaust Research 4 (2019), p. 254–276. FINDER, Gabriel N.: 'Sweep Out Evil From Your Midst'. The Jewish People's Court In Post-War Poland, in: Beyond camps and forced labour. Current international research on survivors of Nazi persecution, edited by Johannes-Dieter STEINERT, Osnabrück 2005, p. 269–279. FINDER, Gabriel N.: The Trial of Shepsl Rotholc and the Politics of Retribution in the Aftermath of the Holocaust, in: Gal-Ed: On the History & Culture of Polish Jewry (2006), p. 63–89. FINDER, Gabriel N./PRUSIN, Alexander Victor: Jewish Collaborators on Trial in Poland 1944–1956, in: Polin (2007), p. 122–148. FINDER, Gabriel N./JOCKUSCH, Laura (ed.): Jewish honor courts. Revenge, retribution, and reconciliation in Europe and Israel after the Holocaust, Detroit, Michigan 2015. JOCKUSCH, Laura: In Search of Retribution. Nazi Collaborators Trials in Jewish Courts in Postwar Germany, in: Revenge, Retribution, Reconciliation. Justice and emotions between conflict and mediation, a cross-disciplinary anthology, edited by Laura JOCKUSCH / Andreas KRAFT / Kim WÜNSCHMANN (Martin Buber Society of Fellow Notebook Series, vol. 3), Jerusalem 2016, p. 127–145. MUIR, Simo: Rumkowski's Scapegoat? The Case of Łódź Ghetto Functionary Maks Szczęśliwy at a Rabbinic/Honor Court in Helsinki, 1949–1953, in: Holocaust and Genocide Studies 2 (2021), p. 185–210. PACZKOWSKI, Andrzej: Crime, Treason and Greed. The German Wartime Occupation of Poland and Polish Post-War Retributive Justice 2019. PERSON: Warsaw ghetto police. PLACHÝ, Jiří/PLACHÁ-ZEMANOVÁ, Pavla: Der Wulkower Kollaborateur vor dem Außerordentlichen Volksgericht in Prag, in: Theresienstädter Studien und Dokumente (2008), p. 48–63. PORAT, Dan: Bitter Reckoning. Israel Tries Holocaust Survivors As Nazi Collaborators, Cambridge 2019. SILVERMAN, Joel: Krieger v. Mittelman and Jewish Perceptions of the Refugee in the Early Cold War, in: Judaism 1/2 (2006), p. 40–54. WOLF, René: Judgement in the Grey Zone: the Third Auschwitz (Kapo) Trial in Frankfurt 1968, in: Journal of Genocide Research 4 (2007), p. 617–635. YABLONKA, Hanna: The Development of Holocaust Consciousness in Israel: The Nuremberg, Kapos, Kastner, and Eichmann Trials, in: Israel Studies 3 (2003), p. 1–24.

100 TRUNK: Judenrat, p. 548–569.

101 It is sufficient to read the preceeding footnotes again and count how often the term appears just in the titles of differnt publications. Moreover, Levi's concept also features in other debates. The results different scholars arrive at with their textual exegesis of Levi's work vary greatly. See: CHEYETTE, Brian: Appropriating Primo Levi, in: The Cambridge companion to Primo Levi, edited by Robert Samuel Clive GORDON (Cambridge companions to literature), Cambridge 2007, p. 67–85, here p. 80–81.

102 On the development of the term in Levi's works over at least ten years, see: WILLIAMS, Dominic: What Makes the Grey Zone Grey? Blurring Moral and Factual Judgements of the Sonderkommando, in: Testimonies of resistance. Representations of the Auschwitz-Birkenau Sonderkommando, edited by Nicholas CHARE / Dominic WILLIAMS, New York 2019, p. 69–88, here p. 69–70.

103 BAIRD, Marie L.: The "Gray Zone" as a Complex of Tensions. Primo Levi on Holocaust Survival, in: Legacy of Primo Levi, edited by Stanislao G. PUGLIESE, New York 2005, p. 193–206.

104 Baird frames this as "tensions". Ibid., p. 194–195.

105 LEVI, Primo: The Drowned and the Saved, in: The complete works of Primo Levi. Volume III, edited by Primo LEVI (vol. 3), New York 2015, p. 2405–2574, here p. 2430.

is justified; simplification itself is not always."[106] The goal of his text is thus "to explore the space that separates the victims from the tormentors".[107] As the primary inhabitants of said space Levi identifies the "hybrid category of inmate-functionaries" in concentration camps which "is a gray zone, with undefined contours, which both separates and connects the two opposing camps of masters and servants."[108] In another passage, Levi states that "[t]he network of human relationships inside the concentration camps was not simple: it could not be reduced to two blocs, victims and perpetrators".[109] Yet this should not be misread as an attempt to dissolve the clear distinction between victims and perpetrators, Levi sharply refutes anything of the sort.[110] That point is crucial since there is a prominent example in his text where he situates German SS perpetrator Erich Muhsfeldt in the gray zone – but for Levi, that does not make Muhsfeldt a victim.[111] Nor do the inmate functionaries become perpetrators. Therefore, one could enter the gray zone, the third bloc between victims and perpetrators, from either side, but that did not make one less of a victim or a perpetrator.

That Levi first introduces the term "gray zone" to talk about inmate functionaries and then later introduces Muhsfeldt into it, even "if only at the far end", gives the reader a taste of the various contradictions and tensions that seem constitutive for Levi's text.[112] Various authors have grappled with these contradictions by just reducing them to one side, even at the expanse of contradicting Levi, such as by boldly proclaiming that Muhsfeldt was not in the gray zone.[113] However, these tensions should be taken seriously. As we argue below, they are the core of the text.

Another basic contradiction about the gray zone is the concept's extension, which has been aptly described as "extremely nebulous".[114] Is the gray zone something that applies to concentration camps, concentration camps and ghettos, concentration camps as places where certain aspects of totalitarian societies are most prominently developed, totalitarian societies more generally, modern societies in general (as understanding the gray zone is important "to understand what happens in a

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[106] Ibid., p. 2431.
[107] Ibid., p. 2433 To which Levi links the practical socio-political goal of knowing "how to defend our souls should a similar ordeal ever occur".
[108] Ibid., p. 2435.
[109] Ibid., p. 2431.
[110] Levi writes: "I am no expert on the unconscious or the inner depths, but I do know that there are few experts, and that those few are more cautious. I do not know, nor am I particularly interested in knowing, whether a murderer is lurking deep within me, but I do know that I was an innocent victim and not a murderer." Ibid., p. 2439–2440. Another Holocaust survivor, Jean Amery, used quite similar arguments. See: AMERY, Jean: Jargon der Dialektik, in: MERKUR 236 (1967), p. 1041–1059, here p. 1041–1042.
[111] LEVI: Drowned and the Saved, 2446–2447, 2439-2440.
[112] Ibid., p. 2447. Therefore, Marie L. Baird's essay is spot on with its title: BAIRD: "Gray Zone" as a Complex of Tensions.
[113] See Williams' critique: WILLIAMS: What Makes, p. 70.
[114] Ibid., p. 71.

large industrial compound"), Western civilization or is the "gray zone" even part of trans-historical human socio-political universals?[115] Levi claims all of that at different points in his text.

Moreover, the gray zone itself has "an incredibly complicated internal structure", one with a center and a periphery, where Muhsfeldt was situated.[116] However, Levi does not provide us with a detailed description of that structure. He only warns his readers that the gray zone "harbors just enough to confound our need to judge".[117] Thus, we have a zone between victims and perpetrators, which in the case of the Holocaust was primarily inhabited by those victims who were forced into functionary positions. That zone definitely existed in Nazi concentration camps and ghettos and maybe even extends far beyond. The zone has a complicated structure and "confounds" attempts at judgment.

What exactly we have to understand under "confound" is, again, highly contradictory. Regarding inmate functionaries, Levi first cautions against "rushing to moral judgment", which seemingly implies that one could arrive at such judgment at a slower pace.[118] He also deems it preferable if only people who had experienced similar pressures made such judgments.[119] Here, Levi essentially argues for "a jury of peers".[120] Further complicating matters, Levi also introduces a distinction between moral and judicial judgment, between absolving and condemning on the one hand and acquitting and convicting on the other.[121] Apparently, judicial judgment is no less difficult than moral judgment, since Levi claims not to "know a human court that could be delegated to take [the] measure" of victims' guilt.[122] It is thus all the more surprising that he later states as a seemingly natural fact that "no court would have acquitted" Rumkowski, which sits ill with his earlier claim about no "human court" being capable of judgment.[123] Moreover, the first statement about human courts' inability to judge seems to suggest that there are no viable parameters for judgment.

That sits ill with the clear parameters Levi then sets out for the hypothetical scenario that he "had to judge", that is, someone would make him.[124] These parameters are "coercion" and "complicity".[125] He would absolve those "whose complicity in the crime was minimal and whose coercion was maximal".[126] Levi then provides a typology of different functionary roles, beginning

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115 LEVI: Drowned and the Saved, p. 2431, 2433–2434, 2436, 2438, 2449, 2455.
116 Ibid., p. 2435.
117 Ibid.
118 Ibid., p. 2436.
119 Ibid.
120 BRAVO, Anna: On the *Gray Zone*, p. 8, online: http://www.primolevi.it/@api/deki/files/810/=MAUSC_E00002.pdf, last accessed February 20, 2017.
121 LEVI: Drowned and the Saved, p. 2436, 2455.
122 Ibid., p. 2436.
123 Ibid., p. 2455.
124 Ibid., p. 2436.
125 Ibid.
126 Ibid.

with "low-level functionaries" in concentration camps, such as "sweepers, vat washers, night watchmen, bed smoothers" etc., and ending with the Sonderkommandos and ultimately Chaim Rumkowski, the head of the Łódź ghetto Jewish council.[127] That Levi lays out the parameters and then follows up with a typology suggests that the people in those roles differed across the parameters.

Perhaps accordingly, when he discusses the Sonderkommandos, the "jury of peers" does not apply to them: "I believe that no one has the authority to judge them, not those who experienced the Lager and, especially, not those who did not."[128] Levi states that the Sonderkommandos acted under extreme coercion and faced "[…] the true *Befehlsnotstand*, the 'state of coercion following an order'", which for them meant "obedience or death".[129] Therefore, the Sonderkommandos confront us with a total "impotentia judicandi", resulting in the famous demand that "any judgment of them be suspended".[130] Turning everything on its head once again, Levi then applies the same "impotentia judicandi" to Rumkowski, although he describes someone in a fairly different role than that of a Sonderkommando member.[131]

It is thus difficult not to agree with Dominic Williams' assertion that "it is actually very hard to extract what [Levi] says to provide guidance on how, or whether, one should judge people in the zone".[132] For Williams, Levi's text presents a "set of cases that Levi has assembled together to puzzle over, not some general principle that he applies to a defined category of prisoner".[133]

Further pursuing that line of argument, one should see confusion and inadequacy as the primary messages of Levi's text. He begins his deliberations on the gray zone with the question: "Have we survivors succeeded in understanding and making other people understand our experience?"[134] As a core moment of that experience, he then describes the utter confusion that new arrivals in the concentration camps felt when instead of finding solidarity among the inmates, the veteran prisoners welcomed them with hostility and the inmate functionaries beat them.[135] Levi identifies this as a central aspect of how the Nazi concentration camp system crushed any potential for resistance among prisoners.[136] It used some prisoners' desperation to draw them into "performing morally reprehensible acts", which makes the gray zone so "vicious".[137] In his text, Levi lets us

[127] Ibid., p. 2436–2456.
[128] Ibid., p. 2448.
[129] Ibid.
[130] Ibid., p. 2449.
[131] Ibid.
[132] WILLIAMS: What Makes, p. 70.
[133] Ibid.
[134] LEVI: Drowned and the Saved, p. 2430.
[135] Ibid., p. 2431–2434.
[136] Ibid., p. 2432.
[137] BAIRD: "Gray Zone" as a Complex of Tensions, p. 200.

observe his attempts to make sense of that experience and he clearly demonstrates his own failure. The text provides little in the way of an answer, it just elaborates how difficult the problem is. For the distant reader who did not share Levi's experience, it conveys a vague shadow of the author's confusion and recognition of his own inadequacy in the task of judging.

At the same time, Levi tells us right at the start of his essay that the "Manichean tendency" of strictly sorting into good and evil is something universal, something inherent in our language and our being "social animals".[138] Thus, Levi's text is a reminder about the limits of our judgments – if we cannot escape making them, then we should at least be aware that they remain inadequate for those in the gray zone. That is especially important since, as Adam Brown has noted, "language is never neutral or value-free" and "judgment is inherent in all forms of representation".[139] In other words: It is impossible to even talk about Jewish ghetto functionaries without conveying implicit judgments. Therefore, the present study treats the term primarily as a reminder that judgment is inevitable and that judgment is also inevitably inadequate.

Thus, a book about Jewish ghetto functionaries from Transnistria runs the risk of conveying inadequate judgments about these people – of condemning them morally, even if inadvertently. When studying Soviet trials of these functionaries, another danger looms large, namely that of implicitly condemning the witnesses. Given the development in historiography towards a greater understanding of Jewish ghetto functionaries' limited knowledge and room for maneuver, there is a danger of understanding the "suspension of judgment" as absolving these functionaries morally. In turn, that may implicitly include a moral judgment of the witnesses. Why were they too incompetent to see what we know today? Why did they direct their indignation at the functionaries, rather than at the true culprits, the Romanian perpetrators? In the context of the present study: Why were they so immoral to testify as witnesses in an authoritarian judicial system? It is easy to muster much understanding for Jewish functionaries, as long as it was not you who took the beatings, it was not your relatives who were deported to their deaths, etc. Therefore, the inadequacy of moral judgments cuts both ways – we fail if we condemn and we fail if we absolve.

The problem is exacerbated by the communal-class separation discussed above. In the trials under study here, the majority of defendants were Romanian Jews and the majority of witnesses were Soviet Jews. Thus, the danger of implicitly siding with the defendants against the witnesses would also entail taking the side of those Jews who were, on average, socially, politically, and culturally more palatable for observers sitting in offices of current Western academia. In contrast, Soviet Jews, more assimilated and potentially loyal to the regime and perhaps even Stalin, pose a

[138] LEVI: Drowned and the Saved, p. 2430.
[139] BROWN: Judging "Privileged" Jews, p. 25.

less attractive object for identification. These are, of course, gross oversimplifications. But the potential problem is real. Adding to the problem of potential scholarly bias is the fact that most of the existing scholarship is primarily based on historical materials authored by Romanian, rather than Soviet Jews. The present dissertation is part of an emerging scholarship that acounterbalances earlier works by including the perspective of Soviet Jews.[140] In sum, for the present study, taking the gray zone seriously can only mean sensitizing the reader to these problems – the moral questions raised are aporias that we cannot solve, only recognize.

That insight is also relevant for analyzing the behavior of courts. Levi's distinction between judicial and moral judgments is quite important. He accepted that both follow a different logic. Thus, when we ask whether a court recognized that a defendant had acted in the gray zone, such a recognition need not necessarily entail an acquittal. As soon as courts have a case in their jurisdiction with sufficient evidence, they will either convict or acquit. The question is then how these institutions frame such decisions. Is there a nuanced deliberation that shows that the adjudicators are aware of the complexities and contradictions inherent in the situation? Do they admit that they are facing a conundrum, that the defendants had played an ambiguous role, and that it was difficult to fit the case in the available legal framework? Do courts leave room for gray tones, or do they reduce the case to black and white?

By placing the Jewish functionaries in the gray zone, we also try to avoid another loaded concept, namely that of collaboration. The concept is ubiquitous in the historiography of World War II but ill-defined and poorly operationalized as an analytical concept. The sad state of the field would warrant a separate essay.[141] To date, the most solid attempt in historiography at defining

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[140] DUMITRU: Gordian Knot, p. 734.

[141] Consider just some relatively recent examples. Sometimes an analytically defeatist mood prevails. For example, Leonid Rein spends several pages recounting the history of the concept, peppered with discussions of various attempts to define collaboration as an analytical term and seemingly unaware that these two levels would best be kept apart. The effort seems pointless considering that Rein then concludes that the matter is complicated and one cannot arrive at a "exact and all-encompassing definition", as if that was the point of a definition in research. REIN, Leonid: The kings and the pawns. Collaboration in Byelorussia during World War II (War and genocide, vol. 15), New York 2011, p. 11–18. Similarly, Klaus Kellmann outright refuses to define the term "collaboration", although his 2018 study has the word in its title and aims to present an overview of the phenomenon it describes for the whole of Europe. That raises the question of how Kellmann managed to delimit that phenomenon in the first place. His further deliberations do not meet the basic criterion of logic consistency. Thus, Kellmann describes as "the core of the whole problem" that "[p]eople subjected to military force do something they actually do not want to do". One page later and in an equally apodictic tone, Kellmann claims that collaborators are "servants of evil masters and want to be just that." KELLMANN, Klaus: Dimensionen der Mittäterschaft. Die europäische Kollaboration mit dem Dritten Reich, Wien 2018, p. 13–14. Unfortunately, logical inconsistency characterizes not only the works of the outright analytical defeatists. Thus, Rossolinski-Liebe conceptualizes collaboration as a phenomenon occurring in occupied countries and postulates that research should focus on "collaboration between the occupiers and the occupied, which legitimizes the political goals of the occupiers, assists them in the implementation of their policies, and thus harms the native population, especially the people threatened with persecution and murder". At the end of the same paragraph, he then geographically outlines the object of further research based on this concept, including countries that were not occupied at all. ROSSOLINSKI-LIEBE, Grzegorz: Kollaboration im Zweiten Weltkrieg und im Holocaust. Ein analytisches Konzept. Version: 1.0, Docupedia-Zeitgeschichte 19.07.2019, online: doi:10.14765/zzf.dok-1444, last accessed July 06, 2020.

collaboration still comes from Werner Röhr, who at least explicitly specifies a set of necessary conditions for using the term.

Röhr defines collaboration as "a certain political cooperation of parts of the population of an occupied country with the occupying power."[142] The term is thus only applicable to occupied countries.[143] The occupiers and the occupied who cooperate need to be heterogeneous and, by virtue of the distribution of power among them, their cooperation is asymmetrical.[144] However, to call "parts of the population" collaborators, they need to have a "social and political basis of existence that is independent of the occupier" and "their own resources and means of influence".[145] Put differently, those cooperating need to have a "minimal freedom of choice".[146]

It is that freedom that Jewish functionaries during the Holocaust were lacking, which is why they cannot be meaningfully called collaborators. Levi spoke of coercion and the alternatives of "obedience or death", which is outside Röhr's "minimal freedom of choice". Jewish ghetto functionaries in Transnistria were personally responsible for fulfilling the tasks that the Romanians set for them and the potential punishment was death. Therefore, these functionaries cannot be called collaborators.

Of course, Soviet authorities saw that quite differently. They did not speak of collaboration but used certain legal terms such as "traitor" and "accomplice to the enemy" and the legal instruments of articles 54-1, 54-3 and the decree often called "Ukaz 43" – all of which we describe in detail below (see chapter 5). Thus, while we need to avoid the terms "collaboration" and "collaborators" as analytical terms, the term "collaboration trial" is indispensable. For the present study, "Soviet collaboration trials (and investigations)" means all proceedings that the Soviets initiated using these legal instruments and that were aimed at some form of cooperation with the occupying powers – as the Soviets themselves construed this.

As stated above, we approached the subset of Soviet collaboration trials against former Jewish ghetto functionaries from Transnistria with a specific question in mind: In these trials, what were the interests and goals of witnesses, defendants, and authorities, and what strategies did these actors employ to achieve these goals, and what were the outcomes?

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142 RÖHR, Werner: Landesverrat oder Patriotismus? Fragen und Probleme zur Kollaboration im zweiten Weltkrieg, in: "Neuordnung Europas". Vorträge vor der Berliner Gesellschaft für Faschismus- und Weltkriegsforschung, edited by Werner RÖHR (Chronos, vol. 1), Berlin 1996, p. 87–115, here p. 87.
143 IDEM: Kollaboration. Sachverhalt und Begriff, in: "Kollaboration" in Nordosteuropa. Erscheinungsformen und Deutungen im 20. Jahrhundert, edited by Joachim TAUBER (Veröffentlichungen des Nordost-Instituts, vol. 1), Wiesbaden 2006, p. 21–39, here p. 27.
144 Ibid., p. 27–28.
145 Ibid.
146 Ibid., p. 28.

Answering that question, the dissertation's argument develops as follows. Chapter 1 describes the research design and methods employed. The chapter also further delimits the object of research, discussing Soviet statistics and establishing four levels of analysis from the overall Soviet prosecution to select case studies of individual Transnistrian Jewish ghetto functionaries tried by the Soviets. Chapter 2 deals with source criticism and examines the document validity of Soviet investigative casefiles stemming from collaboration trials of Jewish ghetto functionaries. The chapter asks whether these materials, stemming largely from the security police and political justice institutions of a dictatorship, can even meaningfully be analyzed by historians. Chapter 3 conceptualizes the justice system of dictatorships based on Ernst Fraenkel's term "dual state". Chapter 4 transfers that concept to the Soviet context and operationalizes it for the following analysis. Chapter 5 applies the concept of the "dual state" to the Soviet prosecution of collaboration. Based on the available research literature, as well as on reports, statistics, and correspondence from the institutions involved, the chapter describes overarching trends in how Soviet authorities prosecuted collaboration both on the union-wide level and more specifically in the Ukrainian and Moldovan Soviet republics, our primary area of study. Chapter six focuses on one specific aspect of that prosecution, namely the publicity of trials. On the conceptual level, it deals with the term "show trials" and their position in a "dual state". The chapter then integrates that conceptual discussion with an empirical analysis of Soviet institutions' internal documentation as well as local newspapers from the region under study. The result is a typology of publicity ready to be applied in the following chapters. Together, chapters 2 to 6 form a "book within a book". Expanding on the topic of Soviet collaboration trials more generally is cumbersome, but necessary. The operation of red courts during these years and the way Soviet authorities conducted collaboration trials remain understudied. Therefore, a significant portion of the present book is dedicated to the Soviet institutions that investigated and adjudicated collaboration trials. A broader structural history of these institutions is a necessary basis for beginning to understand the narrower phenomenon, Soviet collaboration trials of Jewish ghetto functionaries from Transnistria. Chapters 2 to 6 provide such a structural history. The following chapters then focus on the narrower phenomenon. Chapter 7 provides a collective portrait of the 51 defendants whose investigative casefiles are available in the archival record. It asks whether the way Soviet authorities targeted former functionaries for prosecution depended on their demographic or political background. Chapter 8 provides a broad overview of how Soviet authorities prosecuted the 51 defendants and adjudicated their cases. Chapter 9 analyzes decision documents (case termination orders and verdicts) from the casefiles of those 51 defendants. It establishes the most common accusations and asks how they correlate with conviction rates and the severity of sentences of the 51 defendants. Together, chapters 8 and 9 ask whether prosecution and adjudication were category-

based and whether they followed contemporary Soviet law. Chapters 10 to 14 are in-depth qualitative case studies, each focusing on investigations and trials concerning one specific ghetto that the Soviets conducted at one specific place during one specific time. Chapter 10 deals with an investigation into the Tul'chin ghetto's Jewish administration that Soviet authorities conducted in Chernovtsy in 1944. Chapter 11 compares that investigation with another one that Soviet authorities began in Tul'chin itself in 1945, which again targeted former functionaries of the Tul'chin ghetto. Chapter 12 focuses on a 1944 investigation and trial in the city of Balta, dealing with the ghetto that had existed in the town. Chapter 13 examines another trial in Balta and about the Balta ghetto, one that took place in 1947. Lastly, chapter 14 is a case study of an investigation and trial concerned with a former functionary of the Odessa ghetto.

# Research design – Sampling, methods, and scope of argument[1]

To explicate research design is to show *what* one studies and *how* one studies it.[2] Approaching the *what*-question, we briefly discuss the materials we use, but leave a detailed discussion of their merits and problems for a separate chapter. We then delimit four different levels of analysis, from the general phenomenon of how the Soviets prosecuted collaboration to trials of individual Jewish council members. Based on Soviet statistics, we discuss the extent of each of those levels, i.e. how many collaboration trials there were and how many Transnistrian Jewish council members and ghetto policemen faced criminal prosecution. Moreover, we problematize in how far it is possible to generalize observations from one level of analysis to another. We then lay out our research design in detail, describing it as a zooming in motion from the level of the general phenomenon of how the Soviets prosecuted collaboration to trials of individual Jewish council members. In describing the zooming-in motion, we discuss the methods employed at each step and thus address the *how*-question. For analyzing Soviet state behavior, we use ideal type heuristics based on Ernst Fraenkel's concept of the dual state. We apply the heuristics both to the general phenomenon of collaboration trials, as well as to the prosecution of former Transnistrian ghetto functionaries. We analyze the demographic background of these functionaries using the collective portrait-method. We correlate the basic characteristics of their criminal prosecution with the collective portrait. Next, we analyze decision documents (verdicts and case termination orders) stemming from former ghetto functionaries' criminal prosecution. To examine what former functionaries were accused of and how that influenced prosecution outcomes, we apply the method of computer-assisted qualitative content analysis. Lastly, our research design features a series of in-depth case studies. We discuss the case study method and explicate the criteria by which we selected cases, thus ending our overview of what we study and how we study it.

[1] For the present discussion we revised and extended the respective section of an earlier publication, on which it is still loosely based. See: SCHNEIDER: From the ghetto, p. 85–88.

[2] It is widely acknowledged both among historians as well as philosophers of science that good research is intersubjectively intelligible. To achieve this goal, researchers need to make transparent how they arrive at research results, thereby enabling others to assess said results. LORENZ, Chris: Konstruktion der Vergangenheit. Eine Einführung in die Geschichtstheorie (Beiträge zur Geschichtskultur, vol. 13), Köln 1997, p. 205. KOCKA, Jürgen: Geschichte als Wissenschaft, in: Geschichte. Studium, Wissenschaft, Beruf, edited by Gunilla BUDDE / Dagmar FREIST / Hilke GÜNTHER-ARNDT (Akademie Studienbücher – Geschichte), Berlin 2010, p. 12–30, here p. 24. SCHURZ, Gerhard: Philosophy of science. A unified approach, New York 2014, p. 23. DETEL, Wolfgang: Erknenntnis- und Wissenschaftstheorie (Grundkurs Philosophie, vol. 4), Stuttgart 2007, p. 90. SCHWANDT, Thomas A.: Inter-subjective understanding, in: The Sage dictionary of social research methods, edited by Victor JUPP, London 2009, p. 155–157, here p. 155.

## What do we study?

The goal of the present study is to examine the interests, goals and strategies of witnesses, defendants, and Soviet authorities in collaboration trials of Transnistrian Jewish council members and ghetto policemen, and to weigh the relative significance of the three sides' behavior for the outcome of the trials. To provide a valid, reliable, and representative answer to this guiding research question, we must first answer two other questions: What *exactly* are we studying and how do we study it?[3]

To include the perspectives of Soviet authorities, witnesses, and defendants in the present study, we analyze various materials.[4] Chief among them are recently declassified Soviet investigation and trial documents of former Jewish ghetto functionaries. To grasp the institutional mechanisms and contexts in which these materials were created, we also analyze Soviet statistics, reports and internal correspondence of the investigative agencies and sentencing bodies handling collaboration cases. Since the perspectives of witnesses and defendants only entered official documents in a filtered form, these perspectives need to be analyzed from other types of materials such as memoirs and oral history interviews. All these materials have their strengths and weaknesses, which we discuss in chapter 2.

When it comes to "what", the research question automatically excludes certain phenomena, such as "wild" acts of retribution. These acts were outside the framework of Soviet judicial organs. As an example, consider the following incident recalled in an oral history interview by Nukhim Epel'boim, a survivor of the Chernovtsy ghetto: When the city was liberated by the Red Army, a former Ukrainian collaborator greeted the Soviet soldiers and showed them his prewar communist party card to gain favor with the returning rulers. Survivors from the ghetto thwarted that attempt and informed the soldiers about the man's conduct during occupation. The soldiers promptly threw the man under a tank, crushing his body with the vehicle. There was no investigation and there was

[3] Research results are considered valid if they are "[…] accurate and correctly capture what is actually happening". Research results are deemed reliable "[…] if the results are consistent across repeated investigations in different circumstances with different investigators". Research results count as representative if they apply to similar phenomena that were not studied in the research process. Such an application may concern a "wide (but specified) range of circumstances beyond those studied in the particular research." GIBBS, Graham: Analyzing Qualitative Data (The Sage qualitative research kit, vol. 6), Los Angeles 2007, p. 91.

[4] A short note on terminology: Instead of the term "source" the terms "material" or "data" are used throughout this study. The term "source" (German "Quelle") comes with a baggage of implicit metaphysical assumptions. In the German historiographical tradition, "source" is metaphorically associated with either water or light. Used as such, "source" stands for clarity and truthfulness, and "with its aura of the authentic" allows "to remove from critical view the historians themselves and their assumptions and stereotypes shaped by gender, time, place, and social class". Zimmermann thus argued to use "material" instead of "source", since the former term encapsulates that the sources do very much not "speak for themselves" but serve as somewhat malleable building blocks for historians' analyses. ZIMMERMANN, Michael: Quelle als Metapher. Überlegungen zur Historisierung einer historiographischen Selbstverständlichkeit, in: Historische Anthropologie (1997), p. 268–287, here p. 271, 279, 282.

no trial here, and if similar acts were committed against Jewish council members and ghetto policemen, they are at most peripheral aspects of this study.[5]

Answering the "what"-question beyond such a basic delimitation means deciding which trials to study. Here, the social science terminology of "sampling" is useful, since it allows to explicate some problems historians commonly face (and solve).[6] The relevant social-science terms are "universe", "population", "sample", "case" and "sampling" or "case selection". These terms allow us to conceptualize possible different levels: the things we study, the larger phenomena they are a part of, but that we do not study, and the relationship of both these levels. Martin provides some straightforward definitions:

"The universe is the set of instances to which you'd like to be able to generalize or infer. Classic example: all American adults. But it's hard to figure out how to sample from the universe, so we construct a somewhat narrower population that we know how to approach. For example, we could use all telephone numbers. Or all noninstitutionalized civilians between nineteen and sixty-five dwelling in the United States on January 1, 2014. We pick some of the members of the population, and this is our sample."[7]

A sample is comprised of individual "cases".[8] In Martin's example, it would be the individual American adults. Thus, the population is the sum of the things we study (sample) and the similar things we could study, but do not (cases unstudied).[9] Lastly, the term sampling (or case selection) refers to making "scientifically defensible" choices of what to study.[10] Note that these terms are

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[5] EPEL'BOIM, Nukhim, Interview 45977. Interviewed by Valentin Dolina. Visual History Archive, USC Shoah Foundation 07.06.1998, https://vha.usc.edu/viewingPage?testimonyID=49296&returnIndex=0#, last accessed May 29, 2020, segments 49–50. Red Army personnel treated many Soviet citizens who had served in Axis armed formations similarly and apparently did so on a large scale. See: EDELE, Mark: Stalin's defectors. How Red Army soldiers became Hitler's collaborators, 1941-1945, Oxford 2017, p. 137.

[6] The terminology is rarely used among historians, which is surprising. After all, historians still primarily work with archival materials. But the documents kept in archives are only a small part of the documentary record produced by modern government agencies. Archivists appraise materials offered to them and archives then keep less than 25% of these materials. See: HOLLMANN, Michael: Bestandspolitik, in: Handbuch Archiv, edited by Marcel LEPPER / Ulrich RAULFF, Stuttgart 2016, p. 199–206, here p. 203. Historians constantly face this problem and are "excellent on the selection biases imposed by document survivability and intentional collection into archives, and thus on inference from the body of surviving documents to the original unobserved whole." Historians face and solve issues of "wholes and parts", but they rarely explain how they solve such issues in the systematic terminology offered by the social sciences. To make our solutions to such issues transparent, we rely on exactly this terminology. DARNTON, Christopher: Archives and Inference. Documentary Evidence in Case Study Research and the Debate over U.S. Entry into World War II, in: International Security 3 (2018), p. 84–126, here p. 94.

[7] MARTIN, John Levi: Thinking through methods. A social science primer, Chicago 2017, p. 36.

[8] GERRING, John: What Is a Case Study and What Is It Good for?, in: The American Political Science Review 2 (2004), p. 341–354, here p. 342.

[9] Ibid.

[10] Martin deems sampling to be no less than "the core of sociology". MARTIN: Thinking through methods, p. 35. Much earlier, Droysen highlighted the significance of sampling considerations for historiography in particular: "Any historical material has gaps in it, and even the most exact investigation is not free from errors. The measure of sharpness wherewith these gaps and possible errors are signalized is the measure of the certainty of our investigation." DROYSEN, Johann Gustav: Outline of the principles of history, Boston 1897, p. 25.

relative and depend on the questions guiding the research.[11] Sampling is a central element of research design, since making sampling decisions means answering the question "What do we study?". In this understanding, sampling is central to both quantitative and qualitative research.[12]

Regarding sample and population, four levels emerge to which we can apply such terms:

A) Soviet collaboration trials (≈ 500.000)[13]

B) collaboration trials of Transnistrian Jewish council members and ghetto policemen (≈ 200)

C) 51 collaboration trials of Transnistrian Jewish council members and ghetto policemen

D) selected cases of collaboration trials of Jewish council members and ghetto policemen

We arrive at these four levels by answering two questions that arise when we use the sampling terminology for our research design: How many trials were there and how do we get to them, i.e. what is accessible in the archives? These questions directly concern our focus of interest, Transnistrian Jewish council members and ghetto policemen. But it also concerns the larger phenomenon, Soviet collaboration trials in general. After all, maybe the trials of former ghetto functionaries tell us something about the broader phenomenon of Soviet collaboration trials? The answer depends on the extent of both the broader phenomenon (all collaboration trials) as well as the sub-type (trials of former functionaries) and the proportions of the sub-type to the broader phenomenon.

So how many trials were there? Both the total number of Soviet trials against Jewish Council members and ghetto policemen, as well as that of Soviet trials on charges of collaboration remain unknown. For all Soviet collaboration trials, scholars put forward estimates that range from 320 000 to 500 000. Both figures have some problems and demand closer examination. The figures are calculated from Soviet crime statistics and based upon the numbers for the main legal instruments used to prosecute collaboration in the USSR. We just name those instruments here because we discuss them in detail in chapter 5. The respective legal instruments are articles 58-1 and 58-3 of

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[11] "The most important point is that all these terms are definable only by reference to a particular proposition and a corresponding research design. A country may function as a case, […] a population, or a case study. It all depends upon what one is arguing." GERRING: What Is a Case Study, p. 342.

[12] "Case selection is the foundation of qualitative inquiry." PATTON, Michael Quinn: Qualitative research & evaluation methods. Integrating theory and practice, Los Angeles 2015, p. 402. See also: FLICK, Uwe: Designing qualitative research (The Sage qualitative research kit, vol. 1), Los Angeles 2007, p. 33.

[13] Strictly speaking, the broader phenomenon of all Soviet collaboration trials cannot be called the "universe" of the present study. The guiding research questions focus only on a sub-type – trials of Transnistrian ghetto functionaries. Based on the definitions provided above, this focus dictates what can count as a study's universe, population, and sample. But while level A) *should* not be included, it still *must* be included. The broader phenomenon on level A) is so severely understudied, that analyzing a sub-type of trials such as level B) necessitates examining the broader institutional and legal context on level A) – whether we like it or not. To put it positively: the present study contributes to a much broader field than its narrower analytical focus.

the Russian Soviet Federative Socialist Republic's criminal code (and their equivalents in other Soviet republics' criminal codes), as well as a decree from April 1943 commonly referred to as Ukaz 43.

Even though Ukaz 43 was also used to prosecute Germans, the numbers for this legal instrument are the least problematic. As article 58-1, Ukaz 43 was widely applied in trials of Germans for war crimes (real or supposed).[14] In general, there was a significant institutional and legal overlap between the prosecution of collaboration and such prosecution of Germans.[15] However, Soviet statistics differentiate along citizenship, so the overlap causes no problem for estimating the number of collaboration trials. Ultimately, some 36 065 Soviet citizens were tried under Ukaz 43.[16]

But problems arise with the available numbers for the other legal instruments, mostly because the instruments were also used to prosecute actions other than collaboration. The core of the recent estimates (320 000 and 500 000) is the number of people charged under article 58-1 "treason to the Motherland".[17] Between 1941 and 1954, a total of 333 108 people were charged under that article.[18] Yet the number includes not only people who had cooperated with the Axis powers in some form or another during World War II.[19] The figure also entails people accused of activities in nationalist organizations that were engaged in a civil war against the Soviet state in the aftermath of World War II, most notably members of the Organization of Ukrainian Nationalists and the Ukrainian Insurgent Army in Ukraine.[20] Evidence for such a conflation can be drawn from documents of the highest authority of political justice ("spetspodsudnost"") in Ukraine. That authority was the "Military tribunal of the NKVD troops of the Ukrainian district", and it sent reports about its activities to the Central Committee of the Ukrainian Communist Party. The reports regularly list examples of cases tried under article 58-1 that concerned incidents either not

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[14] HILGER, Andreas/PETROV, Nikita/WAGENLEHNER, Günther: Der „Ukaz 43". Entstehung und Problematik des Dekrets des Präsidiums des Obersten Sowjets vom 19. April 1943, in: Sowjetische Militärtribunale. Vol 1.: Die Verurteilung deutscher Kriegsgefangener 1941–1953, edited by Andreas HILGER (Schriften des Hannah-Arendt-Instituts für Totalitarismusforschung, vol. 17,1), Köln 2001, p. 177–209, here p. 179.

[15] ZEIDLER, Manfred: Stalinjustiz contra NS-Verbrechen. Die Kriegsverbrecherprozesse gegen deutsche Kriegsgefangene in der UdSSR in den Jahren 1943 - 1952; Kenntnisstand und Forschungsprobleme (Berichte und Studien / Hannah-Arendt-Institut für Totalitarismusforschung, vol. 9), Dresden 1996, p. 25–34.

[16] VOISIN, Vanessa/KUDRYASHOV, Sergey: The Early Stages of "Legal Purges" in Soviet Russia (1941-1945), in: Cahiers du Monde russe 2/3 (2008), p. 263–295, here p. 267.

[17] PENTER, Tanja: Collaboration on Trial. New Source Material on Soviet Postwar Trials against Collaborators, in: Slavic Review 4 (2005), p. 782–790, here p. 783. PENTER, Tanja: Local Collaborators on Trial. Soviet war crimes trials under Stalin (1943-1953), in: Cahiers du Monde russe 2-3 (2008), p. 1–24, here p. 2. VOISIN/KUDRYASHOV: Early Stages, p. 267. Edele is pessimistic about the possibility to estimate the toal number of people prosecuted for collaboration. He notes that the avaibalbe statistics are "both incomplete and full of overlapping categories". We concur, but want to add that the problem lies at least as much within the overlap of categories as in the range of actions prosecuted under each individual category. EDELE: Stalin's defectors, p. 140–141.

[18] VOISIN/KUDRYASHOV: Early Stages, p. 267.

[19] EXELER, Franziska: The Ambivalent State. Determining Guilt in the Post-World War II Soviet Union, in: Slavic Review 3 (2016), p. 606–629, here p. 607.

[20] On the nationalist insurgency in the Western borderlands, see: PRUSIN, Alexander Victor: The lands between. Conflict in the East European borderlands 1870–1992 (Zones of violence), Oxford 2010, p. 202–208.

related to the Axis occupiers or even occurring after the end of the occupation, that is incidents exclusively dealing with the Ukrainian nationalist insurgency.[21] Besides concrete examples cited, the terminology of the reports at times confounded several different types of offenders into interesting composites. For example, another report by the same tribunal over the period July-December 1944 spoke of "cases of Ukrainian-German nationalists and other traitors to the Motherland and accomplices of German occupiers".[22] Terminologically, the phrase is a hodgepodge of article 58-1 and article 58-3 as well as confounding the assistance to the Axis with nationalist insurgency. Both categories were at times clearer delimited, at other times they were equally blended.[23] This is not to say that Ukrainian nationalists did not collaborate with the Germans to a significant degree – despite all myth-making to the contrary, they did.[24] But the Soviets later sometimes lumped together things that had happened during occupation with things that had happened when the Germans were already gone.[25]

In the period under study here, earlier reports indicate that most cases figuring under article 58-1 were concerned with collaboration. Later reports speak of an increased proportion of nationalist insurgents. In 1943, 1944 and 1945, cases under article 58-1 constituted the lion share of all "counterrevolutionary crimes" which fell in the jurisdiction of the Military Tribunal of the NKVD troops of the Ukrainian District.[26] For the third quarter of 1943, the Head of the tribunal put this figure at 71,7% percent of cases tried in his courts.[27] Seemingly aware of the semantic ambiguity,

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[21] Head of the Military Tribunal of the NKVD troops of the Ukrainian District Colonel of Justice Sytenko to Secretary of the Central Committee of CP(b)U Korotchenko: Excerpt from the report on the work of the NKVD troops' Military Tribunal of the Ukrainian District for the 3rd quarter of 1945, 14.11.1945, F1O23D2437, p. 62–83, Tsentral'nyi derzhavnyi arkhiv hromadc'kykh ob'iednan' Ukrainy (TSDAHO), p. 75. On the legal basis for this practice see: EPIFANOV, Aleksandr Egorevich: Organizatsionnye i pravovye osnovy nakazaniia gitlerovskikh voennykh prestupnikov i ikh posobnikov v SSSR, 1914–1956 gg, Moskva 2017, p. 78–79.

[22] Lieutenant Colonel of Justice Indychenko, temporarily serving as the Head of the Military Tribunal of the NKVD troops of the Ukrainian District to head of the sector of the judicial and prosecutorial department of the Central Committee of the Communist Party of Ukraine Glukh: Review of the supervisory and judicial activities of the Military Tribunal of the NKVD troops of the Ukrainian District over the period July-December 1944, 06.04.1945, F1O23D2437, p. 22–29, Tsentral'nyi derzhavnyi arkhiv hromadc'kykh ob'iednan' Ukrainy (TSDAHO), p. 25.

[23] The real extent of their cooperation notwithstanding, Weiner offers an interesting discussion of how nationalists were demonized in official Soviet ideology by associating them with the Germans: WEINER, Amir: Making sense of war. The Second World War and the fate of the Bolshevik Revolution, Princeton [2]2002, p. 163.

[24] RUDLING, Per A.: The OUN, the UPA and the Holocaust. A study in the manufacturing of historical myths (The Carl Beck papers in Russian & East European Studies, no. 2107), Pittsburgh 2011, p. 33.

[25] Similarly, Bernstein and Makhalova argue that many arrests featuring in Soviet Ukrainian statistics as being based on "'nationalist rebellion' […] probably could have been classified as collaboration". BERNSTEIN, Seth/MAKHALOVA, Irina: Aggregate Treason. A Quantitative Analysis of Collaborator Trials in Soviet Ukraine and Crimea, in: The Soviet and Post-Soviet Review 1 (2019), p. 30–54, here p. 49. This problem was not specific to Ukraine and Moldova, but has been described for other regions as well, such as Estonia. WEINER, Amir: The Empires Pay a Visit. Gulag Returnees, East European Rebellions, and Soviet Frontier Politics, in: The Journal of Modern History 2 (2006), p. 333–376, here p. 340.

[26] Work of the Military Tribunal in the 3rd quarter of 1945, TSDAHO, F1O23D2437, p. 71.

[27] Head of the Military Tribunal of the NKVD troops of the Ukrainian District Colonel of Justice Vasiutinskii to Central Committee of CP(b)U: Report on the work of the Military Tribunal of the NKVD troops of the Ukrainian District in the 3rd quarter of 1943, 29.10.1943, F1O23D684, Tsentral'nyi derzhavnyi arkhiv hromadc'kykh ob'iednan' Ukrainy (TSDAHO), p. 6.

the Head of the tribunal made sure to clarify that in the 3rd quarter of 1943, most cases under article 58-1 were concerned with collaboration, not with nationalist insurgency.[28] To a degree, the dynamic shifted towards the latter over the period under study here (1943-1946). Hence, in the second quarter of 1945, the increased caseload faced by the tribunals was explained with the intensified counterinsurgency in the Western regions.[29] It was not stated, however, what precise share of "traitors" the nationalist insurgents took up. The proportions of both subgroups of "traitors" were never assessed statistically. But the central Kiev tribunal's reports also contained short descriptions of typical cases for areas such as overall punitive policy and supervision. And collaboration always remained an integral part of the cases described here.[30] While the terminological confusion cannot be completely disentangled, it is sufficiently clear that the data provided in the report pertained to collaboration cases, even if it included others as well. However, because both lines of judicial prosecution intersected in article 58-1 to an unknown degree, the number of 333 108 defendants contains an unknown portion of people not charged for cooperating with the Axis powers, but for fighting the Soviet state after World War II. The exact proportions of both groups of defendants tried under article 58-1 are yet to be determined. Thus, when official Soviet statistics contain the category "treason to the Motherland", researchers should take these numbers only as rough estimates for the number of trials dealing with collaboration.

Equally problematic are the numbers for article 58-3, which were incoherently recorded in union-wide statistics and remain difficult to extrapolate from more detailed regional statistics. The official union-wide Soviet statistics do not provide precise numbers of people charged under 58-3, "liaison with foreign powers", another article the Soviets used to put those deemed collaborators on trial. Voisin and Kudryashov extrapolated an estimate of the total union-wide number of such cases from the more detailed statistics of one region, namely Kalinin.[31] But caution is advised here. A comparison with corresponding statistics from Ukraine shows significant regional differences in the ratio of cases tried under article 58-1 to those tried under article 58-3. Voisin and Kudryashov estimated a ratio of 61,8% to 28,2% (article 58-1 to article 58-3). Yet in the statistics of the Kiev District Military Tribunal from 1945 to 1947, the respective ratio of cases ranges between 97% to

[28] Ibid.
[29] Head of the Military Tribunal of the NKVD troops of the Ukrainian District Colonel of Justice Sytenko to Secretary of the Central Committee of CP(b)U Korotchenko: Report on the work of the Military Tribunal NKVD troops of the Ukrainian District in the 2nd quarter of 1945, 30.08.1945, F1O23D2374, p. 31–44, Tsentral'nyi derzhavnyi arkhiv hromadc'kykh ob'iednan' Ukrainy (TSDAHO), p. 33.
[30] This holds true well into 1946: Head of the Military Tribunal of the MVD troops of the Ukrainian District Colonel of Justice Sytenko to Central Committee of CP(b)U - comrade Stetsenko: Report on the work of the Military Tribunals of the Ministry of Internal Affairs of the Ukrainian District for 1-2 quarters and the month of July 1946, 07.09.1946, F1O23D3671, Tsentral'nyi derzhavnyi arkhiv hromadc'kykh ob'iednan' Ukrainy (TSDAHO), p. 98–100.
[31] VOISIN/KUDRYASHOV: Early Stages, p. 267.

3% and 91% to 9%.[32] Hence, we need to be careful when we extrapolate from one region to the whole of the USSR. There are more problems with the statistics for article 58-3. It was not completely excluded from union-wide statistics, but sometimes appeared in them as part of a composite measurement for several articles together. At least between 1943 and 1946, the ratio of the combined sum of article 58-3 and several other articles to article 58-1 is smaller than estimated by Voisin and Kudryashov.[33]

A similar, but numerically less significant problem exists for another article of the criminal code, article 58-2, that was also only recorded in composite measures. Article 58-2 dealt with "Armed insurrection or counter-revolutionary invasion of Soviet territory by armed bands, seizure of power in the center or in the regions for the same purposes".[34] In some trials examined in the present study, defendants were charged under this article.[35] Apparently, the responsible Soviet officers saw it as an act of invasion and/or insurgency that the defendants had been deported from Romanian territories, incarcerated in Transnistrian ghettos and then served in these ghettos' administrations. Nonetheless, in most cases examined for the present study, the same acts were subsumed differently and tried under the usual legal instruments used for collaboration. As with the ratio of article 58-3 to article 58-1, the exact ratio of article 58-2 to these first two articles remains unknown. Cases tried under article 58-2 were recorded in official union-wide statistics, but again only in different composite measurements including other articles.[36] The percentage varies which cases recorded in such composite measurements constitute of the total number of "counterrevolutionary crimes": from four percent in 1943, to twelve percent in 1944 and 24% in 1945.[37] The likeliest explanation for the increase seems to be the aforementioned nationalist insurgencies. But for our present interest, these numbers are practically worthless – they do not tell us which part of these

[32] Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 39. Head of the first department of the administration of MVD troops' military tribunals lieutenant colonel of justice Naranovich to Head of the administration of MVD troops' military tribunals, Major-General of justice comrade Andreev: Report on the results of the inspection of the work of the MVD military tribunal of the Ukrainian district in the period of January 1 to December 25, 1946, F1O23D4937, p. 309–338, Tsentral'nyi derzhavnyi arkhiv hromadc'kykh ob'iednan' Ukrainy (TSDAHO). Lieutenant Colonel of Justice Adylin, temporarily serving as the Head of the Military Tribunal of the MVD troops of the Ukrainian District to Central Committee of CP(b)U - comrade Shikov: Review note on cases reviewed by the military tribunal of the MGB troops of the Ukrainian district, received through the line of the Ministry of State Security of the Ukrainian SSR on cases of violation of Soviet laws in 1946 and the first half of 1947, 29.07.1947, F1O23D4953, p. 395–417, Tsentral'nyi derzhavnyi arkhiv hromadc'kykh ob'iednan' Ukrainy (TSDAHO), p. 410.

[33] MOZOKHIN, Oleg Borisovich: Pravo na repressii. Vnesudebnye polnomochiia organov gosudarstvennoi bezopasnosti :, Moskva ²2011 (Statisticheskie svedeniia o deiatel′nosti VCHK-OGPU-NKVD-MGB SSSR (1918–1953)), p. 496–534.

[34] Ugolovnyi kodeks RSFSR redaktsii 1926 goda s izmeneniiami na 1 dekabria 1938 goda, p. 28.

[35] Sherf Isaak Lazarevich, D20752, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Vinnyts′ka oblast′) (HDA SBU VO), p. 137.

[36] In 1943, "Insurgency and political banditry" included articles 58-2 as well as 59-2, 3, 3b. In 1944, we find article 58-2 in two such composites, "Participation in anti-Soviet conspiracies, organizations and groups", which also includes 58-3 and "Participation in rebel organizations and groups". In 1945, we again see "Participation in anti-Soviet organizations and groups" and "Participation in rebel organizations and groups".

[37] MOZOKHIN: Pravo na repressii, p. 481–534.

composite measurements came from articles 58-2 (or 58-3, where included). They also do not tell us whether the respective trials were concerned with our analytical category of interest – collaboration. While unknown numbers and ratios of these articles are numerically negligible for article 58-2, the estimates for article 58-3 have a significant impact on calculations such as Voisin's and Kudryashov's.

In addition to a lack of numbers for some legal instruments, data for some institutions is also unavailable, namely for regular courts. The official union-wide statistics do not include people tried in courts other than military tribunals and the "Special board of the People's Commissariat of Internal Affairs" (OSO), both of which we discuss in detail in the following chapters.[38] In other words, regular courts are not represented in the statistics. The problem not only concerns the overall number of collaboration trials, but also the number of such trials in which the defendants were Jews. For example, Markus Brukker was tried by the Chernovtsy regional court. The charges brought against Brukker related to his work as a Kapo at the Bratslav concentration camp in the Vinnitsa region in 1941 and 1942.[39] It is neither clear how many collaboration trials were held in regular courts, nor in how many of those trials the defendants were Jews (or in particular Jewish council members or ghetto policemen from Transnistria). On the one hand, previous scholarship has proven that "counterrevolutionary crimes" (a legal meta-category that included article 58 and Ukaz 43) made up only a small part of the caseload of regular courts. The figure was five percent in 1937 and it dropped below 0,5% in 1953.[40] On the other hand, the Soviet criminal justice system remains seriously understudied for the period during and immediately after World War II.[41] It is therefore still difficult to estimate how many collaboration trials were held in regular courts.

Thus, we are confronted with a disjuncture between the analytical concept of interest, "collaboration trials", the empirically given institutions adjudicating it and the empirically given legal qualification at the time. The legal qualification was based on a set of main legal instruments and primarily undertaken by a distinct set of institutions, but it also spread into other areas – to an unknown and probably indeterminable extent. Voisin and Kudryashov thus rightly point out that their estimates are "only indicative".[42] Despite the problems discussed here, Voisin's and Kudryashov's estimates are undoubtedly the best currently available and can well serve as a rough orientation.

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[38] VOISIN/KUDRYASHOV: Early Stages, p. 267.
[39] See the indictment: Brukker, Markus, TR.18/JM/23495, Yad Vashem Archives (YVA), Jerusalem, p. 32.
[40] REBITSCHEK, Immo: Die disziplinierte Diktatur. Stalinismus und Justiz in der sowjetischen Provinz, 1938 bis 1956 (Beiträge zur Geschichte Osteuropas, vol. 51), Köln 2018, p. 16.
[41] BUDNITSKII, Oleg: The Great Terror of 1941. Toward a History of Wartime Stalinist Criminal Justice, in: Kritika: Explorations in Russian and Eurasian History 3 (2019), p. 447–480, here p. 448.
[42] VOISIN/KUDRYASHOV: Early Stages, p. 267.

Unfortunately, estimating the number of former Transnistrian ghetto functionaries prosecuted in collaboration trials is even more difficult. Since these trials were not separately reported in Soviet statistics, researchers can only base their estimates on investigative casefiles they retrieve from archives – a process that potentially introduces bias through an element of snowball sampling (or chain referral). The number of former Transnistrian ghetto functionaries prosecuted in collaboration trials is unknown because that group was not recorded as a separate category in the statistics.

That does not mean that Soviet authorities did not know that Jewish ghetto functionaries existed in Transnistria. When the Red Army reconquered Transnistria in 1944, the security personnel following the troops had explicit orders to arrest "immediately" the whole "leading and administrative apparatus of the ghettos created by the Romanians".[43] The ghetto functionaries found themselves on a list comprised of 16 different groups that the Ukrainian SSR People's Commissar of State Security, Savchenko, designated as vital targets in the Soviet effort to regain control of the area. Among others, that list included "the leading staff of police and gendarmerie organs created by the Germans and Romanians", "members of German fascist organizations", as well as "personnel and agents of […] the intelligence and counter-intelligence agencies of the Germans and Romanians".[44] Not only did the Soviets know about the ghettos and their Jewish functionaries, they also deemed these ghetto functionaries a threat similar to local police forces and spy networks established by the Axis. Nevertheless, the various groups listed in the order were inconsistently recorded in reports and statistics, and Soviet authorities took no separate count of Jewish ghetto functionaries.

Since Soviet statistics do not separately list Jewish ghetto functionaries investigated and tried, it is only possible to roughly estimate the number of such proceedings. To do this, we need to consider the ways documents about collaboration trials can be retrieved from the archives. Thinking about file retrieval helps to identify differences between "patterns in [the] data" we examine "and the pattern of [the] search" for and retrieval of, such data.[45] In the context of Soviet collaboration trials, the procedure of retrieving files in the archives inevitably introduces an element

[43] Ukrainian SSR People's Commissar of State Security, 3rd rank Commissar Savchenko to NKGB administrations heads of the regions in the Romanian occupation zone: Directive with instructions to immediately arrest persons involved in cooperation with the Romanian occupation military and civilian administration, April 1944, F9D74, p. 147–149, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU).
[44] Ibid.
[45] MARTIN: Thinking through methods, p. 60. Making such considerations concerning archives is one of historiography's greatest strenghts. DARNTON: Archives and Inference, p. 94. In our concrete case, we are less concerned with the problem of "mistaking the proportions of tradition ["Überlieferung"] with the proportions of past reality", but with the problem of the retrieval of "tradition" from the archives which hold it. ESCH, Arnold: Überlieferungs-Chance und Überlieferungs-Zufall als methodisches Problem des Historikers, in: Historische Zeitschrift (1985), p. 529–570, here p. 543.

of snowball sampling. That element comes into play even before researchers can even think about making any sampling decisions. In the social sciences, snowball sampling means finding one or a few members of a group of interest and then asking them to refer one to other members of that group – hence the alternative term "chain referral".[46] The approach of chain referral is commonly understood to result in "questionable representativeness".[47] After all, why should the people you ask happen to be friends with a representative sample of your group of interest? Something like chain referral is imposed on researchers by the organization of the archives containing Soviet investigation and trial documents and the mechanisms of file retrieval.

Chain referral is introduced because in the most important archives, files can only be retrieved by the names of defendants. The relevant archives for the present study are the former KGB-archives in Ukraine and Moldova (as well as two collections at the United States Holocaust Memorial Museum compiled of files from these archives). Of the relevant institutions and collections, the archives of the Ukrainian security service SBU are most important for the present study. There are no more restrictions on access to files of Soviet security agencies in Ukraine.[48] Since access is both formally and informally more restricted in Moldova, the following remarks only concern Ukraine.[49] The relevant collections in the SBU archive are Fond five (files of suspects who were not rehabilitated) and Fond six (files of suspects who were rehabilitated).[50] Both are accessible almost exclusively through alphabetical card indexes organized by defendants' names.[51] The card indexes have been partially transferred into electronic databases, but these remain incomplete.[52] It is not possible to retrieve files from these collections based on the articles of the criminal code under which suspects were prosecuted.[53] Retrieval functions by name and by name only.

Here, chain referral comes into play: names to look for in the card indexes are often drawn from other investigative casefiles. The problem can be illustrated by examining the creation of the relevant collections at the USHMM. These are RG-54.003, "War Crimes Investigation and Trial

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[46] BABBIE, Earl R.: The practice of social research, Boston, MA 2016, p. 188.
[47] Ibid.
[48] These restrictions were lifted in a law which was part of the larger "decommunisation" campaign following the Euromaidan. CORRIGAN, Polly: Political Police Archives in Ukraine and Georgia: A Research Note, in: Europe-Asia Studies 1 (2020), p. 117–131, here p. 122.
[49] The archives of the Moldovan secret service are not accessible for researchers. The Moldovan National Archives hold a collection of materials on formerly repressed and later rehabilitated persons, which were transferred from the archives of the Moldovan secret service (collected in the National Archives' "Fond R-3401"). In practice, accessing this collection remains difficult.
[50] Ibid., p. 128.
[51] DANYLENKO, V. M.: Otraslevoi gosudarstvennyi arkhiv SBU. Putevoditel', Khar'kov 2010, p. 71, 74.
[52] Additionally, materials on rehabilitated defendants were partially transferred to regional state archives in Ukraine. Such materials are still easiest to locate by inquiring in the central SBU archive in Kyiv.
[53] BERNSTEIN/MAKHALOVA: Aggregate Treason, p. 36. Even if it were possible, researchers would still face the problem that different offenses were tried under the same articles, such as nationalist insurgency and collaboration.

Records from the Republic of Moldova" and RG-31.018M, "Postwar war crimes trials related to the Holocaust", that contains files from Ukraine. Search procedures for compiling both collections were strongly oriented toward the Holocaust, not towards collaboration in general. [54] To compile these collections, USHMM staff used names of potential suspects found in other archival materials and in the available literature.[55] The USHMM's investigators then searched for those names in the card indexes/databases of the respective post-Soviet countries. Once such referencing yielded a match, the casefile obtained could then be checked for other potential defendants – and that is the element of chain referral. It is impossible to say what exact influence it had on the USHMM collections.

But chain referral thoroughly influenced the collection of casefiles we undertook for the present study. We gathered investigation and trial documents related to 51 defendants who held positions as Jewish council members or policemen in Transnistrian ghettos and subsequently were subject to criminal prosecution in Soviet Ukraine and Moldova. Our search was initially based on seven files contained in the USHMM archives; the seven files then served as the basis for a first chain referral. Additionally, we searched for names in the relevant research literature on the Holocaust in Transnistria, in oral history interviews, in memoirs and in archival materials other than investigative casefiles. Especially important was the section on the Holocaust under Romanian aegis in the third volume of the USHMM's encyclopedia of camps and ghettos.[56] To find additional names based on the encyclopedia, we used both the entries on the ghettos in Transnistria, as well as the archival materials in the USHMM collections referenced in these entries (as far as linguistically accessible to us). Based on that search and several rounds of chain referral from defendants' casefiles, we compiled lists of some 400 names of potential defendants – many of which we only saw in investigative casefiles, but never in the literature or other materials. For these names we then searched in the SBU archives. Combined, the files we gathered in the USHMM and in the SBU archives pertain to the above-mentioned 51 defendants. These defendants had held positions in 17 different ghettos in Transnistria.[57]

The USHMM Encyclopedia of Camps and Ghettos lists 71 ghettos in Transnistria, so it is almost certain that more Jewish council members and ghetto policemen from the region were investigated

[54] For studies interested in collaboration in general, such an intentional collection introduces selection bias. For the present study, this is less relevant, since its specific group of interest falls into the USHMM's broader focus. Ibid., p. 39.
[55] Ibid., p. 36. ZIMMERMANN: Quelle als Metapher, p. 271.
[56] WHITE, Joseph R./HECKER, Mel/MEGARGEE, Geoffrey P. (ed.): Camps and ghettos under European regimes aligned with Nazi Germany (The United States Holocaust Memorial Museum Encyclopedia of camps and ghettos, 1933–1945, vol. 3), Bloomington 2018.
[57] These ghettos are: Balta, Bershad′, Bertiuzhany, Chechel′nik, Iaruga, Kopaigorod, Kryzhopol′, Mogilev-Podol′skii, Obodovka, Odessa-Slobodka, Ol′gopol′, Rybnitsa, Shargorod, Tatarovka, Tul′chin, Vinozh, and Zhmerinka.

and tried. A very rough way to estimate the total number would be to calculate the ratio of defendants per ghetto from the sample of 51 arrestees and apply the resulting ratio to the total number of ghettos in Transnistria (as per the USHMM encyclopedia). Such a calculation results in an estimated population of 217 defendants.[58] But this number is more a guess than an estimate and has little claim to validity.[59] Compared to Voisin's and Kudryashov's estimate of 500 000 collaboration trials the number of 200 trials of former functionaries at is much more conjectural.

In conclusion, it is almost certain that casefiles of more defendants than the 51 exist, but impossible to know how many, with 200 being only a most tentative estimate. On the other hand, all the caveats on the previous pages are primarily meant to sensitize the reader for the problems inherent in such estimates and in the search and retrieval of materials. These problems weigh heavily on the representativeness of any claims we make about the subject. But as a rough orientation the above-mentioned numbers suffice – around half a million collaboration trials, around 200 of them trials of Jewish council members and ghetto policemen from Transnistria.

Regarding sample and population, four levels emerge to which we can apply such terms:

A) Soviet collaboration trials (≈ 500.000)[60]

B) collaboration trials of Transnistrian Jewish council members and ghetto policemen (≈ 200)

C) 51 collaboration trials of Transnistrian Jewish council members and ghetto policemen

D) selected cases of collaboration trials of Jewish council members and ghetto policemen

[58] See the section of the USHMM encyclopedia dedicated to camps and ghettos under Romanian control: Ibid., p. 570–830.

[59] To accept it at face value, we would have to presuppose a variety of things we do not know. First, that our search revealed all files related to these ghettos in the archives. This is dubitable, because of the heavy element of chain referral and because the databases and card indexes are not perfect. Second, that all ghettos had notable Jewish councils and ghetto police forces. Third, that investigations and trials were initiated evenly across the regional and temporal scope of our study. Determining any of this with certainty seems difficult. Thus, the number of such cases may be lower than the estimate – maybe there are no more than the 51 cases examined for the present study. However, the number may also be much higher. A survivor of the ghetto Mogilev-Podol'skii claimed that there were one hundred Jewish policemen in that ghetto alone. In comparison, the estimate of 217 Soviet collaboration trials of Jewish ghetto functionaries seems meager. Shtern Ignatii Samoilovich, D85-p, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Chernivets′ka oblast′) (HDA SBU ChO), p. 48–49.

[60] Strictly speaking, the broader phenomenon of all Soviet collaboration trials cannot be called the "universe" of the present study. The guiding research questions focus only on a sub-type – trials of Transnistrian ghetto functionaries. Based on the definitions provided above, this focus dictates what can count as a study's universe, population, and sample. But while level A) *should* not be included, it still *must* be included. The broader phenomenon on level A) is so severely understudied, that analyzing a sub-type of trials such as level B) necessitates examining the broader institutional and legal context on level A) – whether we like it or not. To put it positively: the present study contributes to a much broader field than its narrower analytical focus.

## How do we study it?

Based on these potential levels of analysis and generalization, what exactly do we examine here and how do we examine it? Our analysis resembles a zooming-in motion. It moves from levels A) to C) to D), from the conceptual to the empirical level, from historiographical literature to historical materials, from primarily quantitative to primarily qualitative methods and, increasingly, from the perspective of the Soviet state to those of witnesses and defendants. To analyze level A) from the perspective of state actors', we develop an ideal-type heuristic based on Ernst Fraenkel's concept of the "dual state". We discuss the concepts origins in the study of National Socialist Germany, transfer it to the Soviet case and operationalize it based on the mass operations of the Great Terror. A primarily quantitative step follows, in which we create a "collective portrait" of the defendants on level C). We correlate the biographic data from the "collective portrait" with a broad overview of the investigations and trials (average sentences etc.). To better understand the courts' sentencing practice, we summarily analyze decision documents such as verdicts and case termination orders. Here, we use the method of qualitative content analysis. We then move from level C) to level D), a series of case studies, increasingly including witnesses' and defendants' perspectives. On level D), we combine the methods of case studies, source criticism, qualitative content analysis, and, wherever possible, data triangulation. In the rest of the present chapter we lay out our research design in more detail. We describe the different methods and clarify vital issues such as case selection principles and the infamous qualitative/quantitative distinction.

Throughout the book, we make both qualitative and quantitative arguments: we *name* (or *categorize*), and we *count*.[61] In scientific inquiry, measurement is examining defined characteristics of an object of investigation.[62] Symbols (words) or numbers are assigned to different expressions of a characteristic or variable of the object.[63] Thus, measuring can mean observing something (reading it in a document, hearing it in an interview) and calling it something else – naming or categorizing it. Measuring can also mean counting – how often do we read that thing in a document, or in how many documents do we find it? But at the beginning of every research has to be a qualitative step: "I first have to know what I want to investigate, I have to *name* it […]."[64] Put in a simplifying way,

[61] We simplify the qualitative/quantitative-distinction in this way to sidestep the "paradigm wars". The distinction often refers to two competing research paradigms with fundamentally different underlying assumptions about what scientific inquiry is. For some decades, the confrontation between these broader models of scientific inquiry had the character of recurring "paradigm wars". Denzin discerns at least three such "wars" since the 1970s: DENZIN, Norman K.: Moments, Mixed Methods, and Paradigm Dialogs, in: Qualitative Inquiry 6 (2010), p. 419–427, here p. 421. DÖRING, Nicola/BORTZ, Jürgen (ed.): Forschungsmethoden und Evaluation in den Sozial- und Humanwissenschaften (Springer-Lehrbuch), Berlin, Heidelberg 2016, p. 32.

[62] MAYRING, Philipp: Qualitative Inhaltsanalyse. Grundlagen und Techniken (Beltz Pädagogik), Weinheim [12]2015, p. 18.

[63] Ibid.

[64] Ibid., p. 20.

the difference between qualitative and quantitative is thus one between categorizing and counting.[65] To be able to count, you first must categorize. When you want to talk about how common a category is, you need to count.[66] Once you have counted, you need to make sense of the resulting numbers, which again is a qualitative step. Lastly, if researchers want to be clear about what they are doing, they need to clarify when they are categorizing (using qualitative methods) and when they are counting (using quantitative methods).[67]

In the context of our study "quantitative methods" mostly refers to the use of basic *descriptive* statistics (percentages, averages etc.), rather than the more complex *inferential* statistics.[68] We primarily use descriptive statistics for the analysis of internal documentation, correspondence and statistical reports compiled by various Soviet agencies. How many people were sentenced by which organs, under which paragraphs? What was the average sentence? Such questions can only have quantitative answers.

Furthermore, to safeguard against selective anecdotalism, we also count when making primarily qualitative arguments, even though we are aware of the problems associated with small numbers. Since "historians write stories backed by evidence", they are experts in finding anecdotes in archival materials which provide a narrative flow for the final research report.[69] While entertaining presentation is important, historians here run the danger of falling into "selective anecdotalism".[70] Selective anecdotalism is best understood as "[…] the use of untypical examples to try to make a general point".[71] Researchers run danger to "pick out exceptionally fascinating or even exotic examples to illustrate [one's] analysis" and "to use exotic but untypical examples to build a more general picture than is warranted".[72] The only way of deciding how general a picture is warranted

[65] We consciously oversimplify the issue here and loosely base this simplification on Mayring's discussion of the qualitative-quantitative distinction as a difference in the scale of measurement. See: Ibid., p. 17–22.
[66] Quantification helps to see how representative qualitative findings are. FLICK, Uwe: Triangulation (Qualitative Sozialforschung, vol. 12), Wiesbaden 2011, p. 76, 91.
[67] MAYRING: Qualitative Inhaltsanalyse, p. 22.
[68] BABBIE: Practice of social research, p. 451. JUPP, Victor: Descriptive statistics, in: The Sage dictionary of social research methods, edited by Victor JUPP, London 2009, p. 66–67. Today, only economic historians use inferential statistics. Outside the sub-discipline of economic history, few historians even use descriptive statistics. In the decades since World War II, historians' traditional aversion to counting was briefly eroded by social and economic historians from the 1960s to the 1980s, but the "cultural turn" reinstated the status quo ante of these attempts. BUCHNER, Michael et al.: Zur Konjunktur des Zählens – oder wie man Quantifizierung quantifiziert. Eine empirische Analyse der Anwendung quantitativer Methoden in der deutschen Geschichtswissenschaft, in: Historische Zeitschrift 3 (2020), p. 580–621, here p. 581, 582, 615.
[69] MOSES, Jonathon Wayne/KNUTSEN, Torbjørn L.: Ways of knowing. Competing methodologies in social and political research, Basingstoke ²2012, p. 119.
[70] It stands to assume that the "pull" towards selective anecdotalism is exacerbated by the popularity of narrativist theory in the philosophy of history since the middle of the 1980s and the parallel rise of literature as most important "inspirational discipline" for historiography. BEVERNAGE, Berber et al.: Philosophy of History after 1945. A bibliometric study, in: History and Theory 3 (2019), p. 406–436, here p. 426, 428, 429.
[71] GIBBS: Analyzing Qualitative Data, p. 100.
[72] Ibid.

is to count.[73] Therefore, even when we make qualitative arguments, we often provide numbers, allowing the reader to see how common our observations were in the materials. Naturally, when such quantitative arguments are based on only the 51 cases on level C), this consistently results in small numbers – numbers too small to allow statistical generalizations to an unobserved whole, such as levels A) or B). The problem is the same, only more acute, for the case studies on level D). Skeptical readers might raise an eyebrow when they learn that of 31 witnesses in one investigation, 40% said one thing, but 60% said something else. However, even though such statements do not allow statistical generalizations, they nonetheless represent the *best of our knowledge*. They are the best *available* anchor for deciding how common or uncommon the attitude of a witness, a accused's defense strategy or an investigator's methods were. With these considerations in mind, let us return to a step-by-step discussion of the research design.

In a first qualitative step, we approach the subject from the Soviet state's perspective. We use an ideal-type heuristic based on Ernst Fraenkel's idea of the "dual state" to describe the Soviet prosecution of collaboration and to generate hypotheses about it. We develop the heuristic in two chapters (conceptualization and operationalization) and apply it throughout the rest of the book. We start by conceptualizing how judicial and security institutions work in dictatorships. We discuss Ernst Fraenkel's idea of the "dual state" and conclude that its key concepts of the "normative" and "prerogative" states are best understood as ideal types in the sense of Max Weber. Because Fraenkel developed these concepts for Nazi Germany, we adapt them for the Soviet case and operationalize them based on the Great Terror. "Operationalize" means we draw indicators from the literature on the Great Terror and assign those indicators to Fraenkel's key concepts. Since we base the operationalization on the Great Terror, it also allows us to ask about continuity and change in the Soviet judiciary. The operationalization allows us to look for the indicators assigned to each key concept in historical materials and to use those concepts to describe said materials.

In the next step, apply the indicators to discuss level A) – the Soviet prosecution of collaboration during the 1940s. In doing so we move from the conceptual level and from discussing research literature to the empirical level and to analyzing historical materials. Here we are mainly concerned

[73] Methodologists fall into two camps on this issue. The first group is all for counting, such as Martin: "The importance of reporting numbers holds true for any 'small N' study. If you have more than one unit of analysis, there are numbers attachable to your statements. Saying 'three out of six' isn't 'mistaking' your 'approach' for a 'quantitative' one, making some sort of 'error,' […]. It's being honest. If you won't tell us the numbers, chances are it's because you're afraid to." MARTIN: Thinking through methods, p. 238. The second camp is more sceptical. As Flick explains, some methodologists warn of "[…] a tendency in qualitative research to convince the readers of research reports by argumentations built on a quantitative logic (e.g. five out of seven interviewees said …; The majority of the answers referred to …) instead of looking for a theoretically grounded interpretation and presentation of the results. The patterns of argumentation […] can also be understood as an implicit transformation of qualitative data into quasi-quantitative results. In the course of the transformation, a decontextualization of information is carried out – for example, when the frequency of a statement is isolated from the respective contexts in which it was made and considered separately." We consider Martin's argument convincing and follow his position. FLICK: Triangulation, p. 88.

with materials produced by the institutions prosecuting collaboration in Ukraine and Moldova in the 1940s. Based on such documents, we make a series of quantitative arguments.

Equipped with the dual state heuristics, we move from level A) to level C), the trials of former ghetto functionaries. To examine these trials, we create a collective portrait of the defendants, draw an outline of investigations and trials, and conduct a summary analysis of decision documents. In this step, we combine both qualitative and quantitative arguments. The resulting overview serves three purposes. First, to find out who the defendants were. Second, to check whether what we found out about the overall prosecution of collaboration holds true for the 51 defendants we focus on. Were they tried differently, or the same as anyone else? Third, to provide a background for the following case studies on level D), i.e. some hypotheses to check and a context to determine how common things we find out in the case studies were.

Three things need to be clarified when it comes to the "collective portrait" method.[74] First, the term needs to be defined and differentiated from competing terms such as prosopography. Second, the group to be studied needs to be delimited. [75] Third, it needs to be discussed what biographical data is to be included.

In a most basic understanding, collective portraits are the "[…] investigation of the common background characteristics of a group of actors in history by means of a collective study of their lives."[76] Biographical data is collected and then examined for "both for internal correlations and for correlations with other forms of behavior or action."[77] There is a host of competing terms for the method (prosopography, collective biography, collective portrait etc.). [78] We opt for "portrait" rather than "biography" because the data available in the investigation and trial files covers a person's life only up to the point of the arrest.[79] In contrast "collective biographies" try to cover how people's whole lives developed (at minimum their adult lives).[80] Since the available data is insufficient for a "biography", "portrait" is the more appropriate term.

Delimiting the group for the collective portrait is unproblematic for the present study. In short, it is everybody on level C). That is all persons who held positions in the Jewish administration of

[74] In creating a collective portrait of the defendants we build on the work of other scholars who used the method to investigate whom the Soviets prosecuted as collaborators. The method was first used in this context by Penter. Later studies built on this, most notably the one by Bernstein and Makhalova. PENTER: Collaboration on Trial, p. 784. BERNSTEIN/MAKHALOVA: Aggregate Treason.

[75] SCHRÖDER, Wilhelm Heinz: Kollektivbiographie. Spurensuche, Gegenstand, Forschungsstrategie, in: Historical Social Research / Historische Sozialforschung. Supplement 23 (2011), p. 74–152, here p. 140.

[76] STONE, Lawrence: Prosopography, in: Daedalus 1 (1971), p. 46–79, here p. 46.

[77] Ibid.

[78] Ibid., 46, 51. For a more detailed discussion of prosopography and collective biography in German and English speaking historiography and social sciences, see: SCHRÖDER: Kollektivbiographie, p. 127–128.

[79] IUMASHEVA, Iuliia Iur'evna: Istoriografiia prosopografii, in: Izvestiia Ural'skogo federal'nogo universiteta. Seriia 2: Gumanitarnye nauki 39 (2005), p. 95–127, here p. 97.

[80] SCHRÖDER: Kollektivbiographie, p. 128.

ghettos in Transnistria and were later prosecuted by Soviet authorities, leading to the creation of a file we could locate in the archives. The most problematic term here is "ghetto" since delimiting ghettos from camps was sometimes difficult in Transnistria. We discuss this problem in the chapter.

Researchers who compile collective biographies/portraits usually must design a questionnaire. They must decide which categories of biographical data they want to extract from historical materials about the group they study.[81] Soviet investigators recorded a wide range of such biographical data about arrestees. The recorded data usually includes place and date of birth, class background, occupation, party affiliation and many more. Since we lack other materials about most defendants, we simply rely on the data Soviet investigators recorded in the casefiles. We discuss the validity of the data and the problems with it in detail in the respective chapter (for example, the pitfalls of class-related Soviet terminology).

Besides the collective portrait, we also compile the basic facts about the investigations and trials into an outline of how the group was prosecuted. The data here includes such things as date of arrest, date of trial, legal instruments used, type of sentence etc. Then we correlate the collective portrait with the outline of the prosecution. We check whether things we found out about the overall Soviet prosecution of collaboration hold true for this group. For example, just that the prosecution of collaboration was not class-based in general does not mean that the same is true for the specific group. In other words, we compare what we know about levels A) and C) so far.

On analytical level C), we then move from the outline of investigations and trials to a summary analysis of key documents. These documents encompass the available verdicts and release orders of all 51 defendants. Occasionally, we also include indictments. We examine the concrete accusations against the defendants that the Soviet judiciary saw as proven. We thus move from the articles discussed in the outline to the acts the Soviet judiciary subsumed under them. We discuss if and how the articles of the criminal code, the acts subsumed under these articles, the outcomes of the trials and the findings from the collective portrait are related to each other.

For the analysis of such decision documents, we use the method of qualitative content analysis.[82] A descriptive method, qualitative content analysis aims to "systematically describe the meaning of […] material" by reducing qualitative data into a system of categories, which are flexibly derived

[81] STONE: Prosopography, p. 46.

[82] With its major proponents in Germany, QCA should not be mistaken for the primarily quantitative method commonly termed "content analysis" in English-speaking academia.SCHREIER, Margrit: Qualitative Content Analysis, in: The SAGE handbook of qualitative data analysis, edited by Uwe FLICK, London 2014, p. 170–183, here p. 172. A detailed overview of development of both methods is provided here: IDEM: Qualitative content analysis in practice, Los Angeles 2012, p. 9–17. "German" QCA should also not be mistaken for the method of qualitative comparative analysis developed by Ragin, which is referred to with the same abbrevation. GERRING, John: Social science methodology. A unified framework (Strategies for social inquiry), Cambridge ²2013, p. 342.

both deductively and inductively.[83] Qualitative content analysis is a category-oriented method.[84] It abstracts "from the specifics of a given passage" in the materials and summarizes that passage together with other equal or different, but similar, passages into a category.[85] Every relevant passage of the material is "file[d] away" under a category.[86] Researchers commonly arrive at the categories both deductively and inductively.[87] Often, researchers first approach the materials with a set of concept-driven categories that can be derived from theory or the relevant research literature on the topic.[88] These categories can then be refined, split, combined or dropped altogether, depending on how adequately they capture the content of the materials. Most importantly, where the concept-driven categories fail to do so, data-driven categories are derived directly from the materials.[89] Introducing data-driven categories thus ensures "that the categories in fact match the data – or, to put it differently, that the coding frame [*i.e. the category system, WS*] provides a valid description of the material."[90] Thus, the materials' relevant aspects are organized into a category system which combines both concept-driven (deductive) and data-driven (inductive) categories.[91] Once the relevant parts of the materials are organized in the category system, researchers can check how different categories relate to each other.[92] For example, do some of them only ever appear in the materials in combination with certain others? In our concrete research: Are accusations of beatings always connected to forced labor mobilization? Furthermore, researchers can check how categories relate to variables they might attach to the documents to which the category system was applied. Hence, qualitative content analysis can contain both qualitative and quantitative steps.[93] Let us illustrate this with an example from our concrete situation. We examine the contents of verdicts, i.e. we ask what exactly Soviet authorities accused former functionaries of. This is a qualitative analytical step. In a second, quantitative step, we can correlate the accusations to the severity of the sentences, which we treat as a variable for each individual verdict. We simply count how common

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[83] SCHREIER: Qualitative content analysis in practice, p. 3. To simplify matters, we use a qualitative data analysis software – MAXQDA™ – for analyzing the decision documents.
[84] IDEM: Varianten qualitativer Inhaltsanalyse. Ein Wegweiser im Dickicht der Begrifflichkeiten, in: Forum Qualitative Sozialforschung 1 (2014).
[85] SCHREIER: Qualitative Content Analysis, p. 170.
[86] SCHREIER: Qualitative content analysis in practice, p. 37–38.
[87] KUCKARTZ, Udo/RÄDIKER, Stefan: Analyzing Qualitative Data with MAXQDA. Text, Audio, and Video, Cham 2019, p. 96. The risk of such generalizing category-formation is to lose too many specific aspects of individual documents by reducing statements to their lowest common denominator. The risk of the alternative, more individualizing and narrative approaches is to amass heaps of descriptive data without undertaking any analysis. Combining deductive with inductive category-formation reduces the risk of "cutting off" too much of the materials. This is compatible with historians' approaches, which combine deductive and inductive steps already since Droysen. LORENZ: Konstruktion der Vergangenheit, p. 330.
[88] KUCKARTZ/RÄDIKER: Analyzing Qualitative Data, p. 97. MARSHALL, Catherine/ROSSMAN, Gretchen B.: Designing qualitative research, Thousand Oaks, CA [4]2006, p. 60.
[89] SCHREIER: Qualitative Content Analysis, p. 176.
[90] Ibid., p. 171.
[91] Ibid.
[92] Ibid., p. 170.
[93] MAYRING: Qualitative Inhaltsanalyse, p. 17.

an accusation was in relation to the variable of the severity of sentences. How many of the defendants who faced severe, average, or mild sentences were accused of having beaten ghetto inmates? By doing so, we can find out how the content of the verdicts relates to the sentences they stipulate. How many of those who were found guilty of organizing deportations faced a severe sentence, how many got away with a mild one?

Once we have an overview over the prosecution of former ghetto functionaries, we move on to analytical level D). Here, we conduct five in-depth case studies, which we support by further qualitative content analysis. The term "case study" has so many different meanings that it needs to be specified to carry any meaning. Gerring defines a case study as:

> "*an intensive study of a single unit for the purpose of understanding a larger class of (similar) units*. A unit connotes a spatially bounded phenomenon – e.g., a nation-state, revolution, political party, election, or person – observed at a single point in time or over some delimited period of time. (Although the temporal boundaries of a unit are not always explicit, they are at least implicit.)"[94]

To do case studies one needs to clarify what counts as a case. For the present study, we define the word "case" in "case study" as all investigations and trials regarding one ghetto conducted in one place at one time.[95] It would be possible to follow the organization of such proceedings in casefiles and just take one such file as one case. But Soviet authorities often conducted parallel investigations against several former ghetto functionaries. Those investigations overlapped, with former functionaries being defendants in one investigation and witnesses in another. For example, such an overlap can be seen for defendants arrested in 1944 in Chernovtsy for their actions in the Tul'chin ghetto. Moreover, an investigation of three other defendants was later conducted in Tul'chin itself. But there was no contact or exchange of materials between the investigators in Chernovtsy and Tul'chin whatsoever. Therefore, the investigations in Chernovtsy are treated as one case, and those in Tul'chin are treated as a separate case. Thus we draw comparisons within cases and between cases.

When it comes to the above mentioned "*purpose of understanding a larger class of (similar) units*", we are dealing with issues of representativeness. For the present study, the representativeness of the case studies on level D) diminishes with every step up the chain of analytical levels. Regarding representativeness, case studies are ambiguous: "One wishes to know both what is particular to that unit and what is general about it, and these elements are often unclear."[96] The discussion of

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[94] GERRING: What Is a Case Study, p. 342.
[95] The present definition of "case" might give rise to confusion, since in the context of criminal justice "case" refers to individual investigations and trials. Hence, we refer to "cases" in the juridical sense as "investigations and trials".
[96] GERRING, John: Case study research. Principles and practices, New York 2007, p. 78. There are of course so called single-outcome studies (purely "idiographic" analyses), but if one can chose a design that allows for propositions not only about the case studies, but also about the population of cases unstudied, this seems preferable. Ibid., p. 193.

different Soviet statistics above had yielded four levels, with level D) as the level of case studies. Whatever the concrete case selection, representativeness of any findings on level D) likely diminishes with each step to a higher level. With the right technique for case selection, what we find out on level D) may tell us a lot about the 51 defendants on level C). But levels A) and B) are much less clearly delimited. There is a host of problems both with estimating the number of trials on those levels and with retrieving the respective files. For that reason, extrapolating from the case studies to those levels is much more difficult. The reader needs to keep these limitations in mind when considering the reach of our claims.

Nevertheless, at least a limited representativeness from level D) to C) is both desirable and achievable with the right sampling-technique.[97] But how to choose cases? There are two major types of sampling / case selection: probability sampling and non-probability sampling. The latter is also called "purposeful sampling".[98] The present study uses purposeful sampling. Probability sampling means choosing units from the population at random and with equal chance of being chosen for each unit. That approach results in "statistical generalizability" and is commonly considered the gold standard for achieving representativeness.[99] It should be obvious from the previous discussion that such an approach is out of the question for the present study. Probability sampling requires knowing the extents of the population. But both for collaboration trials in general and for those trials of Jewish council members and ghetto policemen, the population is only vaguely delimited, and the archives do not allow random file retrieval. When the population is not clearly delimited, probability sampling is impossible.[100] Moreover, if our estimate of 217 trials of former Transnistrian ghetto functionaries was correct, the 51 cases would not be enough to achieve statistical generalizability. For a population of that size, a sample of 139 cases is needed to make inferences with a 95% confidence level and a 5% margin of error. Furthermore, those 139 cases would have to be chosen at random, without the element of chain referral present in the 51 cases we located in the archives. Non-probability sampling is thus the way to go. It is also called "purposeful sampling" and defined as "selecting information-rich cases for in-depth study".[101]

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[97] Already in 1949, Samuel Gringauz complained that "[a]ll the descriptions of ghetto life published thus far bear the stamp of individualizing *reportage*" and contrasted his study of the Kovno ghetto to this pre-existing scholarship, since he attempted "to provide an insight into the inner mechanism of Jewish group life, by highlighting the historical-generalizing moments, and thus throw light on the tensions and forces of Jewish group integration". GRINGAUZ, Samuel: The Ghetto As An Experiment of Jewish Social Organization. Three Years of Kovno Ghetto, in: Jewish Social Studies: History, Culture, Society 1 (1949), p. 3–20, here p. 4.

[98] Competing terms are "selective", "theoretical" and "purposive" sampling. FLETCHER, Margaret/PLAKOYIANNAKI, Emmanuella: Sampling, in: Encyclopedia of case study research. Volume 2, edited by Albert J. MILLS / Elden WIEBE / Gabrielle DUREPOS, Los Angeles, CA 2010, p. 837–840, here p. 837. Patton argues that "purposeful" sounds least like jargon, so we choose this term. PATTON: Qualitative research, p. 403.

[99] BABBIE: Practice of social research, p. 192. SMALL, Mario Luis: How many cases do I need?, in: Ethnography 1 (2009), p. 5–38, here p. 12.

[100] BABBIE: Practice of social research, p. 193.

[101] PATTON: Qualitative research, p. 401.

More precisely, the "purpose" of such an approach is "to focus case selection strategically in alignment with the inquiry's purpose, primary questions, and data being collected."[102]

Since the present study revolves around an explorative research question, the maximum-variation technique is the best purposeful sampling strategy. Purposeful sampling encompasses a wide range of techniques.[103] "Information-richness" and the choice of purposeful sampling technique depend on the research question one asks. It is useful to think of research questions as descriptive, explanatory, or exploratory.[104] Almost nothing is known about collaboration trials of Jewish council members and ghetto policemen from Transnistria. Therefore, the present study is necessarily descriptive and exploratory in nature. For such studies "the cases selected should give maximal information about the specific features and characteristics of a particular social phenomenon."[105] Case selection should also help to "maximize the opportunities for developing hypotheses or theories that explain the social phenomenon at stake."[106] The best choice to achieve both these aims is the maximum variation technique.[107]

A maximum variation sample promises to identify both what is general and what is specific to the selected cases, as well as to generate hypotheses to explain what happened in the cases. The term "maximum variation technique" is almost self-explanatory. The technique tries "to capture the full range of variation along the dimension(s) of interest."[108] A valuable side-effect of the technique is that among purposeful sampling techniques it is considered one of the most beneficial for representativeness.[109] But the main purposes of the technique are: "[…] (1) to document diversity and (2) to identify important common patterns that are common across the diversity (cut through the noise of variation) on dimensions of interest."[110]

Based on our definition of "case" and our research question, we can identify five dimensions for variation: time, space, authorities, defendants, and witnesses. Cases are bound in time and space – both dimensions might influence their outcomes. The research question concerns the views and actions of three groups of actors involved in the trials: authorities, defendants, witnesses. Who these people were, what their views and actions were and how they influenced the trials – that is

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[102] Ibid., p. 402.
[103] Patton's comprehensive list includes 40 different strategies. Ibid.
[104] BLEIJENBERGH, Inge: Case Selection, in: Encyclopedia of case study research. Volume 2, edited by Albert J. MILLS / Elden WIEBE / Gabrielle DUREPOS, Los Angeles, CA 2010, 61-63, here 61.
[105] Ibid.
[106] Ibid. See also: SWEDBERG, Richard: Exploratory Research, in: The Production of Knowledge, edited by Colin ELMAN / John GERRING / James MAHONEY 2020, p. 17–41, here p. 27–28.
[107] Synonymous terms are "heterogeneity sampling" and "diverse case" sampling.
[108] GERRING: Case study research, p. 99. See also: PATTON: Qualitative research, p. 405. MARTIN: Thinking through methods, p. 37. FLICK: Designing qualitative research, p. 28–29. MARSHALL/ROSSMAN: Designing qualitative research, p. 63, 71.
[109] GERRING: Case study research, p. 100.
[110] PATTON: Qualitative research, p. 405, 429.

the question. Therefore, all three groups should serve as dimensions for the maximum variation case selection.

The time scope of the present study is short, but timing might have been a factor, nonetheless. The investigations and trials examined in the present study span the years 1944 to 1949. Most of them happened in 1944 and 1945. The short timespan notwithstanding, timing might have been a factor. Maybe the authorities handled trials differently after the Axis had been defeated than during wartime? For achieving maximum variation in the dimension of time, we consider both the dates of arrest and the dates of trial.

For maximum variation sampling, the dimension of space can be approached as place of ghetto or as place of trial. A spatial variation is provided by choosing cases referring to different ghettos. For the five in-depth case studies, we chose Balta, Odessa-Slobodka, and Tul′chin. These five case studies deal with a total of twelve defendants. Soviet authorities conducted two trials relating to the Balta ghetto at different times, one in 1944/1945, the other in 1947. These trials thus present two separate cases. Similarly, Soviet authorities conducted two separate investigations and trials into the Tul'chin ghetto Jewish council – one in Chernovtsy in 1944, and one in Tul'chin itself that began in 1945. Again, these are separate cases, raising the number of case studies dealing with the three ghettos to five. We support these five case studies with a qualitative content analysis of the investigative casefiles of these cases, adding files relating to three further ghettos, namely Mogilev-Podol′skii, Rybnitsa and Shargorod, which present another five separate investigations (separate either in time or place). These additional cases bring the total amount of defendants on level D) to 26, that is, for the qualitative content analysis of investigative casefiles. Our case selection also ensures that each region (judeţ) of Transnistria for which we could retrieve investigation and trial files is represented in the case studies. But the place of the ghettos might be less relevant than the place of the trials. Maybe defendants were treated differently on new Soviet territories than on old Soviet territories? That is on territories the Soviets had first controlled in 1940 after the Hitler-Stalin pact than on core Soviet territories? Think of the different cases related to Mogilev-Podol′skii ghetto: one of them took place on new, the other on old Soviet territory (i.e. in Chernovtsy and Mogilev-Podol′skii respectively). After all, the Soviets had already brutally sovietized the new acquisitions to their empire in 1940 – only to lose them to the Axis powers in 1941. After the Axis were driven out, a new round of Sovietization commenced. It stands to ask: how significant was that difference between old and new territories for the trials? In choosing trials held on new and old territories, we also strived to represent in our case selection all oblasts (Soviet regions) from which we could retrieve casefiles. Lastly, some trials were held at the place of the respective ghettos inside now former "Transnistria". Other trials were held outside of former "Transnistria" and far

away from the respective ghettos. Did this influence the proceedings? Our selection accounts for that type of spatial variation as well.

When it comes to Soviet authorities, variation must be achieved regarding investigative agencies, types of courts, publicity of trials and investigation and trial outcomes. Different investigative agencies such as the military counterintelligence SMESH, the NKVD and NKGB were involved in prosecuting collaboration (see chapter 5). Once investigated, cases were adjudicated by different sentencing body, such as military tribunals or the Special Board of the NKVD (see chapter 5). Maybe different institutions treated defendants differently? Furthermore, some trials were held completely sealed off from the public. But in other trials, at least the witnesses were summoned to the courts (see chapter 6). Maybe this influenced the proceedings? Lastly, the case selection should include different outcomes. Some defendants died in custody, some were released without trial, a few acquitted during the trials – but the majority was found guilty. Those were sentenced based on different legal instruments and to varying lengths of confinement in different types of Soviet penal camps (see chapter 8). All these differences are represented in the case studies.

Our case selection should also contain the full variation of defendants. Those prosecuted differed in their regions of origin. Here the distinction between local Soviet Jews and Jews deported from Romania is most significant. Social origins, education and political affiliation also varied and need to be accounted for. Lastly, some defendants confessed fully, some partially, yet others denied all accusations Soviet officials confronted them with. These different behaviors need to be included in the case studies. Our case selection encompasses the full variety of defendants.

Witnesses also differed in their regional, social and political backgrounds. Again, the divide between deportees and locals needs to be captured. But these regional differences are not synonymous with social and political divides, which might also have influenced witnesses' behavior in during investigations and trials. Our case selection accounts for these differences as well.

On analytical level D), we also employ qualitative content analysis, this time to the study of witnesses' and defendants' pretrial testimony. We follow two goals. First, by treating this testimony as one big opinion survey, we use thematic coding to correlate the prevalence of certain themes with demographic information about witnesses. Here, we use qualitative content analysis to answer questions such as: How commonly did Soviet and Romanian Jews among the witnesses voice accusations of anti-Soviet agitation? Are social conflicts between the two groups a central or a peripheral theme in the testimonies, and who talks about those conflicts more often – the locals or the deportees? We apply qualitative content analysis to the materials of the five case studies and to three further ghettos (i.e. the materials relating to ten separate investigations into the Jewish councils of the Balta, Mogilev-Podol′skii, Odessa-Slobodka, Rybnitsa, Shargorod and Tul′chin

ghettos). Analyzing the materials for the three additional ghettos will help to roughly corroborate some findings of the five in-depth case studies. It also ensures a minimum level of representativeness based a maximum variation sample.

The second goal we pursue with qualitative content analysis on analytical level D) is to generate an empirical basis for discussing document validity. Historians traditionally frame questions of document validity in terms of "source criticism".[111] As a method, "source criticism" aims "to verify the factuality of the source data and of the events the source data indicates", as one classic textbook puts it.[112] The method is thus concerned with the validity of the materials themselves: Was the historical material one studies falsified from the outset, or has someone interfered with it since it was created?[113] "Source criticism" also deals with the validity of historical materials' content, that is whether they adequately capture that part of reality they deal with.[114] Are the contents plausible in general and more specifically in the context they refer to?[115] What conscious and unconscious biases of the author have shaped the content?[116] Thus, historians applying source criticism try to estimate what distortions could be inherent to the materials they study.[117] In sum, source criticism in historiography boils down to genre-specific considerations on how to analyze process-generated data, for example diplomatic documents or, as in the present study, investigative casefiles.[118]

Since the present study is primarily built upon the analysis of Soviet investigative casefiles, a systematic and in-depth discussion of document validity is inevitable. After all, the materials produced by the Soviet state security agencies are notoriously riddled with ideological clichés, falsifications and confessions elicited by torture. Therefore, it is imperative to discuss the extent of potential distortions in the documentary record analyzed here.

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111 Originally a set of philological methods adapted for historiography. See: MOSES/KNUTSEN: Ways of knowing, p. 121.

112 BERNHEIM, Ernst: Lehrbuch der historischen Methode und der Geschichtsphilosophie. Mit Nachweis der wichtigsten Quellen und Hilfsmittel zum Studium der Geschichte, Leipzig $^{3}$1903, p. 294.

113 DROYSEN, Johann Gustav: Grundriss der Historik, Leipzig $^{3}$1882, p. 16.

114 MOSES/KNUTSEN: Ways of knowing, p. 132.

115 DROYSEN: Grundriss der Historik, p. 17.

116 Ibid.

117 KAMP, Jeanette et al.: Writing history! A companion for historians, Amsterdam 2018, p. 70.

118 Some of these genres even spawned their own "auxiliary sciences of history", such as numismatics, the study of coins, etc. See: JORDAN, Stefan: Theorien und Methoden der Geschichtswissenschaft (UTB, vol. 3104), Paderborn 2009, p. 33, 41. Müller provides a good definition of process-generated data: "Process-produced data are all those data that have been or are being collected as records by public and private organizations in the course of their activities and not only for the purpose of scientific or statistical evaluation." MÜLLER, Paul J.: Vorwort, in: Die Analyse prozeß-produzierter Daten, edited by Paul J. MÜLLER (Historisch-Sozialwissenschaftliche Forschungen. Quantitative sozialwissenschaftliche Analysen von historischen und prozeß-produzierten Daten, vol. 2), Stuttgart 1977, here p. 1. On process-generated data see also: BÜHL, Walter L.: Historische Soziologie. Theoreme und Methoden (Wissenschaftliche Paperbacks Soziologie, vol. 19), Münster 2003, p. 20. Of course, source criticism also encompasses the one method of generative data collection historians have at their hands, namely oral history. It lays out the rules on how to conduct oral history interviews and stipulates guidelines for their analysis. NIETHAMMER, Lutz: Fragen – Antworten – Fragen. Methodische Erfahrungen und Erwägungen zur Oral History, in: Oral history, edited by Julia OBERTREIS (Basistexte Geschichte, vol. 8), Stuttgart 2012, p. 31–71, here p. 34–35.

The investigative casefiles dealing with the six ghettos on analytical level D) form the basis of this discussion. We used qualitative content analysis and thematically coded a host of documents from these files, primarily protocols of witness depositions and defendants' interrogations. Such codes relate to questions as, for example: Did the investigators conduct the interrogation during the day or at night? If a defendant confessed to something, had he already admitted to it during a prior interrogation, or was the confession new? Did the confession follow a reproach, that is, had the interrogators demanded that the defendant should tell the truth right before he admitted something? In combination with a more traditional in-depth discussion of selected excerpts from the casefiles, these codes form the basis of our discussion of document validity.

Lastly, we use data triangulation throughout the study. That is, we combine different types of materials, mainly investigative casefiles, Soviet institutions' internal correspondence and statistics, as well as oral history interviews and memoirs. Data triangulation allows to balance biases and gaps in one set of materials by consulting another.

## Conclusion

This chapter answered the questions of what we study and how we study it in the present book. What we study are Soviet collaboration trials of Jewish ghetto functionaries from Transnistrian ghettos. More specifically, we approach the subject on four analytical levels: The level of Soviet collaboration trials in general (level A)), the level of all Soviet collaboration trials of Jewish ghetto functionaries from Transnistrian ghettos (level B)), the level of those 51 functionaries on whose investigations and trials archival evidence is available (level C)) and the level of select investigations and trials drawn from those 51 individuals (level D)). The representativeness of our findings decreases with every step up the chain – what we find out on level D) is hardly representative of the general phenomenon on level A). Whether levels C) and D) tell us a lot about level B) is open for debate, since the figure of around 200 cases on this level is a very rough estimate. Nevertheless, the step from level D) to C) can still yield solid results, since the cases on level D) were selected using the maximum-variation sampling technique.

Performing a zooming-in motion, we approach the subject with a range of different methods. These include descriptive ideal-type heuristics based on Ernst Fraenkel's concept of the "dual state", which we apply on all four analytical levels to describe the behavior of the Soviet agencies involved, beginning with a broad overview of Soviet collaboration trials on level A). Moving on to level C), we use the method of collective portrait, provide a quantitative overview of the investigations and trials and employ a qualitative content analysis of key decision documents. These methods aim to establish patterns of how the Soviets targeted, prosecuted, tried, and sentenced former ghetto functionaries. The basic method on level D) is the case study. We occasionally

supplement the five case studies with a qualitative content analysis of protocols (of witness testimonies, defendants' interrogations, and confrontations) drawn from the casefiles on level D). The same qualitative content analysis also serves as the empirical basis for our discussion of document validity in the following chapter.

# Source criticism – Problems in analyzing Soviet investigative casefiles and how to solve them

The analysis presented in this book is based on a variety of historical materials, and the validity of the information contained in them needs to be discussed. The materials we analyze can be grouped into three sets: 1) oral history interviews and written memoirs, 2) internal communications, reports, and statistics produced by the Soviet investigative and judiciary institutions in charge of conducting collaboration trials, 3) the investigative casefiles about such investigations and trials compiled by these institutions.

Our study can make its biggest contribution to the discussion of set 3), therefore we limit our comments on the other two sets to this paragraph. There is a vast literature on oral history and memoirs, even if one considers only what was written more or less directly about oral history relating to the Holocaust.[1] For methodological orientation, we direct the reader to this literature. Besides the methodological meta-level, the body of oral history and written testimonies itself has grown to seemingly incalculable proportions.[2] Therefore, when we cite such materials in the present book, this entails no claim to exhaustiveness – it is more likely that we missed some relevant materials, than that we found all of them. Regarding official internal Soviet documentation, there is a long and lively tradition of debating its validity, especially that of statistics. Without going into detail, the present study operates on the basic assumption that contrary to official propaganda, secret internal statistics and materials are quite reliable, since Soviet institutions needed those numbers to function.[3] We leave our comments on sets 1) and 2) at that, since we want to focus on the investigative casefiles in the following. That type of materials is at once the most important for

[1] See, for example: BROWNING, Christopher R.: Collected Memories. Holocaust History and Postwar Testimony, Madison, WI 2003. BROWNING, Christopher R.: Holocaust History and Survivor Testimony. Challenges, Limitations, and Opportunities, in: Against the Grain, edited by Ezra MENDELSOHN / Stefani HOFFMAN / Richard I. COHEN (Jewish Intellectuals in Hard Times) 2014, p. 277–284. GREENSPAN, Henry: The Awakening of Memory. Survivor Testimony in the First Years after the Holocaust, and Today, Washington, D.C. ²2004. JÜNGER, David: Verzerrte Erinnerung. Die Wirkung des Holocaust auf das Zeugnis von der nationalsozialistischen Judenverfolgung, in: Geschichte und Gesellschaft 3 (2021), p. 412–437. KNELLESSEN, Dagi/POSSEKEL, Ralf: Zeugnisformen. Berichte, künstlerische Werke und Erzählungen von NS-Verfolgten (Reihe Bildungsarbeit mit Zeugnissen, vol. 1), Berlin 2015. MATTHÄUS, Jürgen (ed.): Approaching an Auschwitz survivor. Holocaust testimony and its transformations, New York 2009. NIETHAMMER: Fragen – Antworten – Fragen. PERKS, Robert/THOMSON, Alistair (ed.): The oral history reader (Routledge readers in history), London and New York ³2015. PLATO, Alexander von: Zeitzeugen und die historische Zunft. Erinnerung, kommunikative Tradierung und kollektives Gedächtnis in der qualitativen Geschichtswissenschaft – ein Problemaufriss, in: BIOS 1 (2000), p. 5–29. SHENKER, Noah: Reframing Holocaust testimony (Modern Jewish Experience), Bloomington, IN 2015. WELZER, Harald: Das Interview als Artefakt. Zur Kritik der Zeitzeugenforschung, in: BIOS 1 (2000), p. 51–63.

[2] Holocaust historian Raul Hilberg wrote already in the 1980s: "Sometime during the second half of the late 1950s, the historian and bibliographer Philip Friedman, a survivor himself, told me that survivors' accounts were getting out of hand, that they were too numerous to list. At last count there were more than 18,000. That was thirty years ago." HILBERG, Raul: The anatomy of the Holocaust. Selected works from a life of scholarship (Vermont studies on Nazi Germany and the Holocaust, vol. 8), New York 2020, p. 148.

[3] WHEATCROFT, Stephen G.: Victims of Stalinism and the Soviet Secret Police. The Comparability and Reliability of the Archival Data – Not the Last Word, in: Europe-Asia Studies 2 (1999), p. 315–345, here p. 324.

the present study and the one commonly considered most problematic. Hence, our study can make its biggest contribution regarding the analysis of that type of material, while offering little new insight about oral history or Soviet statistics. Our discussion therefore revolves around the investigative casefiles and the protocols contained therein.

The validity of the information contained in these documents is a matter of debate in historiography.[4] There is considerable concern that the information in the casefiles was potentially elicited using torture or that defendants' and witnesses' statements were fabricated altogether (see the discussion below). In other words, many scholars are concerned about various distortions in how the materials reflect reality. Those potential distortions mainly concern a certain type of documents contained in the Soviet investigative casefiles: the protocols of verbal exchanges, i.e. of witness depositions, confrontations and defendants' interrogations. Our contribution to this debate approaches the problem on three levels, examining different potential distortions in protocols of verbal exchanges on each level.[5] These levels are: the protocols vs. the events they relate to, the protocols vs. the verbal exchange they seemingly recorded, and the protocols vs. the free will of those questioned.

The level of protocols vs. events is concerned with validity in the most basic sense. The questions is whether the claims about some past event recorded in the protocol are true. The level of protocols vs. verbal exchange is concerned with the validity of the record itself, rather than with the validity of the claims about some event in the world other than the verbal exchange itself. The question is: Was the testimony someone gave accurately recorded? Both levels are related, but different: If someone intentionally or unintentionally provided the authorities with false information, that constitutes one type of distortion. The claims recorded in the protocol are then no valid representation of past events. But if the authorities did not record, for instance, any exonerating information about a defendant, that would constitute another type of distortion. The protocol is then no valid record of the verbal exchange. The problem of a distorted record thus precedes the problem of a distorted account of events recorded in the protocol. Lastly, the level of protocols vs. free will potentially constitutes another type of distortion. What good is a protocol in which the investigators faithfully recorded someone's words if that someone only said them because he was afraid, or the investigators had tortured him? Again, the resulting information in

[4] The problem is often framed as one of "document reliability", which is something of a misnomer. For researchers, "reliability" concerns the question if someone else using the same methods and the same data would arrive at the same results. That is not what the discussion is about. We do not wonder whether we would write down the same things Soviet investigators wrote down, were we to employ the same interrogation techniques when questioning defendants in the 1940s. We wonder whether the information in the casefiles adequately captures the reality is supposedly describes – in other words, its validity.

[5] On source criticism as the analysis of distortions, see: KAMP et al.: Writing history!, p. 70.

the protocols will not provide a valid picture of the events the document is about. Discerning these three levels helps to get a clearer picture about the document validity of Soviet investigative casefiles.

Before delving into Soviet investigative casefiles and the protocols within them, it stands to clarify what role such files play in modern legal systems more generally. In such systems, these files serve as means of internal communication in the organizations that produce them.[6] In addition, and more importantly, the agents that create and interact with investigative casefiles use them to justify the decisions they themselves take in a given case.[7] The addressees of such files are not the general public or the witnesses or defendants whose testimonies are recorded in it, but the investigators and adjudicators handling the case (as well as their supervisors).[8] These people do their job based on the files: they plan, conduct and report their investigations, and they take their judicial decisions, be it acquitting someone, be it convicting them.[9] Therefore, any investigative casefile is the product of a selective gathering of information, and the governing criterion of relevance is whether a piece of information could be relevant "for the legitimation of procedural decisions or as a basis of knowledge for the addressees".[10] The information thus selectively gathered can take the form of different documents, with protocols of verbal exchanges being only one of many.

The Soviet investigative casefiles we analyzed for the present study contain a great variety of documents: orders (for arrest, release, admission of legal counsel etc.), reports of investigative measures (such as home searches), protocols of verbal exchanges (witness depositions, defendant's interrogations, and confrontations), indictments, records of court proceedings, decision documents (such as case termination orders or verdicts, be they judicial or administrative, be they convictions or acquittals), letters (by witnesses or defendants and their relatives), and lastly, correspondence and decision documents related to appeals and rehabilitation. The composition of these files seems to have been relatively stable since at least the 1930s.[11] Also in keeping with the previous decade, the main type of documents in the files relating to 1940s war crimes and collaboration proceedings

[6] LEUSCHNER, Fredericke/HÜNEKE, Arnd: Möglichkeiten und Grenzen der Aktenanalyse als zentrale Methode der empirisch-kriminologischen Forschung, in: Monatsschrift für Kriminologie und Strafrechtsreform / Journal of Criminology an Penal Reform 6 (2016), p. 464–480, here p. 467.
[7] Ibid.
[8] Ibid., p. 467–468.
[9] Ibid. NIEHAUS, Michael: Wort für Wort. Zu Geschichte und Logik des Verhörprotokolls, in: Das Protokoll. Kulturelle Funktionen einer Textsorte, edited by Michael NIEHAUS, Frankfurt am Main 2005, p. 27–47, here p. 34.
[10] LEUSCHNER/HÜNEKE: Möglichkeiten und Grenzen, p. 467.
[11] See the varying, but largely overlapping lists provided by different scholars concerning the 1930s and 1940s: VIOLA, Lynne: Stalinist perpetrators on trial. Scenes from the great terror in Soviet Ukraine, New York 2017, p. 7. RUSINA, Iu. A.: Istochnikovedenie noveishei istorii Rossii, Ekaterinburg 2015, p. 49–50. RUDAKOVA, Daria: Soviet Women Collaborators in Occupied Ukraine 1941-1945, in: Australian Journal of Politics and History 4 (2016), p. 529–545, here p. 532.

are protocols of verbal exchanges (depositions, interrogations, and confrontations).[12] Therefore, it is problematic to say the least that some researchers analyze Soviet investigative casefiles drawing exclusively on documents such as indictments and ignore the bulk of documents in the files, namely the protocols of verbal exchanges.[13]

Material evidence, such as captured German or Romanian "trophy documents", is in general much rarer in the investigative casefiles of the time (that is those dealing with war crimes or collaboration).[14] A quick screening of the files we collected on analytical level C) reveals that this is the case here too. Where documentary evidence is included, it stems from body or home searches, such as the newspaper clippings confiscated from defendant Rakhmut and used as evidence of his alleged anti-Soviet convictions.[15] Conspicuously absent from the casefiles are documents stemming from the Jewish ghetto administrations themselves. That is surprising, since the Jewish ghetto functionaries had been part of a bureaucracy that helped administer the lives of hundreds and sometimes thousands of people in a given ghetto (see chapters 10 to 14).

Moreover, Soviet authorities collected large quantities of files the Axis occupation authorities had produced. A 1943 NKVD report on the situation in the recently reconquered city of Kharkov shows that Soviet security organs were keen to gather any "archival documents that are of government or operative significance".[16] Therefore, the Soviets collected all documents produced by the occupation authorities on which they could get their hands.[17] In the report, the NKVD not only proudly listed all arms it had confiscated in Kharkov, but also how many truckloads of documents it had seized.[18] Information, it appears, was as important as machineguns. And theoretically, the files of the Jewish ghetto administration surely would have been of "operative significance". For example, when Soviet investigators later went after former Jewish functionaries,

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12 PODKUR, Roman/CHENTSOV, Viktor: Dokumenty organov gosudarstvennoi bezopasnosti USSR 1920–1930-kh godov. Istochnikovedcheskii analiz, Ternopol' 2010, p. 274. RADCHENKO, Yuri: "We Emptied our Magazines into Them". The Ukrainian Auxiliary Police and the Holocaust in Generalbezirk Charkow, 1941–1943, in: Yad Vashem Studies 1 (2013), p. 63–98, here p. 68. POHL, Dieter: Sowjetische Strafverfahren gegen Kollaborateure, in: Bewachung und Ausführung. Alltag der Täter in nationalsozialistischen Lagern, edited by Angelika CENSEBRUNN-BENZ / Marija VULESICA (Reihe Geschichte der Konzentrationslager 1933–1945, vol. 14), Berlin 2011, p. 101–110, here p. 106.

13 Irina Makhalova rightly points out that these researchers necessarily miss some of the most important information in the investigative casefiles. See: MAKHALOVA, Irina: Kollaboratsionizm v Krymu v period natsistskoi okkupatsii, Moskva, p. 34.

14 RICH, David Alan: Reinhard's Footsoldiers. Soviet Trophy Documents and Investigative Records as Sources, in: Remembering for the future. The Holocaust in an age of genocide, edited by John K. ROTH, Basingstoke 2001, p. 688–701, here p. 689. POHL: Sowjetische Strafverfahren, p. 106.

15 Rakhmut, Samuil Khaimovich, RG-31.018M, R-2838, F03, 322, Postwar war crimes trials related to the Holocaust, 1943-1991, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 105–106.

16 People's Commissar of Internal Affairs of the Ukrainian SSR Commissar of State Security Riasnoi to People's Commissar of Internal Affairs of the USSR, Commissar General Beria L. P.: Report on the situation in the city of Kharkov and the results of work of the NKVD organs for August 27, 1943, 27.08.1943, F16O1D543, p. 12–17, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU), p. 15.

17 Ibid., p. 15–16.

18 Ibid.

they delved into questions such as forced labor mobilization. Organizing forced labor for hundreds or thousands of people must have created a paper trail at some point in time. Since we find no trace of that paper trial in the investigative casefiles, it stands to conclude the Soviets either did not gather any significant number of documents produced by the Jewish ghetto administrations, or for some reason did not use those documents for criminal prosecution.

The truth is probably a mixture of both, with a strong tendency to an overall lack of documentation in the archives. On the one hand, the USHMM encyclopedia on camps and ghettos regularly cites individual documents stemming from Jewish ghetto administrations, which the USHMM obtained from various former Soviet archives in Ukraine and Moldova.[19] Thus, the Soviets collected at least some of these documents which eventually ended up in their archives. Other relevant materials also found their way into archives, such as the documents of the Central Jewish Office (Centrala Evreilor) in Bucharest, which coordinated the aid deliveries to the Transnistrian ghettos and was in extensive correspondence with their Jewish councils.[20] But the records of this organization were in Bucharest, and therefore unavailable for the local Soviet investigators in charge of former ghetto functionaries' cases.[21] Even if the Soviets had been able (or willing) to obtain these documents – an organization's external correspondence still is something quite different than its internal records.[22] Concerning such materials, it appears that the Jaegendorf collection held by the Yad Vashem Archives is the most comprehensive documentation of a former Transnistrian Jewish ghetto administration available in any archive.[23] Siegfried Jaegendorf, the former head of the Mogilev-Podol'skii ghetto, brought part of the Jewish council's records with him to Romania when he returned from Transnistria.[24] No similar document collections are available in Romanian archives (or former Soviet archives).[25] Thus, it is unlikely that Soviet authorities systematically collected documents produced by the Jewish ghetto administrations.

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[19] See, for example, the sources cited for the entry on the Balta ghetto: CREANGĂ, Ovidiu/KRUGLOV, Alexander: Balta, in: Camps and ghettos under European regimes aligned with Nazi Germany, edited by Joseph R. WHITE / Mel HECKER / Geoffrey P. MEGARGEE (The United States Holocaust Memorial Museum Encyclopedia of camps and ghettos, 1933–1945, vol. 3), Bloomington 2018, p. 597–598, here p. 598.

[20] DELETANT, Dennis: Hitler's Forgotten Ally. Ion Antonescu and his Regime, Romania 1940–1944, London 2014, p. 120–126.

[21] These records are now also available at the United States Holocaust Memorial Museum: Centrala Evreilor, 1941–1944, RG-25.016M, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC.

[22] At least one defendant formally requested that the Soviet investigators contact the Central Jewish Office and obtain his past correspondence with that organization, since that evidence would immediately clear him of all charges. However, the investigators declined to grant that request. See chapter 12.

[23] Archive of Siegfried Jaegendorf, President of the Jewish Coordinating Committee for the Deported Jews in Transnistria, 1941-1967, P.9, Yad Vashem Archives (YVA).

[24] JAGENDORF, Siegfried/HIRT-MANHEIMER, Aron: Jagendorf's foundry. Memoir of the Romanian Holocaust, 1941–1944, New York [1]1991, p. 176.

[25] ANGRICK: Transnistrien, p. 303.

In sum, such documentation entered the archival record only very selectively, and it apparently played no role whatsoever in the Soviet prosecution of former Jewish ghetto functionaries. That is unfortunate, since Soviet authorities usually did not falsify such records – the "trophy documents" scholars find in Soviet files are mostly genuine.[26]

With the lack of material evidence in the investigative casefiles, it comes to no surprise that the primary type of document within them is protocols of verbal exchanges, which by default were also the primary type of evidence used by the judiciary – after all, there wasn't much else the authorities had at their hands.[27] In the following, we approach these protocols on the three levels specified above, that is, the protocols vs. the events they relate to, the protocols vs. the verbal exchange they seemingly recorded, and the protocols vs. the free will of those questioned. Examining the protocols on these levels allows a differentiated discussion of their validity.

## Protocols vs. events

In general, document validity can be approached with external or internal checks. External checks are the simplest and they help answer questions of document validity at the basic level of documents vs. the events they relate to. Doing external checks means triangulating documents with other materials and seeing if the contents match. Doing the much trickier internal checks means to hypothesize about potential distortions in a document judging by its content and the contents of the surrounding casefile alone. The necessity to triangulate is acknowledged in the scholarship on Soviet 1940s war crimes and collaboration trials, as well as in the broader historiographic literature on how to analyze Soviet investigative casefiles.[28] The agenda for the present study is thus obvious: triangulate whenever there are other materials besides the investigative casefile.

But external checks also allow a more general assessment of document validity. Diana Dumitru triangulated 61 Soviet investigative casefiles with oral history interviews related to the same events.[29] The comparison confirmed "the accuracy of the overall account, as depicted by the NKVD investigation documents".[30] Thus, the overlap between Soviet investigative casefiles and

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[26] KUDRYASHOV, Sergey: Ordinary Collaborators. The Case of the Travniki Guards, in: Russia. War, peace and diplomacy, edited by Ljubica ERICKSON / Mark ERICKSON, London 2005, p. 226–239, here p. 227–228.
[27] POHL: Sowjetische Strafverfahren, p. 106.
[28] See, for example: Ibid., p. 110. BLUM et al.: Survivors, p. 230. KUDRYASHOV: Ordinary Collaborators, p. 228. PODKUR/CHENTSOV: Dokumenty organov gosudarstvennoi, p. 277.
[29] Three things are problematic about the sample Dumitru used for her analysis. First, it covers a relatively large timeframe, 1944 to 1957, during which the Soviet investigative and adjudicative organs changed significantly. Second, the sample only includes cases form Moldova, which may introduce regional specificities. Third, Dumitru accessed these files as part of the USHMM collections, which are by no means a representative subset of the overall Soviet trial documentation (even just the documentation for that particular region). DUMITRU, Diana: An Analysis of Soviet Postwar Investigation and Trial Documents and Their Relevance for Holocaust Studies, in: The Holocaust in the East. Local perpetrators and Soviet responses, edited by Michael DAVID-FOX (Kritika historical studies), Pittsburgh PA 2014, p. 142–157, here p. 145.
[30] Ibid., p. 148.

oral history was considerable. On the one hand, that result helps to ease fears of overall falsification. It appears that in 1940s proceedings like the ones we analyze here, Soviet investigators did not write down pure fiction.

On the other hand, that general result is of little help when dealing with any concrete aspect discussed in an investigative casefile, especially if there is nothing to triangulate the file with. And unfortunately, that situation is quite common: often, there are no other historical materials to study a given event that occurred during Axis occupation.[31] Therefore, external checks are limited in their capacity to help researchers analyze the investigative casefiles. Internal checks are needed, which leads us to the level of protocols vs. the verbal exchange they seemingly recorded and the level of protocols vs. the free will of those questioned.

## Protocols vs. verbal exchange

To be sure, on very rare occasions external checks can be applied to these two levels too. Sometimes one is lucky enough to find materials that help to verify that a protocol accurately depicted a verbal exchange, or, vice versa, instances where the investigative casefile helps to verify information about a Soviet collaboration trial drawn from another type of material.[32] Consider the investigative casefile of Ida Teplitskaia-Shkodnik and the oral history interview with her. On October 20, 1946, a Soviet military tribunal found her guilty of treason and sentenced her to a long term of hard labor.[33] The authorities saw it as proven that she had served in the Jewish ghetto police in Uman.[34] During an oral history interview in 1997, Teplitskaia-Shkodnik claimed that she made an unusual request to the military tribunal on the day of her trial. If they were to find her guilty, they should sentence her to death and have her shot. If not, they should release her.[35] That sounds not very credible and one is tempted to brush it off as an elderly lady bragging to an

[31] PENTER: Collaboration on Trial, p. 784. For yet another recent example, see Penter's discussion of German murders of disabled people in Preslav. PENTER, Tanja: Vergessene Opfer von Mord und Missbrauch. Behindertenmorde unter deutscher Besatzungsherrschaft in der Ukraine (1941-1943) und ihre juristische Aufarbeitung in der Sowjetunion, in: Journal of Modern European History 3 (2019), p. 353–376, here 2, 4. POHL, Dieter: Sowjetische und polnische Strafverfahren wegen NS-Verbrechen. Quellen für Historiker?, in: Vom Recht zur Geschichte. Akten aus NS-Prozessen als Quellen der Zeitgeschichte, edited by Finger, Jürgen, Göttingen 2009, p. 132–141, here p. 140.

[32] Since this is so rare, it is all the more surprising when scholars miss the few excellent opportunities to triangulate that are available to them. In their article on Jewish ghetto functionaries tried in Soviet Lithuania, Blum, Chopard and Koustova simply ignore that there is an oral-history interview with one of the defendants they write about. See: BLUM et al.: Survivors. The interview is: PADISON, Perets, Interview 21945. Interviewed by Rozalia Dobina. Visual History Archive, USC Shoah Foundation 11.11.1996, https://vha.usc.edu/viewingPage?testimonyID=23535&returnIndex=0#, last accessed May 29, 2020.

[33] Teplitskaia-Shkodnik, Ida Elovna, RG-31.018M, R-62, 20950, Postwar war crimes trials related to the Holocaust, 1943-1991, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 71.

[34] Ibid., p. 51. Since Uman was German-controlled territory, the case is not included in our sample at analytical level C) and does not feature in the rest of our study.

[35] TEPLITSKAIA-SHKODNIK, Ida, Interview 38426. Interviewed by Maxim Sofovich. Visual History Archive, USC Shoah Foundation 26.11.1997, https://vha.usc.edu/viewingPage?testimonyID=39917&returnIndex=0#, last accessed May 09, 2018, segment 228.

interviewer about her alleged youthful fearlessness. Yet the trial record confirms every word – it is precisely what Teplitskaia-Shkodnik said to the court.[36]

Nevertheless, external checks fall almost completely short when we approach the levels of protocols vs. verbal exchange and of protocols vs. free will. There simply aren't enough other materials in which people talk about what they said when they gave witness testimony or what happened when they were interrogated as defendants. Even if former witnesses or defendants talked or wrote about their experience with the Soviet justice system, the information they provided is often too vague to say anything about a protocol's validity as a record of a conversation.[37]

Therefore, researchers need guidelines for judging the validity of a protocol based on the protocol itself and the other documents in the same investigative casefile – that is, on internal checks. Such guidelines mostly pertain to the levels of protocols vs. verbal exchange and protocols vs. free will. Yet from the outset, such internal checks have limits, simply by virtue of what was recorded, and what was not. Occasionally, a protocol allows to see that the record available for researchers was very likely incomplete.

Thus, when Samuil Bosharnitsan petitioned before the authorities to reopen his case and overturn his conviction, he claimed that the investigators had simply removed the testimonies of twelve witnesses from the casefile, because these people had "rehabilitated" him, as Bosharnitsan put it.[38] Bosharnitsan claimed that before the authorities arrested him, an acquaintance told him that the investigators had already questioned these people.[39] We only know this version of events because Bosharnitsan filed a cassation appeal against the court's sentence.[40] But many defendants were even denied such a minimal legal remedy. In turn, those who could not file appeals could not enter information about such alleged peculiarities into the documentary record of the investigative casefile. Therefore, internal checks remain limited by definition.

Above, we had already mentioned that investigative casefiles represent a selective collection of information, and in the following, we will show how that played out on the level of protocols as the primary type of document within them. But one thing should be clear from the outset: Since

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[36] Teplitskaia-Shkodnik, Ida Elovna, USHMM, RG-31.018M, R-62, 20950, p. 70.

[37] Thus, defendant Taikh later published a report about his time in the ghetto where he also briefly talked about his encounter with the Soviets. Yet we learn little more than that he was "in a terrible Russian prison for over six months". TEICH, Meir: The Jewish Self-Administration of Ghetto Shargorod (Transnistria), in: Yad Vashem Studies (1958), p. 219–254, here p. 231.

[38] Bosharnitsan, Samuil Samuilovich, RG-54.003*06, War Crimes Investigation and Trial Records from the Republic of Moldova, 1944-1955, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 77.

[39] Ibid., p. 96–97.

[40] After the investigation was reopened, the interrogators tried to deflect Bosharnitsan's claim by asking witnesses whether they had been interviewed before. Most witnesses denied that. However, Bosharnitsan had not named concrete individuals in his appeal. Therefore, the investigators could just have asked some other witnesses, and not those who had "rehabilitated" Bosharnitsan. Ibid., p. 108-111, 112-114, 115-118, 119-121, 126-130, 133-135, 136-139, 142-144, 145-149, 155-159, 160-164, 171-174, 179-184.

much was not recorded in the casefiles and in the protocols, the evidence we present on the following pages will often be circumstantial rather than direct, lying in the realm of probability rather than certainty. The remaining margin of error is significant. We trust the reader's capability to assess whether our claims are solid or unsubstantiated. In the five case studies making up the second half of this book, we try to enable such an assessment by unfolding the available evidence in great, at times even excessive detail – to which we see no alternative in a study based primarily on investigative casefiles created by agencies as the NKGB.

**A theory of the processes that generated protocols**

As with the casefiles, thinking about protocols in the Soviet case is much easier if one first considers what they are in modern legal systems in general. Here, protocols present a record of an asymmetric form of communication between state (legal, police) officials and citizens (as suspects or witnesses) that state officials conduct to investigate crimes.[41] Since protocols address adjudicators and investigators and allow them to take and legitimize procedural decisions, protocols can be defined as a "[t]echnique of writing down, that transforms oral speech events into institutional facts and provides them with an institutionally backed claim to truth."[42] As the casefiles they are part of, protocols thus always represent a selective gathering of information, governed by the criterion of whether a piece of information can help the addressees to take and legitimize procedural decisions. To understand what exactly that selection entailed, one needs a to understand several things: what type of trial one is dealing with, what constituted evidence in a given legal system, what categories of offences the evidence was gathered about and what technical knowledge and skills the investigators used to depose witnesses and interrogate defendants.[43]

In other words, since protocols are process-generated data, we need a theory of the process that generated them.[44] To develop internal checks for protocols from Soviet 1940s collaboration trials, we need a theory of the underlying interrogation and recording practices and that theory needs to rest on a basis of both scholarly literature and empirical observations. The empirical foundation

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[41] SCHUMANN, Antje: Verhör, Vernehmung, Befragung. Zu Geschichte und Dogmatik des Rechtsbegriffs der Vernehmung im Strafprozess und seiner Auflösung im 20. Jahrhundert (Jus poenale, vol. 8), Tübingen 2016, p. 1.

[42] NIEHAUS, Michael: Epochen des Protokolls, in: Zeitschrift für Medien- und Kulturforschung 2 (2011), p. 141–156, here p. 148.

[43] HILBERG, Raul: Sources of Holocaust research. An analysis, Chicago, IL 2001, p. 45. ORTMANN, Alexandra: Machtvolle Verhandlungen. Zur Kulturgeschichte der deutschen Strafjustiz 1879–1924 (Kritische Studien zur Geschichtswissenschaft, vol. 215), Göttingen 2014, p. 53–56. FUCHS, Ralf-Peter/SCHULZE, Winfried: Zeugenverhöre als historische Quellen – einige Vorüberlegungen, in: Wahrheit, Wissen, Erinnerung. Zeugenverhörprotokolle als Quellen für soziale Wissensbestände in der Frühen Neuzeit, edited by Ralf-Peter FUCHS / Winfried SCHULZE (Wirklichkeit und Wahrnehmung in der frühen Neuzeit, vol. 1), Münster 2002, p. 7–40, here p. 14. LEPSIUS, Susanne: Zeugnisse. Review of: Wahrheit, Wissen, Erinnerung. Zeugenverhörprotokolle als Quellen für soziale Wissensbestände in der Frühen Neuzeit (Wirklichkeit und Wahrnehmung in der Frühen Neuzeit vol. 1), Münster 2002, , edited by Ralf-Peter Fuchs and Winfried Schulze, in: Rechtsgeschichte - Legal History 03 (2003), p. 182–184, here p. 182–183.

[44] Much like social scientists need a theory of their classical methods such as surveys, interviews, and experiments to understand the data these methods produce.

must include the contemporary legal framework and instructional literature, as well as a sufficient number of protocols. We need to know what laws governed the process and what technical knowledge and skills Soviet investigators could have had based on the instructional literature available to them. But we also need to see whether they abided to those laws and used that knowledge in practice. After all, the contents of normative legal texts and instructional manuals could be quite irrelevant if the investigators did not know them or could afford not to follow them.

Besides the code of criminal procedure and a key contemporary textbook on how to conduct a criminal trial, the following discussion rests on protocols drawn from the Soviet investigative casefiles on analytical level D) of the present study. To be specific, the basis is formed by 310 pretrial witness testimonies, 179 defendant's interrogations and 67 confrontations (interrogations in which the investigators simultaneously questioned either a defendant and a witness or two defendants). In total, 26 defendants and 247 individual witnesses provided these testimonies. Using qualitative content analysis, we thematically coded these materials. In the following, we present some of the results of that coding, combined with an in-depth discussion of select excerpts more akin to traditional source criticism (see chapter 1).

Besides an empirical basis, a theory of interrogation and recording practices needs to consider the existing literature from different fields (and to varying degrees of exhaustiveness). It must include scholarship on interrogation and recording practices in USSR and other dictatorships, such as national socialist Germany, as well as the broader historiography on protocols and underlying practices in other countries and other periods, reaching back to early modern inquisition trials. More broadly, an occasional glance into criminology is also beneficial. Literature from these areas helps to develop a theory of the interrogation and recording practices that Soviet investigators used when they created protocols of verbal exchanges.

Luckily, a basic theoretical framework is already at hand and well established in historiography, namely that of a threefold authorship. According to this model, protocols have three authors: an intellectual, a material and a juridical one.[45] The intellectual author is the witness or defendant. He "drafts the content of the testimony and arranges it".[46] In both areas, the intellectual author cannot act autonomously. He interacts with the juridical author, the representative of the state (be it a police or state security officer or a judge).[47] The juridical author "give[s] weight to the testimony through his institutional position: through investigative and judicial activity [...] and through his

[45] Finger, Jürgen/Keller, Sven: Täter und Opfer. Gedanken zu Quellenkritik und Aussagekontext, in: Vom Recht zur Geschichte. Akten aus NS-Prozessen als Quellen der Zeitgeschichte, edited by Finger, Jürgen, Göttingen 2009, p. 114–131, here p. 117. Initially, the model was not designed specifically for judicial protocols, see: HOWELL, Martha C./PREVENIER, Walter: From reliable sources. An introduction to historical methods, Ithaca, N.Y. ⁴2001, p. 63.
[46] Finger, Jürgen/Keller, Sven: Täter und Opfer, p. 117.
[47] Ibid.

legal knowledge, dictating the testimony or instructions to the transcript writer."[48] Moreover, the juridical author "significantly influences the course of the conversation through his questions, sets topics, avoids them, and directs the interrogation through his questioning style."[49] That is the reason why the communication is asymmetric. Finally, the interaction between intellectual and juridical author only enters the protocol in a mediated way, because it is written down by the material author, another official who takes the notes.[50] In doing so, the material author "smooths out the statement in the protocol, transfers it from dialect to standard language, changes the style from colloquial, perhaps rather vague, imprecise spoken language to bureaucratic language oriented to terms of criminal law […]".[51] Thus, "transcription is translation".[52] The juridical and material authors' task is to transform the things the intellectual author says into something the addressees of the protocol and the casefile can work with – something that is recognized as evidence and allows the investigators and adjudicators to take and legitimize procedural decisions in the given case.[53] Yet despite the manifold ways in which the juridical and material authors influence the final protocol, intellectual authors never disappears completely from the protocol – to a degree, the contents are still their version of the events (except, of course, in cases of outright falsification).[54]

Applying the model of threefold authorship to the investigative casefiles on analytical level D), it quickly becomes obvious that juridical and material author were most often the same person. As previous scholarship already established, in most instances the name of one specific investigator who questioned suspects and witnesses uniformly corresponds to one specific handwriting.[55] There are rare exceptions to that rule in some of the casefiles.[56] But for the most part, witnesses and defendants talked just to one Soviet investigator, who also wrote down the protocol.

**Language questions – transcription as translation in the literal sense**

When applying the idea that transcription is translation to the protocols on analytical level D), it becomes clear that this was sometimes true in the most literal sense. The protocols were all in

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[48] Ibid.
[49] Ibid.
[50] Ibid.
[51] Ibid. See also: ORTMANN: Machtvolle Verhandlungen, p. 63. BECKER, Peter: „Recht schreiben" – Disziplin, Sprachbeherrschung und Vernunft. Zur Kunst des Protokollierens im 18. und 19. Jahrhundert, in: Das Protokoll. Kulturelle Funktionen einer Textsorte, edited by Michael NIEHAUS, Frankfurt am Main 2005, p. 49–76, here p. 65.
[52] VERHOEVEN, Claudia: Court Files, in: Reading primary sources. The interpretation of texts from nineteenth- and twentieth-century history, edited by Miriam DOBSON (Routledge guides to using historical sources), London 2009, p. 90–105, here p. 93.
[53] BRÜCKWEH, Kerstin: Dekonstruktion von Prozessakten. Wie ein Strafprozess erzählt werden kann, in: Vom Recht zur Geschichte. Akten aus NS-Prozessen als Quellen der Zeitgeschichte, edited by Finger, Jürgen, Göttingen 2009, p. 193–204, here p. 196–197.
[54] ORTMANN: Machtvolle Verhandlungen, p. 67.
[55] PENTER: Local Collaborators, p. 21.
[56] For example, see the protocols of interrogations conducted by the same investigator, in which the handwriting occasionally differs, suggesting the presence of a second Soviet official: Shtrakhman, Nakhman Mortkovich, RG-54.003*44, War Crimes Investigation and Trial Records from the Republic of Moldova, 1944-1955, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 13, 19, 20, 26, 27, 28, 29, 31, 32, 33, 35, 36.

Russian, but some of these records represented conversations held in another language.[57] Such translation makes protocols much more likely to contain errors, misunderstandings and distortions.[58] The casefiles sometimes allow to see this directly. Consider the following exchange contained in the third deposition of witness Raukher:

> "Question: And why then did you declare during your interview on July 19th that Prais sent people to work?
>
> Answer: My testimony is false. The false testimony I gave as a result of poor knowledge of the Russian language."[59]

Interestingly, 27 or 15% of the 176 defendant's interrogation protocols note that the conversation was not held in Russian or that a translator was present. Some protocols only state that a translator took part, others explicitly mention the concrete language of the conversation. Perhaps surprisingly, Romanian is less commonly mentioned than German and "the Jewish language", aka Yiddish.[60] Among the translators were people with names such as "Engel"' and among the interrogators some with names such as "Landau", suggesting that the Soviet security organs tasked Jewish officers with overcoming the language barriers to some of the defendants and witnesses.[61] Adding credibility to this assumption is said officer Landau's personal file, according to which she was in fact Jewish, and, moreover, her superiors noted benevolently in 1940 how she studied German.[62]

Of the 310 witness testimonies, only five protocols specify that the conversation had taken place in a language other than Russian. It thus seems that Soviet authorities considered it more important to note issues of translation when it came to defendants' interrogations.[63] However, it is highly likely that many more witnesses' testimonies were translated into Russian when the investigator wrote the protocol. After all, almost a third of the witnesses questioned in the casefiles on analytical level D) did not stem from pre-1940 Soviet territories. It is much less likely that these mostly Romanian Jews spoke Russian, but the protocols of those Jews' depositions almost never acknowledge that the protocol was a translation.[64] Apparently the authorities simply did not care

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[57] On the problem of translation see also: DUMITRU: Analysis, p. 153.
[58] SOLONARI: Patterns of Violence, p. 754.
[59] Rakhmut, Samuil Khaimovich, USHMM, RG-31.018M, R-2838, F03, 322, p. 54–57.
[60] Yiddish was the language Romanian and Soviet Jews had used to communicate in the Transnistrian ghettos, too. See: ALTSKAN: On the Other Side, p. 12.
[61] Rakhmut, Samuil Khaimovich, USHMM, RG-31.018M, R-2838, F03, 322, 42, 45. Donnenfel'd Samuil Leonovich, D1639, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Chernivets'ka oblast') (HDA SBU ChO), p. 11.
[62] Landau Sofiia Markovna, D362-os, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU), p. 2, 10.
[63] Some protocols of defendant's interrogations also contain short introductory phrases stating that the defendant knew Russian and was willing to testify in that language. See, for example: Bosharnitsan, Samuil Samuilovich, USHMM, RG-54.003*06, p. 9–11. Roizman, Khaim Falikovich, RG-54.003*38, War Crimes Investigation and Trial Records from the Republic of Moldova, 1944-1955, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 13–16.
[64] On the Romanian Jewish deportees in Transnistria mostly not speaking Russian and Ukrainian, see: OFER: Holocaust in Transnistria, p. 134, 142-143.

to diligently record the language in which interrogators and witnesses had talked. Consider, again, officer Sofiia Landau. She conducted 12 defendant's interrogations and 6 interviews with witnesses. Yet only 8 of the protocols of defendant's interrogations note translation and none of the witness depositions are marked as such.[65] But the witnesses Landau questioned were almost all Romanian Jews.[66] It is therefore likely that she questioned these people in Yiddish or German.

In sum, it is clear that for a significant part of the protocols, transcription meant translation in the most literal sense, which put an important layer of potential distortions on the witnesses' and defendants' words. That is an important indicator of potential distortions and a detriment to protocol validity on the level of protocol vs. verbal exchange. But even if that specific gateway for distortions was absent and those questioned spoke Russian, their words were only recorded in a very specific way.

**Interview and recording practices: normative standards and empirical realities**

According to the code of criminal procedure, the testimonies of defendants and witnesses should be "entered into the protocol in the first person and, as far as possible, verbatim."[67] Contrary to that requirement, previous scholarship has already established that the protocols cannot be considered verbatim records.[68] Some scholars do believe 1930s Soviet interrogation protocols to be verbatim, probably because as the 1940s materials, they were hand-written.[69] However, the files on analytical level D) support the assessment that the records are by no means stenographic ones. The same files also allow to qualify that assessment further. In this regard, the ratio of protocol text to interrogation time is crucial.

Many defendant's interrogation protocols and some witness statements specify how long the investigators talked to someone. Based on average speech tempo in Russian, it appears that protocols cover between two and five percent of the interrogation time if we translate that time into the lower end of the average speech tempo spectrum. Of the 179 defendant's interrogations, 97 provide a clearly identifiable start and end time, of the 310 pretrial witness testimonies, only 19 protocols contain such information. The average speech tempo in Russian is 80 to 120 words a minute.[70] If we compare the number of words in a given protocol to the duration of the conversation recorded in it, it becomes clear that the protocols are by no means stenographic

[65] Shtern Ignatii Samoilovich, HDA SBU ChO, D85-p, p. 16–31.
[66] Ibid., p. 34, 38, 41, 45, 50.
[67] See articles 136 and 162 in the Ukrainian SSR code of criminal procedure: Ugolovno-protsessual'nyi kodeks USSR 1927 goda. Tekst i postateinyi kommentarii, Khar'kov 1928, p. 115, 136. See also: PODKUR/CHENTSOV: Dokumenty organov gosudarstvennoi, p. 274. ZEIDLER: Stalinjustiz contra NS-Verbrechen, p. 21.
[68] EDELE: Stalin's defectors, p. 14.
[69] Thus, in her study on Stalinist perpetrators, Viola talks about "contain stenographic records of the interrogations of the accused" stemming from the late 1930s. VIOLA: Stalinist perpetrators, p. 7.
[70] SVETOZAROVA, N. D.: Temp rechi, in: Bol'shaia possiiskaia entsiklopediia. Elektronnaia versiia (2017).

records. A random pick of three defendant's interrogation protocols covering the full range of how long the interrogations could get yields the following result: an interrogation of 45 minutes resulted in 195-word protocol, another one lasting four hours in a 325-word protocol and a staggering 10 hours and thirty minutes of interrogation generated a protocol of a mere 965 words.[71] If the interlocutors were speaking at the lowest average speed, they would have uttered 3.600, 19.200 and 50.400 words respectively. Checking three randomly picked witness testimonies which represent the full spectrum of how long witnesses were questioned yields similar results.[72] Thus, the protocols clearly report a shortened summary of what was said. The analytical task is to understand what went into it and what was left out. To begin with, it stands to hypothesize how and when exactly was that summary created.

While one scholar believes that the protocols "were drawn up at the end of the interrogation", we assume that investigators also drew up protocols as the conversation went along, fixating certain parts of the intellectual author's narrative they saw as concluded.[73] Thus, protocols sometimes contain blank spots regarding key information such as someone's patronymic, which suggests that the investigators left an open space in case the witness would remember the information later and then went on to other topics.[74] It seems plausible to assume that different investigators used different styles, either creating a protocol topic by topic as the conversation went along or drawing it up at the very end of the interview.

Investigators apparently also interpreted the requirement to record testimony "in the first person" in different ways. Most protocols are structured as dialogues (question – answer), but some take the form of first-person reports without any questions by the interrogators.[75] One scholar assumes that the latter type of protocols "makes it less likely that details that could be considered unimportant by the investigators but would be invaluable for contemporary historians seeped into the archived material".[76] That assumption falls into the trap of what has been termed "staged

[71] Fidler Igor' Iakovlevich, D22239, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Odes′ka oblast′) (HDA SBU OO), p. 45. Eidler Iakov Bentsionovich, D3834, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Odes′ka oblast′) (HDA SBU OO), p. 17. Shtern Ignatii Samoilovich, HDA SBU ChO, D85-p, p. 20.

[72] Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 137. Moskovich Pavel Mikhailovich, D5916, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Odes′ka oblast′) (HDA SBU OO), p. 85. Rakhmut, Samuil Khaimovich, USHMM, RG-31.018M, R-2838, F03, 322, p. 51.

[73] EDELE: Stalin's defectors, p. 14.

[74] Vitner Gerbert Maksovich, D2395-o, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Chernivets′ka oblast′) (HDA SBU ChO), p. 20.

[75] Again, this seems to have been relatively stable since the 1930s. See: PODKUR/CHENTSOV: Dokumenty organov gosudarstvennoi, p. 274.

[76] SOLONARI: Patterns of Violence, p. 754. It is tempting to mistake protocols for stenographic records of a conversation simply because they have a dialogic structure. Nevertheless, this assumption does not hold true for the materials studied in the present book. ESCHEBACH, Insa: »Ich bin unschuldig.« Vernehmungsprotokolle als historische Quellen. Der Rostocker Ravensbrück-Prozeß 1966, in: WerkstattGeschichte (1995), p. 65–70, here p. 67.

authenticity" of protocols.[77] As we have seen, the dialogic records were also a result of heavy redaction and selection. Moreover, it is often quite easy to recognize the questions that structured the conversation behind protocols of the report-type. Consider a phrase like the following, taking from a protocol structured as a report: "Whether Vainshtok took bribes and whether he betrayed Soviet citizens I cannot say and I cannot say whether he bribed the Romanian authorities with the goal to save the Jews."[78] It takes no Sherlock Holmes to figure out the underlying questions, even if they were not entered into the protocol phrased as such. A similar task arises when one examines trial session protocols of the files on analytical level D). In these protocols, only the answers defendants and witnesses gave were recorded, but not the questions that the court, defendants or lawyers asked (the typical formulation being "Following a question by the court/the defendant X/the lawyer Y, witness Z answered: […]."). Those questions therefore need to be "reverse engineered", which entails an element of uncertainty and speculation, albeit a limited one. Here too, it is mostly quite clear what issue a question had been aimed at.

Thus, the dialogic or report structure of the protocols is one of their more ephemeral features. It carries little weight for understanding the questioning and recording practices and for estimating the mode and extent of redaction and selection a respondent's words were subjected to. At first glance, protocols structured as dialogues may seem to represent the underlying conversation more faithfully than reports, but that is ultimately an illusion. No meaningful internal checks for identifying distortions can be derived from it.

**Cross-protocol consistency**

A feature of these documents that allows to further develop our theory of recording practices and to derive an internal check is that of cross-protocol consistency (or lack thereof).[79] When witnesses were questioned several times, interesting contradictions between the different depositions can emerge, that sometimes even point in the direction of outright falsification. Consider the following example:

> "Question: What exactly do you deem incorrectly recorded in the [previous] protocol (…)?
>
> Answer: In the protocol (…) it says that it was Sherf's and Taikh's fault that 3.000 Jews perished in Shargorod. I do not know this and I did not say this during my deposition in July 1944. On the contrary, during the period of occupation my family suffered from typhus and Dr. Taikh saved my family of dying of typhus."[80]

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[77] ORTMANN: Machtvolle Verhandlungen, p. 63.
[78] Shtrakhman, Nakhman Mortkovich, USHMM, RG-54.003*44, p. 164.
[79] The issue is regularly addressed in the literature on Soviet war crimes and collaboration trials, see, for example: DEAN, Martin: Crime and Comprehension, Punishment and Legal Attitudes. German and Local Perpetrators of the Holocaust in Domachevo, Belarus, in the Records of Soviet, Polish, German, and British War Crimes Investigations, in: Holocaust and justice. Representation and historiography of the Holocaust in post-war trials, edited by David BANKIER / Dan MICHMAN, Jerusalem 2010, p. 265–280, here p. 270.
[80] Sherf Isaak Lazarevich, HDA SBU VO, D20752, p. 62–63.

Of course, both witnesses and defendants had to sign every page of a testimony and in the protocols examined for the present study, the investigators consistently made sure that this rule was followed. Theoretically, that should have minimized cross-protocol contradictions. But one should take into account that testifying to state security officers put significant pressure on witnesses (as discussed below). In such a situation, it is plausible that witnesses just skimmed the papers handed to them by the investigator and quickly signed them to get out of the situation. Moreover, thirteen of the witnesses on analytical level D) were completely illiterate, another 31 only semi-literate. In sum, almost one in five witnesses had trouble reading and writing or did not have those skills altogether. For the illiterate witnesses, Soviet security organs often solved the problem by having those people bring someone literate with them and having that person sign the protocol.[81] Therefore, witnesses' signatures on the protocols were often a precarious safeguard against inter-protocol inconsistencies. And researchers should be especially skeptical when dealing with protocols of illiterate witnesses.

In the example cited above, the correction of an earlier testimony goes into an exonerating direction and it seems the investigator writing the first protocol twisted the witness's words completely. In such cases, the contents of the previous testimony need to be treated with utmost caution or disregarded altogether. Moreover, similar accusations in other protocols in the same casefile then appear less credible. But there are also plentiful examples that go into a different direction.

Thus, during a confrontation with defendant Akhtemberg, witness Shtymer added a significant detail to his description about an incident with the defendant in the ghetto. Shtymer repeated his claim from an earlier witness deposition that Akthemberg had beaten him for refusing to perform forced labor.[82] But the witness added an important detail: the incident occurred when Shtymer had just returned home from a work shift.[83] In this later version, Shtymer thus appears as someone already contributing his fair share in taking the burden of forced labor the occupiers had put on the Jews in the ghetto. And the defendant appears as significantly more brutal and merciless, physically attacking a ghetto inmate who is tired from work and trying to get him to perform two shifts back to back.

Thus, checking cross-protocol consistency is a crucial internal check for protocol validity. Unfortunately, that indicator is limited because most witnesses were questioned only once. At the

[81] See, for example: Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 142–143. Shtrakhman, Nakhman Mortkovich, USHMM, RG-54.003*44, p. 32, 157.
[82] Akhtemberg, Moisei Iakovlevich, RG-54.003*01, War Crimes Investigation and Trial Records from the Republic of Moldova, 1944-1955, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 45.
[83] Ibid.

pretrial stage, 80% of the 310 witness testimonies are first testimonies. Only 20% are second, third or fourth depositions provided by one individual witness. Of the 247 individual witnesses these testimonies belong to, 198 or 80% testified only once during a pretrial investigation, 37 or 15% gave two pretrial statements and only 12 gave three or four statements. To that we have to add those 61 confrontations that the investigators staged with a witness and a defendant, rather than with two defendants (the remaining six confrontations in the casefiles on analytical level D)). Twenty of those confrontation protocols contain at least one new accusation that the investigators had not recorded in the earlier pretrial testimony, which again highlights how significant cross-protocol-consistency is. Nevertheless, the overall trend is clear: for most witnesses it is impossible to compare different pretrial statements because there is only one available.

Neither did the majority of witnesses get the chance to correct any mistakes in the protocols of their pretrial testimony during a trial. Of the 247 witnesses who testified at the pretrial stage, only 80 and thus not even a third later testified in court. That is highly unfortunate. As the five case studies and especially the chapter on the Tul'chin ghetto show, witnesses disclosed a host of important information when the defendants (and, if available, their legal counsel) had a chance to cross-examine these witnesses (see chapter 11).

While this all sounds rather bleak, the mere fact that a witness withdraws earlier statements should not mislead scholars to question in general the validity of the contemporary Soviet protocols of verbal exchanges. After all, the very same thing occurred during other times and in other places in legal systems that functioned quite differently.[84] Witnesses withdrawing or changing statements seems to be a common feature of many modern legal systems.

**Investigators' personal styles and vocabularies**

Another indicator for identifying if and how the juridical and material author distorted a witness's words is that of a personal style or vocabulary. In some instances, the protocols created by one investigator allow to identify specific formulations that no one else wrote into protocols.[85] To identify them, one needs to check all protocols created by the investigator and also to check the differences between depositions the same witness gave to different interrogators. A striking example of such a personal vocabulary is the phrase "extermination of the Jewish population", sometimes ascribed as the ultimate goal of a Jewish ghetto functionary's actions. Such an accusation is sure to raise an eyebrow of any scholar studying Jewish councils. Consider the following example:

[84] See, for example: ORTMANN: Machtvolle Verhandlungen, p. 54–55.

[85] LUTSISHIN, Artur Vasil'evich: K voprosu ob ispol'sovanii materialov sledstvennykh del politicheskikh protsessov 20-30-kh gg. v kachestve istochnikov, in: Prepodavatel' XXI vek 4 (1-2) (2009), p. 234–242, here p. 240. ORTMANN: Machtvolle Verhandlungen, p. 64.

> "Kats Moses was the chairman of the committee. He controlled the work of the committee and directed it towards the creation of unbearable conditions and the mass extermination of the Jewish population."[86]

However, the phrase only crops up twice in the respective casefile, both times in protocols written by the same officer. In another investigation, a similar phrase appears twice in the pretrial testimonies, and again both testimonies were written by the same officer.[87] More substantial is the evidence in the casefiles relating to the Shargorod ghetto. Here, such a phrase appears in four different witness depositions – all of them written by the same investigator.[88] None of the other seven investigators handling the case wrote protocols that contain the phrase. Neither does it appear in the second pretrial testimony or the confrontation with one of the witnesses that were recorded by other investigators.[89] It is thus more probable that the investigator inserted that phrase into the protocol than to assume that the witnesses uttered it. Individual investigators thus did not take it all too seriously that the code of criminal procedure demanded a verbatim transcript of witnesses' words. To be sure, that would even have been possible given the fact that protocols only functioned as a condensed summary of a conversation. Still, the summary could have contained the witnesses' own formulations. Besides problems with the demand for verbatim transcription, investigators also had poor knowledge of the criminalist state of the art in the 1940s USSR. And that problem concerned not only individual investigators, but their majority.

**Protocols' poor quality as evidence**

Despite the fact that the instructional literature provided solid criminalist knowledge, the protocols' overall quality as evidence for criminal trials is low. A prominent 1941 textbook called "The criminal trial" can serve as a rough orientation for what Soviet investigators could and should have known.[90] Its author was Mikhail Strogovich, one of the "leading textbook writers" and most important figures in Soviet legal doctrine after 1937.[91] Besides all sorts of ideological clichés such as the alleged mutual understanding between Soviet judges and citizens because of shared proletarian origins, Strogovich's book contains a lot of actually useful criminalist knowledge that seems completely compatible with other legal systems.[92] Regarding witness testimony, Strogovich discusses basic questions such as memory formation and whether a given witness testimony is plausible based on the witness's distance to the events, the lighting at the time of these events and

[86] Rakhmut, Samuil Khaimovich, USHMM, RG-31.018M, R-2838, F03, 322, p. 58–59.
[87] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 136-138, 143-149.
[88] Sherf Isaak Lazarevich, HDA SBU VO, D20752, p. 26–27. Taikh Maer Mendelevich, D633, Derzhavnyi arkhiv Vinnyts'koi oblasti (DAVO), p. 30–32.
[89] Sherf Isaak Lazarevich, HDA SBU VO, D20752, p. 29-30, 62-63.
[90] STROGOVICH, M. S.: Ugolovnyi protsess, Moskva 1941.
[91] SHARLET, Robert: Stalinism and Soviet Legal Culture, in: Stalinism. Essays in historical interpretation, edited by Robert C. TUCKER, New Brunswick, NJ 1999, p. 155–179, here p. 174–175.
[92] STROGOVICH: Ugolovnyi protsess (1941), p. 128–130.

so on.[93] However, the protocols of witness testimonies examined for the present study are much less sophisticated.

Such a lack of sophistication is evident in the fact that most protocols do not even specify whether the witness had seen something with their own eyes or just heard about it. As stated above, we used qualitative data analysis and thematic coding on the witness testimonies, defendants' interrogation and confrontation protocols. In the 310 witness testimonies, we coded whether a given accusation is marked as an eyewitness account ("I saw him do X."), as hearsay "(Someone told me he did X.") or whether that aspect is not even clarified ("He did X."). Unfortunately, the Soviet juridical/material authors did not bother to specify this question for most of the accusations – nearly 60% of accusations in the protocols do not have that information attached. Almost a third is clearly designated as eyewitness testimony and one in ten accusations is marked as hearsay. In sum, the testimony is thus rather vague and in no way corresponds to today's, or even to contemporary Soviet standards (if one takes Strogovich's textbook as a crude yardstick for those).

Adding to the problem is the question of whether witnesses could name concrete victims of a crime.[94] We coded instances in which witnesses accused defendants of actions for which one could plausibly expect the witnesses to name concrete victims, such as beatings, forced labor mobilization, denial of food etc.[95] In most of those instances, namely 55% of them, no concrete victims are mentioned. The remainder of the protocols, the witnesses describe themselves, a third individual or both as the victims of an alleged action. Again, the protocols remain rather vague.

In light of the witness testimony protocols' vagueness at the most basic level, it comes to no surprise that the investigators almost never recorded the more "sophisticated" aspects such as spatial plausibility (could a witness even have seen what they claimed to have seen). It is very rare that officers recorded questions that went even remotely in this direction. Such aspects are discussed merely in nine of the 310 pretrial witness testimonies. Consider the following example:

> "Answer: […] In 1944 when the German troops were withdrawing I saw Fidler withdrawing with them. He was sitting on a German car in a German officer's uniform. The rank I do not know.

[93] Ibid., p. 130–134.

[94] Naturally, "concrete" is a question of definition. In practice, we solved that problem as follows: If witnesses reported individual names, we coded that as mentioning concrete victims. If witnesses reported numbers, we drew the line at twelve – then it is still probable that witnesses could theoretically name everyone included in that number. Anything above seems to defy the point of the code. If 48 was "concrete", then "200" would be concrete too; if only names were "concrete" then nine would not be concrete. Of course, drawing such lines in operationalizing a concept always entails an element of arbitrariness.

[95] There are other accusations to which such a code is not applicable. If witnesses voice indignation because a Jewish ghetto functionary allegedly organized parties for Romanian military personnel, that is an action without a victim, at least without an immediate one.

> Question: Could you recognize Fidler's face well at the moment when he was withdrawing with the Germans and was wearing a German officer's uniform?
>
> Answer: Yes, I recognized Fidler well, that he was in a German officer's uniform."[96]

Conspicuously, in two of those nine testimonies the investigators seem to have brought up the question of spatial plausibility when they were trying to pick apart exonerating witness testimony. This points to a significant accusatory bias in how investigators questioned respondents and how they recorded their testimonies. Consider the two witness testimonies concerning defendant Bosharnitsan. His wife and another witness claimed that a Romanian officer beat up Bosharnitsan for refusing to become the new primar' (head of the Jewish council) of the Rybnitsa ghetto.[97] The witnesses thus presented the investigators with evidence that the defendant had acted unwillingly and that the Romanians had subjected him to repressions, essentially coercing him into office. In both testimonies, the investigators were interested in the witnesses' physical distance to the event – what could they see and hear from the point where they were standing? [98] It is important to note that the interrogators in Bosharnitsan's case did not care to examine accusations against him with the same care as this potentially exonerating testimony. A similar problem sometimes emerges in investigations with multiple defendants. Here, the interrogators often recorded accusations against one of the defendants, but did not note any information the witnesses could have provided about other defendants in the same case. As we demonstrate in the case study on the Tul'chin ghetto, that is a significant problem: individual witnesses often held one defendant in high regard, while hating another one (see chapter 11).

**Accusatory bias in questioning and recording**

Accusatory bias is also obvious in countless instances when the investigators used suggestive questioning. The most prominent example is surely the typical opening phrase "What do you know about defendant X's treasonous (/collaborationist/criminal/anti-Soviet/counter-revolutionary) activities?", which we discuss in detail below. That phrase clearly suggested that the defendant had engaged in such activities. But suggestive questioning can be found in many other parts of the protocols as well. Consider the following example, stemming from a witness testimony and concerning arrests the Romanians conducted in the Balta ghetto:

> "Question: Do you know what they did to those people at the police station?
>
> Answer: From people who were confined in the ghetto I heard that those who were held at the police station on orders of Moskovich [a Balta ghetto Jewish functionary, *WS*] were subjected to beatings and humiliation. […]

[96] Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 70–71.
[97] Bosharnitsan, Samuil Samuilovich, USHMM, RG-54.003*06, p. 165-170, 224.
[98] Ibid.

> Question: Consequently, the Jews were arrested following denunciation by Moskovich and they were beaten up on his orders.
>
> Answer: That is so, because I personally know that Moskovich wrote to the police, since nobody besides Moskovich was engaged in these questions and nobody else went to the police regarding the affairs of the ghetto. That the Jews were beaten there happened also on Moskovich's orders, because he had good relations with the head of police and of gendarmerie, visited them often, and if Moskovich had wanted to take the Jews under his protection, he could have done so."[99]

Note how the investigator *tasks* the witness to deliver a particular result, namely to say that Moskovich was responsible for the beatings. The witness's previous answer does not suggest that. But the investigators second question implies it should have. The witness then complies, even if only by claiming that Moskovich's guilt lay in omission to protect rather that in direct orders to harm.

However, the extent to which accusatory bias influenced what made it into the protocols and what was left out should not be overestimated. More than a third of the 310 witness testimony protocols mention at least one potentially exonerating factor. The three most common are: defendants using their role as ghetto functionaries to provide social welfare to the ghetto population, defendants defending inmates from harm, such as enabling them to hide and avoid forced labor or deportations, and lastly defendants facing repressions from the occupiers, such as beatings, arrest etc. Therefore, the investigators recorded exonerating witness testimony at least to a certain extent.

Moreover, the protocols also contain instances in which investigators ask questions that show they were sincerely interested in finding out what had happened, rather than just trying to ensure a conviction. Consider the following example, which stems from the testimony of a survivor of the Pechora death camp:

> "Answer: Eidler is guilty of provoking us, tricking us to sign up for work in the Tul'chin ghetto, when in fact they handed us over to the Germans to be shot.
>
> Question: Why do you think that Eidler knew that those Jews who were noted for work will not be taken to the Tul'chin ghetto but handed over to the Germans?
>
> Answer: Eidler was at the head of the ghetto and knew exactly that they did not need so many people. I think that he was sent to us as a provocateur."[100]

In this instance, the officer conducting the interview approached the witness's claim with the necessary degree of skepticism. As a result, we know that the witness was reporting an assumption

[99] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 85–88.
[100] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 147–148.

rather than an observation. On the other hand, such more solid work only highlights the many other instances in which the investigators failed to deliver it.

Besides accusatory bias, the poor quality of the protocols was also the result of low levels of education and professional training in the Soviet security organs and judiciary.[101] Soviet supervising agencies regularly complained about the "[g]ross negligence in the preparation of investigative documents" that their subordinates showed.[102] On the other hand, the numbers presented above show that there was no real institutional pressure for investigators to do better at least in 1944 and 1945. Investigators wrote protocols of low quality because they could afford to do so, because these documents were enough to get a case to and through court. It apparently played little role that the code of criminal procedure and the instructional literature demanded a higher standard.

**Homogeneity of form, ideologically loaded language and repetitiveness**

Both the low quality of protocols as evidence and the accusatory bias primarily concern protocol contents and the question what was recorded. But there is also the question how the conversation was recorded, the aspect of protocol form, and that raises concerns among scholars. Thus, Mariana Hausleitner claims that "[t]he schematically constructed interrogations conducted by Soviet authorities immediately after 1945 prove to be worthless for the clarification of social structures [in the Transnistrian ghettos, *WS*] since they contain identical predetermined formulations."[103] Similarly, most scholars acknowledge a certain homogeneity of from or at least a strong repetitiveness in content and form in contemporary Soviet protocols of verbal exchanges. Such homogeneity and repetitiveness are mostly seen as the result of investigators redacting witnesses' words while recording them. This assumption certainly has great merit.

A common methodological suggestion on how to analyze such protocols directly relates to it, namely the idea that non-formulaic parts of the protocols are more authentic. Scholars thus need to pay attention to "gaps" in the testimonies, mismatches between investigators' and witnesses' speech. In other words: among all the Soviet ideological clichés, the parts that do not conform to them are most likely unredacted words of the witnesses.[104] In this view, ideological clichés are

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[101] PENTER: Local Collaborators, p. 6–7.
[102] Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 36. Work of the Military Tribunal in the 3rd quarter of 1945, TSDAHO, F1O23D2437, p. 67.
[103] HAUSLEITNER: Überleben durch Korruption, p. 261.
[104] MAKHALOVA: Kollaboratsionizm v Krymu, p. 34. LUTSISHIN: K voprosu ob ispol'sovanii, p. 238–239. The search for a "gap" is also used by historians who deal with other types of materials from the Soviet period, such as letters Soviet citizens sent to state agencies: LENOE, Matthew E.: Letter-writing and the State. Reader correspondence with newspapers as a source for early Soviet history, in: Cahiers du Monde russe 1 (1999), p. 139–169, here p. 167. The same methodological suggestion is a well-tested staple in the historiography of early modern witchcraft and inquisition trials. See: GINZBURG, Carlo: The Night Battles. Witchcraft and Agrarian Cults in the Sixteenth and Seventeenth Centuries, Hoboken 2011, p. xiv. BURKE, Peter: Popular culture in early modern Europe (Harper Torchbooks), New York 1978, p. 78. GRUNDMANN, Herbert: Ketzerverhöre des Spätmittelalters als quellenkritisches Problem, in: Deutsches Archiv für Erforschung des Mittelalters (1965), p. 519–575, here p. 535.

entered into the protocols by the juridical/material authors, who "sovietize" respondents' words while writing them down.

There are many examples that support such a view. Consider the following excerpt from a witness testimony relating to the Shargorod ghetto:

> "[…] Zand Bruno Rafailovich expressed his opinions about Soviet power and the Red Army, calumniated ("vozvodil klevety", *WS*) the Red Army, said: That the Red Army is uncultured, poorly equipped, simultaneously praised the German-Romanian army, said that it is better supplied with military equipment and capable of crushing the Red Army. Drew such conclusions that today the Germans retreat, but tomorrow they will go on the offensive and make it to the Volga river. He said that in 1942 among the Jewish population."[105]

Here, the introductory phrase seems like a legal-political cliché that the investigator used to frame the contents of Zand's alleged statements as the witness related them. To be sure, these contents seem redacted to different degrees themselves, probably with "praising the German-Romanian army" at the more heavily rephrased end and "making it to the Volga" more of a literal quote. This gives credit to the assumption that it was the investigators who drenched the protocols in Soviet ideological terms.

On the other hand, homogeneity of form demands some additional comments: First, that one should not mistake homogeneity of form for homogeneity of content (as Hausleitner seems to have done). Second, that even repetitiveness of form and/or content is not necessarily a result of the investigators redacting witnesses' words, but can also stem from the social standardization of memory among witnesses. Lastly, ideological stereotypes also lend themselves to be appropriated by witnesses "from below" in pursuit of their own specific goals, what we term "desirability bias as instrument". Let us examine these aspects in more detail.

**Heterogenous content despite homogenous form**

A prime example of how Soviet interrogations were "schematically constructed" and "contain identical predetermined formulations" is the common opening question "What do you know about defendant X's treasonous activities?". The word "treasonous" could be substituted with other, similar adjectives such as "collaborationist", "criminal" or "anti-Soviet". The phrase appears in a third of the 310 witness testimony protocols. The most common of the adjectives was "treasonous", which was used in a third of those questions. But the adjectives appear to have been used almost as synonyms, since they were also freely combined into phrases as "anti-Soviet-treasonous", "collaborationist and treasonous", "treasonous counterrevolutionary", "criminal

[105] Zand Bruno Rafailovich, D3033, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Vinnyts′ka oblast′) (HDA SBU VO), p. 25–26.

treasonous", or "criminal collaborationist".[106] Moreover, "treasonous" and "collaborationist" referred to the only vaguely defined legal-political terms of article 54-1 and 54-3 of the Ukrainian criminal code (see chapters 1 and 5).

The homogeneity of these vague ideological terms is not reflected in the contents of witnesses' answers to these questions, which are highly varied. Just take the answers that followed the mixed terms we just quoted. The range of topics they cover entails: having connections to the Romanian authorities, enjoying privileges granted by those authorities, mocking the poor organization of Soviet economy and institutions and the weakness of the Red Army, upholding order in the ghetto, denouncing communist sympathizers and partisans, organizing forced labor, confiscating property, drawing up lists for deportations and personally helping to conduct them, chasing Jews out of the ghetto who had escaped mass shootings in other areas and lastly, beating ghetto inmates.[107] The variety of topics shows that one should not mistake homogeneity of form for homogeneity of content. Moreover, it was also possible to give no answer at all: One witness simply replied that she knew nothing about "criminal treasonous" activities.[108]

When witnesses gave a negative answer, this sometimes prompted the investigators to rephrase the question, concretizing it:

> "Answer: I cannot say anything about Rubinshtein's criminal activity […].
>
> Question: Do you know about instances when Rubinshtein beat up persons of Jewish nationality? […]
>
> Question: Are you aware of any facts in which Rubinshtein's inhuman attitude towards persons of Jewish nationality expressed itself?
>
> Answer: Working as the ghetto primar' (head of Jewish council, *WS*), Rubinshtein complied with all orders of the occupiers regarding the assignment of persons of Jewish nationality to various forms of labor."[109]

Therefore, it appears the vague terminology in the question is best understood as a normative marker for the witnesses and a sort of conceptual bait. Words like treasonous, collaborationist, criminal, anti-Soviet or counter-revolutionary just meant "bad" and prompted witnesses to say what they themselves saw as bad behavior on part of the defendants. In addition, some witnesses chose not to take that politically loaded conceptual bait at all. They waited for the investigators to

[106] Sherf Isaak Lazarevich, HDA SBU VO, D20752, p. 19. Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 143–145. Zand Bruno Rafailovich, HDA SBU VO, D3033, p. 22. Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 75–77. Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 109–111.
[107] Sherf Isaak Lazarevich, HDA SBU VO, D20752, p. 19. Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 143–145. Zand Bruno Rafailovich, HDA SBU VO, D3033, p. 22. Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 109–111.
[108] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 75–77.
[109] Rubinshtein Pinkhos Itskovich, D7435, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Odes′ka oblast′) (HDA SBU OO), p. 61–62.

ask more concrete questions. Therefore, formal homogeneity is compatible with heterogenous contents and at least some witnesses rejected to have their testimony put in a certain ideological framing all too easily.

Moreover, the protocols regularly contain a certain surplus of information that did not even relate to the immediate defendants and their alleged actions. Witnesses often simply laid out their personal suffering, and that of their relatives, to the investigators, who diligently recorded it despite the fact that this information was of no value for prosecuting the defendant in question (see chapter 14). Again, we see that both accusatory bias and ideological redaction had limits, otherwise these fragments would not have made it into the protocols. And again, this proves that formal homogeneity is compatible with heterogenous contents. Even the ideologically loaded linguistic framework of the protocols allowed for seemingly "useless" information that is highly interesting for historiographic analysis.[110]

**Homogeneity of form and content as socially standardized memory**

But even repetitive content is not necessarily a result of the investigators redacting witnesses' words. Social processes likely also lead to a certain alignment of witnesses' memories, which they then related to the investigators. Ghetto inmates could only discuss the events they witnessed in their families and neighborhood milieus, since the public sphere was sealed off.[111] That was certainly true during Axis occupation and remained mostly unchanged under Stalinist rule after liberation.[112] Under these communicative circumstances, it is quite likely that a certain "social standardization" of memory set in.[113] A recent study on the Lithuanian ghettos and Soviet trials of their Jewish functionaries put forward a similar hypothesis, namely that select episodes of violence turned into a sort of collective screen memory, a cognitive shorthand for many other similar instances.[114] Thus, when protocols of different witnesses' interrogations describe the same event in very similar terms, this may be a social effect on memory formation as much as a an effect of the investigators redacting the witnesses' words.

These considerations also relativize another argument in the historiographic literature, namely that the protocols have great analytical potential because they were recorded immediately after the events.[115] That certainly holds true for things that happened only a few months before the Soviet

[110] On the importance of such "useless" information, see: SOLONARI: Patterns of Violence, p. 754.
[111] MELNYK, Oleksandr: Stalinist Justice as a Site of Memory. Anti-Jewish Violence in Kyiv's Podil District in September 1941 through the Prism of Soviet Investigative Documents, in: Jahrbücher für Geschichte Osteuropas 2 (2013), p. 223–248, here p. 228. PENTER: Local Collaborators, p. 18.
[112] MELNYK: Stalinist Justice, p. 228. PENTER: Local Collaborators, p. 18.
[113] WELZER: Interview als Artefakt, p. 57.
[114] BLUM et al.: Survivors, p. 229.
[115] POHL: Sowjetische und polnische Strafverfahren, p. 140.

investigations began.[116] But the intervening period was often longer, even if the Soviet investigations began almost immediately after the Red Army marched through. Thus, when the Soviets began to investigate members of the Tul'chin ghetto Jewish council, almost three years had passed since the first actions of that council (see chapters 10 and 11).

Besides more opportunity for "social standardization" of memory, a longer intervening period could also mean more additional traumatic experiences for witnesses, which may also have hampered their memory. One witness expressed this explicitly: "I could give several more examples of Moskovich's inhumane attitude towards the Jews that were confined in the ghetto, but after all I have been through, I forgot everything now."[117] Therefore, the argument that Soviet investigative casefiles are valuable because of their temporal proximity to the event is a relative one: it holds true in comparison to oral history interviews and memoirs from the 1990s, but should not be overestimated on its own.[118] Thus, homogeneity of form and repetitiveness of content can also be a result of socially standardized memory.

**Homogeneity of form "from below" and desirability bias as instrument**

Following the same direction, it stands to hypothesize that Soviet terminology can also be found in the protocols because witnesses used it. The likelihood that witnesses used such terms depends, for one, on their age. The year of a witness's birth determines how much of their socialization period they spent under Soviet rule and thereby influenced how fluent they probably were in Soviet terminology. As a rough breaking point, we may use the year 1911. Someone born in this year was six years old at the time of the revolution and thus experienced all secondary socialization under Soviet conditions. Of the 178 Soviet witnesses who gave pretrial testimony, 61 individuals or 34% were born in 1911 or after. A finer grained age distribution looks as follows:

[116] PENTER: Vergessene Opfer, p. 356.
[117] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 120–123.
[118] BUDNITSKII, Oleg: A Harvard Project in Reverse. Materials of the Commission of the USSR Academy of Sciences on the History of the Great Patriotic War – Publications and Interpretations, in: Kritika: Explorations in Russian and Eurasian History 1 (2018), p. 175–202, here p. 176.

| **age distribution Soviet witnesses as of 1944** | | |
|---|---|---|
| *age groups* | *individuals* | *%* |
| 14-20 | 20 | 11% |
| 21-30 | 36 | 20% |
| 31-40 | 26 | 15% |
| 41-50 | 47 | 26% |
| 51 and older | 49 | 28% |
| total | 178 | 100% |

*tab. 1*

Regardless of one looks at a rough measure or the finer grained distribution, the analytical implications are always the same: The younger a Soviet witness was, the likelier it was that they themselves spoke to the investigators using Soviet terminology.

Another possible yardstick is witnesses' party affiliation. However, as the following table shows, most witnesses were not members of Soviet political organizations. Only 13% of the 178 Soviet pretrial witnesses are clearly identifiable as current or former members or candidates for membership in either the Soviet communist party or its youth organization.

| **party affiliation Soviet pretrial witnesses** | | |
|---|---|---|
| none | 139 | 78% |
| Komsomol (including former) | 20 | 11% |
| VKP(b) (including former and candidates) | 4 | 2% |
| unkown | 15 | 8% |
| total | 178 | 100% |

*tab. 2*

Therefore, party affiliation only rarely helps to determine the likelihood of witnesses conversing in Soviet ideological terms.

However, where witnesses are identifiable as party of Komsomol members, that can have far-reaching consequences. Sometimes the distinction between investigators and witnesses effectively collapses. Consider the example of witness Duvidzon, a Komsomol member who testified against Jewish functionaries of the Rybnitsa ghetto. In a 1996 oral history interview, Duvidzon claimed that during his time in the ghetto, he wrote down on notes every raid, shooting and "treason" that he learned of, put those sheets of paper in bottles and buried them. Once the Red Army arrived,

he dug up more than twenty of those bottles and took the papers to the Soviet security organs.[119] According to Duvidzon's 1996 interview, he "exposed many" of the "Ukrainian, and Russian traitors and Jewish traitors" to the authorities and even testified in court against some.[120] Indeed, Duvidzon's testimony is the earliest witness statement recorded in the Soviet investigation against the Rybnitsa ghettos Jewish functionaries, which lends credibility to his claims from the 1996 interview.[121] In a sense, the distinction between investigator and witness becomes muddled here, because their goals largely overlapped. Therefore, it would also be wrong to assume that Soviet terminology in Duvidzon's 1944 witness testimony stems only from the investigator who recorded it.

But even if witnesses' interests differed from those of the investigators, it was still important for those who testified to find a common tongue with those who deposed them. There is anecdotal evidence suggesting that witnesses were aware of which answers were desirable, both in form and in content, and that these witnesses used such social desirability to their advantage. In general, social desirability means that respondents are more likely to tell things that they think their counterpart will receive well than things that they think their counterpart will dislike.[122] The following example shows that individual witnesses used such desirability to achieve their own goals within a trial.

Thus, when Shargorod ghetto survivor Mikhail Zhvanetskii reconvened with his family after liberation, some relatives began talking about a local Ukrainian collaborator in Vinnitsa.[123] A family member who had served in the Red Army suggested the following:

> "[…] it is necessary to inform the authorities on him and say that he is an enemy of Soviet power, because if you only say that he killed Jews, he will get a short incarceration term. But if he is against Soviet power, he will get more. And they did everything that was possible and impossible, and he got 15 years in prison. A revolutionary tribunal tried him in Vinnitsa. And he did not come back. He remained somewhere in Kolyma."[124]

Zhvanetskii's testimony is a striking example of witnesses exploiting the social desirability of certain answers in the setting of collaboration trials. They knew that the investigators would

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[119] DUVIDZON, Nikolai, Interview 25001. Interviewed by Maria Lackman. Visual History Archive, USC Shoah Foundation 16.12.1996, https://vha.usc.edu/viewingPage?testimonyID=25479&returnIndex=0#, last accessed May 24, 2021, segments 106–107.
[120] Ibid., segment 107.
[121] Shtrakhman, Nakhman Mortkovich, USHMM, RG-54.003*44, p. 61, 21. Roizman, Khaim Falikovich, USHMM, RG-54.003*38. Akhtemberg, Moisei Iakovlevich, USHMM, RG-54.003*01. Bosharnitsan, Samuil Samuilovich, USHMM, RG-54.003*06.
[122] "An answer that is perceived to be socially desirable is more likely to be endorsed than one that is not." BRYMAN, Alan: Social research methods, Oxford [4]2012, p. 227–228.
[123] Ibid., p. 126–127.
[124] ZHVANETSKII, Mikhail, Interview 38462. Interviewed by Artur Fredekind. Visual History Archive, USC Shoah Foundation 03.12.1997, https://vha.usc.edu/viewingPage?testimonyID=40109&returnIndex=0, last accessed October 07, 2021, segments 126–127.

probably like to hear that the collaborator held anti-Soviet convictions, and they assumed that telling that lie would help them achieve their own goal – securing a tough punishment for someone who had helped to murder their relatives. Here, desirability bias becomes an instrument in the hands of the witnesses.

Using desirability bias as an instrument probably also influenced the form, rather than just the contents of witnesses' statements. After all, as Lenoe put it, "[t]hose who wished to manipulate the Bolshevik state had to speak its language."[125] Moreover, witnesses in Soviet wartime and postwar trials were aware of "the dominant discourse of the politics of retribution" and the "performative nature of Stalinist politics" influenced their testimonies.[126] In this context, letters that witnesses sent to the authorities offer interesting insights. After all, their contents were not redacted by investigators. For such letters, intellectual and material authors are the same people. And we find the same politically loaded language and Soviet clichés in some of these letters. Take, for instance, the collective letter former Tul'chin ghetto inmates sent to the authorities in defense of the former ghetto functionary Shraiber. Interestingly the authors chose to speak of "peaceful Soviet citizens" rather than of Jews – a Soviet cliché that emerged in the war years and became ubiquitous in the postwar period.[127] And the letter witness Smirnova sent to the authorities about defendant Moskovich of the Balta ghetto effectively denounces him as a selfish capitalist who acted out of class-hatred towards the poor.[128] Smirnova's letter is linguistically indiscernible from a Pravda-article. Both letters show that these witnesses either shared the worldview such language entailed, or they used it strategically for their own goals.

As Zhvanetskii's testimony shows, witnesses approached the authorities with their own ideas about a defendant's guilt and about the punishment he did or did not deserve. The loss of family members and witnesses' desire to speak for the victims who suffered and perished are important in this regard.[129] In 45 testimonies or 15% of the 310 pretrial witness testimonies, the respondents mention family members. They do this either to point out that a defendant had helped or hurt these family members. We can expect that this background also influenced witnesses' goals in the trial, whether they wanted to free or to bury the defendant. Moreover, many witnesses emphasized in their testimonies that a defendant's action affected women, children, the elderly or the sick and disabled. Such information crops up in 91 (i.e. 30%) of the 310 pretrial witness testimonies. Again, one may hypothesize that at least some of the witnesses saw themselves as acting on behalf of

[125] LENOE: Letter-writing, p. 168.
[126] MELNYK: Stalinist Justice, p. 230.
[127] Shraiber Pedutsii Borisovich, D1595, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Chernivets′ka oblast′) (HDA SBU ChO), p. 38–39. PENTER: Collaboration on Trial, p. 786.
[128] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 26.
[129] Finger, Jürgen/Keller, Sven: Täter und Opfer, p. 123.

those people and that such a self-image influenced their agenda during the investigation and trial. In turn, if witnesses pursued an agenda, they were more likely to strive for a linguistic alignment with the investigators as representatives of the Soviet state.

Therefore, the search for a "gap" in the testimonies has clear limits. To be sure, it makes sense to look for "authentic" formulations in the testimony of, say, an elderly uneducated peasant who wasn't a party member. But for younger witnesses, for those with better (Soviet) education and those who were closer to the regime, it makes no sense to see Soviet ideological phrases as "inauthentic" or as something that ended up in the protocol because the investigators redacted the witness's words. On the contrary, it stands to reason that these witnesses either just talked liked that in general, or that they did so during the interview to achieve specific goals.

## Protocols vs. free will

### Desirability bias as impediment for witnesses

Of course, desirability bias could not only function as an instrument in the hands of respondents, but also as an impediment that hindered them from speaking freely, or from keeping silent. Here, our discussion progresses to the level of protocols vs. the free will of those who were questioned. John Levi Martin defines desirability bias in a much more somber way than the definition we provided above. He writes: "We bend to what other people (especially those with guns) want us to do."[130] Soviet security officers were a breed of "people with guns" who had proven to the surrounding society that they were ready to use those guns. Therefore, it cannot be overstated that witnesses were likely not only driven by "an urge to record the killings, violence and looting in the name of German power", but also by fear of "men wearing the uniforms and blue caps of the secret police".[131] These officers were people who presented a threat far greater than mere dislike and some informal social sanctions if one went against what they deemed socially desirable. From the viewpoint of Soviet citizens who talked to the security organs, just the absence of negative consequences was a kind of positive sanction.

Moreover, Soviet citizens who had "remained on occupied territory" were socially stigmatized and subjected to a general suspicion of disloyalty in the late war and postwar years.[132] Even years later a person's whereabouts during the war were regularly checked when they applied for places in higher education.[133] Not even Jewish survivors were exempt from those suspicions.[134] Often,

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130 MARTIN: Thinking through methods, p. 77.
131 EXELER, Franziska: Reckoning with occupation. Soviet power, local communities, and the ghosts of wartime behavior in post-1944 belorussia 2013 ((Order No. 3604465). Available from ProQuest Dissertations & Theses Global: The Humanities and Social Sciences Collection. (1474910082).), p. 195.
132 Ibid., p. 628.
133 Ibid.
134 ALTSHULER, Mordechai/STERNBERG, Saadya: Religion and Jewish identity in the Soviet Union, 1941-1964, Waltham, Mass 2012, p. 43.

Holocaust survivors faced demands to justify their survival.[135] Thus, when Donia Samsonova's mother told a Chernovtsy city official that she had survived a concentration camp, the reaction was far from sympathetic. Had she maybe survived by betraying others?[136] After the incident, Samsonova's mother told her daughter not to tell others that they had been in a concentration camp.[137] Therefore, we can assume that survivor witnesses were under significant pressure to testify. Talking to those men in "blue caps" may also have driven witnesses to disambiguate the morally contradictory situation of the ghettos and their Jewish functionaries, to make these people appear entirely bad, so as to distance oneself from them. Lastly, there are certain topics that were surely off-limits when talking to the investigators if one did not want to get into trouble.

A striking feature of the witness testimony protocols is the complete absence of any mention of religion in those documents. There is no talk of prayer, synagogues, minyans, rabbis or anything even remotely connected to the topic of Jewish religion in the protocols. That absence is striking, since other types of materials, such as oral history and memoirs of the post-Soviet period, reveal that there was considerable religious activity in the ghettos. Just consider the Rybnitsa ghetto. As oral history interviews show, a Hassidic rabbi from Bessarabia, Khaim Zanvl, played an important role in the ghetto's religious life.[138] His activities apparently included prayers at a clandestine synagogue in the ghetto, circumcising Jewish boys and ritual burials of deceased ghetto inmates.[139] These survivors praise him as a supportive figure who eased other Jews' suffering and inspired hope. It stands to reason that none of these activities would have been possible without the support of the Jewish ghetto functionaries who administered the ghetto and served as liaison men to the Romanian authorities. At least it would have been different to do anything of the sort in direct opposition to the Jewish ghetto administrators. However, there is no mention of this rabbi or religious life in general in the protocols that concern the Rybnitsa ghetto. And that is completely understandable: It would have been incautious for the witnesses and the defendants to talk about such issues with representatives of a fiercely anti-religious regime.

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135 ZELTSER, Arkadi: Unwelcome Memory. Holocaust Monuments in the Soviet Union, Jerusalem 2018, p. 90–91.

136 SAMSONOVA, Donia, Interview 24863. Interviewed by Evgenia Litinskaya. Visual History Archive, USC Shoah Foundation 13.12.1996, https://vha.usc.edu/viewingPage?testimonyID=25305&returnIndex=0#, last accessed October 07, 2021, segment 89.

137 Ibid., p. 89.

138 BELOUS, Iosif, Interview 37961. Interviewed by Lev Bakal. Visual History Archive, USC Shoah Foundation 09.10.1997, https://vha.usc.edu/viewingPage?testimonyID=41174&returnIndex=0#, last accessed March 16, 2022, segments 82–83. There is little information available about Zanvl online. A news article mentions that he died in the United States in 1995. See: LIPHSHIZ, Cnaan: In breakaway Transnistria, the few Jews left eye an escape, in: Times of Israel, 21.09.2019, online: https://www.timesofisrael.com/in-breakaway-transnistria-the-few-jews-left-eye-an-escape, last accessed March 16, 2022.

139 SHNAYDERMAN, Betya, Interview 48191. Interviewed by Sophia Geyfetsman. Visual History Archive, USC Shoah Foundation 06.11.1998, https://vha.usc.edu/viewingPage?testimonyID=50930&returnIndex=0#, last accessed March 16, 2021, segments 74-75, 86, 89, 94.

Besides such "speaking omissions" in the protocols, there are also instances where the witnesses suddenly find themselves under pressure and have to explain and justify some aspect of their testimony. Consider witness Betia Kuperman, who survived the Mogilev-Podol'skii ghetto. When a SMERH-officer questioned her in 1944, she told him in gruesome detail how the Romanians had murdered her son Aron. According to her testimony, the Romanians killed Aron for escaping from a camp they had sent him to and returning to the ghetto. She continued:

> "A few days after Aron had been shot I went to the head of the gendarmerie Botoroaga, so that he would allow me to take Arons corpse and bury him on the graveyard, which Major Botoroaga allowed me to do. When I took his corpse, I saw that he had a bullet hole all through his head and also his stomach was all cut up. This is what these barbarians did to my only son Aron."[140]

The first question the investigator then asked Kuperman was whether her son had been a member of the Komsomol. She replied evasively: "Aron was still very young, he was only 16 at the time, he was no Komsomol member."[141] For Betya Kuperman this presented a shift in the interrogation: suddenly she had to justify her son's behavior and switch to a mode of defense, rather than accusation.

Adding to the overall pressure was the fact that refusing to testify as a witness was illegal. According to article 87 of the Ukrainian SSR criminal code, witnesses who did so faced a fine of 100 rubles or up to three months of corrective labor.[142] And according to article 90, giving false testimony was punished with imprisonment lasting between six months and three years.[143]

Yet despite these different types of pressure to testify and to deliver accusations, the extent to which desirability bias functioned as an impediment for witnesses should not be overexaggerated. As we discuss in the case studies, there was in fact a considerable self-selection of witnesses for that particular role. Apparently, one could choose not to testify, at least to a certain extent (see chapter 12).

Moreover, witnesses regularly clarified what they did not know. In 129 or 42% of the 310 pretrial testimonies, witnesses said that they did not know, see or hear something the investigators asked them about. Thus, if the investigators pressured witnesses to make something up, the respondents did not give in to that pressure easily. Therefore, desirability bias as an impediment had limits. It was probably more likely to prompt someone to not say something then to elicit fabrications.

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[140] Grinberg Mikhail Iosifovich, D10092, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Chernivets′ka oblast′) (HDA SBU ChO), p. 36–37.
[141] Ibid.
[142] Ugolovnyi kodeks USSR s izmeneniiami i dopolneniiami na 1 noiabria 1934 goda, Kiev 1934, p. 38–39.
[143] Ibid.

Moreover, even when someone else claimed that a certain witness knew something or had said something, these witnesses apparently had no problem just denying it. Consider the following exchange:

> "Question: Anna Khait, who was questioned as a witness, testified that you know facts of anti-Soviet activities from Bosharnitsan's side. Why do you conceal this?
>
> Answer: I do not know anything about Bosharnitsan's anti-Soviet activity and I do not know why Khait testified that."[144]

To be sure, it is highly likely that those few prosaic lines of protocol stand for a part of the conversation that was far from pleasant for the witness. But the result is the same: The witness did not know any incriminating information about that defendant, or did not want to disclose that information, and so he did not.

In sum, desirability bias could be an instrument for witnesses as well as a significant impediment, constraining what they could say or not say. However, in the context of the Soviet judiciary, the core concern with respondent's free will lies not with the witnesses, but with the defendants. It is imperative to discuss the pressures they acted under once they were arrested by the Soviet security organs. These pressures fall into two categories: first, pressures associated to the social role of an arrestee and defendant in a criminal trial more generally, such as the prisoner's dilemma. Second, there is torture.

**"Pre-torture" pressures on defendants**

The most obvious pressure that defendants faced was the threat of being convicted of a crime.[145] In investigations with multiple defendants, as well as in investigations parallelly occurring in different places, the problem was exacerbated by the prisoner's dilemma, which is abstractly defined as follows:

> "A prisoner's dilemma describes a decision situation in which two actors can either cooperate or defect. For both actors it is individually rational to defect, but a better result could be achieved by mutual cooperation."[146]

In other words: Collectively it would have been best for defendants to cover each other (to "cooperate"), be it by not saying anything about one another, be it by only saying positive things. But for the individual arrestee, it was a great temptation to blame everything on the other defendants and send them to their doom (to "defect") and thereby to minimize one's own exposure. In the context of Soviet collaboration trials, previous case studies suggest that the authorities offered defendants deals for "defecting". Thus, Penter hypothesized that in a trial

[144] Bosharnitsan, Samuil Samuilovich, USHMM, RG-54.003*06, p. 175–178.
[145] RADCHENKO: "We Emptied", p. 69.
[146] BAUR, Nina/BLASIUS, Jörg (ed.): Handbuch Methoden der empirischen Sozialforschung, Wiesbaden ²2019, p. 227.

dealing with the murder of disabled people in Ukraine, one defendant was released because she had provided extensive incriminating testimonies about others.[147]

A qualitative content analysis shows that defendants used both strategies (and mixtures of them), but that defecting was more common than cooperating. We coded 165 defendant's interrogation protocols and notes of confrontations involving two defendants to identify such behaviors. We did not include protocols of investigations where there was only one defendant. The spectrum of answers defendants gave when they were talking about each other entails: blaming something on another Jewish ghetto functionary, claiming to have followed the orders of another functionary, pointing out that Jewish functionaries had a shared responsibility for something, avoiding to blame others and, lastly, saying positive things about another functionary. The tactics of blaming something on another Jewish ghetto functionary and claiming to have followed the orders of another functionary are types of "defecting". Pointing to shared responsibility is a tactic that cannot meaningfully described as either "defecting" or "cooperating" – it appears as an attempt to mediate the two. Avoiding to blame another defendant or highlighting positive things he had done are types of "cooperating". Here is the distribution of those approaches, measured as the number of protocols in which we coded for each tactic at least once:

| **code** | **count** | **% of documents** |
|---|---|---|
| positive about other defendants | 8 | 5% |
| avoiding blaming other defendants | 20 | 12% |
| shared responsibility | 7 | 4% |
| following another functionary's orders | 23 | 14% |
| blaming other defendant | 44 | 27% |

*tab. 3*

**counted once per document*

*N = 165 (defendant's pretrial testimony + confrontations between defendants from cases where defendants could meaningfully talk about other defendants)*

As the table shows, 41% of the documents contain at least one instance of defection, while only 17% contain at least one instance of cooperation. Attempts to point to a shared responsibility are negligible.

Besides counting codings once per document and calculating their prevalence relative to the total number of documents, one can also count all codings for one code relative to the total amount of

[147] PENTER: Vergessene Opfer, p. 371.

codings for all of the codes. The result is the following table, that supports the view that defection was more common than cooperation:

| code | count | percentage of total codings |
|---|---|---|
| positive about other defendants | 17 | 10% |
| avoiding blaming other defendants | 31 | 19% |
| shared responsibility | 11 | 7% |
| following another functionary's orders | 27 | 16% |
| blaming other defendant | 78 | 48% |
| total codings | 164 | 100% |

*tab. 4*

*N = 165 (defendants' pretrial testimonies + confrontations between defendants from cases where defendants could meaningfully talk about other defendants)*

Here, the picture is even clearer: Most times defendants talked about another, it was to shift blame on another.

Note that the prisoner's dilemma also extended to certain witnesses, namely those under arrest for other accusations and to potential suspects. It is not uncommon to find individual arrestees among the witnesses. These people were not among the defendants of the investigation into the respective Jewish council, but in custody no less.[148] One can easily imagine that such witnesses potentially tried to strike deals with the authorities, such as getting their sentence reduced in exchange for providing incriminating testimony in another case. Moreover, there were people among the witnesses who had themselves served in the Jewish ghetto administrations, but were not arrested. These people had very good reason to present themselves as innocent and to shift all blame on those former functionaries that were already in custody (see chapter 10).

Whether they were defendants, witnesses arrested in other cases or witnesses who had reason to fear arrest, the prisoner's dilemma presents a serious potential distortion to these individuals' testimony. These people would likely have kept silent or said other things, had there not been the pressure of Soviet criminal prosecution. That situation itself was already influencing their decisions, and the protocols cannot be seen as documenting expressions of their free will.

[148] Bosharnitsan, Samuil Samuilovich, USHMM, RG-54.003*06, p. 31. Dresher Iosif Solomonovich, D5126-o, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Chernivets'ka oblast') (HDA SBU ChO), p. 27, 30. Rakhmut, Samuil Khaimovich, USHMM, RG-31.018M, R-2838, F03, 322, p. 74, 83. Shtern Ignatii Samoilovich, HDA SBU ChO, D85-p, p. 34, 41, 48.

**Indicators for torture**

Moreover, there is the problem of torture, which is regularly discussed in the literature on Soviet war crimes and collaboration trials.[149] A serious problem with this scholarship is that it is mostly based on anecdotal evidence and fails to treat the problem systematically. For example, Alexander Prusin states that "[t]o demonstrate their zeal, the police functionaries often fabricated cases or forced innocent individuals to accuse themselves of war crimes and collaboration."[150] Unfortunately, Prusin does not substantiate this claim with a footnote. Another similar claim at least references a document, namely one appeal taken from one casefile.[151] The nonchalance with which such broad claims are based on single empirical observations is even more surprising since hundreds and hundreds of such files are currently accessible for researchers in the US alone, not to speak of the massive collections in the Ukrainian SBU archives. There seems to be peculiarly little interest in the scholarly community to investigate things "that everybody knows anyway", such as that the Soviets used torture. One wonders if some scholars simply project findings from the 1930s into the 1940s and generalize them for that period, such as the idea that confessions were the primary type of evidence in 1940s war crimes and collaboration trials – which they were not.[152] A notable exception to that state of scholarship is Penter's work on internal mechanisms of the criminal justice institutions to counter torture, which the institutional analysis presented in this book builds upon (see chapter 5).[153] But most scholars leave their comments at nebulous and ill-supported remarks akin to those by Prusin cited above. It should be maintained against such tendencies that while it is well-established that Soviet investigators tortured some defendants, the degree to which they used torture is difficult to determine. Some of the authors referenced above at least acknowledge this explicitly.[154]

Unfortunately, even those who tread more cautiously and try to estimate how common the use of torture was offer only few and unsystematic suggestions on how to spot it in a concrete

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[149] The following is just an incomplete selection: BLUM et al.: Survivors, p. 229. DEAN, Martin: Collaboration in the Holocaust. Crimes of the local police in Belorussia and Ukraine 1941 - 44, Basingstoke 2000, p. 158. DUMITRU: Analysis, p. 144. EXELER: Ambivalent State, p. 610. EXELER: Reckoning with occupation, p. 224. MAKHALOVA: Kollaboratsionizm v Krymu, 32-33. POHL: Sowjetische Strafverfahren, p. 107. PENTER: Local Collaborators, p. 7–8. EADEM: Kohle für Stalin und Hitler. Arbeiten und Leben im Donbass 1929 bis 1953 (Veröffentlichungen des Instituts für soziale Bewegungen: Schriftenreihe C, Arbeitseinsatz und Zwangsarbeit im Bergbau, vol. 8), Essen 2010, p. 404. PRUSIN, Alexander Victor: "Fascist Criminals to the Gallows!". The Holocaust and Soviet War Crimes Trials, December 1945–February 1946, in: Holocaust and Genocide Studies 1 (2003), p. 1–30, here p. 17. PRUSIN, Alexander Victor: Traitors or War Criminals. Collaboration on Trial in Soviet Courts in the 1940s, in: Stalin's Soviet justice. "Show" trials, war crimes trials, and Nuremberg, edited by David CROWE, London 2019, p. 79–103, here p. 88, 97. RADCHENKO: "We Emptied", p. 68–69.

[150] PRUSIN: Traitors, p. 88.

[151] Ibid., p. 97.

[152] The claim can be found in: FEFERMAN, Kiril: Soviet legal procedures against the Nazi criminals and Soviet collaborators as historical sources, in: Legacy 6 (2014), p. 34–43, here p. 39–40.

[153] PENTER: Local Collaborators, p. 7–8.

[154] POHL: Sowjetische Strafverfahren, p. 107.

investigative casefile. The disinterest in deriving some sort of methodological guidelines for identifying torture is baffling. Even if scholars managed to arrive at a more solid estimate of just how widely Soviet authorities tortured defendants in the 1940s investigations, that would not be useful for recognizing signs of torture in a concrete protocol. There seems to be a tacit radical skepticism among scholars that this is not even worth trying. Contrary to that radical skepticism, the remainder of this chapter presents a series of indicators in the protocols themselves that allow to arrive at a more informed skepticism and at probabilistic estimates of how likely torture was. As with any "internal check", the margin of error remains significant (see above). However, trying and erring seems preferable to analytical defeatism.

It needs to be stressed that these remarks are no attempt at whitewashing institutions like the NKGB and their methods. Even if investigators did not beat up defendants, the conditions of investigative custody were already inhumane in 1940s Ukraine and Moldova.[155] That torture was a real problem is completely obvious from the fact that the supervising institutions made at least some attempts at curtailing it (see chapter 5). It is also obvious from the fact that even if one just studies a narrow topic such the judicial aftermath of the Jewish ghettos in the occupied USSR, torture just crops up by chance. Consider the oral history interview with Semen Burle, a survivor of the Rybnitsa ghetto. After his liberation from the ghetto, Burle joined the local paramilitary Soviet "extermination battalion" and in that function he participated in the arrests of former local Ukrainian policemen.[156] Burle talks openly about how the members of the "extermination battalion" beat these arrestees.[157]

An example a bit more removed from the focus of the present study is the testimony of Abram Zeleznikow, a survivor of the Vilna ghetto in Lithuania. Zeleznikow escaped from the ghetto, joined the Soviet partisans, was later recruited into SMERSH and tasked with hunting Lithuanian Nazi collaborators. In a 1997 interview, Zeleznikow talked openly about beating someone during an interrogation:

> "I remember very vivid in my memory a young Lithuanian girl, what we apprehended on the railway station. When we took her in for interrogation, we find a diary in Lithuanian. And as I was quite fluent then in Lithuanian, I find out, that there was notes about parties, gatherings with German officers, with Lithuanians what were with the Nazis. I tried to get out from her

[155] Criminal proceedings regularly exceeded the statutory time limits and defendants had to remain in pre-trial detention longer than anticipated. One of the most common explanations for this was that the defendants fell ill while in pre-trial detention and were unable to attend the trial. Another was that entire pretrial detention facilities were quarantined to prevent the spread of infectious diseases. See: Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 34. Defedant Taikh even sent a petition to the prosecutor, detailing how the conditions of investigative custody eroded his health. Taikh Maer Mendelevich, DAVO, D633, p. 50.

[156] BURLE, Semen, Interview 5922. Interviewed by Michael Feldman. Visual History Archive, USC Shoah Foundation 24.10.1995, https://vha.usc.edu/viewingPage?testimonyID=7497&returnIndex=0#, last accessed May 24, 2021, segments 78–81.

[157] Ibid.

> some names and then she didn't want to cooperate, and I have to admit that I used force, beat her up and frightened her very much, so she gave us a few names and even addresses and we went over and we made quite a few arrests. And we find some Lithuanians and even some Germans what have been hiding."[158]

However, as stated above, such anecdotal evidence cannot help to estimate how prevalent the use of torture was in institutions like SMERSH and it is mostly useless for identifying torture in a concrete casefile. For that, one needs indicators drawn from the file itself.

One potential such indicator derived from the literature on Gestapo interrogation protocols is defendants' signatures. The suggestion is to check whether these signatures are "shaky, incomplete or spelled incorrectly", which is seen as a sign of distress and a likely result of torture.[159] In the protocols examined for the present study, defendants had to sign their names at the bottom of every page, which allows to check their signatures. However, nothing out of the ordinary can be found in any of the files we examined. At least for the present study, the defendants' signatures do not appear to be a useful indicator of torture.

Naturally, many of the other indicators revolve around confessions as the ultimate goal of torture. At the most basic level this means to treat the contents of confessions with great skepticism. If a defendant admitted to everything or all of the defendants in one case gave extensive confessions, this is a likely sign of illicit interrogation methods.[160] Conversely, if defendants did not admit any guilt or at least kept denying the lion share of the accusations, it is unlikely that the Soviet security officers tortured them, at least not to the extent that was prevalent during the Great Terror and the mass operations (see chapter 4).[161]

However, complete and total denial of everything is an unlikely defense strategy. If an accused wanted to keep key information from the investigators, it was imperative for him to appear credible. Thus, one can expect those defendants to use "a strategy of partial admission and partial omission", with which they divulged more innocuous information and those facts they could not reasonably deny anyway.[162] In our case, a typical example is a defendant who admits that he served in the Jewish ghetto administration, which was public knowledge anyway, and then denies having been involved in anything like forced labor recruitment etc.

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[158] ZELEZNIKOW, Abram, Interview 27584. Interviewed by Sharona Blum. Visual History Archive, USC Shoah Foundation 11.02.1997, https://vha.usc.edu/viewingPage?testimonyID=27714&returnIndex=0#, last accessed March 17, 2017, segments 168–178.

[159] RUZINEK, Bernd A.: Vernehmungsprotokolle, in: Einführung in die Interpretation historischer Quellen, edited by Bernd-A. RUSINEK / Volker ACKERMANN / Jörg ENGELBRECHT (UTB, 1674: Geschichte), Paderborn 1992, p. 111–132, here p. 118–119.

[160] ESCHEBACH: »Ich bin unschuldig.«, p. 67.

[161] PODKUR/CHENTSOV: Dokumenty organov gosudarstvennoi, p. 275. KUDRYASHOV: Ordinary Collaborators, p. 229.

[162] RUZINEK: Vernehmungsprotokolle, p. 116–117.

In many ways, the timing of a confession is crucial for estimating whether the investigators elicited it violently. Thus, even the agencies supervising the work of Soviet investigative authorities and military tribunals in 1940s Ukraine were suspicious about protocols which started with a complete denial of all guilt but ended on a complete admission of guilt.[163] More generally, the later in an investigation a defendant confesses to something he denied in earlier interrogations, the more likely this means he crumbled under significant pressure, and pressure may well have meant torture.

Another aspect of timing are confessions that follow reproaches.[164] These come in two types: First, "pure" reproaches when an investigator just demands to be told the truth, at best vaguely alluding to some form of evidence. Such a reproach reads like this:

> "Question: You are not saying the truth, you were a member of the committee headed by Kats, provide us with detailed testimony about your collaborationist activities for the Romanian occupiers."[165]

The second type of reproaches are instances when investigators confront defendants with incriminating evidence, namely excerpts from witness testimonies or statements of other defendants. Such reproaches read like this:

> "Question: Why are you leading the investigators astray and not telling the truth. You personally ordered the Romanian soldier to beat up the ghetto Jew Khananis, I am reading out the testimony of witness Khananis to you, do you confirm it?"[166]

If no torture was used, a defendant had no apparent reason to react to a "pure" reproach. After all, nothing had changed, the investigators had not found out anything new that made it more difficult for the defendant to keep his story straight. Conversely, when interrogators confront defendants with new incriminating testimony, one can expect some of them to give up and confess even in rule-of-law-based legal systems. Therefore, when a defendant confesses following a "pure" reproach, that makes it more likely that the defendant was tortured.

We coded these types of reproaches and the defendants' reactions to them in 179 pretrial interrogation protocols. Interestingly, the share of instances when defendants "crumbled" from "pure" reproaches is about the same as that of defendants admitting something because they were presented with new evidence, as the following tables show:

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[163] Military Prosecutor of L'vov Military District Colonel of Justice Lipatov to Secretary of the Central Committee of CP(b)U, comrade Khrushchev, 04.07.1945, File 2374, Reel 57, RG-31.026M, Selected records from former Archives of the Communist Party of Ukraine, p. 12–29, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 26.
[164] RUZINEK: Vernehmungsprotokolle, p. 118.
[165] Rakhmut, Samuil Khaimovich, USHMM, RG-31.018M, R-2838, F03, 322, p. 37–40.
[166] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 66.

| code | coded segments | percentage |
|---|---|---|
| total "pure" reproaches | 92 | 100% |
| reaction: no new confession despite reproach | 79 | 86% |
| reaction: confession following reproach | 13 | 14% |

*tab. 5 N = 179 documents*

| code | coded segments | percentage |
|---|---|---|
| total reproaches as confrontation with testimony | 103 | 100% |
| reaction: rejecting incriminating witness testimony | 87 | 84% |
| reaction: accepting incriminating testimony | 16 | 16% |

*tab. 6 N = 179 documents*

As a result, the things defendants confessed following a "pure" reproach should be treated with utmost caution. On the other hand, it seems that if reproaches were accompanied by torture, then defendants held firm in most instances. In turn, that makes it unlikely that every reproach was accompanied by torture. After all, if one takes the 1930s as a yardstick, the methods Soviet investigators had in their repertoire were extremely hard to withstand (see chapter 4).

Another indicator related to the timing of confessions is what one may term a "sudden change of heart", that is instances when a new interrogation begins with a defendant confessing everything he had denied before. One has to wonder what happened in the meantime that made the defendant change his mind.[167] That is especially true is the first thing a defendant supposedly said was something like "I have come to realize that my stubborn refusal to confess is futile and will now

[167] PODKUR/CHENTSOV: Dokumenty organov gosudarstvennoi, p. 276. EDELE: Stalin's defectors, p. 14.

give truthful testimony."[168] It then stands to reason that the defendant just repeated what the investigators had "instructed" him to say before the interrogation.[169]

Lastly, there is the issue of torture in the form of sleep deprivation.[170] For more than half of the interrogations, the investigators recorded at what time they had started and ended. Therefore, we can be sure that at least a bit more than a third of the interrogations was conducted at night (if we count anything happening between 8 pm and 6 am as "night").

| **interrogations** | | |
|---|---|---|
| daytime | 41 | 23% |
| nighttime | 64 | 36% |
| unknown | 74 | 41% |
| total | 179 | 100% |

*tab. 7 *unknown mostly means that no time was recorded, but occasionally only start or end times were recorded*

Not only were nighttime interrogations common, they also changed the pattern of defendants' confessions. As stated above, we coded confessions following "pure" reproaches and confessions when defendants accepted some incriminating testimony. Moreover, we coded confessions stemming from the very first interrogations, confessions when defendants just repeated something they had admitted in a previous interrogation and confessions when defendants admitted to something new (without being prompted to do so by an investigator's reproach). Clearly, the confessions following reproaches and those "unprompted" new confessions are the most suspicious. Of the 97 confessions in the 64 protocols of nighttime interrogations, those suspicious confessions make up 40%. In the 41 protocols of daytime interrogations, only 30% of the 71 confessions are "suspicious". Therefore, one can assume that sleep deprivation had an effect on defendants' readiness to confess, and that this went against their free will.

## Conclusion

Soviet investigative casefiles cause much skepticism among historians. In the context of the present study, such skepticism should primarily be directed against the protocols of different verbal exchanges – witness depositions, defendants' interrogations and confrontations. Such records can be distorted on three levels – that of the protocols vs. the events they relate to, the protocols vs.

[168] Tkachenko et al, TR.18 - Documentation from Committee for State Security (KGB) archives in Ukraine, JM/19771, 11426739, Yad Vashem Archives (YVA), p. 22. MÜLLER, Reinhard: NKWD-Folter. Terror-Realität und Produktion von Fiktionen, in: Stalinscher Terror 1934-41. Eine Forschungsbilanz, edited by Wladislaw HEDELER, Berlin 2002, p. 133–158, here p. 142.
[169] This problem, too, was known to the supervising agencies. See: Lipatov to Khrushchev, USHMM, File 2374, Reel 57, RG-31.026M, p. 28.
[170] PRUSIN: "Fascist Criminals", p. 16.

the verbal exchange they seemingly recorded, and the protocols vs. the free will of those questioned.

On the level of protocols vs. events, previous studies showed that the contents of protocols drawn from 1940s collaboration proceedings are not pure fiction – these contents correspond to information available in other materials. Therefore, to assess protocols' validity, their contents need to be triangulated whenever possible.

However, such triangulation is often impossible and on the level of protocols vs. verbal exchanges, hints about the documents' validity need to be drawn from these materials themselves. A basic theory of the underlying processes that generated such protocols stipulates that they have a threefold authorship, consisting of an intellectual, a juridical and a material author. In the materials studied here, these roles were divided between the witnesses/defendants, as the intellectual authors, and the investigators who fulfilled the other two roles. As a basic assumption, the theory states that witnesses' and defendants' words enter protocols only selectively and in redacted form, but that they are not lost completely in those documents.

In the materials examined for the present chapter, redaction could mean translation in the literal sense, when intellectual authors' words were translated from another language into Russian. But even of conversations held in Russian, only a fraction was recorded in the protocols, despite the legal requirement to record an intellectual author's word verbatim and in the first person. Therefore, hypothesizing what was left out and how exactly these words were summarized is the key analytical task. What potential distortions did that process introduce?

To answer that question, one needs to check cross-protocol consistency (if possible) and trace investigators' personal styles and vocabularies. More broadly, to understand the way investigators summarized and redacted what intellectual authors said also means to evaluate the protocols quality as evidence. What was the standard here, what did they have to write down? Despite the fact that normative acts demanded a high standard and that criminalist guidelines should theoretically have been available to the investigators, the quality of the protocols as evidence remained low. During the period under study, protocols did not even consistently record whether witnesses had seen something with their own eyes. Another potential distortion stems from a certain accusatory bias inherent to the protocols. It takes the form of suggestive questioning and an often limited interest in learning exonerating factors. However, since a third of the witness depositions mention at least one such factor, such accusatory bias should also not be overestimated.

A potential distortion that is especially difficult to disentangle is the issue of ideologically loaded language and repetitive form. Skeptics often see these aspects as a result of the juridical/material

authors translating intellectual authors' words into Soviet ideological terms. Because of such redaction, skeptics claim, the protocols are of limited informational value. However, as the present chapter demonstrated, such homogeneity of form was often compatible with a surprising heterogeneity of content. Moreover, the homogeneity might not even have been introduced by the Soviet investigators. It could also have been a result of socially standardized memory, of survivors talking through the events and thereby unintentionally aligning their stories. Lastly, the analysis also suggested to take witnesses more seriously as active agents who used different strategies in pursuing their own goals with in the criminal proceedings. One such strategy is using the desirability bias Soviet security organs projected for one's own goals. Made up accusations of anti-Soviet agitation represent such an approach on the level of content, and we may assume that it also affected the level of form. Such strategies may partially explain the homogeneity of form and the prevalence of ideologically loaded terms – these aspects came not only "from above", but "from below" as well.

However, desirability bias also played a role on the level of protocols vs. free will. That bias could become an impediment for witnesses, especially in a situation where those who had lived on occupied territory were deemed suspicious and the same was even truer for Holocaust survivors. The protocols have noteworthy "speaking gaps", such as the theme of religion, that had played a role in the ghettos, but was never mentioned in the protocols. Moreover, witnesses sometimes faced pressure to explain their own actions rather than those of the defendants. Nevertheless, desirability bias as an impediment should not be overestimated as well. Several examples show that witnesses did not make up things they did not know and that there was even a certain self-selection for taking on the social role as witness in the first place.

For defendants, things looked quite differently. Even if they were not tortured, they acted under a host of pressures – a conviction to a term in the Gulag was scary enough even if one was not being beaten by investigators. In investigations with multiple defendants, former ghetto functionaries faced a prisoner's dilemma, and often acted as the theory predicts, namely by shifting blame on the other defendants. These statements need to be treated with utmost caution – the prisoner's dilemma represents a serious potential distortion.

Another potential distortion is torture. The present chapter reviewed a series of indicators for the use of torture: defendants' signatures, the extent of confessions, the timing of confessions within the overall investigation, confessions following reproaches, confessions at the beginnings of protocols and sleep deprivation. Some of these indicators proved useless, such as signatures, others quite useful, especially if combined. To detect torture in protocols will invariably mean to estimate how likely it was. But there are at least some useful hints for such an estimate in the casefiles themselves.

In sum, there is a host of aspects that scholars can and should consider when analyzing protocols of verbal exchanges to estimate the validity of these materials. These considerations will surely fail to dispel any radical skepticism. But a position of radical skepticism must simply exclude Soviet investigative casefiles and the protocols within them from analysis – hardly a satisfying option. The thoughts laid out in this chapter present a guideline for informed skepticism on the levels of protocols vs. events, protocols vs. verbal exchanges and protocols vs. free will. The present discussion informed our analysis of the protocols drawn from the casefiles on analytical level D) and the references we make throughout the book to similar documents stemming from other cases. It is meant to serve both as a guideline for other historians who want to analyze such documents and as a quality standard to which the reader can hold the discussion in the following chapters.

# The Dual State – A Reconstruction of Fraenkel's Approach to the Nazi Legal System

In this chapter, we develop the conceptual framework guiding our analysis of Soviet security and judiciary actors' behavior, namely the concept of the "dual state". We discuss Ernst Fraenkel's original definition and examine its key elements: dualism, violence, arbitrariness, legality, and institutions. We conclude that "dual state" refers to a dualism of modes of operation in the legal sphere of dictatorships. Whereas the weaker, dependent "normative state" is a norm-bound approach to justice, the stronger, independent "prerogative state" discards any self-restriction of the state by legal norms, mostly for unleashing political repression. These strategies only partially overlap with features of institutional design, such as the dualism of regular courts and extraordinary political courts. We argue that to operationalize them, the concepts "normative state" and "prerogative state" are best understood as ideal types in the sense of Max Weber. Lastly, we discuss which functions scholars ascribe to the "normative" and "prerogative" states. We propose that such a functionalist perspective can provide hypotheses about Soviet actors' decision-making – which is notoriously difficult to grasp empirically. We then move on to operationalize our conceptualization of the dual state into a descriptive ideal type heuristic.

## Defining the "dual state"

Since Ernst Fraenkel coined the term "dual state", our conceptualization begins with his original definition of the term.[1] Fraenkel postulated a dualism of two "systems of rule" ("Herrschaftssysteme") in Nazi Germany, namely the "prerogative state" and the "normative state".[2] In the introduction to the 1941 edition, Fraenkel provided the following explanation of these terms:

> "By the Prerogative State we mean that governmental system which exercises unlimited arbitrariness and violence unchecked by any legal guarantees, and by the Normative State an administrative body endowed with elaborate powers for safeguarding the legal order as expressed in statutes, decisions of the courts, and activities of the administrative agencies."[3]

There are several problems with this definition that make it necessary to further examine its key elements. The definition is "rather vague", which invited considerable misunderstandings.[4] It is too vague to be operationalized in this current form. Also, Fraenkel used this definition as a starting point of his analysis, not as a conclusion. In the rest of Fraenkel's analysis, he relativized parts of

[1] However, our goals are more eclectic than exegetic. Rather than trying to establish "the true Fraenkel", we aim to extrapolate a version of his theory which is serviceable for the following analysis. Our conceptualization is thus based as much on Fraenkel's work as on the subsequent debate.

[2] FRAENKEL, Ernst: Der Doppelstaat, in: Der Doppelstaat, Hamburg (³2012), p. 39–273, here p. 101.

[3] IDEM: The dual state. A contribution to the theory of dictatorship 2017, p. xxiii.

[4] EDEN, Sören: Fraenkels »Doppelstaat« als Rechtsgeschichte. Arbeitsrecht und Politik während der NS-Diktatur, in: Zeithistorische Forschungen/Studies in Contemporary History 2, p. 278–299.

the definition. Subsequent contributors to the debate have also refined it. A further step-by-step examination is thus required. In the definition, Fraenkel introduced the elements of dualism, violence, arbitrariness, legality, and institutions – each of these elements demands clarification, as does their relationship to one another.

The "dualism" in Fraenkel's "dualist approach" concerned not the distinction between state and party, but one within the state.[5] Fraenkel saw such a misunderstanding coming and explicitly stated that he did not want "the dual state" to be mistaken for the dualism of state and party in Nazi Germany.[6] In this regard, his argument was anti-exculpatory and aimed against "any euphemistic division into a pure, innocent bureaucracy on the one hand and a Nazi movement destroying state and law on the other".[7] Fraenkel thus emphasized "the division that existed *within* the state" over the party-state distinction.[8]

According to Fraenkel's definition, this "division within the state" was linked to arbitrariness and violence. In Fraenkel's theory, violence was both central and secondary. Central, as it was a primary "output" of the prerogative state, secondary, as it was just one of several ends that could be reached by the means of arbitrariness.[9] In the context of the dual state, the word "arbitrary" is best understood as "unchecked by any legal guarantees", as lawlessness.[10] As Dreier noted, "arbitrariness" should not be confounded for haphazardness or chaos, since "[t]he system as a whole was by no means erratic, but acted with frightening consistency."[11] Fraenkel emphasized that lawlessness is of primary theoretical importance: "It must be remembered that in dictatorial countries the dichotomy of justice and injustice has been supplanted by one of legality and lawlessness."[12] Thus, the normative state is the sphere of legality, the prerogative state that of lawlessness.

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[5] On Fraenkel's treatment of Nazi Germany as a "dualist approach", see: AMBOS, Kai: National Socialist Criminal Law. Continuity and radicalization, Baden-Baden 2019, p. 25.

[6] FRAENKEL: Dual state, p. xxv.

[7] WILDT, Michael: Die Transformation des Ausnahmezustands. Ernst Fraenkels Analyse der NS-Herrschaft und ihre politische Aktualität, in: 50 Klassiker der Zeitgeschichte, edited by Jürgen DANYEL / Jan-Holger KIRSCH / Martin SABROW, Göttingen 2007, 19-23, here p. 21.

[8] MEIERHENRICH, Jens: An Ethnography of Nazi Law. The Intellectual Foundations of Ernst Fraenkel's Theory of Dictatorship, in: The dual state. A contribution to the theory of dictatorship, edited by Jens MEIERHENRICH 2017, p. xxvii–lxxxi, here p. xli.

[9] This primacy of violence was obvious even in those areas where the prerogative state "took a backseat to the normative state", as the economy. IDEM: The remnants of the Rechtsstaat. An ethnography of Nazi law, Oxford 2018, p. 194–195. PLAGGENBORG, Stefan: Experiment Moderne. Der sowjetische Weg, Frankfurt 2006, p. 202.

[10] FRAENKEL: Dual state, p. xxiii.

[11] DREIER, Horst: Recht und Willkür, in: Recht und Willkür, edited by Christian STARCK, Tübingen 2012, p. 1–25, here p. 6. Fraenkel himself had already emphasized this: "The political sphere is a vacuum as far as law is concerned. Of course it contains a certain element of factual order and predictability but only in so far as there is a certain regularity and predictability in the behavior of officials." FRAENKEL: Dual state, p. 3.

[12] Ibid., p. 95. Referred to as "Rechtsmäßigkeit oder Rechtslosigkeit" in the German version. FRAENKEL: Doppelstaat, p. 147.

How are lawlessness and legality connected to the institutions of the state, the remaining elements of Fraenkel's definition? One line of Fraenkel's argument suggests a clear division of both spheres into different institutions of the state. Fraenkel substantiated the proposed dualism of legality and lawlessness with an instructive example. In some criminal cases, the defendants were acquitted by a regular court, since their guilt could not be proven, only to be immediately arrested and put into concentration camps by the "police authorities", who deemed these defendants political enemies.[13] Fraenkel referred to such instances as "external reservations" by which the prerogative state interferes in the normative state and deemed this the primary type of their interaction.[14] Judging from this example, the opposites of lawlessness and legality seem to have been mirrored in the "institutional design" of Nazi Germany, that is, the prerogative and normative state existed in separate "administrative agencies".[15] This idea of institutional compartmentalization of both "states" is a strong current in Fraenkel's book. He speaks of the "co-existence of authorities bound by law and of others independent of law".[16] As prerogative state institutions independent of law, Fraenkel identified the Gestapo and police authorities, the Nazi Party NSDAP, and the special political courts, including the infamous people's court (Volksgerichtshof).[17] This was the "compartment" of the prerogative state.

The idea of an institutional compartmentalization can also be substantiated with Fraenkel's treatment of the normative state. According to Fraenkel, it had its separate institutions. The widespread erosion of legality notwithstanding, Fraenkel and others pointed out that lawlessness was far from the only mode of operation of the executive and judicial agencies in Nazi Germany. To a large part, these agencies adhered to the law as they had before the Nazis' rise to power.[18] Here, the principles of reliability, rationality, and accountability prevailed.[19] The sphere of lawfulness was primarily institutionalized in the regular court system as the Nazis had inherited it from the Weimar Republic.

How then, were the prerogative and normative states delimited? Fraenkel proposed that the normative state was the weak, dependent element, completely at the mercy of the strong, independent prerogative state. When we understand "arbitrariness" as doing away with legal constraints for the sake of political expediency, we must ask what constitutes the sphere of the

[13] FRAENKEL: Dual state, p. 38–39.
[14] DREIER, Horst: Nachwort: Was ist doppelt am "Doppelstaat"? Zur Rezeption und Bedeutung der klassischen Studie von Ernst Fraenkel, in: Der Doppelstaat, Hamburg (³2012), p. 274–300, here p. 285.
[15] MEIERHENRICH: Ethnography of Nazi Law, p. lxi. FRAENKEL: Dual state, p. xxiii.
[16] FRAENKEL: Dual state, p. 38.
[17] Ibid., p. 9, 33-37, 50–51.
[18] INTELMANN, Peter: Franz L. Neumann. Chancen und Dilemma des politischen Reformismus (Nomos Universitätsschriften - Politik, vol. 66), Baden-Baden 1996, p. 276.
[19] EDEN: Fraenkels »Doppelstaat«.

political in the first place. How it is delimited in "a dictatorship country" and how are normative and prerogative state interrelated?[20] Fraenkel summed up the wide range of issues the prerogative state deemed within its competence as follows: "The conclusion one must come to is that politics is that which political authorities choose to define as political."[21] Elsewhere, Fraenkel couched this idea in finest legalese: "From this follows the principle that the presumption of jurisdiction rests with the Normative State. The jurisdiction over jurisdiction rests with the Prerogative State."[22] In other words: the dualism is highly "imbalanced, characterized as it was by the 'primacy' ('Primat') of the political".[23] Hence the "normative state" is the weaker element, completely dependent on the self-restriction of its prerogative counterpart.[24] The prerogative state expands and retracts, taking from and giving to its weaker counterpart, the normative state's sphere is variable to those permutations.[25] Therefore, legality "[…] in its entirety is at the mercy of the prerogative state."[26] While the prerogative state reigned potentially unlimited, since "absence of boundaries" was "the essence of its nature", the normative state could potentially be nullified. [27]

Since it is utterly dependent on the prerogative state, the normative state is by no means a rule of law system ("Rechtsstaat"). With the "dual state", Fraenkel theorized "'policy reservation' ('*Politikvorbehalt*')" as a defining feature of the legal system in National Socialist Germany.[28] Laws could be followed, but only if politics were not deemed more important. This point cannot be overemphasized, since it is the defining element of the dual state and central to Fraenkel's distinction between the normative state and a rule-of-law-system.[29] The normative state cannot pretend to belong to the category of "Rechtsstaat" because it is "always subject […] to the sword of Damocles" of the prerogative state.[30] Hence Fraenkel stated:

> "The Normative State, however, is by no means identical with a state in which the 'Rule of Law' prevails, i.e., with the Rechtsstaat of the liberal period. The Normative State is a necessary complement to the Prerogative State and can be understood only in that light. Since the Prerogative and Normative States constitute an interdependent whole, consideration of the Normative State alone is not permissible."[31]

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[20] FRAENKEL: Dual state, p. 95.
[21] Ibid., p. 42.
[22] Ibid., p. 57.
[23] MEIERHENRICH: Ethnography of Nazi Law, p. xlii.
[24] "The limits of the Prerogative State are not imposed from the outside; they are imposed by the Prerogative State itself." FRAENKEL: Dual state, p. 58.
[25] DREIER: Nachwort, p. 295.
[26] RÜCKERT, Joachim: Unrecht durch Recht – zum Profil der Rechtsgeschichte der NS-Zeit, in: JuristenZeitung 17 (2015), p. 793–804, here p. 799. Rückert thus criticizes "The Dual State" for failing to make a point that is at the heart of the book's argument.
[27] MEIERHENRICH: Remnants, p. 183.
[28] AMBOS: National Socialist Criminal Law, p. 29. MEIERHENRICH: Remnants, p. 192.
[29] A point missed by some commentators, as for example: TUSHNET, Mark: Rule by Law or Rule of Law?, in: Asia Pacific Law Review 2 (2014), p. 79–92, here p. 84.
[30] DREIER: Nachwort, p. 300.
[31] FRAENKEL: Dual state, p. 71.

Thus far, the dual state appears as an institutional compartmentalization with one set of institutions intervening in the lawful operation of a second set of institutions, merely based on political expediency. But the institutional division was less clear cut than Fraenkel sometimes claimed. Ultimately, the concepts of the "normative" and "prerogative" state are best understood as strategies or modes of operation available across divisions in the institutional design. Despite his emphasis on institutional compartmentalization, Fraenkel was also aware that these boundaries were fluid. Often, the demarcation between the two "systems of rule" ("Herrschaftssysteme") appears to be one of institutional *behavior* as much as of institutional *design*.[32] The "external reservations" which the prerogative state forced up the normative state were important. But the representatives of the latter also tended to show "internal reservations", that is "anticipatory obedience (what Germans call *vorauseilendem Gehorsam*) to presumed imperatives" of the prerogative state.[33] This lead to "ordinary courts' voluntary abdication of their adjudicative power".[34] Fraenkel himself dismissed the prevalence of such "internal reservations", but gave various empirical examples supporting the very claim he argued against.[35] To use Ian Kershaw's term, ordinary judges were "working towards the Führer".[36] And representatives of a wide variety of administrative agencies acted in the same manner.[37] We thus see a considerable "self-restriction" of agencies which in the overall institutional design belonged to the "normative state" yet acted according to the principles of the "prerogative state", either depending on situational conditions or even as a stable, unbroken pattern.[38] Even the country's highest courts acted upon such "internal reservations". In this context, Jürgen Zarusky spoke of the "self-co-ordination" ("Selbstgleichschaltung") of the

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[32] FRAENKEL: Doppelstaat, p. 101.

[33] MEIERHENRICH: Remnants, p. 184.

[34] Ibid. Thus Meierhenrich contends: "The facts of the case need not concern us here. What matters is that Prussia's highest administrative court seized the occasion of the particular, localized dispute to pronounce— on its own accord— on the general conditions under which Gestapo orders were subject to judicial review. The panel held that very few such conditions existed. The organization of the prerogative state, it ruled, would only be subject to review in the event that acts of ordinary police (acting as auxiliary forces for the Nazi Secret Police) went above and beyond the orders they received from the Gestapo." Ibid., p. 185. Until today, "judicial self-restraint" is one of the most important mechanisms by which the legal sphere is contained in authoritarian regimes. See: MOUSTAFA, Tamir: Law and Courts in Authoritarian Regimes, in: Annual Review of Law and Social Science 1 (2014), p. 281–299, here p. 289.

[35] DREIER: Nachwort, p. 289–295. Thus Fraenkel insisted: "It would not be legitimate to speak of a Normative State if, in cases of conflict, the courts ignored the existing law in favor of general principles of National- Socialist origin. The Normative State would not exist if, even in cases where the political police do not intervene, the legal authority had to contend with this second reservation." FRAENKEL: Dual state, p. 74.

[36] KERSHAW, Ian: 'Working Towards the Führer'. Reflections on the Nature of the Hitler Dictatorship, in: Contemporary European History 2 (1993), p. 103–118, here p. 118. Kershaw defined the concept as "[…] a selective push for the radicalisation and implementation of those ideological lines most closely associated with Hitler's known broad aims, which could gradually take shape as policy objectives rather than distant goals". McElligott thus coined the term "sentencing towards the Führer". See: MCELLIGOTT, Anthony: 'Sentencing towards the Führer'? The judiciary in the Third Reich, in: Working towards the Führer. Essays in honour of Sir Ian Kershaw, edited by Anthony MCELLIGOTT, Manchester 2003, p. 153–185, here p. 153.

[37] Michael Wildt mentions the financial administrations in this context, see: WILDT, Michael: Die politische Ordnung der Volksgemeinschaft. Ernst Fraenkels »Doppelstaat« neu betrachtet, in: Mittelweg 36 2 (2003), p. 45–61, here p. 52.

[38] DREIER: Nachwort, p. 289–295. Regarding this dynamic, an insightful study in the area of labor law was provided by Eden: EDEN: Fraenkels »Doppelstaat«.

Imperial Court of Justice (Reichsgericht).[39] Later empirical studies have further diminished the sharp institutional demarcation. Similar to the prerogative tendencies of normative state agencies, institutions generally recognized as of purest prerogative state pedigree often adhered to legal norms, of course depending on situational conditions. Later studies made similar claims even regarding the notorious National Socialist "Volksgerichtshof".[40] Hence, "normative state" and "prerogative state" are best understood as "mode[s] of operation" which only partially overlapped with the compartmentalization of state agencies in Nazi Germany.[41] Some scholars even go as far as relating the concepts of the prerogative and normative states only to actions, not to actors.[42] While this is a helpful counterpoint to overly "institutionalist" accounts of the dual state, we think it too unwise to outright dismiss the numerous instances when Fraenkel assigns whole bureaucracies to one of both concepts. Ultimately, the problem is resolved when we treat Fraenkel's concepts as ideal types.

## The "normative" and "prerogative" states as ideal types

Some authors remarked that the terms "normative state" and "prerogative state" have the character of ideal types.[43] Unfortunately, these authors forgo any further discussion of "ideal types".[44] Let us redress this omission. In general, Weber saw concepts as "tools" for understanding empirical reality, "and not the endpoint of the analysis".[45] He thus rejected any view of concepts as metaphysical entities from which empirical reality "emanates".[46] As tools, concepts must thus not be confused with empirical reality itself, nor can these tools perfectly capture it. According to Weber, reality must not be forced into concepts "as into a procrustean bed" – tools are only tools.[47]

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[39] ZARUSKY, Jürgen: Politische Strafjustiz im nationalsozialistischen Doppelstaat, in: Justiz im Zwielicht. Ihre Rolle in Diktaturen und die Antwort des Rechtsstaates, edited by Jürgen WEBER / Michael PIAZOLO (Akademiebeiträge zur politischen Bildung, vol. 32), München 1998, p. 25–37, here p. 29–33.

[40] SCHLÜTER, Holger: Die Urteilspraxis des nationalsozialistischen Volksgerichtshofs (Münsterische Beiträge zur Rechtswissenschaft, vol. 86), Berlin 1995, p. 230–232.

[41] DREIER: Nachwort, p. 300. To use Dreier's term, who speaks of "Funktionsmodus".

[42] EDEN: Fraenkels »Doppelstaat«.

[43] ZARUSKY, Jürgen: Die stalinistische und die nationalsozialistische „Justiz". Eine Problemskizze unter diktaturvergleichender Perspektive, in: Russland und Deutschland im 19. und 20. Jahrhundert. Zwei „Sonderwege" im Vergleich, edited by Leonid LUKS / Donal O'SULLIVAN (Schriften des Zentralinstituts für Mittel- und Osteuropastudien, vol. 4), Köln 2001, p. 163–191, here p. 165. MEIERHENRICH: Remnants, p. 182

[44] GOERTZ, Gary: Social science concepts. A user's guide, Princeton, NJ 2006, p. 70. This is a common phenomenon, as Goertz observed: "It is quite surprising, given the frequency with which scholars refer to ideal types, that there exists little methodological analysis of them."

[45] SWEDBERG, Richard: How to use Max Weber's ideal type in sociological analysis, in: Journal of Classical Sociology 3 (2018), p. 181–196, here p. 183.

[46] WEBER, Max: Roscher and Knies and the logical problems of historical economics, in: Collected Methodological Writings, edited by Hans Henrik BRUUN / Sam WHIMSTER (Weber in Translation), Hoboken 2012, p. 3–99, here p. 19–20.

[47] SWEDBERG: How to use, p. 184. We expatiate upon this, since many historians still perceive discussions of conceptualization (often termed "theory") as forcing something external on the sources. Conversely, we assume that there is no "atheoretical" approach to empirical reality, since scholars' cultural, social and not least professional backgrounds always form a set of implicit preconceptions about any given subject of study (with the implicit professional preconceptions often referred to as "instinct"). To discuss one's concepts explicitly is then merely

As a subset of such tools, ideal types differ markedly from other concepts. Unlike these other concepts, ideal types are no "averages", but a highly specific "analytical accentuation of certain elements of reality", giving them the character of a "*utopia*".[48] An ideal type is "not a generalization from experience but a logically formulated idea […] with the aid of which data from experience can be interpreted".[49] Because an ideal type is defined by "accentuating" some aspects of a phenomenon and disregarding others, we cannot find a "pure" example of the ideal type in the world. As Weber put it: "In its conceptual Purity, this mental construct (*Gedankenbild*) cannot be found empirically anywhere in reality."[50]

If we cannot find pure examples of ideal types in the world, why use ideal types? For Weber, ideal types allow us to clearly see the components of a murky reality. Because empirical reality is messy and chaotic, we should not be surprised that we are unable to find "pure" examples of ideal types. But that reality is messy does not mean our concepts should be messy too – for understanding reality, we need to have well-sharpened tools, namely well-defined and operationalized concepts.[51] Ideal types can help to disentangle a chaotic reality and see its components with conceptual clarity. Weber proposed to use ideal-types to contrast empirical data to them and "determine the extent to which this Ideal-construct approximates to or diverges from reality", highlighting "certain of its significant components".[52] Utilized in this way, ideal types are not an end in themselves, but a means for describing empirical reality and generating hypotheses.[53] A description in ideal types can either identify elements of an ideal type in a phenomenon, helping us to classify these elements, or it can fail to do so – with the negative result itself being a valuable empirical observation.[54] Using ideal types thus allows us to identify those aspects of an empirical phenomenon that fit this ideal type, simultaneously showing us which other aspects do not – i.e. ideal types help us identify the ingredients of the chaotic mixture that empirical reality always is. Consider Weber's typology of legitimate rule (see also chapter 6). He proposed three types of

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introducing a measure of control of these preconceptions and to make one's approach transparent, rather than hiding it behind a supposed "purity" of the sources unimpaired by "theory". The goal of this is once again intersubjectivity. See: WEHLER, Hans-Ulrich: Anwendung von Theorien in der Geschichtswissenschaft, in: Theorie und Erzählung in der Geschichte, edited by Jürgen KOCKA / Thomas NIPPERDEY (Beiträge zur Historik, vol. 3), München 1979, p. 17–39, here p. 34.

[48] WEBER, Max: "Objectivity" in Social Science and Social Policy, in: On the methodology of the social sciences, edited by Edward SHILS, Glencoe, IL 1949, p. 50–112, here p. 90.

[49] COTTERRELL, Roger: Legality and Legitimacy. The Sociology of Max Weber, in: Law's community. Legal theory in sociological perspective (Oxford socio-legal studies), Oxford (2005), p. 134–159, here p. 135–136.

[50] WEBER: "Objectivity", p. 90.

[51] IDEM: Wirtschaft und Gesellschaft (Grundriss der Sozialökonomik), Tübingen ²1922, p. 123. As Weber wrote: "Drawing a sharp distinction is often impossible in reality, but that makes conceptual clarity all the more necessary." ("Scharfe Scheidung ist in der Realität oft nicht möglich, klare Begriffe sind aber dann deshalb nur umso nötiger.")

[52] WEBER: "Objectivity", p. 90, 93. As Swedberg puts it, an ideal type "helps the social scientist to get a better handle on empirical reality, and this is done primarily through a comparison of reality with the ideal type." SWEDBERG: How to use, p. 184.

[53] WEBER: "Objectivity", p. 92, 90.

[54] Ibid., p. 102.

legitimate rule, a traditional, a legal, and a charismatic type. For example, using these ideal types, scholars can track how much fascists rely on charismatic elements of rule during their movement phase and their regime phase. Are "charismatic" leader figures equally important during both phases? If charismatic elements are more important during the movement phase, it stands to ask what replaces them during the regime phase – traditional or legal forms of rule? To understand the mixture, one needs a clear picture of its potential components, and those clear pictures are ideal types.

It is highly useful that the larger concept of the "dual state" is divided into two contrasting ideal types. This division allows to specify an "internal" contrast class, rather than to rely on comparisons of a dictatorship's legal system to that of liberal democracy. As Goertz noted, in using a social science concept it is paramount to explicate its negation (what he calls the "positive" and the "negative" concept) and to think about the continuum between them.[55] To say something meaningful about war, we need to clarify where war ends and peace begins. Otherwise, we might think many of our observations are specific to war, while in fact, they occur in peace as well. In other words, we need to determine a contrast class.[56] When we say that something is specific to the thing we study, the question should always be: "Specific as compared to what?" In the case of law in dictatorships, a big advantage of the "dual state"-approach is that it does not rely on "liberal democracy" as an "external" contrast class, but allows to categorize empirical observations "internally".[57] Comparing the Soviet judiciary to "rule of law"-systems is instructive, but also superficial. Uniformly, such a comparison ends with the knowledge that it did not adhere to the rule of law. But this knowledge does not help us to understand how exactly the Soviet judiciary operated and to track changes within its operation – we need an "internal" contrast class.

Coincidentally, Fraenkel has already provided us with two contrasting ideal types. Once adopted for the Soviet case, the twin concepts will allow us to place any empirical observation of Soviet state agents' behavior along the continuum between them. Put differently: when using a set of dichotomic ideal types, any phenomenon will contain traits of both the dichotomy's poles and will lie somewhere in between. By sorting different aspects of a phenomenon on the continuum, we measure the degree to which the phenomenon belongs to each of the ideal types. Above we had

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[55] GOERTZ: Social science concepts, p. 31, 33.

[56] On contrast classes see: LORENZ, Chris: Philosophy of History and Analytical Philosophy in Germany. A Special Relationship?, in: Towards a revival of analytical philosophy of history. Around Paul A. Roth's vision of historical sciences, edited by Krzysztof BRZECHCZYN (Poznań studies in the philosophy of the sciences and the humanities, vol. 110), Leiden 2018, p. 55–72, here p. 66. LORENZ: Konstruktion der Vergangenheit, p. 233.

[57] Our argument emulates Hachtmann's thoughts on Weber's typology of legitimate rule, Hachtman contended that: "The advantage of Weber's 'Three Forms of Legitimate Rule', i.e. his proposal of several ideal types, is that one is not dependent on the simplifying negative foil of an already abstract classical-bourgeois form of government as a normative ideal." HACHTMANN, Rüdiger: „Charismatische Herrschaft" und der Nationalsozialismus. Version: 1.0, Docupedia-Zeitgeschichte 02.04.2019, online: doi:10.14765/zzf.dok-1351, last accessed November 25, 2019.

discussed the proposal to localize the prerogative and normative states only in actions, not in institutions. Treating the concepts as ideal types, the distinction becomes somewhat irrelevant: institutions, as well as the actions of their representatives, are only ever "prerogative" or "normative" to a degree.

## The dual state: a functionalist perspective

Why, we need to ask, should the state in "a dictatorship country" like Nazi Germany even alternate its behavior like this? Why even leave any sphere at all to be regulated by law? Why not rule by total lawlessness? Fraenkel gave an essentially functionalist and a moderately Marxist answer.[58] The dual state, Fraenkel contended, was used to guarantee the continued existence of German capitalism:

> "German capitalism today requires state aid in two respects: (a) against the social enemies in order to guarantee its existence, and (b) in its role as guarantor of that legal order which is the pre-condition of exact calculability without which capitalist enterprise cannot exist. German capitalism requires for its salvation a dual, not a unitary state, based on arbitrariness in the political sphere and on rational law in the economic sphere. Contemporary German capitalism is dependent on the Dual State for its existence."[59]

Again, the division of labor between the two spheres was messier than Fraenkel suggests here. While the "prerogative state took a backseat to the normative state" when it came to "governance of the economy", its function of crushing the regime's enemies also extended to the labor unions, which was highly relevant for the economy.[60] Subsequent authors pointed out additional functions of the normative state. It ensured "the regularity of behavior" in society and served to legitimize Nazi rule.[61] Therefore, the two modes of operation were applied in different degrees to different social groups and actors, along the lines of an ideologized friend-enemy-distinction. The violence enabled by lawlessness was aimed at different groups to different degrees. Hence Fraenkel saw an area of policy almost entirely controlled by the prerogative state: matters concerning Jews.[62] As Zarusky put it: "In the racist pyramid established by the Nazi regime, the further towards the bottom, the more the prerogative state ruled."[63] And on the bottom were, primarily, the Jews.

Conversely, the "normative state"-mode of operation was primarily applied to the so-called "constructive forces", best understood as "societal groups and sectors, such as big business, that did not constitute or harbor so-called enemies of state".[64] Considered "Aryan" in the racist ideology

[58] On the role of Marxism in Fraenkel's work see: MEIERHENRICH: Remnants, p. 171, 173.
[59] FRAENKEL: Dual state, p. 205–206.
[60] MEIERHENRICH: Ethnography of Nazi Law, p. lxxvii.
[61] ZARUSKY: Stalinistische und nationalsozialistische „Justiz", p. 165–166. ZARUSKY: Politische Strafjustiz, p. 25.
[62] WILDT: Transformation, p. 21.
[63] ZARUSKY: Politische Strafjustiz, p. 28.
[64] MEIERHENRICH: Remnants, p. 190.

of the regime, the majority of the population also got to enjoy the fruits of the normative state, as long as other political concerns, such as non-racial political enmity, did not interfere.[65]

## Conclusion

To apply the concept of a "dual state" to the Soviet Union, one needs to identify a at a set of indicators that allow to do so. The following refined definition of the "dual state" contains these indicators: The "dual state" is a pair of dichotomic ideal types describing two modes of operation of the legal and executive branches of dictatorships. The "prerogative state" is the mode of lawlessness and amounts to the exercise of power unbound by any formal legal restraint. Its main output is political violence, primarily targeted according to ideologized friend-foe distinctions. The "normative state" is the mode of legality and amounts to legal self-restriction of the regime in its exercise of power. The main beneficiaries of this self-restriction are those deemed friends, not foes, by the regime. A sharp asymmetry in power characterizes the dual state, with the prerogative state as the dominant element, the normative state as the completely dependent element. Ultimately, "policy reservation" is the core organizing principle of their relationship. Both modes of operation partially overlap with the regime's institutional compartmentalization, especially regarding the prerogative state's institutionalization in political police, security services, and special political courts. Yet ultimately the modes of operation transcend institutional boundaries. Besides enabling unrestricted political repression, the dual state fulfills the function of economic stabilization and serves to legitimize the dictatorship. Fraenkel described his approach as a "contribution to the theory of dictatorship".[66] In the next chapter, we take him at his word and transfer our refined definition to another "dictatorship country" – the Soviet Union.

[65] Instructively analyzed by Wildt, see: WILDT: Politische Ordnung, p. 59–61.
[66] FRAENKEL: Dual state.

# The Soviet Dual State – A Fraenkelian Approach to Soviet Justice

In this chapter, we argue that the Soviet Union was a dual state and operationalize this concept based on the mass operations of the Great Terror. First, we show that the USSR can validly be called a "dual state". In broad strokes, we track the development of the Soviet legal system from revolution and civil war through the new economic policy and the Great Terror. Describing this development, we identify the indicators discussed in the previous conceptualization. Since its emergence in revolution and civil war, the Soviet state was essentially a prerogative state unleashing political violence unbound by legal norms. A limited normative state was then carved out from the still all-powerful prerogative state during the subsequent consolidation of the regime. The law became increasingly codified and systematized, the legal sphere was increasingly institutionalized, centralized, and professionalized. Only at first glance were the prerogative and normative states unambiguously compartmentalized in separate institutions. In the USSR, too, "dual state" refers to institutional behavior as much as institutional design.

In the second part of the chapter, we operationalize the concept of the Soviet "dual state" for analyzing the Soviet prosecution of collaboration. We derive indicators for this later analysis from the apex of the Soviet prerogative state – the mass operations of the Great Terror. We describe the general macro-level features of how Soviet agencies acted in the mass operations (a union-wide, extremely harsh campaign of preventive, category-based repression in which people were persecuted for ascribed group affiliation). We then track these agencies' actions on the micro-level of investigations and trials (including torture, a focus on confessions, the suspension of legal protections, and the administrative nature of sentencing). From twenty-two indicators of the Soviet prerogative state, we derive the respective indicators of Soviet normative state ex negativo. With these conceptual tools, we move on to the next chapter and analyze the Soviet prosecution of collaboration (analytical level A)).

## From purely prerogative to partially normative: The development of the Soviet "dual state"

Since its emergence in revolution and civil war, the Soviet state was essentially a prerogative state.[1] It included the element of special political police and courts, as well as that of lawlessness enabling violence – all important indicators of our definition of a "dual state". To fight "counterrevolutionaries", the Bolsheviks were quick to establish extraordinary political courts,

[1] NEWTON, Scott: Law and the making of the Soviet world. The red demiurge, Abingdon 2015, p. 34, 68.

initially called revolutionary tribunals.[2] With equal speed they established extraordinary political police authorities, initially called the Cheka.[3] If necessary, the security organs operated completely unbound by Soviet law, doing whatever was deemed necessary to secure the Bolshevik party's monopoly of rule.[4] In the Soviet "acronym jungle", the monikers by which the political police authorities were known changed, as did their organizational structure.[5] Nonetheless, from Cheka to NKVD, these institutions were at the fore of each subsequent and increasingly abhorrent campaign of political repression. This continuity of the prerogative state shaped the regime's development profoundly.[6] From the outset of the Soviet project, there were also debates about the law and its relationship to the regime's political goals. These poles were eventually framed as "zakonnost'" ("legality") and "partiinost'" ("partisanship"), and in the latter term, it is not difficult to recognize "policy reservation" as discussed above.[7] Such debates notwithstanding, in the period of revolution and war communism, the prerogative state emerged with full force. It was accompanied by the establishment of a de-professionalized justice system and the de-formalization of the law, resulting in a legal system staffed with lay judges whose decision making was less guided by formal laws than by their "revolutionary consciousness".[8] Both the law and the legal system were impatiently expected to "wither away".[9]

But those expectations soon came in tension with the realities of the New Economic Policy, when first steps towards the development of a normative state were taken both in policing as well as in the legal system.[10] Soviet bureaucrats and even some high-profile figures clashed over the political police's competences for extralegal repression, which were curtailed at least temporarily and at least in some areas.[11] The legal system took a "rightward swerve", "civil law and a zone of

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[2] PENTER, Tanja: Öffentlichkeit und Rechtsprechung unter der frühen Sowjetmacht. Der Prozeß gegen den „Južnyj Rabočij" in Odessa 1918, in: Jahrbücher für Geschichte Osteuropas 4 (2002), p. 558–576, here p. 561. REBITSCHEK: Disziplinierte Diktatur, p. 16.

[3] PLAGGENBORG: Experiment Moderne, p. 205.

[4] BRUNNER, Georg: Was ist sozialistisch am »sozialistischen« Recht?:, in: Festschrift für Klemens Pleyer zum 65. Geburtstag, edited by Paul HOFMANN, Köln 1986, p. 187–205, here p. 201.

[5] "Acronym jungle" is Newton's term, see: NEWTON: Red demiurge, p. 17. Helpful for cutting aisles into this "jungle" are the organizational charts provided here: HILGER, Andreas: Sowjetunion (1945–1991), in: Handbuch der kommunistischen Geheimdienste in Osteuropa, edited by Łukasz KAMÍNSKI / Krzysztof PERSAK / Jens GIESEKE (Analysen und Dokumente, vol. 33), Göttingen 2009, p. 43–141, here p. 45. PARRISH, Michael: The Lesser Terror. Soviet state security, 1939–1953, Westport 1996, p. 360. For an exhaustive discussion of the various functions of the security and executive agencies, see: KOKURIN, Aleksandr I./PETROV, N. V./PICHOIA, R. G.: Lubianka. VChK - OGPU - NKVD - NKGB - MGB - MVD - KGB, 1917–1960 (Rossiia XX vek. Dokumenty), Moskva 1997 (Spravochnik).

[6] NEWTON: Red demiurge, p. 31.

[7] SHARLET: Stalinism and Soviet Legal Culture, p. 156.

[8] PENTER: Öffentlichkeit und Rechtsprechung, p. 561.

[9] ZARUSKY: Stalinistische und nationalsozialistische „Justiz", p. 168.

[10] PLAGGENBORG: Experiment Moderne, p. 204.

[11] The development was, however, contradictive. During NEP, the political police expanded its competences of extralegal repression from the sphere of the political crime to the sphere of civil crime. HAGENLOH, Paul: 'Mass Operations' under Lenin and Stalin, in: The anatomy of terror. Political violence under Stalin, edited by James HARRIS, Oxford 2013, p. 163–175, here p. 164–168, 173.

private right" were "tactically" reintroduced, the "procuracy […] restored, the bar re-established, a hierarchical judiciary re-institutionalized, and professional legal education resumed" as well as "revolutionary consciousness" began to be supplanted by "revolutionary legality" as the prime ordering principle of the legal sphere (at least in theory).[12] Vyshinskii later reformulated "revolutionary legality" as "socialist legality" which referred to the adherence to the law by citizens and state agencies alike.[13] These "rightward" tendencies during NEP were somewhat held in check by the dominance of the Pashukanis school in Soviet law. Legal "nihilism" remained influential. The proponents of this school still "sought to build a selfliquidating legal transfer culture based on flexible legal rules, simplified legal roles, and popular legal institutions".[14]

But that more doctrinal Marxist experimental spirit was soon discarded together with Pashukanis himself, who was replaced by Vyshinskii as the leading legal scholar and policymaker in 1937.[15] Vyshinskii further pursued the systematization and codification of Soviet law, as well as the institutionalization, professionalization, and centralization of the legal system – eventually creating a norm-bound sphere that is a crucial indicator of a dual state.[16] In legal education, whole subdisciplines of the law saw their rehabilitation in the academy, where they had been shunned before.[17] This concerned "administrative, civil, criminal and family law", but also "state-law".[18] Institution-wise, a major reorganization of Soviet legal agencies started in 1936, but was hampered by the regime's unprecedented mass repressions during the Great Terror and only completed in 1938/1939.[19] Some problems in the institutional structure remained, like the unclear division of labor between the USSR's Supreme Court and the People's Commissariat of Justice, but compared to the earlier legal nihilism the bureaucratization was immense.[20] Overall, this drive towards a modern legal system can be construed as the carving out of a normative state from the prerogative state. What emerged were centralized legal bureaucracies and systematically codified law.

As the agents of these bureaucracies, a corps of legal bureaucrats emerged who eventually played a significant role in Soviet society. These agents were increasingly professionalized to "observe

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[12] NEWTON: Red demiurge, p. 6. SHARLET: Stalinism and Soviet Legal Culture, p. 160. ZARUSKY: Stalinistische und nationalsozialistische „Justiz", p. 169.
[13] REBITSCHEK: Disziplinierte Diktatur, p. 42.
[14] SHARLET: Stalinism and Soviet Legal Culture, p. 163.
[15] SHARLET, Robert/BEIRNE, Piers: In Search of Vyshinsky. The Paradox of Law and Terror, in: International Journal of the Sociology of Law (1984), p. 153–177, here p. 172. Already before his eventual downfall, Pashukanis had started to implement policies much more akin to what his successors would eventually undertake. For a detailed account, see: HEAD, Michael: Evgeny Pashukanis. A critical reappraisal (Nomikoi: Critical Legal Thinkers), London 2008, Chapter 8.
[16] SOLOMON, Peter H.: Soviet criminal justice under Stalin (Cambridge Russian, Soviet and post-Soviet studies, vol. 100), Cambridge 1996, p. 274–277.
[17] SHARLET: Stalinism and Soviet Legal Culture, p. 169.
[18] NEWTON: Red demiurge, 6, 172. SHARLET: Stalinism and Soviet Legal Culture, p. 177.
[19] SOLOMON: Soviet criminal justice, p. 274.
[20] Ibid., p. 277.

procedural and evidentiary rules" but did not constitute an independent "legal profession" in the Western sense.[21] The ultimate goal of the professionalization drive was to establish an "apparatus of technically versed officials who could guarantee perfect criminal proceedings with scientific accuracy". [22] Although many developed a further-reaching tentatively norm-oriented professional ethos, Soviet legal officials are still best characterized as legal bureaucrats.[23] As Sharlet argues, in the emergent normative state of regular courts, the regular police and the procuracy such legal bureaucrats eventually handled "the great bulk of the cases of civil litigation and criminal prosecutions […] concerned with such mundane matters as family, housing, labor, inter-enterprise, and personal property disputes, along with a much smaller number of garden variety criminal cases".[24]

One agency, in particular, played a pivotal role for the nascent normative state: the procuracy (state's attorney's office). Besides prosecuting crime, the procuracy ultimately became the primary organ for supervising state bureaucracies' behavior and ensuring this behavior confirmed to the law.[25] Step by step, the procuracy gained "exclusive control of pretrial investigations (1928); the right to supervise the legality of proceedings at trial (1933); and the task of monitoring the legality of public administration as a whole (1936), including the work of other ministries" and thus became "most powerful of the legal agencies". [26] Supervision or "nadzor" became a primary duty of the procuracy. Eventually, prosecutors (*prokurory*) were thus tasked not only with enforcing the legal order in the population but also with ensuring the regularity of state behavior.[27]

But such tendencies towards norm-bound state behavior notwithstanding, the Soviet Union remained a dual state, and the supremacy of the prerogative state remained unchanged. [28] Throughout the literature on the subject, it is noted as the central paradox of Soviet legal development that the restoration of legality occurred almost simultaneously with the Great Terror, the most brutal campaign of extralegal repression ever carried out by the regime.[29] And the Great Terror fostered a clearer institutional division between both spheres. Solomon concluded that

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[21] Ibid., p. 338. REBITSCHEK: Disziplinierte Diktatur, p. 150.
[22] REBITSCHEK: Disziplinierte Diktatur, p. 232.
[23] Ibid., p. 228, 150.
[24] SHARLET: Stalinism and Soviet Legal Culture, p. 156.
[25] REBITSCHEK: Disziplinierte Diktatur, p. 17.
[26] SOLOMON: Soviet criminal justice, p. 400.
[27] REBITSCHEK: Disziplinierte Diktatur, p. 423.
[28] NEWTON: Red demiurge, p. 45.
[29] SHARLET: Stalinism and Soviet Legal Culture, p. 155. ZARUSKY: Stalinistische und nationalsozialistische „Justiz", p. 186. SCHMEITZNER, Mike: Unter Ausschluss der Öffentlichkeit? Zur Verfolgung von NS-Verbrechen durch die sowjetische Sonderjustiz, in: NS-Prozesse und deutsche Öffentlichkeit. Besatzungszeit frühe Bundesrepublik und DDR, edited by Jörg OSTERLOH / Clemens VOLLNHALS (Schriften des Hannah-Arendt-Instituts für Totalitarismusforschung, vol. 45), Göttingen 2011, p. 149–166, here p. 152. REBITSCHEK: Disziplinierte Diktatur, p. 15. SHARLET/BEIRNE: Vyshinsky, p. 173. NEWTON: Red demiurge, p. 11, 21. PLAGGENBORG: Experiment Moderne, p. 206.

"[a]fter 1938, political cases were concentrated only in certain military tribunals and bodies of the NKVD; ordinary courts even at the regional level played little or no role in their adjudication."[30] Therefore, it appears that a "compartmentalization of the legal and extralegal spheres" was more or less firmly established with the end of the Great Terror in 1938.[31]

Still, as in Nazi Germany, for the Soviet case, the prerogative and normative states are best understood as ideal-typical modes of operation only partially overlapping with institutional design. The institutional "compartmentalization" was far from pervasive and institutions of the Soviet normative state could act according to prerogative state principles. For the regular courts, their "normative state" mode of operation was still under "policy reservation". At the beginning of the Great Patriotic War, the Stalinist leadership launched a campaign of mass repression on the home front that employed "general jurisdiction courts" as "one of its mechanisms" (see chapter 5).[32]

Moreover, norm-boundedness remained under policy-reservation and the normative state remained dependent on the prerogative state – another indicator for speaking of a "dual state".[33] The Bolshevik party still considered itself unbound by law and fully qualified to interfere in the matters of the courts and therefore retained a "commission of the Politburo on court cases (sudebnym delam)".[34] And the realm of interference varied with the expansion and reduction of what was deemed "political", a category that varied, based on the party's changing "definitions of politically deviant activity".[35] Long before Fraenkel included policy reservation into his theory of law in dictatorships, the principle was explicitly formulated by Vyshinskii: "The dictatorship of the proletariat is authority unlimited by any statutes whatever. But the dictatorship of the proletariat, creating its own laws, makes use of them, demands that they be observed, and punishes breaches of them."[36] The main architect of the establishment of a modern legal system in the USSR thus remained "adamant that partiinost should resolve any collision between the formal commands of law and those of the proletarian revolution."[37] Therefore, the Bolshevik party was a "metajuridical entity with 'jurisdiction' over jurisdiction".[38] The party's "internal norms, the rules and customs both" thus approximated a "constitution" of the prerogative state.[39] But ultimately, the line between

[30] SOLOMON: Soviet criminal justice, p. 467.
[31] Ibid., p. 5. REBITSCHEK: Disziplinierte Diktatur, p. 22, 110-113.
[32] BUDNITSKII: Great Terror of 1941, p. 450.
[33] Brunner thus noted: "Within the purview of the 'normative state', the normativity of the law must, in principle, be taken seriously. The limitation 'in principle' is intended to emphasize that, according to the communist understanding of law, the reservation of political expediency generally applies to all legal norms whatsoever." BRUNNER: Was ist sozialistisch, p. 203.
[34] SOLOMON: Soviet criminal justice, p. 398.
[35] SHARLET: Stalinism and Soviet Legal Culture, p. 156.
[36] As quoted in: SHARLET/BEIRNE: Vyshinsky, p. 153.
[37] Ibid., p. 169. See also: REBITSCHEK: Disziplinierte Diktatur, p. 44.
[38] SHARLET: Stalinism and Soviet Legal Culture, p. 156. On the role of the communist party in the Soviet dual state see also: BRUNNER: Was ist sozialistisch, p. 200.
[39] NEWTON: Red demiurge, p. 38.

normative and prerogative state was drawn by no one other than Stalin himself. Stalin's "revolution from above" resulted in a "curiously atavistic, early-modern model of sovereignty [which] permitted or justified the series of ever-constricting substitutions by which the 'All-Russian Communist Party (Bolshevik)' inserted itself into the place of the unified class subject, only itself to be displaced in turn by the Central Committee, the Politburo, and finally the General Secretary."[40] In the last instance it was Stalin who decided where policy reservation would apply, and he followed "penal policy and its application" attentively.[41]

But as an ordering principle, policy reservation was well known not only at the highest levels of the regime's hierarchy but even to low-level officials primarily representing the normative state. One effect of the 1930s legal professionalization was the total submission of all legal and executive officials under the party line. As Rebitschek pointedly wrote about the procuracy: "The party card embodied the expedient limitation of regularity."[42] Hence, the procuracy's "supervisory authority for the legality of all state acts and decisions" had its limits when it came to the highly variable sphere of the prerogative state.[43] The normative state remained the dependent element under policy reservation.

As normative state institutions could act according to prerogative state principles, prerogative state institutions could adapt normative state principles. For example, recent scholarship has drawn attention to the way the Great Terror was wrapped up by the regime in a "purge of the purgers".[44] The NKVD had been the "primary institution" responsible for the mass operations of the Great Terror.[45] But in a series of secret trials between 1939 and 1942, NKVD officials who had executed Stalin's orders for unprecedented mass repressions now found themselves in the dock – for executing those orders, now referred to as "violations of socialist legality".[46] Lynne Viola argues that these trials had little in common with the mechanisms of the mass operations. These trials largely "followed procedure" and guaranteed the NKVD officers tried "far more rights than their victims ever had".[47] Curiously, the institutions pursuing this reinstatement of socialist legality were the core institutions of political justice, namely the NKVD's court system, its military tribunals.[48]

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[40] Ibid., p. 36–37. The term "revolution from above" was introduced by Tucker: TUCKER, Robert C.: Stalinism as Revolution from Above, in: Stalinism. Essays in historical interpretation, edited by Robert C. TUCKER, New Brunswick, NJ 1999, p. 77–108.
[41] RITTERSPORN, Gabor T.: Terror and Soviet Legality. Police vs Judiciary, 1933–1940, in: The anatomy of terror. Political violence under Stalin, edited by James HARRIS, Oxford 2013, p. 176–190, here p. 182.
[42] REBITSCHEK: Disziplinierte Diktatur, p. 425.
[43] NEWTON: Red demiurge, p. 46.
[44] VIOLA: Stalinist perpetrators, p. 4.
[45] Ibid., p. 19.
[46] Ibid., p. 5-6, 166-167.
[47] Ibid., p. 6.
[48] VATLIN, Alexander: Agents of Terror. Ordinary Men and Extraordinary Violence in Stalin's Secret Police, Madison 2016, p. 72. VIOLA: Stalinist perpetrators, p. 6.

Thus, what happened in the political police and political justice authorities after the Great Terror could diverge from the ideal-typical pole of the prerogative state. The operation of these institutions could at times come closer to the ideal-typical pole of the normative state. Despite an increasing "institutional compartmentalization" of the Soviet normative and prerogative states, the "dual state" is still best understood as a duality of modes of operation *transcending* the boundaries of different institutions.

But why even have a dual state? Fraenkel had ascribed certain functions to the National Socialist prerogative and normative states – did their Soviet analogues serve the same purposes? Some authors argue that regarding the relationship between the Soviet leadership and the state apparatus, the normative state provided mechanisms for ensuring centralized control, subordinating various bureaucracies, and ensuring their compliance with centrally devised policies.[49] In his study of the procuracy, Rebitschek thus described one of its functions as being an "authority of sanction and control" and an "instrument of rule on behalf of the party".[50] In a similar vein, Rittersporn speaks of the "regular and controllable functioning of the state apparatus in a field where the regime literally faced the rest of society".[51] The early Soviet experiments with lay justice guided by an amorphous "revolutionary consciousness" had obviously not helped ensure control and regularity. Regarding the problem of control, it might be worthwile consider a related aspect, namely the agency problem in dictatorships. The rulers in such regimes are often half-blind to what is happening in their realm of power, since "despite an enormous authority structure, accurate information on the capacity and performance of frontline officials will usually be locked up below".[52] Enforcing that subordinates follow some kind of procedure reduces their capacity to act arbitratily, which in turn makes the information they send up the chain of command more reliable. Furthermore, some authors have pointed out that the legitimizing function of the normative state played a role in Soviet legal officials' thinking, which we will discuss in more detail below. [53] Regarding this element of our definition, the overlap between the functions ascribed to the Nazi "dual state" and its Soviet counterpart is only partial.

Thus far, we identified key indicators allowing us to call the Soviet Union a "dual state". But to be analytically useful for understanding the Soviet prosecution of collaboration, the concepts of the normative and prerogative states still need to be *operationalized*. Put differently, we need to

[49] SOLOMON: Soviet criminal justice, p. 4.
[50] REBITSCHEK: Disziplinierte Diktatur, p. 110.
[51] RITTERSPORN: Terror and Soviet Legality, p. 180.
[52] GORLIZKI, Yoram/KHLEVNIUK, Oleg: Substate dictatorship. Networks, loyalty and institutional change in the Soviet Union (The Yale-Hoover series on authoritarian regimes), New Haven 2020, p. 6.
[53] SOLOMON: Soviet criminal justice, p. 401, 416.

answer the question: Which potential observations can we assign to each of the two concepts, what are our potential empirical indicators for using them?[54] In the second part of the chapter, we derive indicators for the "prerogative state" from the prime, most pure example of political repressions in the history of the USSR: the "mass operations" of the Great Terror.[55] Ex negativo, we use these indicators to establish their counterparts on the normative state side of our dichotomic pair of ideal types. Finally, we can place the observations from the materials we study along the continuum between those two poles.

Note that the following discussion presents a highly selective reading of the extensive literature on the subject. It is in no way a comprehensive review of this vast field, nor an attempt to suggest that the literature used here is of better quality than other works on the topic (a different selection would have been possible). The goal is different: to gather indicators that allow to operationalize the concepts of the prerogative and normative states for the subsequent analysis, which can be achieved with a much more superficial review of the existing literature.

## Operationalizing the Soviet "dual state" through the "mass operations"

The mass operations form only part of the larger phenomenon known as "The Great Terror", but they were the apex of these Soviet repressions in the 1930s.[56] Between 1934 and 1937, repressions increased but were smaller in scale compared to the mass operations.[57] In general, the term "The Great Terror" describes a compound of several overlapping strands of political mass repression which occurred in the Soviet Union in the 1930s.[58] Political repressions were escalated already after the murder of Leningrad Party Secretary Sergei Kirov in December 1934. But until 1937, those repressions still "coexisted with remnants of 'moderate' policies", such as concessions to the peasantry and the mass release of prisoners earlier convicted for nonpolitical crimes.[59] In 1936 the first of the three major Moscow show trials was held, marking a further escalation (for

[54] MARTIN: Thinking through methods, p. 10. Martin defines "to operationalize" as "to link our theoretical terms to observational terms".
[55] "Mass operations" were common before and after the events of 1937/1938 for which the term is today usually reserved. As Hagenloh argues the "technique of mass operations, understood as state-driven operations (identification, registration, deportation, arrest, resettlement, execution) that targeted entire social strata (defined by markers of class, ethnicity, criminality, geography, or biography), was central to Russian and Soviet statecraft well before Stalin came to power". However, we follow the common usage and reserve the term for the campagin of 1937/1938. HAGENLOH: 'Mass Operations', p. 163.
[56] BINNER, Rolf/JUNGE, Marc: Wie der Terror "Gross" wurde: Massenmord und Lagerhaft nach Befehl 00447, in: Cahiers du Monde russe 42/2-4 (2001), p. 557–614, here p. 559.
[57] The mass operations also overlapped with other instances of persecution, such as "[p]arty purges, purges of the military and the Comintern, central and local show trials, and numerous other forms of state repression". HAGENLOH: 'Mass Operations', p. 163.
[58] KHLEVNIUK, Oleg: Stalin. New biography of a dictator, New Haven 2015, p. 150–151.
[59] Ibid., p. 134–136.

the phenomenon of show trials, see chapter 6).[60] Until 1937, "repression was primarily targeted at key members of the government, party, state security services, and military and had little effect on ordinary citizens."[61] Since February 1937, a central commission at the NKVD began to draw up lists of thousands of people to be tried by the Military College of the Supreme Court of the USSR and, conveniently for the court, also specified the sentence each defendant should receive.[62] Those lists were approved by Stalin and his inner circle, who soon had put their signatures under the names of "4,500 people (3,700 of whom were to be executed)".[63] On the local level, the NKVD still persecuted politically undesirable individuals, such as "members of former oppositions within the Bolshevik party, prerevolutionary political figures, and members of non-Bolshevik parties who were too active in public affairs or had retained old connections" and "nomenklatura workers" ("ranking members of Soviet officialdom").[64]

Yet these repressions pale in comparison to the "mass operations" which were launched in the summer of 1937 and called off only at the end of 1938. Already from a purely numerical point of view, it is obvious that these operations were the core element of the Great Terror, since "[f]rom the 681,692 executions of the Great Terror, some 90% were caught up in these mass operations."[65] On July 30, 1937, NKVD Order № 00447 set in motion the repression of "a much larger swath of the Soviet population" than before.[66] This order, which revolved around social categories of enemies was the dominant driving force of the Great Terror until mid-March 1938. Then, the "national operations" took on that role, and increasingly, the Terror targeted people merely for

[60] Ibid., p. 139. We follow Binner and Junge, who argue that the mass operations were a much more specifically Stalinist phenomenon than the show trials. This further supports our decision to derive indicators for the prerogative state from the mass operations. BINNER/JUNGE: Wie der Terror "Gross" wurde, p. 568.
[61] KHLEVNIUK: Stalin, p. 140. Nevertheless, a the repression "of old Bolshevik leaders and Parry members, as well as of large numbers of specialists in the economy, sciences, education, and in the press" could already be called "a wide-scale pure". SHEARER, David: Policing Stalin's socialism. Repression and social order in the Soviet Union, 1924–1953 (The Yale-Hoover series on Stalin, Stalinism, and the Cold War), New Haven 2009, p. 320.
[62] RACHINSKY, Yan: "The Lists" of Extrajudicial Convictions in the Period 1937-1938, in: Political and transitional justice in Germany, Poland and the Soviet Union from the 1930s to the 1950s, edited by Magnus BRECHTKEN / Władysław BUŁHAK / Jürgen ZARUSKY, Göttingen 2019, p. 27–35, here p. 30.
[63] Ibid.
[64] VATLIN: Agents of Terror, p. 20.
[65] VIOLA: Stalinist perpetrators, p. 15. Khlevniuk puts the number of people shot between 1930 and 1952 at around 800.000, which underscores just how intense repression was during 1937 and 1938. KHLEVNIUK: Stalin, p. 38. Hagenloh also uses the figure of 90%, but uses it in reference to everybody shot by order of the regime in 1937 and 1938. HAGENLOH: 'Mass Operations', p. 163.
[66] KHLEVNIUK: Stalin, p. 141.

their ethnicity.[67] As Vatlin put it, "the absurdity of Stalinist repression [had] reached its apex" in these operations.[68]

Based on the mass operations, we created the following operationalization, ranging from general features to indicators on the micro-level of investigation and trial. We explicate these indicators in the following discussion of the mass operations and the "prerogative state" column of the following table.

| **The Soviet Dual State** | | |
|---|---|---|
| **aspect** | **prerogative state** | **normative state** |
| *general features* | | |
| 1. *preventive vs. punitive* | preventive /ex ante | punitive / ex post |
| 2. *who* | categories/groups<br>(initially: going by the registry – origins and past)<br>(partially: snowball effect – following "связи") | individuals |
| 3. *what* | ascribed group affiliation<br>in part arbitrary | concrete criminal acts |
| 4. *severity* | extreme harshness, high rate of death sentences | more liberal, lower rate of death sentences |
| 5. *pervasiveness* | union-wide campaign | localized as crimes prosecuted |
| *investigation* | | |
| 6. *investigative authorities* | NKVD political police | Militia, NKVD criminal police, procuracy (state's attorney's office) |
| 7. *investigation procedures* | simplified, code of criminal procedure (partially or completely) suspended | according to code of criminal procedure (time limits for pretrial detention etc.) |
| 8. *investigation methods* | confession-driven (torture, falsification), result: tayloristic "conveyer-belt" and socialist competition of death | evidence-driven |

[67] VIOLA: Stalinist perpetrators, p. 14. As Rittersporn points out, step-by-step more ethnic groups were included in the list of targets, so that "a hunt started for supposed subversives also among other ethnic minorities and foreigners, although originally Moscow singled out only Poles. Latvians were remembered only in late November when a busybody reminded Ezhov of their existence. Greeks were discovered in December, Iranians in January, and Finns, Estonians, Romanians, Bulgarians, Chinese, and Macedonians were enumerated in a formal order only in early February. This was the moment when the NKVD gave the first formal instruction to arrest ethnic Germans. They were mentioned only en passant in a document from November 1937 although police officers had started to beat out confessions from them in August. RITTERSPORN: Terror and Soviet Legality, p. 183.

[68] VATLIN: Agents of Terror, p. 5.

| | | |
|---|---|---|
| 9. *witness testimony* | status peripheral, "staff witnesses" or accused accusing accused | status equal to confessions and material evidence, real witnesses |
| 10. *legal representation* | impossible | possible |
| 11. *accused's agency* | none | testimony, motions of evidence (naming witnesses, etc.) |
| *trial* | | |
| 12. *sentencing procedure* | administrative | judicial (trial) |
| 13. *sentencing body* | extra-judicial (troika, dvoika), people responsible lacking legal training | judicial (regular courts, High Courts), people responsible trained in the law |
| 14. *basis of sentence* | pre-set categories of "dangerousness", pre-set sentences<br>primary evidence: "confessions" | criminal law |
| 15. *publicity* | non-public | public |
| 16. *defendants' presence* | defendant absent | defendant present |
| 17. *time necessary for decision* | seconds to minutes | hours to days |
| 18. *documentation* | decision making not documented | decision making documented |
| 19. *presence of defense* | no | possible |
| 20. *defendant's agency* | none | testimony, exposing potentially illegal methods of investigation to courts, cross-examination of witnesses etc. |
| 21. *measure of success* | efficiency (fulfilling quotas) | efficiency (case clearance, backlogs etc.) and quality (i.e. legality) |
| *post-trial* | | |
| 22. *legal remedies* | none, sentences cannot be challenged by defendants | defendants can challenge sentences via protests etc. |

*tab. 8*

Indicators one to five of the Soviet "prerogative state" are drawn from the mass operations' general features as a union-wide, extremely harsh campaign of preventive, category-based repression in which people were persecuted for ascribed group affiliation. In general, the mass operations were preventive in nature – people were not targeted for acts they had committed, but

for being potential enemies of the regime (ds1).[69] The regime attempted to rid the country of such internal enemies who might constitute a "fifth column" in the event of an anticipated war with one or all of the regime's external enemies.[70] Those targeted in the mass operations were targeted collectively and persecuted for their ascribed affiliation to social groups (ds2, ds3).[71] Order 00447 provided an impressive list of categories for repression: the (largely fictional) social category of "kulaks", "former members of 'antisoviet' political parties, a series of old regime elites falling under the category of byvshie liudi (or former people, such as tsarist officials, gendarmes, village elders, and clergy), fugitives from repression, and a range of recidivist petty criminals", as well as members of "cossack white-guard insurrectionary organizations, fascist, terrorist, and espionage-diversionary formations".[72] These diverse groups were seen as a unified "universe of internal enemies threatening the Soviet Union".[73] A significant "conflation of social disorder with counterrevolution" is apparent in the fact that social groups were targeted for political goals (such as minimizing the dangers of an expected war).[74]

To determine group affiliation, the NKVD initially just checked the card indexes and files it had kept on those it deemed enemies for decades and persecuted those old acquaintances.[75] People's "past and origins" were thus decisive for targeting.[76] Some unfortunate victims were caught up in each of the subsequent sweeps since the 1920s.[77] By 1938, arrests became more arbitrary, striking people outside the target categories.[78] In urban settings, some NKVD officials seized the opportunity to do away with "homeless people, beggars, prostitutes, and petty criminals".[79] Those

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[69] BUDNITSKII: Great Terror of 1941, p. 450.
[70] KHLEVNIUK, Oleg: The Objectives of the Great Terror, 1937-1938, in: Stalinism. The essential readings, edited by David Lloyd HOFFMANN (Blackwell essential readings in history), Malden, MA 2003, p. 83–104, here p. 102.
[71] SHEARER, David: Social Disorder, Mass Repression and the NKVD during the 1930s, in: Stalin's terror. High politics and mass repression in the Soviet Union, edited by Barry MCLOUGHLIN / Kevin MCDERMOTT, Basingstoke 2003, p. 85–117, here p. 107.
[72] VIOLA: Stalinist perpetrators, p. 12–13. Viola summarizes our knowledge about the category of "kulaks" as follows: "The kulak was mostly a political construct, defined oxymoronically as a 'capitalist peasant' during collectivization and, later, by earlier repression in exile or in the labor camps, so-called biological factors, such as a parent or grandparent who was a kulak or other socioeconomic enemy, and largely subjective political criteria, including participation in anticollectivization protests or a tendency to critique aspects of the Soviet regime.".
[73] BINNER/JUNGE: Wie der Terror "Gross" wurde, p. 563.
[74] SHEARER: Policing Stalin's socialism, p. 318.
[75] VIOLA: Stalinist perpetrators, p. 17. Holquist stresses the significance of these card indexes and files for the Great Terror: "It was these preexisting card indexes and lists that served as the reservoir for arrests and executions upon demand from the Center. Local organs of the NKVD had files encompassing ten to fifteen percent of the total adult population, usually broken down into three categories of perniciousness." HOLQUIST, Peter: State Violence as Technique. The Logic of Violence in Soviet Totalitarianism, in: Stalinism. The essential readings, edited by David Lloyd HOFFMANN (Blackwell essential readings in history), Malden, MA 2003, p. 129–156, here p. 154. It appears the regime never "ran out" of this reserve throughout the mass operations, since more than a million people remained in those indexes and files after the operations were ended. RITTERSPORN: Terror and Soviet Legality, p. 176.
[76] BUDNITSKII: Great Terror of 1941, p. 458. See also: BINNER, Rolf/JUNGE, Marc: "S etoj publikoj ceremonit´sja ne sleduet". Die Zielgruppen des Befehls Nr. 00447 und der Große Terror aus der Sicht des Befehls Nr. 00447, in: Cahiers du Monde russe 43/1 (2002), p. 181–228, here p. 212.
[77] BINNER/JUNGE: "S etoj publikoj", p. 214.
[78] VIOLA: Stalinist perpetrators, p. 17.
[79] Ibid., p. 18.

arrested also had to endure "endless demands to name names (to denounce others)", and those "sviazi" (connections) then facilitated a certain snowball effect of repressions.[80] But first and foremost, people were persecuted not for their "connections" but their ascribed affiliation to groups. Dekulakized peasants remained the single largest victim category persecuted under order 00447.[81] With the later "national operations", the issue of persecution according to "origins" is most obvious. Targeting "Poles, Germans, Finns, Latvians, Estonians, Greeks, Romanians, Chinese, and others" the NKVD persecuted people for innate qualities.[82]

This campaign of category-based repression was not limited to any single one or several regions. The mass operations were a pervasive phenomenon, they occurred union-wide (ds5).[83] Lastly, the repression executed during the Great Terror was extremely harsh (ds4). Operation 00447 had an "imprisonment-to-execution ratio" of "one to one", and the national operation against the Poles brought this ratio to "one to three", combinedly resulting in the total of 681,692 executions mentioned above.[84] Let us now turn to indicators on the micro-level, which we divide into the phases of investigation (indicators 6 to 11), trial (indicators 12 to 21), and post-trial (indicator 22).

The Great Terror was carried out by the NKVD's security police, which conducted investigations "in simplified order" – in this case, a euphemism for ignoring the code of criminal procedure (ds6, ds7).[85] Prosecutors did no longer have to sanction arrests.[86] Confessions quickly emerged as the primary goal of the investigations and in most cases were the only type of evidence the investigations produced (ds8).[87] To elicit confessions, investigators tortured defendants or falsified the protocols (ds14).[88] NKVD officers used a variety of methods: threats, beatings, marathon interrogations (primarily at night) and other forms of sleep deprivation, denial of food and water, cramping people into horribly overcrowded rooms where they could do nothing but stand, and

[80] Ibid., 14, 22. Note that we use the term "arbitrary" only in the sense that a limited snowball effect occured. We generally follow Binner, Bonwetsch and Junge, who advise against the use of the term: "[…] everything followed the rules that this state had established for the actions of its servants – in this case, essentially the NKVD. To characterize this conveyor-belt justice with terms such as 'arbitrariness', 'excesses', or 'disinhibition' and 'dissolution of boundaries' is, on closer inspection, merely a moral denunciation and condemnation that unintentionally trivializes what actually happened." BINNER, Rolf/BONWETSCH, Bernd/JUNGE, Marc: Massenmord und Lagerhaft. Die andere Geschichte des Großen Terrors (Veröffentlichungen des Deutschen Historischen Instituts Moskau, vol. 1), Berlin 2009, p. 419.
[81] SHEARER: Policing Stalin's socialism, p. 318–319.
[82] VIOLA: Stalinist perpetrators, p. 14.
[83] BUDNITSKII: Great Terror of 1941, p. 450.
[84] VIOLA: Stalinist perpetrators, p. 15.
[85] Ibid., p. 14, 19. To be specific, this meant no access to legal counsel, no confrontations with witnesses, no expert witnesses and no material evidence. BINNER/JUNGE: Wie der Terror "Gross" wurde, p. 567.
[86] RITTERSPORN: Terror and Soviet Legality, p. 184.
[87] VIOLA: Stalinist perpetrators, p. 16.
[88] The use of torture had been allowed by no other than Stalin himself. BINNER/JUNGE: Wie der Terror "Gross" wurde, p. 568.

other techniques.[89] In NKVD parlance, such methods firmed under the euphemism "physical influence".[90] The NKVD proved highly successful in "influencing" people to confess. When the accused put their signatures on a piece of paper, the text above was often pre-written by the investigators. Fabrication of "confessions" was rampant.[91] Investigators took every shortcut from arrest to conviction that was available to them, much to the detriment of those arrested.

"Simplified" in this way, investigations proceeded at greatly accelerated tempos. In one case, it took a mere four days from arrest to confession and immediate sentencing.[92] An outlier at the other end of the spectrum is the case the same author cites in which a defendant spent a whole month in custody before breaking down and ultimately confessing.[93] A group of five investigators could achieve around one hundred confessions per day, which meant the completion of an equivalent number of individual or group cases.[94] Compare these figures to numbers specifying the speed of investigations in non-political cases in 1939, after the Great Terror. In the Molotovsk region, the "best investigators completed twelve cases per month, a pair of slow investigators finished only nine between them".[95] Twelve investigations per month vs. one hundred confessions per day – the difference in speed is striking.

During the mass operations, the accelerated tempo was necessary to fulfill quotas demanded by the center (ds21). The quota-system lead to a "socialist competition of death" (ds8). The orders initiating the mass operations specified target numbers for arrests, divided those numbers into subgroups of "dangerousness" and provided the sentences which were to be applied to each group (ds14, see below on the trial phase). To reach these targets, the whole process of investigation and adjudication was organized in a factory-like, taylorist division of labor, resulting in a "bureaucratic process of mass-production killing" (ds8).[96] Arrests, interrogations, torture, the typing of documents – every step of the process was assigned to specific officers.[97] The investigators' rank was matched to the supposed dangerousness of the accused.[98] The provision of target numbers lead to a sort of "socialist competition of death". While the targets were set by the center, the branches of the NKVD apparatus could "petition for larger numbers, and Stalin and the Politburo

[89] SUSLOV, Andrei Borisovich: Ispol'zovanie fal'sifikatsii v deiatel'nosti permskikh chekistov v gody Bol'shogo terrora, in: Vestnik Udmurtskogo universiteta. Seriia "Istoriia i filologiia" 1 (2014), p. 95–99, here p. 97. VATLIN: Agents of Terror, p. 30–31. For a detailed account see: VIOLA: Stalinist perpetrators, Chapter 3.
[90] RITTERSPORN: Terror and Soviet Legality, p. 186.
[91] SUSLOV: Ispol'zovanie fal'sifikatsii, p. 98.
[92] VATLIN: Agents of Terror, p. 37.
[93] Ibid., p. 33. Binner and Junge state that the average time-span between arrest and sentencing was between two and six weeks. BINNER/JUNGE: Wie der Terror "Gross" wurde, p. 576.
[94] SUSLOV: Ispol'zovanie fal'sifikatsii, p. 96.
[95] SOLOMON: Soviet criminal justice, p. 282.
[96] SHEARER: Policing Stalin's socialism, p. 321.
[97] SUSLOV: Ispol'zovanie fal'sifikatsii, p. 97.
[98] Ibid., p. 96.

seldom refused".[99] Internally, ranking officers often couched the repression in terms familiar from the industrial sector: "[…] they were taking part in socialist competitions, fulfilling and overfulfilling the plan, overtaking the neighboring region. It was as if Kuznetsov was talking about norms for grain requisitions or steel, not the arrest of hundreds of people."[100] And the core of this competition was to torture defendants into confessing.

Compared to confessions, the status of witness testimony was peripheral at best.[101] So-called "staff-witnesses" were employed, who often signed blank sheets of paper for later use by investigators (ds9).[102] Another type of witness testimony came from the accused testifying against one another.[103] The credibility of witness testimony was thus on par with that of the confessions the mass operations produced. Given this host of absurd "simplifications", it should not surprise that the accused had no access to legal counsel (ds10). In summary, their agency was practically nullified during the investigation (ds11).

Moving on to what in a regular criminal proceeding would be the phase of the trial, we see that the mass operations did not involve trials. The sentencing procedures were administrative, and the sentencing agencies were extrajudicial bodies (ds12, ds13). So-called troikas, or commissions of three, sentenced the defendants.[104] The three people present were "the leaders of the relevant republic or regional NKVD, Communist Party committee, and Procuracy".[105] As with the production of "evidence", we can see a twisted and perverse remnant of a formal legal process in the presence of a prosecutor at the troikas. The national operations did away even with this merely symbolic link and employed dvoikas instead of troikas. These commissions of two consisted of "of the heads of the relevant regional NKVD and Communist Party organs" – a peak of "partiinost'".[106] At least two-thirds of the personnel responsible thus lacked any legal training. Troikas and dvoikas operated non-publicly, in closed proceedings, and in absence of the defendants (ds15, ds16). Those on "trial" could not be represented by lawyers (ds19). Since defendants were neither present nor

[99] VIOLA: Stalinist perpetrators, p. 14.
[100] VATLIN: Agents of Terror, p. 44. Other NKVD officers referred to their achievements in the familiar terms of "Stakhanov-work". BINNER/JUNGE: Wie der Terror "Gross" wurde, p. 579.
[101] Although in some regions, investigative casefiles contained on average two witness testimonies. BINNER et al.: Massenmord und Lagerhaft, p. 371.
[102] VIOLA: Stalinist perpetrators, p. 17. VATLIN: Agents of Terror, p. 36. KABATSKOV, A. N.: Shtatnyi svidetel'. Istochniki rekrutirovaniia i sotsial'naia rol' v repressiiakh po prikazu Nr 00447, in: Zhizn' v terrore. Sotsial'nye aspekty repressii, edited by A. SOROKIN / A. KOBAK / O. KUVALDINA, Moskva 2013, p. 444–452. The significance of such "staff witnesses" is contested in the research literature. Binner, Bonwetsch and Junge state that "profiteers of the system" from within "nomenklatura (kolkhoz chairmen, village soviet members, firemen etc.)" often testified against accused, but that real "staff witnesses" were rare. BINNER et al.: Massenmord und Lagerhaft, p. 369–370.
[103] SUSLOV: Ispol'zovanie fal'sifikatsii, p. 98.
[104] Such troiki had already been used to sentence close to 400.000 defendants for alleged political crimes in 1930-1933 as part of dekulakization. BINNER/JUNGE: Wie der Terror "Gross" wurde, p. 568.
[105] VIOLA: Stalinist perpetrators, p. 14.
[106] Ibid., p. 15.

could they be represented by legal counsel, they lacked any agency in the trial phase (ds20). For order 0047, sentences were differentiated according to two centrally predetermined categories of "dangerousness", with a first category designated for shooting and a second one for imprisonment in the Gulag for eight to ten years and with target numbers for both categories set for each region (ds14).[107] Investigators prepared lists of defendants for each category and summary letters for the sentencing bodies, giving the investigators direct influence on the sentences.[108] For the "national operations", sentences were not centrally preset through quotas but suggested by regional dvoikas to a central dvoika in Moscow.[109] If investigations were "simplified" and accelerated, that is all the more true for sentencing (ds17). One troika passed some 658 sentences in one night and another troika's work averaged around 50-60 sentences per hour.[110] Yet another "competitor" set the record at 1.301 sentences in one day (1.014 of them to death).[111] Defendants who were sentenced to death were mostly shot immediately, without being informed of their sentence.[112] Decision-making was documented only rudimentarily. A short form containing the columns "heard" and "decided", i.e. a paragraph specifying the accusation and an even shorter one stating the verdict (ds18).[113] Nothing similar to an opinion of the court, not even a brief one, was provided. The only indicator by which those higher up measured their subordinates' success was efficiency. In the case of the order № 00447, this meant fulfilling the centrally preset quotas for arrests, executions, and imprisonment (ds21). For the national operations, the mechanisms differed, but although there were no centrally set quotas, the goal was the same: the efficient elimination of enemies. Attaining this goal also meant denying defendants their rights in the immediate post-trial phase. No legal remedies for challenging their sentences were open to them (ds22).

Ex negativo, we can characterize proceedings following the normative state mode of operation (ds1 to ds5). The following general characteristics emerge: normative state investigations and trials are punitive rather than preventive, they target individuals for concrete acts rather than social groups and are thus localized accordingly, i.e. they take place where those acts took place those individuals reside. Overall, the rate of death sentences in normative state trials is significantly lower than in the imprisonment-to-execution ratio of the mass operations.

[107] Ibid., p. 13. KHLEVNIUK: Stalin, p. 150.
[108] VATLIN: Agents of Terror, p. 29.
[109] BINNER/JUNGE: Wie der Terror "Gross" wurde, p. 566.
[110] VIOLA: Stalinist perpetrators, p. 14.
[111] BINNER et al.: Massenmord und Lagerhaft, p. 407.
[112] BINNER/JUNGE: Wie der Terror "Gross" wurde, p. 572.
[113] BINNER et al.: Massenmord und Lagerhaft, p. 408.

Investigations are conducted by the militia and the procuracy and the (not explicitly political) NKVD criminal police, as opposed to the NKVD security police (ds6).[114] Both investigations and trials conform to the code of criminal procedure (ds7). The investigations are evidence-driven, with material evidence and witness testimony regarded of equal importance as confessions (ds8, ds9). Witnesses are not just other accused or "staff witnesses" but people who can truly testify to the facts of the case (ds9). The defendants have some room for maneuver, such as access to legal representation and the chance to name witnesses in their defense and file motions of evidence (ds10, ds11).

In the normative state mode of operation, trials are held in courts of law, ranging from regular courts to republic and union level supreme courts (ds12, ds13). Legal professionals decide defendants' cases in public proceedings and in the presence of the defendants, which can take anything from hours to days (ds13, ds16, ds17). The decision-making process consists of subsuming concrete deeds under articles of criminal law (ds14). That process is documented in some sort of opinion of the court (ds18). Defendants can be represented by lawyers (ds19). In court, defendants and their legal counsel have at least limited agency, such as filing motions of evidence, cross-examining witnesses, or questioning whether the investigation was conducted correctly (ds20). Through supervision, superordinate authorities control not only measures of efficiency, but also those of legality – the adherence to the code of criminal procedure (ds21). After a defendant is convicted, he has legal remedies available to challenge the verdict and potentially trigger an amendment or even a new trial (ds22).

The 22 pairs of indicators will provide a core tool for the analysis in the remainder of the present study. In the next chapter, we apply them to analytical level A), the Soviet prosecution of collaboration, to identify prerogative and normative state elements in this phenomenon.

## Conclusion

Based on the indicators drawn from the previous theoretical discussion, this chapter showed that the Soviet Union can be called a "dual state". In this case, a limited normative state developed within what was initially and remained a prerogative state framework. To be of any analytical use for the analysis of Soviet collaboration trials, this insight needs to be operationalized. In this chapter, we developed an operationalization (comprised of 22 indicators) that range from macro-features to the micro-level of individual investigations and trials. The typology was developed based

[114] We thus follow Vatlin in his usage of the term: "The NKVD had many different functions. For the purposes of this book, the NKVD refers to its popular association with policing and state security functions. These functions were the responsibility at the national and provincial level of the NKVD's Chief Administration of State Security (GUGB), which inherited the state security functions of the United State Political Administration (OGPU). However, besides the GUGB, the NKVD was responsible for the criminal police, firefighters, internal security at railroads, and other functions." VATLIN: Agents of Terror, p. 148, Note 2.

on the prime example of the Soviet prerogative state, the Great Terror and the mass operations. It provided an example of what "prerogative state" could mean in the worst case in Soviet history, and, by contrast, allowed to describe what one could describe as "normative state" aspects of a given investigation and trial. Equipped with these indicators, we can now turn to the topic of how Soviet authorities prosecuted collaboration.

# The Soviet Dual State and the Judicial Prosecution of Collaboration

In this chapter, we apply the dual state heuristics to identify prerogative state and normative state elements in how Soviet authorities prosecuted collaborators (analytical level A)). We argue that even the organs of extraordinary political justice exhibited tendencies towards norm-boundedness, though these were far from pervasive, and conclude that the composition of each trial needs to be carefully assessed. For analytical clarity, we first delimit how Soviet authorities prosecuted collaborators from two overlapping phenomena. The same institutions used the same legal instruments to prosecute Axis personnel and nationalist insurgents. But the three strands developed in different directions and should thus be treated separately. We then apply the dual state heuristics to the Soviet prosecution of collaborators, which we periodize in two phases. Between 1941 and 1943, Soviet authorities relied on pre-war legal instruments. These instruments were applied harshly and somewhat chaotically by pre-war institutions of special jurisdiction. In 1943 new legal instruments and new institutions for investigating and trying collaborators were created, and the chaos was increasingly systematized. While prerogative state elements remained central to the Soviet prosecution of collaboration, normative state elements were increasingly introduced and moderated the process. Because military tribunals handled the lion's share of collaboration cases, we discuss the composition and operation of these courts at length. Furthermore, we focus on how supervising instances controlled and interfered in military tribunals' operation. Since both prerogative and normative state strategies were available to investigators and judges, it is crucial to determine which incentives guided their choice between these strategies. In this context, we devote special attention to the decisive question of torture. We argue that only limited mechanisms were in place to directly prevent torture. The more effective deterrent against superficial, torture-based investigations was the numerical pressure of completing a big caseload since such superficial investigations would not hold up in court. Ultimately, each investigation and trial must be located on the spectrum between the prerogative state and the normative state. Once a trial is placed on the spectrum, we can use the functions ascribed to the normative and prerogative states to generate hypotheses about why Soviet officials acted in this way.

## Delimiting the Soviet prosecution of collaboration

The Soviet prosecution of collaboration overlapped with two other phenomena, but for analytical clarity, the three things must be analyzed separately. The Soviet state used the same agencies and partially also the same legal instruments to prosecute collaborators, Axis personnel, and the nationalist underground in the Western borderlands of the Soviet Union. At times, nationalist insurgents were simultaneously tried for cooperating with the Germans during the occupation and

for armed opposition against the (re-)Sovietization of their homeland after that occupation. And Germans and other Axis personnel were sometimes tried alongside their local collaborators. The institutional and legal overlaps notwithstanding, the three strands evolved in different directions. When dealing with nationalist insurgents and German POWs, different considerations influenced Soviet officials' approach. Thus, it is well established that the emerging cold war had an immense influence on the treatment of the Germans.[1] Hence, we will treat the three strands as separate phenomena and only discuss the prosecution of collaboration in detail.

Scholars agree that the Soviet state shifted its punitive policies in the 1940s, mainly by ceasing category-based administrative mass repressions in the "old" Soviet territories. The prosecution of collaboration needs to be situated within these shifting policies, which in turn helps to concretize commonly used distinctions such as non-judicial vs. judicial repression. In the pre-1939 territories, the Soviet state abandoned "administrative repression based on categories of identity" in favor of "judicial convictions for breach of law".[2] This change in repression methods towards "more rule-bound judicial processes" did not diminish the scale of repression and "levels of penal incarceration […] reached all-time highs in the years from 1945 to 1953."[3] While the regime ceased to use administrative repressions "socially dangerous elements" in the old territories, it used them extensively in the territories acquired after 1939 (and then again, after driving out the Axis forces).[4] When the Soviets established their rule in these territories, they also "dekulakized" the local peasantry of the new Western regions and deported tens of thousands who refused to comply.[5] Furthermore, the Soviet state deported whole ethnic groups from the border regions, from the "new" territories, and from formerly occupied territories during and after World War II.[6] As an instrument of repression, deportations were never used more than during this period of Soviet history.[7] The Soviet prosecution of collaboration needs to be situated within these shifting policies of repression. Based on Soviet agencies' internal correspondence and investigative case files, it is possible to concretize commonly used distinctions such as non-judicial vs. judicial repression and to determine the range of practices such terms could encompass.

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[1] SCHMEITZNER: Unter Ausschluss, p. 155.
[2] SHEARER: Policing Stalin's socialism, p. 405.
[3] EDELE, Mark/SLAVESKI, Filip: Violence from Below: Explaining Crimes against Civilians across Soviet Space, 1943–1947, in: Europe-Asia Studies 6 (2016), p. 1020–1035, here p. 1030. SHEARER: Policing Stalin's socialism, p. 405.
[4] SHEARER: Policing Stalin's socialism, p. 405.
[5] Ibid., p. 416–417.
[6] Ibid., p. 405, 416.
[7] As Weiner notes: "The number of deported nationalities, 'kulaks' in the newly annexed territories, repatriated Soviet prisoners of war and forced labor in Germany, and Axis POWs—all political categories by definition—surpassed the total of those deported throughout the preceding two decades, collectivization and the Terror included." WEINER: Making sense, p. 152.

Further complicating matters, the Soviet prosecution of collaboration was contradictive, and the sheer mass of institutions involved on the levels of investigation, adjudication, and supervision is challenging for anyone attempting an analysis. In the following, this chaos is ordered using the dual-state typology provided above and combining it with a periodization capturing the phenomenon's development. This combination will, however, result in occasional chronological leaps in the argument.

## Phase one –1941 to 1943

During the period from 1941 to 1943, the investigation and adjudication of collaboration used pre-existing laws and institutions. With considerable leeway, the responsible agencies implemented lose "declarative" goals set by the leadership. The result was an incoherent application of the respective laws and, together with new mechanisms introduced by the center, an overall harsh repressive policy.

To start prosecuting collaborators, the Soviet Union neither needed to create new institutions, nor new legal instruments. The devastating effects of the Great Terror on the Red Army notwithstanding, the USSR was in a certain sense "well prepared for war", a preparedness evident in its "institutional structure and a whole range of practices" which made the USSR "a highly centralized polity already mobilized" for war during peacetime.[8] Forged in the Russian civil war, "the procedural and institutional machinery for wartime compulsion was not in arsenal like the weaponry, but in active use and operation" when Germany invaded the Soviet Union.[9] Thus, contrary to many of Nazi Germany's European enemies, no "legal innovation" was needed in the USSR to prosecute Axis personnel and domestic collaborators.[10] Initially, the "old" legal instruments were deemed sufficient.[11]

Between 1941 and spring 1943, the "old" legal instruments used for prosecuting collaboration were sub-articles of the infamous article 58 and its equivalents.[12] Said article 58 of the Russian Soviet Federative Socialist Republic's (RSFSR) criminal code dealt with "counterrevolutionary

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[8] EDELE, Mark/GEYER, Michael: States of Exception. The Nazi-Soviet War as a System of Violence 1939-1945, in: Beyond totalitarianism. Stalinism and Nazism compared, edited by Michael GEYER / Sheila FITZPATRICK, Cambridge 2009, p. 345–395, here p. 362.

[9] NEWTON: Red demiurge, p. 68.

[10] VOISIN/KUDRYASHOV: Early Stages, p. 270.

[11] We are only concerned here with the sphere of political justice. Other prerogative state instruments such as the exclusion of whole ethnic groups from the Red Army or, far worse, their prophylactic deportation, are outside our focus. From 1941 on, the Soviets deported several groups internally, such as the Volga Germans, Chechens, Ingush and others, which often took a high death toll on these populations. Deportations of whole ethnic groups were as prominent during and after Wolrd War II as during the Great Terror of the 1930s. See: WEINER: Making sense, p. 150–152. SHEARER: Policing Stalin's socialism, p. 416.

[12] Individual legal norms were not called "paragraphs" in Soviet law, but "articles." SCHROEDER, Friedrich-Christian: Das Sowjetrecht als Grundlage der Prozesse gegen deutsche Kriegsgefangene, in: Sowjetische Militärtribunale. Vol 1.: Die Verurteilung deutscher Kriegsgefangener 1941–1953, edited by Andreas HILGER (Schriften des Hannah-Arendt-Instituts für Totalitarismusforschung, vol. 17,1), Köln 2001, p. 69–92, here p. 75.

crimes". Minor differences aside, the RSFSR's criminal code was almost word by word mirrored in the criminal codes of the other Soviet republics, but the enumeration differed.[13] Hence article 58 of the RSFSR's criminal code was article 54 of the respective code of the Ukrainian Soviet Republic, which we will use accordingly – 58 when referring to union-wide phenomena, 54 when speaking about Ukraine and Moldova (which did not have a criminal code and used Ukraine's).[14] Part of the broader category of "state crimes", article 58 and had a total of 14 discrete sub-articles.[15] These included such infamous statutes as article 58-10, counterrevolutionary "propaganda or agitation", which was widely used as a tool for political repression.[16] Soviet authorities applied two other sub-articles to those they deemed collaborators: article 58-1 "treason to the Motherland" and article 58-3, "relations with foreign states".[17] Since 1934, adjudication of both articles fell within the category of "special jurisdiction cases", i.e. explicitly political justice, as opposed to regular adjudication.[18]

The severity of the crimes described in both articles makes it understandable why their adjudication was not left to regular courts: both statutes concerned forms of high treason.[19] The definitions varied, but the punishments stipulated by both articles were quite severe. Article 58-1 was split into 58-1 "a", designated for civilians, and 58-1 "b", designated for military personnel. Both concerned "treason to the Motherland", defined here as "actions, committed by Soviet citizens to the detriment of the military might of the USSR, its state independence or the integrity of its territory, such as: espionage, betrayal of military or state secrets, crossing over to the side of the enemy, fleeing or flying abroad" and in the phrase "crossing over to the side of the enemy" it is apparent why this article was used to prosecute collaboration.[20] Both for civilians and military personnel execution by shooting and the confiscation of all property was stipulated as the sentence. If mitigating circumstances were given, civilians could have their sentence reduced to 10 years imprisonment in corrective labor camps (i.e., the Gulag), but no mitigating circumstances could be applied to military personnel.[21] Article 58-3 concerned

[13] Ibid.
[14] PENTER: Local Collaborators, p. 9. SOLONARI, Vladimir: Die Moldauische Sozialistische Sowjetrepublik während des Zweiten Weltkriegs (1941–1945), in: Die Republik Moldau. Ein Handbuch, edited by Klaus BOCHMANN, Leipzig 2012, p. 87–97, here p. 88 The reason for this was Moldova's history as an "autonomous republic" within the Ukrainian Soviet republic – Moldova only gained the status as a full socialist republic of the USSR in 1940.
[15] Ugolovnyi kodeks RSFSR, p. 26–32.
[16] BUDNITSKII: Great Terror of 1941, p. 453.
[17] SCHROEDER: Sowjetrecht, p. 75.
[18] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 205. VOISIN/KUDRYASHOV: Early Stages, p. 273, 278.
[19] SCHROEDER: Sowjetrecht, p. 81.
[20] Ugolovnyi kodeks RSFSR, p. 26–27.
[21] Ibid.

> "[…] [r]elations for counter-revolutionary purposes with a foreign state or its individual representatives, as well as assistance in any way to a foreign state which is in a state of war with the USSR or is fighting against it using an intervention or a blockade […]"

which should lead to execution by shooting or loss of citizenship and exile.[22] Under mitigating circumstances, the punishment was to be limited to incarceration (with a mandatory minimum of three years) and a partial or complete confiscation of property.[23] Hence, the standard punishment as provided by both articles was the death sentence.

Investigating such crimes was initially left to the officers of the NKVD, other agencies were involved only later (ds6). Immediately when the war began, the NKVD was tasked with investigating Axis war crimes and the collaboration of Soviet citizens.[24] This involved NKVD officers embedded in the army, the regional structures of the NKVD in the territories reconquered from the Axis, and the internal troops of the NKVD, its domestic military arm.[25] In 1941 and 1942, the NKVD often employed similar investigative methods as in the mass operations and tortured defendants until they confessed – typical prerogative state methods (ds8).[26] But once investigated, defendants also had to be sentenced (or released).

A variety of sentencing bodies adjudicated cases under articles 58-1 and 58-3. Both judicial and extra-judicial bodies applied these legal instruments. The most relevant extra-judicial body was the so-called "Special board of the People's Commissariat of Internal Affairs" (ds13). Most important among the judicial bodies were military tribunals of the Red Army and the internal NKVD troops in re-conquered territories (ds13).[27] We will discuss these tribunals in detail below. Extra-judicial troikas and dvoikas were not among the sentencing bodies, but there was another similar organ, the so-called "Special board of the People's Commissariat of Internal Affairs" (OSO).[28] This board usually consisted of a deputy of the People's Commissar himself, a representative of the union level NKVD for the RSFSR, the head of the militia, and a representative of the NKVD of the republic the case stemmed from.[29] It sentenced defendants in absentia and a purely administrative procedure only based on the materials of the investigative case file, but without a trial (ds12).[30] The OSO's

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[22] Ibid., p. 28.
[23] Ibid.
[24] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 127.
[25] Ibid., p. 112.
[26] SOLONARI, Vladimir: Stalinist Purges during and after World War II as Retribution, in: Kritika: Explorations in Russian and Eurasian History 1 (2017), p. 216–221, here p. 218–219. Unfortunately, one of the most important books on the subject, Vanessa Voisin's "L'URSS contre ses traîtres: L'épuration soviétique 1941–1955" is in French and thus behind a language barrier for me. Voisin is one of the leading scholars on the topic, which makes this an even greater loss for the present study. We can only glimpse some of the book's findings from a review by Vladimir Solonari and an article by Voisin and Kudryashov which explicates some of these findings. See: VOISIN/KUDRYASHOV: Early Stages.
[27] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 76.
[28] Ibid., p. 249.
[29] Ibid.
[30] SCHROEDER: Sowjetrecht, p. 91.

jurisdiction was explicitly meant to include cases in which "operative" or "political" considerations made it impossible to try them in a court.[31] Paradoxically, it was expected that "the prisoner's guilt [was] beyond doubt", but "could not be proven in court".[32] The OSO stood in a long tradition of extra-judicial repression. Its predecessor was the "executive committee of the Cheka", one of the first institutions which had "combined the detective (operational), investigative and judicial functions" in the USSR.[33] The "executive committee" had been invested with the power to pass death sentences, but with the restructuring of security agencies and the formation of the NKVD in 1934, the newly founded OSO's powers had been limited to sentences of "five years' exile, banishment or hard labor camps".[34] After war broke out with the Axis, the OSO was again granted the right to "enact sentences up to and including execution" on November 17, 1941.[35] Between 1944 and 1946, the primarily relevant years for the present study, the OSO handled a significant portion of cases under special jurisdiction – 12% of cases tried in 1944, 18% in 1945, and 6% in 1946.[36] Military tribunals and the OSO handled most cases in the first phase between 1941 and 1943 and the OSO remained influential thereafter.

Furthermore, the union-level and republic-level Supreme Courts of the USSR adjudicated collaboration cases (ds13). The USSR Supreme Court also oversaw one of the first prerogative-state escalations of punitive policies, namely the shooting of minors. In the role of the sentencing body, the Military Collegium of the USSR Supreme Court only reviewed a small number of high-profile cases.[37] But it also had the task to approve death sentences passed by lower courts against underage defendants. On November 4, 1942, the highest military prosecutors had allowed to sentence defendants to death from the age of 16 – an escalation of punitive policies that can be classified as a prerogative state element (ds4).[38]

Another such element was the purely administrative persecution of convicts' families (ds 12). On June 24, 1942, the State Defense Committee (headed by Stalin) introduced family liability for some cases of collaboration. The adult family members of those sentenced to death under article 58-1 were to be arrested and banished to "remote places of the USSR" for five years.[39] This concerned

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[31] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 249.
[32] PETROV, Nikita: Judicial and Extra-Judicial Punishment and Acts of Retribution against German Prisoners of War, 1941-1945, in: Political and transitional justice in Germany, Poland and the Soviet Union from the 1930s to the 1950s, edited by Magnus BRECHTKEN / Władysław BUŁHAK / Jürgen ZARUSKY, Göttingen 2019, p. 265–296, here p. 271.
[33] Ibid., p. 270.
[34] Ibid., p. 270–271.
[35] Ibid.
[36] The statistical data referenced here is drawn from Oleg Mozokhin's book "The right to repression", which is also available from the author's website. MOZOKHIN: Pravo na repressii, p. 481–534 See also: http://mozohin.ru/article/view/Statisticheskie-svedenija.html.
[37] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 224.
[38] Ibid., p. 365.
[39] Ibid., p. 96.

the families of civilians as well as of military personnel.[40] Such a practice constituted targeting people exclusively for their origins and past, not for any crimes, and thus represents another prerogative state element (ds3).

But despite such concrete interventions, the overall "line" of how collaborators were to be punished remained somewhat opaque – at least beyond a general drive towards harshness. From the beginning of the war in the summer of 1941 until spring 1943 "declarative" goals set by the leadership offered the respective agencies relatively great leeway.[41] Until 1943, there were almost no instructions on how the courts and other sentencing bodies were to apply the vague legal norms of articles 58-1 and 58-3.[42] It remained unclear which acts even constituted collaboration and the number of potential candidates for prosecution thus encompassed large swaths of the population who had lived on occupied territory.[43] Articles 58-1 and 58-3 hence were applied incoherently.[44] The sentencing bodies initially followed the center's broad calls for vigilance by an almost indiscriminate application of death sentences (ds4).[45] Often even those who had only held "low-level, low-responsibility positions as mayor of a village or policeman" faced the death penalty. [46] And lower sentences were also applied broadly. The most absurd case of someone brought to justice for collaboration reported in the literature is that of a woman who had "cooked and cleaned for the SS".[47] In short, the Soviet authorities' handling of the situation was a mess.

Since 1942, tentative steps towards ordering the prosecution of collaboration and regulating it with normative-state mechanisms were taken. On May 15, 1942, a first attempt at clarification of the legal basis was made. The Prosecutor of the USSR issued an order titled "On the classification of crimes committed by persons who joined the service of the German occupiers in areas temporarily occupied by the enemy".[48] The order specified offense categories for articles 58-1 and 58-3.[49] Since the percentage of cases tried under the article with the less severe sanctions (58-3) was deemed too high, this represented rather an attempt at a more differentiated targeting of repressive policies than at their moderation.[50] On the other hand, the order also specified circumstances under which no criminal prosecution should be initiated and demanded that prosecutors intensify the

[40] Family members were defined as mothers, fathers, sons, daughters, brothers and sisters of the defendants who had lived in the same household with them. Ibid., p. 262–263.
[41] Ibid., p. 45.
[42] Ibid., p. 46.
[43] MERTELSMANN, Olaf/RAHI-TAMM, Aigi: Cleansing and Compromise. The Estonian SSR in 1944-1945, in: Cahiers du Monde russe 2-3 (2008), p. 319–340, here p. 320. EXELER: Ambivalent State, p. 628.
[44] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 45.
[45] SOLONARI: Stalinist Purges, p. 218–219.
[46] Ibid.
[47] PENTER: Collaboration on Trial, p. 784.
[48] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 75–76.
[49] SOLONARI: Stalinist Purges, p. 219.
[50] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 76.

supervision of collaboration cases to prevent the indiscriminate criminal prosecution of Soviet citizens (ds3).[51] Already in 1942, a significant portion of sentences, especially death sentences, was commuted by the higher courts supervising the sentencing bodies (ds4).[52]

## Phase two – from 1943 onwards

In the period from spring 1943 onward, the Soviet leadership reorganized the existing investigative authorities and sentencing bodies and created new ones. New legal rules were also introduced, coexisting alongside the earlier norms. The center also began clarifying the application of these rules. Repressive policies became more differentiated regarding offenses and offenders. Following a series of instructions beginning in late 1943, the overall repressive policy became less harsh. Supervising agencies were central for regulating these policies. In presenting this two-step process, we shift our attention gradually from the whole USSR to the Ukrainian and Moldovan Soviet republics, the region concerned in this study. We also gradually shift from primarily discussing the literature on the topic to an empirical analysis of reports from the agencies involved in prosecuting collaboration.

Beginning in the spring of 1943, new investigative organs were created, and the task of investigating collaborators was split among them. The competence for investigating collaboration, which had rested almost exclusively with the NKVD, was divided among three agencies in 1943. On April 14 of that year, the NKVD was split into two agencies, and its state security duties transferred to the newly established People's Commissariat of State Security (NKGB), which had already briefly existed in 1941.[53] Only five days later, on April 19, military counterintelligence was also taken out of the NKVD's competences and transferred to two newly founded "General Directorates of counterintelligence 'Death to Spies!'" (aka SMERSH) under the People's Commissariat of Defense and the People's Commissariat of the Navy.[54] SMERSH was directly under Stalin's authority since he was the People's Commissar of Defense.[55] Terms as "state security" and "counterintelligence" of course encompassed a variety of tasks. "Counterintelligence" alone included such diverse activities as "surveillance of the Soviet armed forces, the fight against espionage, diversionary and terrorist activities […], the protection of the front against the intrusion of anti-Soviet elements, the unmasking of traitors and the examination of Soviet soldiers who had been prisoners of war".[56] But importantly for the present study, all three agencies were involved in

[51] SOLONARI: Stalinist Purges, p. 219. EPIFANOV: Organizatsionnye i pravovye osnovy, p. 90.
[52] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 91.
[53] KOKURIN et al.: Lubianka, 1917–1960, p. 34. PARRISH: Lesser Terror, p. 16.
[54] PETROV: Judicial and Extra-Judicial Punishment, p. 271.
[55] BOECKH, Katrin: Stalinismus in der Ukraine. Die Rekonstruktion des sowjetischen Systems nach dem Zweiten Weltkrieg (Veröffentlichungen des Osteuropa-Institutes München. Reihe: Geschichte, vol. 71), Wiesbaden 2007, p. 184.
[56] Ibid., p. 183–190.

investigating criminal acts of Axis personnel and their local Soviet collaborators. All three started to hunt "traitors" (and a variety of other enemy categories) immediately after entering a territory closely behind the lines of the advancing Red Army. For instance, when Khar'kov came under Soviet control, the NKGB alone arrived with 500 officers from its reserve and started what it termed "operative work on the capture of the remainder of the enemy element who had moved to the illegal underground, turncoats, and traitors to the homeland".[57] Putative collaborators now had three independent agencies hot on their heels (all of them political security agencies, not regular police (ds6)).

But the new trinity of SMERSH, NKGB, and NKVD also created problems, since these organs' competences were insufficiently delimited, and their cooperation was far from harmonious. As an example, in 1944 regional Ukrainian NKGB leaders had to ask for the support of their Kiev superiors in fending off a wave of requests by SMERSH and NKVD officials who demanded that the NKGB investigate various matters these agencies deemed important.[58] On the ground, the three agencies' respective competences, and the chain of command between them was far from clear. Further complicating the institutional setup for the investigation of collaboration was the fact that prosecutors of different agencies (regional procuracies', military prosecutors) were also involved (more on their role below). This institutional plurality has been noted as a general feature of the whole phenomenon.[59]

In addition to SMERSH, new sentencing bodies were also created on April 19, 1943, and laws for the adjudication of collaboration were introduced. Stalin, in his function as People's Commissar of Defense, issued "Order Nr. 0283 of the People's Commissar of Defense of the USSR with the announcement of the Decree of the Presidium of the Supreme Soviet of the USSR on penalties for spies, traitors of the Motherland from among Soviet citizens and the formation of military field courts". The order was accompanied by said decree, the full title of which reads:

> "On measures for the punishment of fascist criminals responsible for the killings and torture of civilians and Soviet prisoners of war, and the punishment of spies and traitors of the Motherland from among the ranks of Soviet citizens and their accomplices".[60]

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[57] Situation in Kharkov, August 27, 1943, HDA SBU, F16O1D543, p. 12.

[58] Head of UNKGB secretariat Major Rosmanich to Head of the Secretariat of the NKGB of the Ukrainian SSR Captain of State Security Ostapchenko, 11.07.1944, F16O1D550, p. 113–1114, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU).

[59] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 111.

[60] Akademiia Federal'noi sluzhby bezopasnotsi Rossiiskoi Federatsii: Sekrety operatsii "tsitadel'". 1 ianvaria – 30 iunia 1943 goda (Organy Gosudarstvennoi Bezopasnosti SSSR v Velikoi Otechestvennoi Voine. Sbornik dokumentov, 4/1), Moskva 2008, p. 401–402. Such "ukazy" (decrees) had the status of laws and could be passed by the Supreme Soviet according to 1936 constitution. SCHROEDER: Sowjetrecht, p. 76. But since Ukaz 43 was never published, some authors question whether the decree ever "formally" came into legal effect. HILGER et al.: „Ukaz 43", p. 186.

This decree is commonly called "April decree" or "Ukaz 43" in the literature, we will use the latter term in the following. Ukaz 43 has been called the "turning point of Soviet retribution policies".[61] Therefore, we discuss its emergence, content, and impact in detail.

That new legal instruments would emerge and that courts would handle the prosecution of Axis war crimes and domestic collaboration was far from clear before the spring of 1943. After all, the Soviet state had mustered a variety of mass repressions in purely administrative fashion before, such as the mass operations. And as late as November 1943, Stalin famously suggested to Churchill and Roosevelt to summarily execute 50.000 German officers without trial after winning the war.[62] For Stalin, the option of approaching the issue of war crimes and collaboration in an extra-judicial manner and just shooting people by numbers and categories was clearly on the table. Given the fact that the Soviet side had argued for determining the individual guilt in every case of war crimes since the fall of 1942, the timing of this suggestion was quite odd.[63] Stalin's western colleagues reacted displeased, and it appears that international opinion increasingly factored in the Soviet dictator's decisions.[64] In this context, Petrov argues that the timing and contents of Ukaz 43 were mainly due to the changing tides of the war. After decisive battles like that of Stalingrad, Stalin saw a prospect for actually winning the war, Petrov argues, and once sure of survival, the Soviet dictator increasingly considered international opinion about his actions.[65] Simply shooting the majority of German POWs, as had been practiced in 1941 and 1942, began to seem problematic.[66] After Stalingrad, with the Red Army on the offensive, Soviet citizens who had served under the Germans on occupied territory now had to be handled more coherently than before.[67] Axis personnel as well as Soviet collaborators were thus the primary targets of the decree.

The content of Ukaz 43 was bad news for these target groups. Draconian punishments were stipulated for only vaguely described offenses. Ukaz 43 consisted of a preamble, two articles (numbers one and two) loosely defining crimes and specifying the punishments for them, and three articles (numbers three to five) concerning the adjudication of the decree and the execution of death sentences under articles one and two. The preamble consisted of a short text about "facts of unheard atrocities and monstrous acts of violence" committed against the "peaceful Soviet

[61] PRUSIN: "Fascist Criminals", p. 3.
[62] FREI, Norbert: Nach der Tat. Die Ahndung deutscher Kriegs- und NS-Verbrechen in Europa - eine Bilanz, in: Transnationale Vergangenheitspolitik. Der Umgang mit deutschen Kriegsverbrechern in Europa nach dem Zweiten Weltkrieg, edited by Norbert FREI (Beiträge zur Geschichte des 20. Jahrhunderts, vol. 4), Göttingen 2006, p. 7–36, here p. 10.
[63] HILGER et al.: „Ukaz 43", p. 178.
[64] Though on the British side, Churchill had expressed similar ideas internally. FREI: Nach der Tat, p. 10–11.
[65] PETROV: Judicial and Extra-Judicial Punishment, p. 295.
[66] Ibid., p. 265.
[67] Ibid., p. 296.

population" and "captive Red Army members".[68] "Many tens of thousands of innocent women, children, old people, as well as Red Army prisoners", the preamble contended, had been "brutally tortured, hanged, shot and burned alive".[69] Yet the perpetrators, defined as "German, Italian, Romanian, Hungarian, Finnish fascist evildoers" as well as "spies" and "traitors of the Motherland from among Soviet citizens", were not punished severely enough, the preamble continued.[70] Article one of Ukaz 43 thus stipulated that those perpetrators found guilty of murder were to be sentenced to death by hanging.[71] According to article two, those Soviet citizens who had been accomplices to acts of violence would receive a sentence of 15 to 20 years of "katorga".[72] Both punishments specified here were new in the Soviet context. "Katorga", named after a punishment of Tsarist times, referred to a newly established sub-category of the Gulag with even harsher conditions than in the rest of the Soviet camp system.[73] While article one equated Axis personnel and Soviet citizens, article two mentioned only the latter.[74] Nevertheless, as Ukaz 43 became a primary legal instrument for prosecuting German POWs, article two was applied to them as well.[75] By putting Axis personnel and Soviet citizens on an equal level, the decree followed the Soviet "theory of a Hitlerite large-scale criminal project" in which Soviet citizens were involved as domestic agents of foreign powers, a conception resembling the spy-mania of the 1930s.[76] Articles one and two were phrased vaguely, in a "vocabulary […] more denunciatory than legal", leaving the "concrete field of application (the nature of the crimes covered by the new text)" unclear and open for interpretation.[77]

In article three of Ukaz 43, the task of applying articles one and two was delegated to a new sentencing body, so-called military field courts, in whose exclusive jurisdiction the adjudication of Ukaz 43 was placed.[78] Military field courts had been created earlier, already in 1942, and the order accompanying Ukaz 43 legalized their existence retroactively.[79] A week after Ukaz 43 was passed, the new military field courts were granted the right to operate with "simplified" procedures, which in their case meant ignoring the code of criminal procedure altogether and to complete

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[68] Akademiia Federal'noi sluzhby bezopasnotsi Rossiiskoi Federatsii: Sekrety operatsii "tsitadel'", p. 401.
[69] Ibid., p. 401–402.
[70] Ibid., p. 402.
[71] Ibid.
[72] Ibid.
[73] ROSSI, Jacques: The GULAG handbook. An encyclopedia dictionary of Soviet penitentiary institutions and terms related to the forced labor camps, New York 1989, p. 184–185. VOISIN/KUDRYASHOV: Early Stages, p. 291.
[74] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 76.
[75] HILGER et al.: „Ukaz 43", p. 179. HILGER, Andreas: Sowjetische Justiz und Kriegsverbrechen. Dokumente zu den Verurteilungen deutscher Kriegsgefangener, 1941-1949, in: Vierteljahrshefte für Zeitgeschichte 3 (2006), p. 460–515, here p. 497.
[76] VOISIN/KUDRYASHOV: Early Stages, p. 289–291. HILGER et al.: „Ukaz 43", p. 183.
[77] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 52. VOISIN/KUDRYASHOV: Early Stages, p. 292.
[78] Akademiia Federal'noi sluzhby bezopasnotsi Rossiiskoi Federatsii: Sekrety operatsii "tsitadel'", p. 402. ZEIDLER: Stalinjustiz contra NS-Verbrechen, p. 17.
[79] KODINTSEV, A. Ia./SHKAREVSKIĬ, D. D./IANOSHI, V. V.: Organy spetsial′noi iustitsii SSSR v 1930-1950-e gody. Kollektivnaia monografiia, Surgut 2016, p. 63.

investigations in a mind-boggling five days (ds7).[80] Under this kind of time pressure, suspending the code of criminal procedure simply became a prerequisite for the operation of those courts. Furthermore, military field courts were not even supervised by prosecutors – or anyone else, for that matter (ds21).[81] Even death sentences merely needed to be confirmed by a Red Army division commander.[82]

What resulted were trials aimed first and foremost at propagandistic effects and at deterring further collaboration through the brutality of executions. Article four of Ukaz 43 specified that death sentences passed by these courts should be executed immediately. Article five prescribed that the hangings were to be conducted under the attendance of the public and that the bodies of those hanged to be left on display on the gallows for several days.[83] The newly introduced punishment of hanging was mirroring German practices against partisans, which were now used by the Soviets primarily as a deterrent for further collaboration in the territories still occupied.[84] Hangings were used across the territories conquered by the Red Army and even made it into some propaganda films produced by the Soviets.[85] Examples of the resulting "lynch-format trials" can be found for Ukraine as well.[86] Consider, for instance, the hanging of three former policemen of the German occupation authorities in the town of Mena, in the Chernigov region. The local party secretary promptly reported the hanging to the CP(b)U central committee as a propaganda success, noting the audience of several thousand local citizens.[87] A similar report from a trial in Mariupol′ shows that sentences were indeed enacted the very same day and that public hangings were sometimes attended by thousands of Soviet citizens.[88] Military field courts thus played a highly visible role in the Soviet prosecution of collaboration.

Yet the introduction of this additional sentencing body notwithstanding, most collaboration cases were not handled by military field courts, and most collaboration trials were no propagandistic hangings. The military tribunals of the NKVD troops primarily handled collaboration cases, because the local NKVD/NKGB structures which were re-established after the Soviets return

[80] PRUSIN: Traitors, p. 86. KODINTSEV et al.: Organy spetsial′noi iustitsii, p. 64.
[81] KODINTSEV et al.: Organy spetsial′noi iustitsii, p. 64.
[82] Ibid.
[83] Akademiia Federal'noi sluzhby bezopasnotsi Rossiiskoi Federatsii: Sekrety operatsii "tsitadel'", p. 402.
[84] VOISIN/KUDRYASHOV: Early Stages, p. 291. HILGER et al.: „Ukaz 43", p. 181.
[85] VOISIN/KUDRYASHOV: Early Stages, p. 291.
[86] PRUSIN: Traitors, p. 89.
[87] Secretary of the Mena Rayon Committee of the CP(b)U Plotnikov to Secretary of the Central Committee of CP(b)U Korotchenko, 19.10.1943, F1O23D688, Tsentral'nyi derzhavnyi arkhiv hromadc'kykh ob'iednan' Ukrainy (TSDAHO).
[88] Acting prosecutor of the Ukrainian SSR R. Rudchenko to Secretary of the Central Committee of CP(b)U, comrade Khrushchev, 31.05.1943, F1O23D689, p. 45, Tsentral'nyi derzhavnyi arkhiv hromadc'kykh ob'iednan' Ukrainy (TSDAHO).

were responsible for the overwhelming majority of such proceedings (ds13).[89] Lacking a "stable location" as they were advancing with the Red Army, military field courts were deemed an inadequate tool for investigating and adjudicating collaboration cases.[90] Accordingly, the right to apply Ukaz 43 was granted to all military tribunals already on September 8, 1943, turning those tribunals into sentencing bodies fully equipped with all legal instruments to prosecute collaborators.[91] Also, the significance of publicly displaying death penalties and the corpses of those receiving them was eventually diminished in military tribunals. In 1944, these organs were granted the right to sentence defendants to death by shooting under Ukaz 43.[92] Compared to the caseload managed by military tribunals, especially those of the NKVD troops, military field courts were an insignificant institution.[93]

In conclusion, Ukaz 43 simultaneously appears aimed at escalating punishment, as well as a first step towards differentiating offenses – it thus combined elements similar to the mass operations (harshness of repression, a sentencing body ignoring the code of criminal procedure – ds4,13) with elements differing from those operations (judicial sentencing bodies, individual punitive instead of category-based preventive repression, ds1-2, 13)). Initially, the prerogative state impetus of Ukaz 43 seems to have dominated its application, with the goal of a more differentiated, individual prosecution largely ignored by the responsible agencies.

This changed with a series of instructions was passed by different agencies, providing further guidelines for the adjudication of collaboration. Both the USSR prosecutor, as well as NKVD and NKGB leaders tried to concretize which acts were punishable, which positions in the occupation administration someone should have held to be prosecuted and under which circumstances a suspect should not be charged. Already in June 1943, the prosecutor of the USSR issued an instruction titled "On the procedure for establishing and investigating the atrocities of the German fascist invaders and their associates", which provided a more detailed catalog of punishable acts. It listed

> "facts of murders of civilians, violence, abuse and torture, [...] abduction of Soviet people into German slavery, torture and cruelty, [...] against prisoners, sick and wounded Soviet servicemen."[94]

[89] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 128. The decree also marked a shift in the primary sentencing bodies responsible for prosecuting Germans, as Petrov notes: "[…] before the adoption of the Decree of the Supreme Soviet of the USSR of April 19, 1943, the Special Council was the main body responsible for sentencing German POWs. But in the years 1943-1952, military tribunals were the main authorities for trying POWs." PETROV: Judicial and Extra-Judicial Punishment, p. 274.
[90] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 217–218.
[91] Ibid.
[92] Ibid., p. 53.
[93] KODINTSEV et al.: Organy spetsial′noi iustitsii, p. 65.
[94] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 48.

In October, the NKVD and the NKGB jointly issued "clarifications" regarding who was to be investigated for collaboration, a list which narrowed both agencies' targets to police leadership, rank-and-file police who had participated in repressions against soviet partisans and/or who had fulfilled orders with particular alacrity, defected Red Army soldiers, mayors and important officials in the administrative and economic sector, as well as village elders.[95] These "clarifications" also offered some criteria on who not to arrest, such as individuals who had supported Soviet partisans.[96]

Mirroring much of other agencies' prior orders the Collegium of the USSR Supreme Court passed additional instructions on November 25, 1943, which established a relatively unified framework and shaped the prosecution of collaboration significantly.[97] The Supreme Court pushed for a more individual prosecution and thus took a step towards normative-state principles (prosecuting concrete deeds of concrete persons instead of potentially prosecuting everybody who had been on occupied territory). The instruction's full title read "On the qualification of Soviet citizens' actions in assisting the enemy in areas temporarily occupied by the German invaders".[98] Still, the Supreme Court complained, military tribunals all too often "qualif[ied] as treason to the Motherland every assistance rendered by Soviet citizens to the German invaders […] independent of the character of that assistance".[99] Within our conceptual framework, we can see such a broad prosecution as implicitly category-based (the implicit category of "everybody who lived under occupation"). To counter the implicit tendency of category-based repression, the November 1943 instructions listed offenses for which individuals were to be prosecuted, divided the offenses into two sets, and specified the legal norms to be applied to them (ds1-3). In passing, it also assigned terms for the perpetrators of each set of offenses.

Actions listed in the first set encompassed service "in the Gestapo or in important administrative positions (mayors, police chiefs, commandants, etc.)", but also betraying "military or state secrets", and "deliver[ing] or persecute[ing] partisans, Red Army soldiers, Soviet activists and members of their families", being "directly involved in killings and violence against the population, looting and destruction of property of citizens and property belonging to the state, collective farms, to cooperative and community organizations".[100] The first set lastly included "soldiers who have

[95] Ibid., p. 88.
[96] Ibid., p. 92.
[97] PENTER: Local Collaborators, p. 9. EPIFANOV: Organizatsionnye i pravovye osnovy, p. 88. EXELER: Ambivalent State, p. 616.
[98] MALIARENKO, Vasyl' T.: Reabilitatsiia reprecovanykh. Zakonodavstvo ta sudova praktyka, Kyiv 1997, p. 47. On the significance of such resolutions for the Soviet judiciary see: SOLOMON: Soviet criminal justice, p. 412, 416.
[99] MALIARENKO: Reabilitatsiia reprecovanykh, p. 47–48.
[100] Ibid., p. 48.

crossed over to the enemy's side".[101] All of these actions, the instructions stipulated, constituted "treason to the Motherland" and fell under article 58-1 or under article one of Ukaz 43. In contrast, the second set of offences was to be prosecuted under article 58-2 or article two of Ukaz 43. Referred to as "accomplices", the people whose offenses were listed in the second set had "carried out tasks of the German invaders to collect food, forage and things for the needs of the German army, to restore industrial, transport and agricultural enterprises, or who have otherwise actively assisted them".[102] The Supreme Court had thus summarized the overlapping legal norms of article 58 and Ukaz 43 in a unified framework, effectively splitting collaboration into a "proper" and a "light" version – into traitors ("izmenniki") and accomplices ("posobniki").[103] Additionally, giving oneself up was designated as a mitigating circumstance, if the defendant's actions had not led to "serious consequences".[104] And the instructions also clarified that those Soviet citizens who had "held administrative positions" were not to be prosecuted if they had "assisted guerrillas, underground fighters and Red Army units, or sabotaged the demands of the German authorities, helped the population to hide food and property, or otherwise helped the fight against the occupiers".[105] Also, the instructions stipulated that mere service in institutions during occupation was no basis for criminal prosecution. Therefore "minor employees of administrative institutions, workers and specialists practicing their profession (doctors, veterinarians, agronomists, engineers, teachers, etc.)" were not to be prosecuted if they had not committed any criminal acts (as specified in the rest of the document) (ds3).[106] While other instructions further clarifying the adjudication of collaboration followed, the core of the framework established in the November 1943 instructions remained unchanged (and after the end of the war, the issuing of further instructions ceased

[101] Ibid.
[102] Ibid.
[103] In distinguishing "traitors" and "accomplices", the November 1943 instructions brought at least some terminological clarity into a largely confused semantic field. A variety of terms were used simultaneously in Soviet agencies' correspondence at the time. As a term for "traitor", "izmennik" was used in article 58-1 and article one of Ukaz 43, but its synonym "predatel'" can be found in many Soviet documents as well. And while "posobnik" was the only term for "accomplice", the term "stavlennik" ("protégé") sometimes appears as well, without fitting into the scheme of the November 1943 instructions. At times the categories of collaborators were further differentiated in internal correspondence. For instance, the Ukrainian NKGB sent "bi-weekly report[s] on the progress of cleansing the Ukrainian SSR territory liberated from German invaders" to the central NKGB in Moscow, differentiating those who had worked for the Germans into "policemen, village elders, translators" and "active German accomplices" ("posobniki"). But no unified terminology ever emerged among the agencies involved. See: Head of NKVD Internal troops of the Ukrainian District Major-General Marchenkov to People's Commissar of Internal Affairs of the Ukrainian SSR Commissar of State Security Riasnoi: Report on the results of operative activities (…) in the city of Kharkov, 28.08.1943, F16O1D533, p. 1, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU). People's Commissar of Internal Affairs of the Ukrainian SSR Commissar of State Security Riasnoi to Deputy People's Commissar of Internal Affairs of the Union of Soviet Socialist Republics, 2nd rank Commissar of State Security Kruglov: Report note on the situation in the liberated districts of Dnepropetrovsk region, 11.10.1943, F16O1D543, p. 69–73, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU).
[104] MALIARENKO: Reabilitatsiia reprecovanykh, p. 49.
[105] Ibid., p. 48–49.
[106] Ibid., p. 49.

altogether).[107] The new normative-state element softened the blow of repression. Beginning in the winter of 1943/1944, the punitive policy became less harsh, and the rate of death sentences dropped (ds4).[108] It remained comparatively low in 1945 and 1946 when 10-year Gulag sentences became the norm.[109]

Thus, the intensity of repression fluctuated according to broader political tendencies. Therefore, sentences were not purely based on criminal law but followed larger trends of punitive policy (ds14). A somewhat contradictory dynamic emerged, which was owed to shifts in punitive policy and to the specific mechanism through which it was implemented. This mechanism differed from the one used in the mass operations. Rather than prescribing quotas and target groups for extrajudicial sentencing bodies, central bureaucracies intervened in the operation of *courts* through supervision, pushing a central line of harsher or more lenient punitive policies (ds3, 13-14). The mass operations had unfolded according to central orders with designated target categories and clear quotas on how many representatives of each category should receive which sentence. The mechanism of using orders by institutions such as the People's Commissariat of Justice and USSR Supreme Court to increase or decrease the severity of repressions meted out by military tribunals was much more similar to the domestic "cleanup" the Soviets had unleashed against those deemed enemies in 1941.[110]

In the 1941 campaign, the initial impetus was ever harsher persecution of alleged enemies. Higher courts chastised their subordinates for "liberalism" and lower courts had to justify not applying the death penalty.[111] As we have seen, in the prosecution of collaboration from 1943 on, the dynamic was more contradictory. As soon as a central effort was taken to coordinate how collaborators were prosecuted, a push against indiscriminate repression coexisted with calls to escalate the

[107] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 79, 81.
[108] PENTER: Local Collaborators, p. 9. EXELER: Ambivalent State, p. 616.
[109] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 227.
[110] Similar to the mass operations, the 1941 home-front repressions were preventive, category-based, union-wide campaign with a high rate of death sentences – similarities which recently led Budnitskii to call this "The Great Terror of 1941". BUDNITSKII: Great Terror of 1941, p. 480. However, one might question how fitting the moniker Budnitskii uses really is. Speaking strictly numerically, punitive policies in political cases changed radically after the mass operations. As Rittersporn argues, between 1940 and 1953, around 1.5 million people were sentenced for alleged political crimes. Some 80% of these 1.5 million defendants was tried in courts – a similar percentage had been sentenced by extrajudicial bodies during the mass operations. In the mass operations, half of those targeted had been sentenced to death, between 1940 and 1953, the rate of death sentences in political cases dropped to around 20%. And increasingly, penal policy targeted "precisely defined acts" instead of group affiliation. RITTERSPORN: Terror and Soviet Legality, p. 189. A radical break after the mass operations is also evident in the fact that around 86% of all death sentences in political cases between 1921 and 1953 were passed during the mass operations. BINNER/JUNGE: "S etoj publikoj", p. 208. Nevertheless, although they were capable of a more normative state approach, Soviet authorities continued to use different forms of category-based administrative mass repressions, especially mass deportations of ethnic groups. SHEARER: Policing Stalin's socialism, p. 405.
[111] BUDNITSKII: Great Terror of 1941, p. 455, 460.

severity of punishments for those eventually targeted. Eventually, the punitive policy became less severe and the rate of death sentences declined.[112]

But such a broad perspective on how severe the prosecution of collaboration was does not help to determine prerogative state and normative state elements on the level of individual investigations and trials. To examine this, we will turn to an analysis of documents from the respective agencies, drawing mainly on materials stemming from the supervision investigators and courts who handled cases of collaboration in Ukraine. At the current point of our discussion, it is not clear how similar or dissimilar military tribunals operated from troikas. Nor how is it clear how similar or dissimilar from the mass operations' conveyer-belt torture machinery the local SMERSH, NKVD, and NKGB officers' day to day dealings were in the prosecution of collaboration.[113] Legal instruments and instructions clarifying their application are one thing – the implementation of these instructions is another. How then, did military tribunals adjudicate collaboration?

## Military tribunals as the primary tool for prosecuting collaboration

As stated above, most cases of collaboration fell into the jurisdiction of military tribunals. Such courts were part of various agencies and played an important role in prosecuting "special jurisdiction cases" of military personnel and civilians alike. Traditionally, military tribunals "were attached to military districts, fronts and naval fleets" – i.e. military tribunals in the sense the word suggests, courts for the armed forces, used to try military personnel.[114] But the NKVD troops also had their own military tribunals. The NKVD's courts existed independently from the army and fleet tribunals and were organized by region (oblast').[115] Together, army, fleet, and NKVD military tribunals constituted an integral part of what was called "special courts" in the USSR, i.e. courts handling "special jurisdiction cases".[116] The significance of this type of court grew during wartime when various regular courts were turned into military tribunals.[117] This broad "militarization of justice organs" resulted in a fivefold increase in the number of such courts during the Second

[112] Interestingly, Budnitskii and scholars studying the prosecution of collaborators have hypothesized that repression against alleged collaborators was softened in 1943/1944 for similar reasons than that of "old enemies" on the home front in 1941. The war caused a lack of human resources, those scholars argue, which made the Soviet leadership reluctant to overdo it with the death penalty. MERTELSMANN/RAHI-TAMM: Cleansing and Compromise, p. 339. BUDNITSKII: Great Terror of 1941, p. 477. Jones has shown that the same logic applied not only to criminal prosecution, but also to lustrations and exclusions from the communist party. See: JONES, Jeffrey: "Every Family Has Its Freak". Perceptions of Collaboration in Occupied Soviet Russia, 1943–1948, in: Slavic Review 4 (2005), p. 747–770, here p. 755.

[113] Alexander Prusin recently applied the term "troika" to the military tribunals. Thus, in using the mass operations as a template of the prerogative state, we merely explicate an already existing comparative undercurrent of the scholarship on the topic. See: PRUSIN: Traitors, p. 83.

[114] KUCHEROV, Samuel: The organs of Soviet administration of justice. Their history and operation (Studien zur Geschichte Osteuropas, vol. 13), Leiden 1970, p. 108.

[115] ZEIDLER: Stalinjustiz contra NS-Verbrechen, p. 24.

[116] Ibid., p. 23.

[117] BUDNITSKII: Great Terror of 1941, p. 451.

World War.[118] The number of judges in NKVD troops' military tribunals alone increased from 169 in 1942 to 799 in 1945.[119] At the union level, all of these tribunals operated under the jurisdiction of the Military Collegium of the USSR Supreme Court.[120] In Ukraine, at the republic level, all NKVD military tribunals operated under the central "Military tribunal of the NKVD troops of the Ukrainian district", which was based in Kiev.[121] And unlike the army and fleet military tribunals, those of the NKVD primarily tried cases of civilians. Between July and December 1944, some 94% of cases prosecuted in NKVD troops' military tribunals dealt with civilians.[122]

In their composition, military tribunals were not all too different from troikas (ds13). Although military tribunals were judicial, rather than extra-judicial sentencing bodies, they should be seen as prerogative state institutions. In Ukraine, as in the USSR in general, tribunals were composed of "one chairman, two assessors, and one secretary".[123] For the most part, these assessors were not legal professionals.[124] Because of a chronic shortage of such professionals, assessors were often recruited from the ranks of the Red Army, or officers of the NKVD or NKGB.[125] Representatives of the agencies investigating a case regularly also took part in adjudicating that case, which can hardly have been beneficial for the protection of defendants' rights. Regarding their composition, the presence of just one legal professional does not elevate military tribunals above troikas. But there were differences in their operation.

Military tribunals operated with significant "simplifications" (ds7). Generally, the procedure in military tribunals was divided into two stages, the preliminary investigation, and the actual trial (which we capture in the terminological distinction between investigation and adjudication).[126] The trial proceedings themselves were significantly "simplified" during wartime. On June 22, 1941, the Presidium of the USSR Supreme Soviet declared various regions of the USSR under martial law.[127] This included the Ukrainian and Moldovan Soviet republics and hence the regions primarily under study here. On the same day, the Presidium of the USSR Supreme Soviet passed the "Decree on the approval of the Regulations on military tribunals in the areas declared under martial law and in

[118] KODINTSEV et al.: Organy spetsial′noi iustitsii, p. 59, 62.
[119] Ibid., p. 62.
[120] PENTER: Local Collaborators, p. 5.
[121] The earliest report available from this court stems from October 1943. See: Work of the Military Tribunal in the 3rd quarter of 1943, TSDAHO, F1O23D684.
[122] Work of the Military Tribunal in the 3rd quarter of 1945, TSDAHO, F1O23D2437, p. 71.
[123] PENTER: Local Collaborators, p. 5.
[124] SCHROEDER: Sowjetrecht, p. 70.
[125] Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 43.
[126] SCHROEDER: Sowjetrecht, p. 88.
[127] Akademiia Federal'noi sluzhby bezopasnotsi Rossiiskoi Federatsii: Nachalo. 22 iunia – 31 avgusta 1941 goda (Organy Gosudarstvennoi Bezopasnosti SSSR v Velikoi Otechestvennoi Voine. Sbornik dokumentov, 2/1), Moskva 2000, p. 7.

the areas of military operations".[128] Martial law was only revoked on September 21, 1945.[129] For most of the time examined in the present study, military tribunals' activities were thus regulated in this decree. Some notable "simplifications" in tribunals' operation were introduced. The accused only needed to be familiarized with indictments shortly before the trial session.[130] Instead of the usual three days, 24 hours were to suffice.[131] Convicts were denied the usual legal remedy to challenge tribunals' sentences, appeal in cassation. [132] Only supervisory authorities could appeal sentences.[133] All completed cases were transferred from lower to higher (supervisory) instances, but only death sentences needed to be approved by supervisors.[134] Capital punishment could be carried out within 72 hours after the verdict had been sent to the respective higher instances, all other verdicts came into effect immediately.[135]

These "simplifications" were significant but less severe than those enacted for the troikas of the mass operations. As institutions, military tribunals were on the prerogative state side of the spectrum, but their proceedings potentially encompassed normative state elements (ds7). The differences to troikas should not be overlooked. For one, defendants were not tried in absentia (ds16).[136] And even compared to the "simplifications" guiding military field courts, military tribunals' procedures were quite different. Contrary to the five-day limit set for those military field courts, investigations in cases under regular military tribunals' jurisdiction often took months to complete (ds7). In Ukraine, the time limits for investigations were even changed from two to four months in November 1943, because investigators were simply overwhelmed with the workload they faced.[137] Nevertheless, the authorities supervising investigations kept complaining that even the four-month limit was often exceeded.[138] Again, this speaks to differences from the mass operations. And while such "simplifications" were broadly applied, they were not completely pervasive. Thus, in an order delimiting the jurisdictions of military field courts and military tribunals, the General Directorate of Military Tribunals (GUVT) clarified that military tribunals were to review collaboration cases within the framework of "ordinary procedure" (ds7).[139] Epifanov also argues that on the territories reconquered by the Red Army, military tribunals mostly

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128 Ibid., p. 7–10.
129 EPIFANOV: Organizatsionnye i pravovye osnovy, p. 224.
130 SCHROEDER: Sowjetrecht, p. 89.
131 PENTER: Local Collaborators, p. 5.
132 Ibid.
133 Akademiia Federal'noi sluzhby bezopasnotsi Rossiiskoi Federatsii: Nachalo, p. 9.
134 KODINTSEV et al.: Organy spetsial′noi iustitsii, p. 60.
135 Ibid.
136 PETROV: Judicial and Extra-Judicial Punishment, p. 273.
137 EPIFANOV: Organizatsionnye i pravovye osnovy, p. 129.
138 Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 34.
139 Akademiia Federal'noi sluzhby bezopasnotsi Rossiiskoi Federatsii: Sekrety operatsii "tsitadel'", p. 481–482. On military tribunal trials with "ordinary procedure" see also: EPIFANOV: Organizatsionnye i pravovye osnovy, p. 220.

adhered to the code of criminal procedure.[140] Furthermore, some defendants were represented by lawyers in military tribunals (ds10, 19).[141] A directive of the People's Commissariat of Justice made the admission of lawyers possible on October 22, 1945.[142] The exact extent of lawyers' involvement in military tribunal trials is unknown, but it has been suggested that this concerned only a minority of cases. Recent scholarship is inconclusive regarding the role of lawyers during trials in military tribunals. Some scholars see those lawyers as mostly passive figures who only pleaded for leniency, others ascribe them the ability to cross-examine witnesses and influence the outcome of the trials.[143] Representatives of the prosecution were mostly absent in trial sessions during the years concerned in the present study. Thus, most defendants found themselves facing the court and the court alone – neither defense nor prosecution was present (ds19).[144] But prosecutors' role was not limited to appearing as the prosecutor in trial sessions themselves. They also played a significant role in supervision, both before and after trial sessions. And supervision by prosecutors and other instances provided the decisive incentives for pushing investigators and judges into the direction either of the normative or prerogative states.

## Supervision – Incentives for normative and prerogative state behavior

The supervision of collaboration proceedings was split among a variety of authorities, namely various courts on the republic and union levels, as well as different branches of the procuracy. In our region of interest, these included the hierarchy of the military tribunals themselves, with the Kiev-based central "Military tribunal of the NKVD troops of the Ukrainian district" as the highest authority in Ukraine.[145] It also supervised the Moldovan NKVD military tribunals.[146] On the union level, the Military Collegium of the USSR Supreme Court was responsible.[147] Prosecutors of different institutional hierarchies were also involved. Those included regional military prosecutors, both NKVD troops' and of the Red Army, as well as regional prosecutors for "special cases" ("spetsdela") subordinate to the respective ordinary prosecutors.[148] Already in 1944, the head of the Ukrainian district military tribunal complained that insufficiently demarcated competences

[140] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 220.
[141] PENTER: Local Collaborators, p. 11, 21. It is thus not true that there was a general absence of defense in these trials. VOISIN/KUDRYASHOV: Early Stages, p. 276.
[142] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 220.
[143] PRUSIN: "Fascist Criminals", p. 15. PETROV: Judicial and Extra-Judicial Punishment, p. 273.
[144] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 231.
[145] PENTER: Local Collaborators, p. 5.
[146] Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 33. It thus makes little sense to see the "MSSR court system" as detached from that of Ukraine, as Dumitru does. Both were part of the same institutional hierarchy. See: DUMITRU: Gordian Knot, p. 732.
[147] PENTER: Local Collaborators, p. 5.
[148] EPIFANOV: Organizatsionnye i pravovye osnovy, 128, 205. Even the NKVD troops had their own procuracy. See: Deputy Prosecutor of the Ukrainian SSR for special jurisdiction cases, 3rd class state advisor of justice Shugurov to Central Committee of CP(b)U, Fond 1, Opis 23, Delo 2373, Reel 2, RG-31.026M, Selected records from former Archives of the Communist Party of Ukraine, p. 17, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 17.

between those prosecutors often lead to chaos and lowered the quality of supervision.[149] Besides the tribunals themselves and various prosecutors, the investigative agencies had their own supervisory mechanisms. With the so-called "special inspections" of the NKVD and NKGB, both agencies had their own departments of internal investigations. Regarding supervision, these departments were noted on par with the military prosecutors in internal correspondence.[150] Policy implementation could thus be controlled via supervision following the "lines of the procuracy, the People's commissariats of the NKVD and NKGB of the Ukrainian SSR and the NKVD troops" (with the NKVD troops including the military tribunals).[151]

The various supervisors could influence how their subordinates investigated and adjudicated collaboration cases. Supervising instances reviewed sentences passed by military tribunals, assessing these courts' work for efficiency and legality (ds21). Based on such reviews, supervisors could interfere with the work of military tribunals. They could return cases to a supplementary investigation, terminate them altogether, or protest verdicts and amend them. Before judges would even see a case, parts of the preliminary investigation had to be sanctioned by prosecutors. For instance, they had to approve indictments before a case could go to court. An indirect influence on investigations was also exerted by other investigations – namely, the ones into investigators' "infringements of socialist legality" (i.e. torturing defendants). In Ukraine and Moldova, the most important supervising agency for military tribunals was the Kiev-based Military tribunal of the NKVD troops of the Ukrainian district, which sent regular reports outlining the work of its subordinate courts and its "supervisory and judicial activities" to the central committee of the Communist Party of Ukraine (CP(b)U).

Between 1943 and 1946, the authors of these reports regularly criticized their subordinate regional NKVD military tribunals for working inefficiently. Efficiency was measured through a variety of indicators, such as caseload, backlogs, and the overall quality of the materials prepared by the lower-level military tribunals. As mentioned above, the long duration of criminal proceedings and the resulting backlogs remained a permanent problem in the work of the courts.[152] The supervisors in Kiev accepted some of their regional subordinates' justifications for this. The chaotic conditions brought about by the war impeded the regular functioning of the tribunals. It was clear that

[149] Supervisory activities in July-December 1944, TSDAHO, F1O23D2437, p. 23.
[150] Head of the Office of cadre administration department of the Central Committee of the CP(b)U, comrade Stetsenko to Secretary of the Central Committee of CP(b)U Korotchenko: Report on the implementation of the decree of the CC CP(b)U of March 21 and May 19, 1945 "On the facts of gross violations of Soviet legality in the western regions of the Ukrainian SSR" in the Volyn, L'vov, Drogoby and Stanislav regions, 23.10.1945, File 2434, Reel 57, RG-31.026M, Selected records from former Archives of the Communist Party of Ukraine, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 2. For the NKGB, these departments were created on August 27, 1943. EPIFANOV: Organizatsionnye i pravovye osnovy, p. 128.
[151] Report on the implementation, USHMM, File 2434, Reel 57, RG-31.026M, p. 1.
[152] Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 34.

witnesses often failed to appear before the courts, that defendants were often not transferred from jail to the courtroom on the day of the trial etc.[153] But on the other hand, the supervisors chastised individual regional tribunals for "insufficient efficiency of the presidents and members of these military tribunals in the organization of cases brought before military tribunals". [154] Supervisors also criticized the general sloppiness and the low quality of documents prepared by some subordinate courts, including verdicts.[155] The sad state of many of these documents did not help to convince supervisors that their subordinates were working efficiently.

Besides efficiency, supervisors also checked for various indicators of quality, i.e. legality. A major area of concern were errors in subsuming offenses under the correct legal norms and in determining the severity of sentences (ds14). In his "report on the work of the Military Tribunal of the NKVD troops of the Ukrainian District in the 3rd quarter of 1943", the head of the tribunal complained about regular "incorrect classification of crimes", a "lack of differentiation of penalties", and a "lack of motives for commuting sentences".[156] Similar complaints remained constant through the period under study here. Often, the competing legal instruments of articles 54 and Ukaz 43 were applied improperly. Either Ukaz 43 was used where it should not have been, or it was not used where it should have been.[157] The Military tribunal of the NKVD troops of the Ukrainian district also kept complaining about unsubstantiated acquittals and instances of undue leniency.[158] For instance, a regional military tribunal had sentenced a defendant to confinement in the Gulag, although he had assisted the Germans in arresting "Soviet activists" and their relatives, who the Germans later murdered. The Ukrainian district military tribunal insisted that this action was to be punished by execution.[159] On the other hand, the reports also contain numerous complaints about unjustified death sentences.[160] Both sometimes appear in the same reports.[161] Sometimes supposed undue leniency was also phrased in terms similar to those used to escalate earlier campaigns of repression, such as the one in 1941 discussed above. Thus, one investigator was reprimanded for showing "political short-sightedness and irresponsibility" (ds14).[162] Thus, in the eyes of their supervisors, the subordinate military tribunals had significant problems with

[153] Ibid.
[154] Work of the Military Tribunal in the 3rd quarter of 1945, TSDAHO, F1O23D2437, p. 66.
[155] Work of the Military Tribunal in the 3rd quarter of 1943, TSDAHO, F1O23D684, p. 14. Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 38–39. Similar problems have been reported for the Belarussian SSR too. EPIFANOV: Organizatsionnye i pravovye osnovy, p. 148.
[156] Work of the Military Tribunal in the 3rd quarter of 1943, TSDAHO, F1O23D684, p. 14.
[157] Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 38–39. Work of the Military Tribunal in the 3rd quarter of 1945, TSDAHO, F1O23D2437, p. 68–69.
[158] Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 38–39.
[159] Work of the Military Tribunal in the 3rd quarter of 1945, TSDAHO, F1O23D2437, p. 73.
[160] Ibid., p. 68–69.
[161] Work of the Military Tribunal in the 1-2 quarters 1946, TSDAHO, F1O23D3671, p. 97.
[162] Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 38.

correctly subsuming offenses under the respective articles and in determining the appropriate punishments.

A further issue besides correct subsumption and determining punishments was establishing offenses in the first place. This problem essentially concerned the standards of evidence, and contrary to the prerogative state mass operations of the 1930s, supervisors pushed for a high standard of evidence that was based not only on confessions but on witness testimony as well (ds9). In their reports, the supervisors of the Military tribunal of the NKVD troops of the Ukrainian district referred to the problem with phrases as the "incorrect examination of the case materials and their incorrect assessment in the court session" or "sentencing based on insufficiently examined materials". [163] Regarding the standards of evidence, some authors have concluded that confessions played a big role in military tribunals' collaboration trials.[164] We argue that witness testimony was at least of equal significance. The USSR People's Commissar of Justice had already in 1942 decreed that it was obligatory to summon witnesses to the trial session in each case of "treason to the Motherland".[165] And the Military tribunal of the NKVD troops of the Ukrainian district frequently brought this to the attention of its subordinate tribunals.[166] As evidence, the superiors in Kiev took witness testimony quite seriously. For example, the supervising instance criticized its subordinate courts for sentencing a defendant to death although the witnesses had not confirmed the accusations against him. In another case, the military tribunal had simply ignored witness testimony exonerating a defendant.[167] Such witness testimony, the supervising officials clarified, also needed to be differentiated into hearsay and eyewitness accounts. And no verdict could be based on hearsay.[168] Confessions were important but had to be upheld during the trial. In one case, a defendant had confessed during the preliminary investigation but then withdrew his confession during the trial itself. The court tried to sentence him to death nonetheless, but the supervisors intervened.[169] The relative significance of both types of evidence demands further careful examination, which we will provide in the following chapters. But the standards of evidence established by the supervision of the Military tribunal of the NKVD troops of the Ukrainian district was quite different from that of the mass operations – we see a normative state element in the former which was absent in the latter.

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[163] Work of the Military Tribunal in the 3rd quarter of 1943, TSDAHO, F1O23D684, p. 14. Work of the Military Tribunal in the 3rd quarter of 1945, TSDAHO, F1O23D2437, p. 68–69. Similar complaints were made in the RSFSR. See: VOISIN/KUDRYASHOV: Early Stages, p. 284.
[164] PENTER: Local Collaborators, p. 12.
[165] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 206.
[166] Work of the Military Tribunal in the 3rd quarter of 1945, TSDAHO, F1O23D2437, p. 68–69.
[167] Supervisory activities in July-December 1944, TSDAHO, F1O23D2437, p. 24.
[168] Work of the Military Tribunal in the 3rd quarter of 1945, TSDAHO, F1O23D2437, p. 68–69.
[169] Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 40.

To deal with these various problems ranging from errors in the application of legal norms to insufficient evidence, the Military tribunal of the NKVD troops of the Ukrainian district could intervene in the work of its subordinate courts in several ways. To lighten their subordinates' caseload, the central military tribunal could organize so-called "visiting sessions". Members of the central tribunal would visit a region and try a couple of cases under the jurisdiction of the respective regional tribunal.[170] The Military Collegium of the USSR Supreme Court also occasionally organized such sessions.[171] Visits by members of the central tribunal in Kiev were also conducted for purposes of instruction, without adjudicating any cases. The stated intent of these visits was to instruct subordinates on how to avoid further "distortions of the line", i.e. the dominant policy of retribution laid out by the higher instances at a given point in time (ds14).[172]

But much more important than taking cases off their subordinates' backs or instructing them were reviews, which were the starting point of every direct intervention by the Kiev tribunal. The rate of sentences reviewed is difficult to estimate but was likely around one in five cases tried by a subordinate tribunal. Reviews are important because they could lead to upholding the sentence or protesting it, which in turn could result in amendments, returns to the trial stage, returns to a supplementary investigation, or, lastly, to the termination of the case. The numbers of cases in which the central Kiev NKVD military tribunal intervened were rising steadily between 1943 and 1946. While this concerned only 140 cases in the second quarter of 1943, the number rose to almost 500 in the second quarter of 1945.[173] This last figure would amount to a mere four percent of cases of "counterrevolutionary crimes" in which the highest military tribunal intervened.[174] At first glance, these numbers seem modest compared to the total amount of cases handled by NKVD military tribunals. But it is important to note that the percentage of sentences amended does not equal the percentage of sentences reviewed by the central NKVD military tribunal. Yet in most reports, the authors only described the first category – amendments and categorized them further (sentences reduced, sentences nullified with cases sent to a supplementary investigation, sentences nullified with cases terminated, and other amendments).[175] For the third quarter of 1945, the percentage of amendments enacted by the NKVD troops' Military Tribunal of the Ukrainian District can accordingly be calculated as 7,8% of all sentences for "counterrevolutionary crimes".[176] A later report on the first half of 1946 helps to contextualize these numbers. This report lists not

[170] Work of the Military Tribunal in the 3rd quarter of 1945, TSDAHO, F1O23D2437, p. 66.
[171] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 223.
[172] Supervisory activities in July-December 1944, TSDAHO, F1O23D2437, p. 25.
[173] Work of the Military Tribunal in the 3rd quarter of 1943, TSDAHO, F1O23D684, p. 7. Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 40.
[174] Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 40.
[175] Work of the Military Tribunal in the 3rd quarter of 1945, TSDAHO, F1O23D2437, p. 71.
[176] Ibid., p. 63.

only the sentences amended but also the number of sentences upheld, providing us with a total number of cases reviewed. If we take the numbers of the 1946 report as a crude indicator, we can assume that up to 20% of sentences passed by regional NKVD military tribunals eventually ended up on the desks of their superiors in Kiev for review.[177] Notably, this last number only concerns cases of "traitors", and does not include those tried as "accomplices", which we cannot estimate based on the available data. However, since the tribunal tried significantly more cases of "traitors" than of "accomplices", we can take this percentage as a crude estimate of how many cases were reviewed (on these problems, see also chapter 1) Unfortunately, the reports for the period under study were only preserved incompletely. It is thus impossible to calculate the rate of cases reviewed in supervision beyond such a crude estimate. But based on the available data it is safe to assume that the rate of reviews increased, starting in the low one-digit percentages in 1943 and eventually climbing to around every fifth case in 1946.

A significant portion of the sentences reviewed was upheld and between 1943 and 1946, the percentage of cases into which the Kiev-based supervisors decided to intervene declined. In the second quarter of 1945, some 20% of sentences reviewed were upheld, while 38% were deemed too severe and amended. The Military tribunal of the NKVD troops of the Ukrainian district sent back more than a third, 36%, for a new trial and returned 12% for supplementary investigation.[178] For the third quarter of the same year, no number of sentences upheld was provided. Where the supervising agency in Kiev intervened, it softened 34% of sentences, sent 48 % back for a new trial, and nullified the sentences in 9% of cases, which in this instance meant the termination of these criminal prosecutions (the remaining 9% of sentences were changed in other, unspecified ways).[179] For the first half of 1946, the percentage of sentences upheld rose to 77%, only 13% of designated punishments were deemed too harsh and weakened. The number of cases sent to a new trial or a supplementary investigation fell to 4% and 3% respectively.[180] We can conclude that the Military tribunal of the NKVD troops of the Ukrainian district was increasingly satisfied with the work of its subordinate military tribunals.

But the supervisors in Kiev were not the only people whom the judges of individual military tribunals had to worry about. Between these tribunals and their Kiev superiors, there was the level of regional (oblast') tribunals, which also supervised and interfered. The Military Tribunal of the NKVD troops of the Ukrainian District was the most important, but not the only instance capable of protesting verdicts of individual military tribunals. In the period of July through December 1944,

[177] Work of the Military Tribunal in the 1-2 quarters 1946, TSDAHO, F1O23D3671, p. 97.
[178] Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 40.
[179] Work of the Military Tribunal in the 3rd quarter of 1945, TSDAHO, F1O23D2437, p. 71.
[180] Work of the Military Tribunal in the 1-2 quarters 1946, TSDAHO, F1O23D3671, p. 97.

58% of protests originated from the central Kiev tribunal. Another 35% stemmed from the regional (oblast') level tribunals, which in turn oversaw the activities of several such courts of a lower level.[181] This last figure suggests that judges of lower-level courts had to anticipate interventions from their superiors at different levels of the institutional hierarchy. We had estimated the percentage of cases reviewed by the central Kiev military tribunal at a maximum of 20%, to this we would have to add the cases reviewed by the oblast' level tribunals (assuming that supervisors at each level could pick cases at will, i.e. that lower-level instances did not just forward cases they had already checked to higher-level instances).

Notably, convicts could also trigger reviews by protesting their sentences, which means that at least limited legal remedies were open to them in the post-trial phase (ds22). The same report concerning protests of verdicts between July and December 1944 puts the protests convicts themselves made at around seven percent, which lead supervisors to review the respective sentences.[182] Here, military tribunals operated more "normative" than the current instructions should have allowed for. This shows that the "simplifications" introduced in the "Decree on the approval of the Regulations on military tribunals in the areas declared under martial law and in the areas of military operations" were not applied pervasively. According to this decree, defendants in military tribunals did not have any legal remedy to protest the sentences they received. "Distortions" of the general line of retributive policies could thus occur in two directions, either that of the prerogative state or that of the normative state. At least some defendants could achieve a review, and thus at least a few could have their sentences amended or achieve a second court trial of their case.

Besides such ex-post interventions, additional mechanisms of supervision were in place which could affect a case even *before* it went to court. Thus, the individual NKVD military tribunals held so-called "preliminary sessions" before the actual trial, which was another bottleneck a case had to pass. In the second quarter of 1945, some 12% of cases brought to NKVD military tribunals in Ukraine and Moldova did not pass this check. For cases of so-called "counterrevolutionary crimes," the figure was eight percent.[183] These cases were returned to a supplementary investigation because the tribunals contended that the investigative agencies had committed "severe errors". [184] Again, such errors mainly concerned standards of evidence, such as witness testimonies based on hearsay, contradictory witness testimony which was insufficiently clarified, or a failure to verify a defendant's claim that he had supported the Soviet partisans during the occupation.[185] During

[181] Supervisory activities in July-December 1944, TSDAHO, F1O23D2437, p. 23.
[182] Ibid.
[183] Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 35.
[184] Ibid., p. 37.
[185] Ibid., p. 36–37.

preliminary sessions, the professionalism of investigators also came into question when judges criticized the "gross negligence in the preparation of investigation documents".[186] The pressure for ensuring the quality of investigations and sentences thus trickled down from the central NKVD military tribunal to its subordinate courts and from them to the investigators.

Investigators also faced scrutiny from prosecutors, whose primary sphere of influence was the pre-trial investigation. Supervising investigators put prosecutors into a structural opposition to NKVD, NKGB, and SMERSH. Arrest warrants and indictments had to be sanctioned by prosecutors, who thus had to "control the preliminary inquiry".[187] This also meant that investigators had to ask a prosecutor's permission if they wanted to overstep the time limits set for completing an investigation.[188] Such control mechanisms made investigations at least potentially open to interventions from the procuracy. Furthermore, prosecutors were officially supposed to participate in interrogations of the accused, especially when the indictment was served, as well as in deposing key witnesses and in confrontations.[189] Previous scholarship has established that they only partially performed these duties.[190] In the time-frame and regions of our study too, some prosecutors were not too eager to fulfill the invidious task of supervising the NKVD and NKGB. Hence, the Odessa region's head prosecutor reminded his rayon level subordinates in 1944 that supervising NKVD and NKGB investigators was an important task and called upon his subordinates to closely follow investigators' conduct, sanction arrests, and to participate both in interrogating defendants and in deposing witnesses. Their failure to do so, he complained, had already led to a "poor quality of investigations" conducted by the NKVD and NKGB.[191] In turn, the Military Tribunal of the NKVD troops of the Ukrainian District put pressure on its subordinates to ensure prosecutors' involvement in pretrial investigations.[192]

Prosecutors were important not only for conducting pretrial investigations but also for ending them. And prosecutors regularly ordered investigators to collect more evidence before they would allow a case to be forwarded to the courts. By law, before a case could go to court, a prosecutor's sanction was required, otherwise, the case had to be further investigated. In April and May 1945, in the Western regions of Ukraine, including the Chernivtsi region which is part of this study, military prosecutors returned between 5% and 11% of cases brought to them by the NKGB to a

[186] Ibid., p. 37.
[187] VOISIN/KUDRYASHOV: Early Stages, p. 276.
[188] Lipatov to Khrushchev, USHMM, File 2374, Reel 57, RG-31.026M, p. 15.
[189] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 150.
[190] Ibid., p. 149.
[191] Prosecutor of the Odessa Region, 3rd class State Counselor of Justice Ternivskii: Order of the Prosecutor of the Odessa region dated 25 June 1944, 25.06.1944, FR-6105O1D1, p. 6–7, Derzhavnii arkhiv Odes'koi oblasti (DAOO).
[192] Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 37.

supplementary investigation.[193] Again, this was mostly due to problems regarding evidence.[194] Unsurprisingly, it appears that the investigative agencies were trying to limit prosecutors' influence on the pretrial inquiries. Investigators often failed to secure a prosecutor's sanction for extending the time limits of investigations.[195] Also, the NKGB sometimes proved stubborn and, waging an institutional war of attrition, just sent cases that had been returned for supplementary investigation again, without any changes, to the prosecutors.[196] But ultimately, investigators depended on prosecutors to sign off that a case was ready for trial.

Besides deciding which cases would go to trial, prosecutors could also challenge verdicts. At the post-trial stage, prosecutors could protest verdicts of military tribunals and thus initiate a review. The above-mentioned report concerning protests of verdicts between July and December 1944 shows that almost 30% of all protests in cases of "counterrevolutionary crimes" came from prosecutors.[197] Prosecutors thus made a significant contribution to normative-state mechanisms employed in prosecuting collaboration.

A further result of such mechanisms were case terminations, which could occur at different stages of an investigation (and possible trial). Since cases were mostly terminated for lack of evidence, we can see terminations as part of a broader attempt in the judiciary to combat "wrongful criminal prosecutions". Besides the tribunals, the NKVD/NKGB investigators themselves, as well as the prosecutors who were involved at different stages of the pre-trial investigation could terminate cases under investigation.[198] Supervising officials often complained that cases had to be terminated because investigations were initiated "based on unverified materials" such as "vague witness testimony" and thus soon crumbled for lack of evidence.[199] As in the regular criminal justice system at the time, failed investigations were rejected as "wrongful criminal prosecution" of Soviet citizens.[200] In the jurisdiction of military tribunals, this was a common occurrence union-wide as well.[201] Since 1945, limiting "unjustified arrests" was explicitly deemed a top priority in the regular criminal justice system.[202] However, it is difficult to determine how influential these notions became in the system of "special jurisdiction" and the prosecution of collaboration.

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193 Lipatov to Khrushchev, USHMM, File 2374, Reel 57, RG-31.026M, p. 25.
194 Ibid., p. 12–13.
195 Ibid., p. 15.
196 Ibid., p. 26.
197 Supervisory activities in July-December 1944, TSDAHO, F1O23D2437, p. 23.
198 Lipatov to Khrushchev, USHMM, File 2374, Reel 57, RG-31.026M, p. 18.
199 Ibid., 18, 20. Other historians working with specific subgroups of people charged as collaborators have made similar anecdotal observations.RUDAKOVA: Soviet Women Collaborators, p. 533.
200 Lipatov to Khrushchev, USHMM, File 2374, Reel 57, RG-31.026M, p. 19.
201 EPIFANOV: Organizatsionnye i pravovye osnovy, p. 147.
202 SOLOMON: Soviet criminal justice, p. 379.

It appears that terminating cases was the primary mechanism for releasing defendants, rather than acquitting them in courts, which was an absolute rarity.[203] Because the data provided by military tribunals are sometimes of low quality, calculating the precise rates of terminations and acquittals is challenging. This low quality is due to considerable terminological confusion in the reports by the Military Tribunal of the NKVD troops of the Ukrainian District. While most reports clearly distinguish cases terminated ("dela prekrashcheny proizvodstom") from acquittals in court ("podsudimye opravdany v sude"), some reports use "termination" for any decision other than the conviction of the accused. Thus, the report for the second quarter of 1945 lists some two percent of cases as "terminated", which were, in fact, heard in court and thus would be designated as *acquittals* in other reports.[204] This figure has to be combined with the number of terminations in preliminary sessions given in the same report (discussed above). In total, some 10% of defendants were released and cleared of charges of counterrevolutionary crimes in that period within the jurisdiction of NKVD military tribunals in Ukraine and Moldova. There were some regional differences regarding case terminations. A report of the military prosecutor of the L'vov Military District is instructive in this regard. In April and May 1945, some 12,4% of cases were terminated (or the defendants acquitted) in the Western regions of Ukraine, including the Chernovtsy region which is part of this study. In the Chernovtsy region specifically, the rate was even higher – 15%.[205] Terminations were ordered by the NGKB itself, military prosecutors overseeing those cases, or the military tribunals adjudicating them (again, "termination" and "acquittal" were terminologically mixed up). Interestingly, only around 11% of those released were acquitted in this region at that time – 89% of cases that ended in a release were terminated before the trial stage.[206] Compared to all cases completed in the Western regions during these two months, this amounts to 1,3%, which fits well with the figure of two percent acquittals for all cases of "counterrevolutionary crimes" cited above. Just as a comparison: Cases adjudicated by regular courts ("people's courts") in the Odessa region in the first half of 1945 showed quite a different dynamic. The rate of case terminations was at 13,1 percent and thus comparable to that of "special jurisdiction" cases. But a striking difference is obvious in acquittals – the people's courts acquitted 15,3 percent of

[203] We did not correctly differentiate acquittals and case terminations in a previous publication. See: SCHNEIDER: From the ghetto, p. 87.
[204] Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 35.
[205] Lipatov to Khrushchev, USHMM, File 2374, Reel 57, RG-31.026M, p. 19.
[206] Ibid.

defendants tried before them.[207] At the trial stage, "special jurisdiction" was significantly stricter than the regular criminal justice system.[208]

Punitive policies in "special jurisdiction" cases in Ukraine and Moldova followed union-wide trends. Regarding case termination in collaboration cases, similar figures have been reported in the literature for other regions as well. Epifanov puts the percentage of cases terminated in Belarus between the return of the Soviets and August 1, 1946, at 12,6%.[209] Moreover, these regional figures align with the union-wide statistics for all "counterrevolutionary crimes". Here, the category "defendants released" was split into the subcategories "cases terminated during the investigation" and "terminated by the prosecutor and acquitted by the courts", which are thus not directly comparable to the data discussed so far. However, the combined figures amount to roughly the same percentages of defendants released. In 1944, nine percent of cases were terminated during the investigation and four percent terminated by prosecutors or acquitted courts. For 1945, the figures were eight and three percent, for 1946 they were seven and four percent.[210]

Such a combined rate of terminations and acquittals of between 10 and 15 percent stands in stark contrast to the mass operations and their troikas and suggests that the prosecution of collaboration was not solely category based. Of the 588.462 people sentenced by troikas in 1937, a mere 316 were released – 0.05%.[211] We can take this as an indicator that criminal prosecution in 1940s collaboration cases was not category-based – or at least not purely. For in category-based repression, group affiliation is targeted. Once someone has been identified as a member of a targeted group and arrested, there is no valid reason to release them. After all, they cannot just shed that *trait*. But if someone is arrested for some concrete *action* and that action must be proven with evidence, it becomes possible to release them – if no evidence can be found.

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[207] Head of the Administration of the People's Commissariat of Justice for the Odessa Region: Report on the work of judicial organs and organs of the Administration of the People's Commissariat of Justice in the Odessa region in the first half of 1945, FR-6269O1D4, Derzhavnii arkhiv Odes′koi oblasti (DAOO), p. 11. For comparison: Rittersporn claims that 50% of cases investigated by the police were terminated during the pretrial investigation in 1935 and that even in 1937, some 23% of defendants were acquitted in court. RITTERSPORN: Terror and Soviet Legality, p. 177, 180.

[208] One might object that a high conviction rate cannot be interpreted as a sign of "strictness" and point to Japan's criminal justice system, with its famously high conviction rate of almost one hundred percent. However, experts argue that the Japanese conviction rate is only this high because prosecutors bring only those cases to court which they know they can win. Here too, the real bottle neck a case has to pass lies in the pretrial stage. And Japanese prosecutors only prosecute "a small fraction of the suspects forwarded by the police". At the time and place we examine here, Soviet "special jurisdiction" was thus strict because almost nine out of ten people arrested were put on trial and almost everyone of them was then convicted – which stands in sharp contrast to Japan today. RAMSEYER, J. M./RASMUSEN, E. B.: Why is the Japanese conviction rate so high?, in: Journal of Legal Studies 1 (2001), p. 53–88, here p. 53–54.

[209] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 148.

[210] MOZOKHIN: Pravo na repressii, p. 481–534.

[211] Ibid.

## Supervision and "violations of socialist legality" – Institutional mechanisms for preventing torture

However, during the Great Terror and especially the mass operations, Soviet investigators had proven that they were efficient in "finding" evidence for anything they could come up with– most notably, through torture. Such practices were officially outlawed at the time of our study. But to assess whether investigators adhered to that law, we need to examine which mechanisms existed in the criminal justice system to prevent investigators from torturing defendants (ds8-9). As mentioned above, the end of the mass operations had officially reinstated the ban of torture, as it was stipulated in article 134 of the Ukrainian Soviet Republic's code of criminal procedure: "An investigator has no right to solicit the testimony or confession of an accused person by means of violence, threats, and other similar measures."[212]

Part of the supervisory activities of different agencies was to ensure investigators' compliance with this prohibition. Infringements were referred to as "violations of socialist legality" (with "revolutionary legality" and "Soviet legality" used interchangeably in the period under study here).[213] Previous scholarship has established that in 1940s collaboration cases, defendants were frequently mistreated by investigators to elicit confessions. There is also anecdotal evidence for such practices (see chapter 2). At the same time, instances of torture were punished within the apparatus, if discovered.[214] The respective control mechanisms demand closer scrutiny. Such control mechanisms were institutionalized in the NKVD and NKGB "special inspections", the prosecutors' offices, and the military tribunals. Instruments used by these institutions ranged from administrative disciplinary sanctions to criminal prosecution.

Both the NKVD and the NKGB had their respective departments of internal affairs, called "special inspections" and prosecuting "violations of socialist legality" fell within their prerogative. In Ukraine, each of the 24 regional NKGB departments had a "special inspection", consisting of 3 officers per department.[215] While we could not find the respective data for the NKVD, we think it safe to assume that the structure of its "special inspections" was similar. These "inspections" were charged with investigating crimes of NKVD/NKGB personnel.

While the NKVD special inspections actively fulfilled this task, it is often difficult to estimate how many of the administrative sanctions and criminal prosecutions they imposed dealt with

[212] Ugolovno-protsessual'nyi kodeks, p. 114.
[213] See the various citations in the following paragraphs.
[214] PENTER: Local Collaborators, p. 7. EPIFANOV: Organizatsionnye i pravovye osnovy, p. 148.
[215] Deputy Head of the Special Inspection of the NKGB of the Ukrainian SSR Major of state security Kovalev: Report on the work of special inspections of the UNKGB-NKGB in the 2nd quarter of 1945 as of June 15, 1945, 15.06.1945, File 2436, Reel 57, RG-31.026M, Selected records from former Archives of the Communist Party of Ukraine, p. 37–41, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 38.

torture and not some other violation. In a "report on the number of employees of the NKVD of the Ukrainian SSR brought to criminal and disciplinary responsibility", the head of the Special Inspection of NKVD of the Ukrainian SSR, Davydov, provided the following numbers for 1944. He stated that 518 NKVD officers were tried in military tribunals, the majority of whom stood trial for violating guard duties, drunkenness, and bribery.[216] Disciplinary measures were taken against 2779 officers. Here, "abuse of office" and "violations of revolutionary legality" were punished in 184 and 186 cases, respectively.[217] Beating prisoners was explicitly mentioned as one of the acts subsumed under these offense categories.[218] But the proportion of this offense relative to others was not clarified.

Adding to the analytical problems is the fact that it is difficult to estimate how many of the officers prosecuted belonged to the branches of the NKVD which interest us in the present study. According to an order of the People's Commissar of Internal Affairs, in the first four months of 1945, some 325 NKVD and militia members were tried in military tribunals for violations of socialist legality, and disciplinary sanctions were meted out against 1486.[219] Not satisfied with these numbers, the People's Commissar clarified that the fight against "violations of socialist legality" had priority over all other types of misconduct. Each case, he emphasized, needed to be prosecuted and punished.[220] Moreover, he ordered the special inspections to inform other NKVD officers about every one of their colleagues sentenced for this type of offense.[221] But unfortunately, it is not quite clear whether this report relates to the regular or the political police. And it was only the latter which handled collaboration cases and the methods of which we would like to assess.

Separate data is available for another NKVD sub-organization, the internal troops of the NKVD. The available data suggest that the personnel of NKVD internal troops almost enjoyed immunity from criminal prosecution but were subject to administrative sanctions quite regularly. The head of these formations reported 11 cases of violations of socialist legality for the last quarter of 1944 and 13 for the first quarter of 1945. Disciplinary action was taken against 3273 and 3602 officers

[216] Head of the Special Inspection of NKVD of the Ukrainian SSR Davydov: Report on the number of employees of the NKVD of the Ukrainian SSR brought to criminal and disciplinary responsibility, 28.03.1945, File 2410, Reel 57, RG-31.026M, Selected records from former Archives of the Communist Party of Ukraine, p. 22–26, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 22.
[217] Ibid., p. 23.
[218] Ibid., p. 24.
[219] People's Commissar of Internal Affairs of the Ukrainian SSR, 3rd rank Commissar of State Security Riasnoi: Order of the People's Commissar of Internal Affairs of the Ukrainian SSR for 1945 "Following the results of the meeting held with the heads of special inspections of the regional administrations of the Commissariat of Internal Affairs of Ukraine", 29.05.1945, File 2436, Reel 57, RG-31.026M, Selected records from former Archives of the Communist Party of Ukraine, p. 33–34, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 33.
[220] Ibid.
[221] Ibid., p. 34.

respectively.[222] Military tribunals had sentenced 40 officers of the NKVD Internal Troops in the first quarter of 1945.[223] Considering that 36.275 people served in those troops at the time, the numbers of officers tried in court are meager and the numbers of those who were brought to disciplinary responsibility are high.[224] For NKVD internal troops, administrative disciplinary sanctions far outweighed criminal prosecution.

However, the internal troops were not involved in investigating putative collaborators and the profile of their tasks should prevent us from making inferences to the political police investigators we are interested in. The overwhelming majority of the NKVD internal troops were "located in the Western regions of Soviet Ukraine and leading the fight against banditry there", i.e. against the Ukrainian nationalist insurgents.[225] Thus, internal troops had nothing to do with investigating collaboration. The *courts* who adjudicated cases of collaboration were under the institutional roof of the NKVD troops and were thus called "military tribunal of the NKVD internal troops". But the investigators responsible mainly belonged to the regional offices of NKVD and NKGB.

Because of the NKVD's multitude of branches and areas of activity, the numbers of disciplinary and criminal prosecution of NKVD personnel are not very informative but the situation is better for the NKGB, which had more limited functions. Here, we see the familiar picture of administrative disciplinary sanctions far outweighing criminal prosecution. A report on the number of administrative sanctions imposed on the personnel of the NKGB-UNKGB of the Ukrainian SSR shows that a total of 1503 administrative disciplinary punishments were imposed between January 1, and September 15, 1945.[226] From another report, we can infer that there were three types of administrative disciplinary sanctions: reprimands, administrative arrests retaining one's position, and administrative arrests followed by demotions.[227] At the same time, 89 NKGB officers were

[222] Member of the Council for Assistance to Western Regions of Ukraine Lieutenant General Strokach to Secretary of the Central Committee of CP(b)U Korotchenko: Report note on facts of violation of Soviet legality and immoral manifestations in the Internal Troops of the NKVD of the Ukrainian District, 27.05.1945, File 2410, Reel 57, RG-31.026M, Selected records from former Archives of the Communist Party of Ukraine., p. 89–96, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 90.
[223] Ibid., p. 91.
[224] Head of the NKVD Internal troops of the Ukrainian District Lieutenant General Marchenkov to Secretary of the Central Committee of CP(b)U Korotchenko: Report on measures to eradicate the facts of immoral incidents and violations of Soviet legality in the Internal Troops of the NKVD of the Ukrainian District, 03.07.1945, File 2410, Reel 57, RG-31.026M, Selected records from former Archives of the Communist Party of Ukraine, p. 200–204, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 200.
[225] Ibid.
[226] Deputy of the People's Commissar of State Security on questions of cadres of the Ukrainian SSR Stupnitskii: Report on the number of administrative sanctions imposed on the personnel of the NKGB-UNKGB of the Ukrainian SSR, 02.10.1945, File 2436, Reel 57, RG-31.026M, Selected records from former Archives of the Communist Party of Ukraine, p. 113–115, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 113.
[227] Deputy Head of the Rovno region NKGB Personnel Department Major Beliaev: Report on violations of Soviet legality by the officers of the UNKGB and city district bodies of the NKGB of Rovno region as of December 20, 1945, 22.12.1945, File 2436, Reel 57, RG-31.026M, Selected records from former Archives of the Communist Party of Ukraine, p. 123–128, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 123.

tried in court, 39 of them for violations of Soviet legality or abuse of office.[228] For the Ukrainian NKGB, the number of its total personnel is available, at least for roughly the same period, which can be used to calculate an approximate ratio of administrative sanctions and criminal prosecutions per employee. As of January 1, 1945, the agency had 5306 employees, which amounted to 83% of its target staff. [229] Between January 1, and September 15, 1945, there was one administrative punishment per 3,5 individuals working in the agency. And if we were to assume that individual officers were only sanctioned once, that would amount to 28,32% of the agency's staff receiving an administrative punishment and 0,7% being subject to a court trial during these eight and a half months. Of course, it is much more likely that some notorious officers received multiple sanctions within that period. Nevertheless, these numbers indicate that at least administrative sanctions were a permanent feature of how the Ukrainian NKGB operated.

Criminal proceedings and trials in military tribunals had far more severe consequences than administrative sanctions but were also far less common. In its reports to the party, the Kiev District Military Tribunal tried to show that it took "violations of socialist legality" quite seriously. For the second quarter of 1945, the head of the tribunal noted that such cases "held a special place regarding their social dangerousness". He specifically mentioned actions such as the "use of incorrect and perverse methods of investigation" and the "beating of arrestees during interrogation", which are our focus of interest here.[230] The "report on the work of the Military Tribunals of the Ministry of Internal Affairs of the Ukrainian District for 1-2 quarters of 1946 and the month of July 1946" provides us with an indication of which sentences the military tribunals passed in such cases. Some 123 people were sentenced for violations of "Soviet legality" in the first half of 1946. Most of them (76%) received sentences of five to nine years of imprisonment. Nine percent faced shorter terms of imprisonment and eleven percent faced a longer term – ten years. A further two percent went free on probation. The least lucky were the two percent who received death sentences.[231] It thus appears that specifically for beating a defendant, an officer could get off the hook with a reprimand but he could also face anything between three days of administrative arrest, a demotion, or a court trial resulting in years of imprisonment.[232] Officers caught abusing

[228] Number of administrative sanctions imposed, USHMM, File 2436, Reel 57, RG-31.026M, p. 113–114.
[229] Deputy of the People's Commissar of State Security on questions of cadres of the Ukrainian SSR Stupnitskii to Deputy Head of the cadre department of the Central Committee of the CP(b)U Vivdichenko: Statisctical report on the quantitative and qualitative composition of the organs of state security of the Ukrainian SSR as of January 1, 1945, 09.02.1945, File 2425, Reel 57, RG-31.026M, Selected records from former Archives of the Communist Party of Ukraine, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC.
[230] Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 40.
[231] Work of the Military Tribunal in the 1-2 quarters 1946, TSDAHO, F1O23D3671, p. 104.
[232] Head of the UNKGB special inspection in the Ternopol' region, Captain Stetsko: Report on the state of crimes committed by officers of the Ternopol' region's NKGB in violation of Soviet legality and fight against it, 20.12.1945, File 2436, Reel 57, RG-31.026M, Selected records from former Archives of the Communist Party of Ukraine, p. 129–134, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 130.

defendants therefore primarily faced administrative sanctions. Criminal prosecution was a real, but rare consequence of such actions.

However, the special inspections that primarily initiated both administrative and criminal proceedings were in a remarkably weak position within the investigative agencies. Special inspections initiated administrative or criminal proceedings against a potential defendant only "after obtaining a sanction from the People's commissariats", i.e. the republic-level apparatuses' of the respective agencies.[233] Before prosecuting anybody in the rank of an officer (or above), the special inspections even consulted the union-level NKVD or NKGB in Moscow.[234] Both steps, the request for such sanctions and their granting, were sources of constant delays.[235] And once initiated, the proceedings often yielded results which the Head of the Office of cadre administration department of the Central Committee of the CP(b)U, Stetsenko, characterized as "incorrect and liberal".[236] The special inspections had a constrained room of maneuver, were highly susceptible to superiors interfering in their work, and could fulfill their task of upholding "socialist legality" at best to a limited degree – the institutional setup prevented, rather than facilitated the special inspections from fulfilling their role.

While these direct mechanisms for curtailing torture had only limited influence, one should see them in combination with indirect pressures stemming from how supervisors assessed the quality and efficiency of investigators' work. Investigators faced indirect pressures not to torture defendants because they could not get cases based on weak evidence through court – and these indirect pressures were more serious than the direct measures to curtail the use of torture. Taken together, all the above-mentioned direct mechanisms for curtailing torture are testimony to two facts. First, that beatings of suspects were still a very prevalent problem in the investigative agencies. Second, that some limited direct mechanisms were in place to contain that violence. To these, one should add the mechanisms of supervision for ensuring the quality of investigations and trials described above. There, we had already seen that a standard of evidence was upheld which deemphasized the significance of confessions. Simultaneously to the pressure of being sanctioned for the act of torture itself, investigators mistreating defendants also ran danger of jeopardizing the successful conclusion of the whole case. Cases based on confessions extorted with torture could fall apart in the trial when defendants recanted their previous self-incriminating statements. In turn, if supervisors negatively assessed the quality (i.e. legality) of investigators' work, this increased the pressure on the front of efficiency. If an investigator could not bring his cases through court, he

[233] Report on the implementation, USHMM, File 2434, Reel 57, RG-31.026M, p. 6.
[234] Ibid., p. 7.
[235] Ibid.
[236] Ibid.

would accumulate backlogs and thus raise his direct superiors' eyebrows. Thus, the courts' pressure to ensure quality was the decisive factor influencing the prevalence of torture, only supported by the weaker effects of direct administrative or criminal punishments torturers faced.

For locating an individual case on the normative state – prerogative state spectrum, the question of whether it went to a military tribunal or the "Special board" becomes thus even more pressing. Defendants did not have a chance to recant their confessions if they never saw a court and the verdict they received was based solely on the investigators' file. Regarding confessions, a few aspects demand closer scrutiny in the following empirical chapters. How many of the verdicts examined here were based on confessions? And to what extent – exclusively or only partially? Hence, what was the significance of confessions relative to witness testimony? And to what exactly did defendants confess, and under which circumstances? Are there any indications of torture in the files? These aspects will help to place the respective cases on the normative state – prerogative state spectrum.

Once an investigation and trial are placed on this spectrum, we can start to hypothesize why Soviet officials decided to conduct it in this specific way. The theory of the dual state ascribes certain functions to the normative and prerogative sates, and we can use these functions to generate hypotheses about Soviet officials' decision making on different levels.

The various functions ascribed to the prerogative and normative states should be differentiated into an intention-side (who wanted what) and an effect-side (what was the result). In the context of the Soviet prosecution of collaboration, such ascribed functions help to generate hypotheses about actors' intentions that are difficult to reconstruct based on the available archival record. In the previous chapters, we mentioned certain functions commonly ascribed to the normative and prerogative states (both in Fraenkel's original conception, as well as in its transfer to the Soviet case). Such functions are a common feature of many theories of law. In such theories, "[d]efinitions of the concept of law often include assumptions about the 'functions' of the law. It is often left unclear whether these are actual effects of legal norms or effects that are to be achieved with the help of legal norms (e.g., social control, orientation to action, […])."[237] In other words, ideas about "functions" have an intention-side and an effect-side. The same applies to Fraenkel's approach. The question thus is: Who wants to achieve what through the law, and what does law achieve in the end?

In the present context, the "who" can either refer to Soviet leaders deciding what they wanted to use the law for or the "who" can refer to the lower-level officials implementing what these leaders

[237] ROTTLEUTHNER, Hubert: Rechtssoziologie, in: Handbuch Rechtsphilosophie, edited by Eric HILGENDORF / Jan C. JOERDEN, Stuttgart 2017, p. 70–75, here p. 70.

decided. Because important archival collections are inaccessible for researchers, empirically reconstructing Soviet leaders' decision-making process is impossible.[238] Here, the functions ascribed to the normative and prerogative state can act as hypotheses explaining the shifts in punitive policy. We might assume that Soviet leaders strengthened normative state elements to ensure the regularity of state behavior, tighten central control, and legitimize the state in the eyes of the Soviet public (and, to a degree, even the international public). But these hypotheses cannot be verified. They are makeshift heuristic crutches – nothing more.

On the effect-side, we already saw that the Military tribunal of the NKVD troops of the Ukrainian district was increasingly satisfied with the work of its subordinate courts. Put differently, if decision-makers introduced normative state elements to make the courts behave with greater regularity and predictability, then this attempt had at least limited effects. Whether Soviet leaders intended to use the law to legitimize their rule and whether this was successful is examined in the next chapter.

But on the intention-side, "who" can refer to lower-level officials, too. Here, functions ascribed to the prerogative and normative states can be used as hypotheses to explain their decision-making in a different sense. Here, functional hypotheses concern the question of why these actors chose one mode of operation over the other in a situation where they were faced with contradictive institutional incentives. We cannot simply assume that lower-level officials' actions were guided by the same intentions as those of the leadership. People working in institutions are less concerned with macro policy goals. They react to the incentives these institutions provide. And for those actors working in different Soviet agencies tasked with implementing the prosecution of collaboration, the incentive structure was somewhat contradictory. Within the respective agencies, incentives for harshness and merciless vigilance were expressed in demands for an intensification of "judicial repression".[239] Simultaneously, such demands coexisted with incentives for legality, fine-grained, targeted repression, and safeguarding at least some minimal rights of defendants.[240] As an example, regional military tribunals were reprimanded by their superiors both for passing unwarranted death sentences, as well as for a "liberal approach to sentencing" – within the same report.[241] Compared to the mass operations and the 1941 domestic repression campaign, the

[238] As Bourtman notes: "To begin with, it is important to note that because most internal correspondence between high-ranking members of the Politburo remains classified, hypotheses concerning the Soviet leadership's decision to investigate German war crimes and hold military tribunals cannot be verified." BOURTMAN, Ilya: "Blood for Blood, Death for Death!". The Soviet Military Tribunal in Krasnodar, 1943, in: Holocaust and Genocide Studies 2 (2008), p. 246–265, here p. 259. Recently, many Soviet documents relating to the history of World War II were de-classified in Russian archives and even published online. Yet, as Budnitskii notes, "[…] many important documents on economic and financial history, as well as the social and repressive history of the war, remain inaccessible. Despite the fact that all legal secrecy periods have expired." BUDNITSKII, Oleg: Verheimlichte Dokumente. Erlebt Russland eine neue Archivrevolution?, in: Frankfurter Allgemeine Zeitung, 10.05.2020.
[239] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 223.
[240] Ibid., p. 223, 366.
[241] Supervisory activities in July-December 1944, TSDAHO, F1O23D2437, p. 25.

general trend tended toward strengthening a set of minimal normative state elements. But this trend still unfolded in institutions primarily operating according to prerogative state mechanisms. Therefore, a situation emerged in which the individual investigator or judge was confronted with conflicting imperatives. Furthermore, these imperatives were not merely abstract demands but reinforced by very real institutional pressures exerted through various mechanisms of supervision. At each step of an investigation and an eventual trial, each investigator, prosecutor, and judge involved thus had to make a choice – to handle this step of the process in a more prerogative-state fashion or to take a normative-state approach. And adhering to one imperative might lead to trouble from the opposite direction. We can assume that individual investigators and adjudicators tried to resolve this paradox by relying on assumptions about what their superiors wanted. And we can frame these assumptions in terms of the functions ascribed to the prerogative and normative states as the priorities of "elimination" or "legitimization".

The latter function – legitimization – is so far conceptually underdeveloped. Therefore, we turn to the closely interrelated issues of publicity and legitimacy in the next chapter.

## Conclusion

In the present chapter, we applied the dual state heuristics to the Soviet prosecution of collaboration. To do this, the way Soviet authorities prosecuted those they deemed collaborators with the Axis needed to be delimited from two other phenomena, with which it partially overlapped: the prosecution of Axis personnel and nationalist insurgents, which partially relied on the same institutions and legal instruments but developed differently.

The Soviet prosecution of collaboration can be divided into two phases. During the first phase (1941 to 1943) the Soviets relied on what they already had: established legal instruments and established investigative and adjudicative organs. Collaboration was investigated by the NKVD and tried by military tribunals and the "Special board of the People's Commissariat of Internal Affairs" (OSO) as a subset of "special jurisdiction cases", i.e. explicitly political justice. The legal basis was provided in the Soviet republics' criminal codes, namely their articles on the "counterrevolutionary crimes" of "treason to the Motherland" (article 58-1) and "relations with foreign states" (article 58-3). The investigative and adjudicative institutions applied these legal instruments incoherently, following declarative goals set by the leadership. The resulting repressions were harsh, with a high rate of death sentences that were applied almost indiscriminately. The prerogative state ruled almost uninhibited, especially since the center introduced some additional mechanisms such as repressions of certain collaborators' family members

During the second phase, from 1943 onwards, the Soviets created new legal instruments and new institutions to implement them, thereby introducing some order into the previous chaos. The task

of investigating collaborators was split among the NKVD, NKGB, and SMERSH, which increased the pressure on suspects but also lead to some friction between these agencies. The primary legal innovation was "Ukaz 43", which represented a paradoxical push for more harshness and more differentiated sentencing. Initially, the push for harshness was what resonated in the institutions. Besides the "lynch-format trials" of the newly established military field courts, death sentences and the new katorga-punishment were also widely used by military tribunals, the primary adjudicative bodies handling collaboration cases. Only in November 1943 did the Collegium of the USSR Supreme Court reinforce the push for more differentiated sentencing by systematizing the competing old and new legal instruments into the framework of "traitors vs. accomplices" and by stipulating mitigating circumstances. Those new normative state mechanisms softened the prerogative state blow of repressions, the punitive policy became less harsh, and the rate of death sentences declined.

As the primary adjudicative bodies dealing with collaboration, the changing legal framework was implemented by military tribunals. In the context of the present study, these courts' name is something of a misnomer, since the most important tribunals belonged to the NKVD troops, not the Red Army, and since those courts primarily dealt not with personnel of armed forces, but with civilians. For many reasons, these courts can be described as prerogative state institutions the behavior of which could be regulated by normative state practices. The tribunals' composition was not that different from that of troikas, and they operated with significant procedural "simplifications". The main differences to troikas lay in those "simplifications" – those for the 1930s troikas had been much more severe. Thus, military tribunals could lean either towards the normative or the prerogative state, and supervision by prosecutors and other instances was decisive for that.

Supervision primarily functioned along two lines: that of the procuracy and that of various courts on the republic and union levels. The supervising agencies reviewed the work of investigative agencies and military tribunals alike, assessing it for efficiency and quality. In other words: how many cases could they handle and how well did they handle them? Various supervisors could intervene at different stages of a case, both before the trial and after the verdict was passed. Subordinates could expect a significant percentage of their work to be reviewed at one stage or another. Supervisors' main concerns were backlogs, incorrect application of the law, and low quality of evidence. Amidst a general normative state push for a correct application of the law and high standards of evidence, supervisors occasionally demanded harsher punitive policies from their subordinates. In combination with supervisors' complaints about backlogs and low efficiency, these demands represent a prerogative state countercurrent. Therefore, supervisors set competing

incentives for their subordinates. A main normative state result was a relatively high rate of releases, especially pretrial case terminations. "Relatively" here refers to the fact that we are dealing with prerogative state institutions and using descriptive heuristics with indicators that are based on the 1930s mass operations.

A crucial issue for Soviet justice is always that of torture. Our previous discussion in the chapter on document validity had primarily dealt with the question of how to recognize torture in investigative casefiles. The present chapter was concerned with the question of how likely torture was to occur in light of the mechanisms the respective institutions used to curtail its use. The investigative organs had only very limited safeguards in the form of their "special inspections", i.e. departments of internal affairs. A review of how these inspections operated revealed that their potential to influence the use of torture was limited. However, a more effective deterrent against superficial, torture-based investigations was the numerical pressure for efficiency in combination with quality controls that the supervising agencies exerted. For investigators, the problem with torture was less to be caught red-handed abusing defendants than to complete enough cases with a high enough standard of evidence so that these cases would hold up in court – and torture did not help here, but posed a risk.

In sum, even the organs of extraordinary political justice showed normative state tendencies at least to a certain degree. The overall differences to the 1930s mass operations are striking. On the other hand, individual investigators and adjudicators faced competing incentives and the apparatus was capable of both prerogative and normative state techniques. Therefore, elements of both need to be identified in every individual investigation and trial.

# Closed trials, open trials, show trials – The publicity of collaboration trials

Soviet authorities tried many of those they deemed collaborators in public or semi-public proceedings. Thus far, we reduced the complex problem of publicity to a simple dichotomy: non-public proceedings are a prerogative state feature and public proceedings are a normative state feature. But this simple dichotomy is marred by a pesky hybrid – the show trial. The most prominent examples of show trials in the Soviet context are the infamous 1930s Moscow trials which were part of the Great Terror. But the 1940s prosecution of collaboration and Axis war crimes was also accompanied by a series of show trials. It stands to ask how prevalent such features were in the overall Soviet prosecution of collaboration and what role publicity played in this process more generally. To grasp the issue of publicity (still on analytical level A) of the present study, see chapter 1), we begin with a discussion of Soviet 1940s war crimes and collaboration show trials. Based on this description, we check how show trials can be conceptualized both within, as well as outside the dual-state framework. Equipped with "show trial" as an analytical concept, we try to disentangle the hodgepodge of the analytical usage versus the contemporary source term "show trial". With the issue of "show trials" clarified, we develop a typology of publicity for the analysis of 1940s collaboration trials. Based on investigative and adjudicative authorities' internal documentation, as well as on press reports, we discern six types of publicity, ranging from administrative repression to show trials. We then examine the potential effects a trial's publicity had on defendants. We argue that for defendants, publicity was a double-edged sword: too little of it could hurt just as well as too much of it. Publicity could also have effects on the broader population. When conducted at least semi-publicly, collaboration trials potentially also served to legitimize the Soviet regime in the eyes of Soviet citizens. We conceptualize this legal legitimization and conclude that empirically, we can only prove it existed as a regime strategy. Whether it had an effect can only be speculated. Nevertheless, we conclude that a dual-state framework including a concept of legal legitimization is better suited for the analysis of Soviet collaboration trials than two major conceptual competitors – "political justice" and "political trials".

## Soviet show trials of Axis war criminals and collaborators – Conceptual issues

The Soviets took the fore of prosecuting Axis war crimes with the 1943 Krasnodar trial. In the context of the prosecution of collaboration and Axis war crimes, the Krasnodar trial was the first example of a high-profile public trial used for propaganda purposes. Held in July 1943, the trial in the Northern Caucasus city of Krasnodar became the first war crimes trial of the Second World

War.[1] Eleven Soviet citizens, members of SS Sonderkommando 10a stood trial, as well as 15 Germans, who were tried in absentia.[2] The Soviet citizens were mostly tried for the mere fact of their membership in the Sonderkommando, which was deemed sufficient to implicate them in the murders this unit had committed in the region.[3] Eight of the Soviet defendants were sentenced to death by hanging, the other three to 20 years of Katorga – sentences which were predetermined before the trial had even started.[4] Some core features of this trial would be echoed in later similar trials.

A total of 21 similar trials were held, most of them grouped into two waves.[5] As the one in Krasnodar, these 21 trials exhibited many similarities to the 1930s show trials. At the end of 1945 and in early 1946, the first wave of public trials commenced, now with Germans physically in the dock, and not just tried in absentia.[6] The trials were held in Leningrad, Briansk, Nikolaev, Kiev, Minsk, Riga, Velikie Luki, and Smolensk.[7] The second wave of trials was held in 1947 in Sevastopol′, Poltava, Novgorod, Stalino, Gomel′, Chernigov, Bobruisk, Vitebsk, and Kishinev.[8] Some 86 defendants were tried in the first wave, another 135 in the second.[9] These trials were of the highest profile. They were organized under the auspices of a special commission of the central committee of the Communist Party, which was formed on November 21, 1945.[10] It included some of the highest figures of the Soviet government and the authorities of justice and internal affairs in the Soviet Union.[11] The central figure in this endeavor was none other than Vyshinskii himself, who had been the chief prosecutor of the infamous 1930s Moscow show trials.[12] Now, as a member of the new commission, Vyshinksii helped to coordinate the two waves of public trials against Axis personnel. Here too, he had already gathered expertise. In 1943, Vyshinskii had orchestrated the Krasnodar trial.[13] For the high-profile public trials, judges and prosecutors were picked from the highest ranks of their respective professions in the USSR. A special investigative task force was compiled from 39 investigators of the NKVD, NKGB, and SMERSH. It was their task to support

[1] PENTER, Tanja: „Das Urteil des Volkes“. Der Kriegsverbrecherprozess von Krasnodar 1943, in: Osteuropa 12 (2010), p. 117–132, here p. 117.
[2] Ibid.
[3] Ibid., p. 122.
[4] Ibid., p. 120, 126.
[5] Apart from the two waves, trials were also held in Khar′kov, Krasnodon and Khabarovsk. These trials have their own specifics, which is why the following discussion refers to the Krasnodar trial and the two waves of trials of German personnel exclusively. ZEIDLER: Stalinjustiz contra NS-Verbrechen, p. 25, 49. In internal correspondence, Soviet authorities spoke of "the necessity of a politically emphasized conduct of the trial" in Krasnodon. See: Work of the Military Tribunal in the 3rd quarter of 1943, TSDAHO, F1O23D684, p. 6.
[6] ZEIDLER: Stalinjustiz contra NS-Verbrechen, p. 27.
[7] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 235.
[8] Ibid., p. 237.
[9] SCHMEITZNER: Unter Ausschluss, p. 155.
[10] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 235.
[11] Ibid.
[12] PENTER: „Urteil des Volkes“, p. 120.
[13] Ibid., 117, 120.

their local colleagues in the preparation of the trials.[14] For the respective local commissariats too, the trials were a top priority. Local authorities formed their own task forces.[15] The trials were also widely covered in the Soviet press, nationally and internationally, and press coverage was tightly orchestrated.[16] Taken together, these aspects present an all too familiar picture.

Scholars examining the Krasnodar trial and the two subsequent waves have identified a series of striking similarities to the 1930s Moscow show trials. Thus, the Krasnodar trial was meticulously planned and tightly controlled by the Soviet political leadership; the verdict was based primarily on defendants' confessions; the trial was characterized by its "demonstrative lawfulness", but "included theatrical as well as didactic elements", following a script with clear roles assigned to all participants; and the trial was accompanied by a propaganda campaign.[17] For the two waves of trials, many of the same features are highlighted in the literature: centralized planning and control over the trials by the Soviet leadership, which made acquittals impossible; the pivotal role of confessions, for which defendants were obviously "prepared", i.e. tortured; demonstrative adherence to legal norms and norms of criminal procedure, including the presence of lawyers and lastly, a large-scale propagandistic utilization, including reports in the national and international press.[18] For the domestic audience, the trials were meant to signify that "'[…] the Soviet judiciary executed lawful retribution against the Hitlerite monsters'" as one contemporary press report put it.[19] A key difference to the Moscow show trials was that "[…] criminally relevant facts did not have to be specially invented for the German war crimes trials", which is why Hilger classified them as "demonstrative trials" ("Demonstrationsprozesse"). [20] However, the boundaries were somewhat fluid. During the Leningrad trial, a German officer confessed to having participated in the murder of Polish officers in the Katyn forest – a crime in fact committed by the Soviets.[21] Hence, the propagandistic instrumentalization went beyond the struggle with the Axis and was aimed at other aspects of current international affairs as well. We thus think it safe to refer to the Krasnodar trial and the two subsequent waves as "show trials".

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[14] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 235.
[15] Ibid., p. 236.
[16] Ibid.
[17] PENTER: „Urteil des Volkes", 120, 129. Bourtman speaks of a "highly organized public relations campaign" which unfolded "both within and outside the Soviet Union". BOURTMAN: "Blood for Blood", p. 256.
[18] HILGER, Andreas: „Die Gerechtigkeit nehme ihren Lauf"? Die Bestrafung deutscher Kriegs- und Gewaltverbrecher in der Sowjetunion und der SBZ/DDR, in: Transnationale Vergangenheitspolitik. Der Umgang mit deutschen Kriegsverbrechern in Europa nach dem Zweiten Weltkrieg, edited by Norbert FREI (Beiträge zur Geschichte des 20. Jahrhunderts, vol. 4), Göttingen 2006, p. 180–246, here p. 215. SCHMEITZNER: Unter Ausschluss, p. 160.
[19] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 236.
[20] HILGER: „Gerechtigkeit", p. 215. A similar argument regarding this key difference was made by Penter. PENTER: Local Collaborators, p. 20.
[21] SCHMEITZNER: Unter Ausschluss, p. 160.

Outside the dual-state framework, in the conceptual discussion of the term "show trial" in disciplines such as sociology of law, the analytical concept of "show trial" is heavily influenced by the empirical example of the Moscow show trials as well.[22] This is evident for example in Werz' definition of the concept as

> "[…] criminal trials in which a controlled judiciary, within the framework of a dictated, staged course of action and in violation of the rule of law, sentences the accused to a disproportionate punishment in front of a selected audience, while through propaganda measures the publicity of the trial is used to evoke a certain political effect in the population."[23]

While there is some debate on the exact definition of the concept, the two elements of pre-determined outcomes and propagandistic orchestration for a broad audience are commonly agreed upon by scholars in these disciplines.[24]

How do such show trials fit into the dual-state framework? Here, show trials are a sort of hybrid: prerogative-state proceedings which simulate being governed by normative-state principles. Defendants are tried publicly by a court, in a trial session, not administratively, they have legal representation, the court adheres to procedure, the trial can take days to complete, and seemingly, concrete criminal acts are subsumed under legal norms, instead of just punishing ascribed group affiliation. But these elements are only simulated. Despite the presence of witnesses, case stand and fall with defendants' confessions, which are elicited by torture, rehearsed and staged on trial day. The whole undertaking is more theatrical than legal. Defendants have no agency in this play. From start to finish, the trial is predetermined. Show trials are an attempt at achieving two goals simultaneously: the prerogative state goal of eliminating enemies and the normative state goal of legal legitimization (which we discuss below). The heightened significance of confessions in show trials is an attempt at resolving another paradox connected to bolstering regime legitimacy. As Decker points out:

> "Clearly, when power holders allow defendants to speak, they risk losing the support of the public—however, not allowing defendants to speak damages the court's reputation as fair and unbiased and may also lead to a loss of public support. […] It seems that power holders use forced confessions in an effort to resolve this paradox."[25]

Hence, Decker concludes,

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[22] DECKER, Stephanie K.: The Role of Public Confessions in Show Trials. An Analysis of the Moscow Show Trials, in: Journal of Historical Sociology 4 (2019), p. 459–477, here p. 462.
[23] WERZ, Katharina: Der Schauprozess im 20. Jahrhundert in Deutschland. Begriff, Funktion und Struktur anhand ausgewählter Beispiele (Grundlagen des Rechts, vol. 58), Berlin 2016, p. 67.
[24] DECKER: Public Confessions, p. 460.
[25] Ibid., p. 461.

> "[…] authority figures can avoid appearing as tyrants if the defendants themselves introduce alternative realities to the public that legitimize the authority figures, delegitimize themselves, and justify increased social control." [26]

## "Show trial" as source term and analytical concept

It is imperative to strictly differentiate the two different usages of the term "show trial" – as a source term and as an analytical concept.[27] We can find instances where contemporaries used the source term "show trial" for trials we *would not* subsume under the analytical concept, and we can find instances where contemporaries used other source terms to describe trials we *would* subsume under the analytical concept. As an analytical concept, the word is either used in direct comparison to the 1930s Moscow trials or derived from their empirical example, as we had seen above. This does not necessarily mean that the trials analytically identified as show trials ex-post were called "show trial" ("pokazatelnyi protsess") by the contemporaries. [28] The most common distinction drawn in the reports of the military tribunal and internal correspondence of judiciary and police agencies in the 1940s is not that of trial versus show trial, but that of closed trial versus open trial.[29] While we have not conducted an exhaustive survey of press reports, this pair of terms seems to have dominated press coverage as well, with "show trial" rarely used. For instance, the Izmail-based newspaper "Pridunaiskaia Pravda" referred to the Briansk trial simply as an "open trial session".[30] As part of the first wave of 1940s Soviet trials discussed above, we can subsume the Briansk trial under the analytical concept "show trial", but the contemporary press report referred to it with a different source term. On the other hand, Soviet journalists of the time occasionally used the term "show trial". Thus, the Balta-based newspaper "Komunar" referred to the trial of a man who had served as a policeman under the Germans as a "pokazovyi protses" – a "show trial".[31] Yet it is difficult to judge from the newspaper article how many of the indicators ascribed to the analytical concept are covered by this use of the source term. The same problem prevails in the reports of the Military tribunal of the NKVD troops of the Ukrainian district. The term "show trials" ("pokazatelnye protsessy") is rarely used in these reports – we could find only one instance where the term appears. But this mention is significant. According to the report on the months of

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[26] Ibid., p. 475.

[27] For the distinction between source terms and analytical concepts, see: KOSELLECK, Reinhart: „Erfahrungsraum" und „Erwartungshorizont" – zwei historische Kategorien, in: Vergangene Zukunft. Zur Semantik geschichtlicher Zeiten (Suhrkamp-Taschenbuch Wissenschaft, vol. 757), Frankfurt am Main (³1995), p. 349–375, here p. 350.

[28] Usage of the term can be traced back at least into the 1930s, see the following examples: KHAUSTOV, Vladimir Nikolaevich/NAUMOV, Viktor Petrovich/PLOTNIKOVA, N. S.: Lubianka. Stalin i glavnoe upravlenie gosbezopasnosti NKVD, 1937 - 1938. Arkhiv Stalina. Dokumenty vysshikh organov partiinoi i gosudarstvennoi vlasti (Rossiia XX vek. Dokumenty), Moskva 2004, p. 460. DANILOV, V. P./MANNING, Roberta Thompson/VIOLA, Lynne: Tragediia sovetskoi derevni. Kollektivizatsiia i raskulachivanie 1937–1939 (5/1), Moskva 2004 (Dokumenty i materialy), p. 394.

[29] Work of the Military Tribunal in the 3rd quarter of 1943, TSDAHO, F1O23D684, p. 6, 9. Work of the Military Tribunal in the 3rd quarter of 1945, TSDAHO, F1O23D2437, p. 74, 77.

[30] Sudebnyi protsess po delu o nemetskikh zverstvakh v Orlovskoi, Brianskoi i Bobruiskoi oblastiakh, in: Pridunaiskaia pravda, 28.12.1945.

[31] Sud nad zradnykom Bat'kivshchyny, in: Komunar, 12.04.1945.

January through July, the tribunals held a total of 25.947 trials, 823 of them as "show trials" – some three percent.[32] But what are we to make of the terminology used here? Did the authors write "show trial" merely as a synonym for "open trial session", or were they making a categorial distinction? Be that as it may, if the same percentage of collaboration trials was conducted publicly during the late 1940s, then public trials of alleged collaborators were a common feature of everyday life in the years after Soviet authorities returned. But were these public trials "show trials" in the analytical sense, or did Soviet officials just occasionally refer to any public trial as "show trial"?

## From administrative repression to show trials – A typology of Soviet trials

We need to introduce some order into this hodgepodge. Only then will it be possible to answer the question of how pervasive features of show trials (in the analytical sense) were in the Soviet prosecution of collaboration. Based on reports by the military tribunals, internal correspondence, investigation and trial files, contemporary newspaper articles, and the historiographic literature, we have developed the following typology for the Soviet prosecution of war crimes and collaboration, concerning the degree of publicity:

| | | **defendant present in court** | **witnesses present in court** | **audience present in court** | **press coverage local** | **press coverage national / international** |
|---|---|---|---|---|---|---|
| **OSO** | **administrative repression** | no | no | no | no | no |
| **closed trial** | **semi-administrative / semi-trial** | yes | no | no | no | no |
| | **minimal local audience** | yes | yes | no | no | no |
| **open trial** | **medium local audience** | yes | yes | yes | no | no |
| | **broad local audience** | yes | yes | yes | yes | no |
| | **show trials** | yes | yes | yes | yes | yes |

*tab. 9*

At one end of the spectrum are the secret, extrajudicial procedures of the OSO. Defendants were "sentenced" in absentia, witnesses were not summoned, there was no audience and no press coverage whatsoever. The OSO proceedings were a form of *administrative repression*. The next thing

[32] Work of the Military Tribunal in the 1-2 quarters 1946, TSDAHO, F1O23D3671, p. 96.

to administrative repression were *semi-administrative / semi-trial proceedings* held in military tribunals. At least according to the contemporary legal framework, trials of "traitors" should not have taken this form. In Military tribunals, trials were either open or closed. Closed trials could include a *minimal local audience* if the witnesses were summoned to the court session. As mentioned above, in cases of "traitors", it was mandatory to summon witnesses to the trial by order of the USSR People's Commissar of Justice. Yet this order was not universally implemented by the responsible military tribunals. If the witnesses had not been summoned to testify in court, the higher supervising military tribunals sometimes nullified verdicts and returned the cases to their subordinates for another trial.[33] But that such instances are even mentioned in the reports indicates that military tribunals at least occasionally tried defendants without any witnesses present. On the other hand, witnesses' failure to appear before the military tribunals on the trial day was listed among the most important reasons for exceeding the time limits set for case completion.[34] It was a common occurrence that trial dates were moved because of witnesses' absence. Regardless of whether this was intended or unintended by Soviet officials, the resulting closed trials without witnesses deprived the defendants of any protective effect the presence of outside observers might have granted. It meant that the defendant's fate after the arrest was completely shielded from any outsiders. And the adjudication of the case was then based on the investigation file and the defendant's deposition in court alone. For the tribunals, this precluded the possibility of finding discrepancies in investigators' written presentation of witness testimony and the witnesses' own words. It also deprived the defendant of any chance to ask witnesses questions. Hence, such proceedings were on the fringes of administrative repression – a *semi-administrative, semi-trial procedure*.[35] If the witnesses were called to the trial session, both defendants and court members could question the witnesses and there was at least a minimal local audience for the proceedings. Moreover, both purely *administrative*, as well as *semi-administrative / semi-trial proceedings* privilege the punitive element over all other aspects of the legal sphere. As a form of social control, rather than unabridged repression, law necessitates communication of norms based on examples of their violation.[36] And if it is meant to have a social impact beyond the person of the defendant, then law needs to be communicated to at least some minimal audience. If Soviet officials did forgo such an

[33] Work of the Military Tribunal in the 3rd quarter of 1945, TSDAHO, F1O23D2437, p. 69.
[34] Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 33–34. Work of the Military Tribunal in the 3rd quarter of 1945, TSDAHO, F1O23D2437, p. 66.
[35] PETROV: Judicial and Extra-Judicial Punishment, p. 273.
[36] KRAUTH, Stefan: Kritik des Rechts (theorie.org), Stuttgart 2013, p. 39. Law is a form of social control if we understand social control as the control over compliance to social norms. In this framework, law is a form of social control enforced with sanctions, as opposed to socialization. More precisely, law is enforced with formal sanctions, i.e. a formalized procedure by state enforcement bodies (as opposed to informal sanctions of group dynamics). See: KAUSCH, Erhard: Die gesellschaftlichen Funktionen des Rechts, in: Einführung in das Recht. Aufgaben, Methoden, Wirkungen, edited by Dieter GRIMM / Ralf DREIER, Heidelberg 1985, p. 1–37, here p. 9–13.

opportunity, they probably deemed it more important to eliminate the threat a defendant supposedly posed.

It is very likely that trials with a minimum local audience had such a social impact beyond person of the defendant. Witnesses who testified in court spread at least some basic knowledge about the proceedings within their communities. Later oral history interviews with individuals who did not testify as witnesse show that many knew of the trials nonetheless.[37] Anecdotal evidence from later investigations suggests that people were aware of earlier trials with a minimal local audience in which they had not participated.[38] To be sure, knowledge could also spread about arrests followed by administrative sentencing. As Vanessa Voisin rightfully points out, at least the neighbors of those arrested were regularly aware that the "organs" had taken someone away. However, since our typology is concerned with the publicity of trials, and not arrests, that aspect is not our focus.[39] Moreover, if people learnt of an arrest, the communication of norms remained ambiguous and open to interpretation. In trials with a minimal local audience, witnesses were present when the verdict was read – thus, Soviet authorities communicated much more clearly for what actions someone was convicted and what punishment these actions carried.[40]

Besides closed trials, there was the phenomenon of the "open trial" (otkrytyi sudebnyi protsess), characterized by the presence of an audience in court. Open trials can be further differentiated according to the degree of press coverage (none, local, national/international). "Open trials" formed a whole subsection of some reports by the Kiev NKVD military tribunal.[41] Their primary feature was the presence of spectators, which provided a *medium local audience*. This can be seen from the "report on the work of the Military Tribunal of the NKVD troops of the Ukrainian District in the 3rd quarter of 1943", which stated:

> "Despite repeated instructions from the District Military Tribunal that in cases relevant to that purpose, trials of traitors to the homeland are to be conducted open trial sessions with witnesses summoned, and that such trials need to be coordinated with the regional Party committees, those requirements were not met by some military tribunals."[42]

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[37] SCHNEIDER: From the ghetto, p. 95.

[38] Thus, when witness Khait testified against Samuil Bosharnitsan in 1945, she told Soviet investigators that she knew about an earlier trial of two other Jewish functionaries of the Rybnitsa ghetto: "From the words of Pivovar Klara I learned that Vainshtok Shaia and Shtrakhman were arrested in April 1944 by the Rybnitsa administration of the MSSR NKGB and sentenced to ten years each." Khait had not participated in that earlier investigation and trial in any way. Bosharnitsan, Samuil Samuilovich, USHMM, RG-54.003*06, p. 26–30.

[39] VOISIN, Vanessa: The Soviet Punishment of an All-European Crime, "Horizontal Collaboration", in: Traitors, Collaborators and Deserters in Contemporary European Politics of Memory, edited by Gelinada GRINCHENKO / Eleonora NARVSELIUS, Cham 2018, p. 241–264, here p. 257.

[40] Witnesses were in the room when the judge opened the trial session. They then had to leave and were called into the courtroom one by one, where they remained after they had testified. For example, see the protocols of the following trial sessions:Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 152–163. Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 233–291.

[41] Work of the Military Tribunal in the 3rd quarter of 1943, TSDAHO, F1O23D684, p. 9.

[42] Ibid.

To hold such trial sessions "in the presence of the civilian population" was highlighted as especially relevant.[43] An example was provided in which some 600 citizens had attended a trial.[44] It is difficult to ascertain how many open trials were organized. There were seven open trials in the third quarter of 1943.[45] Other reports do not provide total numbers of open trials concerning "traitors" or "counterrevolutionary crimes", but only list some examples. Thus, the report on the third quarter of 1945 stated that "[s]ome military tribunals in the regions have tried some of the cases in which the German occupiers and their accomplices were particularly brutal towards Soviet citizens in open court proceedings." and provided two examples, but no total.[46] The report also indicates that defendants' "brutality" was assessed based on the local population's opinions, with one defendant having been described as a "terrible hangman". [47] While the report on the third quarter of 1945 does not provide a total of open trials of "traitors", it states that for "violators of revolutionary legality" some 65 trials were held.[48] "Violations of socialist legality" were a minuscule part of the caseload of military tribunals. Conversely, cases dealing with collaboration made up a major part of their activities. It is thus likely that many more open trials were organized for cases related to "traitors" and "accomplices" since those trials were deemed propagandistically significant. Above we had cited the number of 823 trials, or three percent of all trials conducted by the Ukrainian district military tribunals between January and July 1946. This number would fit the prominence trials of alleged collaborators had in the military tribunals' caseload. But again – since the authors referred to these 823 trials as "show trials", it is not clear if they were merely "open trials" or "show trials" in the analytical sense. The respective report does not even provide enough information to decide which sub-type of open trials was meant. To decide which type was meant, we would need information about the extent of press coverage.

At times, open trials were also reported in the local press, which constitutes a *broad local audience* in the present typology. Judging by an examination of contemporary newspapers, we can assume that only open collaboration trials were reported in the press and that such press reports were highly exceptional. That the press occasionally reported on collaboration trials on a local level has been established in the research literature.[49] For the time and regions under study here, only very few trials received such press coverage. In the National Library of Ukraine, we screened 23 local newspapers from the regions in which the trials under study here were held. We examined these

[43] Ibid.
[44] Ibid.
[45] Ibid.
[46] Work of the Military Tribunal in the 3rd quarter of 1945, TSDAHO, F1O23D2437, p. 74.
[47] Ibid.
[48] Ibid., p. 77.
[49] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 373.

newspapers for the years of 1944-1946 when most trials examined in the present study took place.[50] Only six of these newspapers contained articles dealing with criminal trials in military tribunals. Two newspapers contained a total of five articles about four trials related exclusively to collaboration.[51] Two other papers described three trials in which defendants were charged with murders or robberies committed after the end of the occupation. Here, the defendants' earlier collaboration was used to characterize them.[52] Four more articles in three different papers dealt with trials in military tribunals related to defendants charged with murder or robbery without any mention of their actions under occupation.[53] For the tens of thousands of trials conducted by military tribunals in Ukraine and Moldova during these years, press coverage thus was a highly exceptional concomitant. Of the four collaboration trials reported on in the press, three were explicitly mentioned to have been open trials. These press reports specifically noted the presence of witnesses, sometimes even publishing their names, and of broader audiences.[54] Interestingly, most articles exclusively dealing with murderers or robbers do not mention whether the trials were held as open trials.[55] For establishing our typology, we can thus assume that only open collaboration trials were reported on in the press. And we can subsume such trials under the category of a *broad local audience*. Two of the articles describing trials of collaborators also mentioned additional propagandistic measures. Following the trials, meetings were held at which local Soviet officials gave speeches and Soviet citizens praised the courts for their verdicts, the press reported.[56] No such propagandistic utilization was reported for the trials of murderers and robbers. Of course, the press reports themselves served propaganda purposes. The texts were held in a mostly denunciatory tone, calling defendants things like "foul degenerates of the human race".[57]

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[50] These newspapers were: Bil'shovyts'ka peremoha (Odessa region), Bol′shevistskoe znamia (Odessa region), Chervona Tul'chynshchyna (Vinnitsa region), Kolhospna pravda (Chernovits region), Kolhospnyk (Odessa region), Komunar (Odessa region), Lenins'kym shliakhom (Odessa region), Leninskyĭ shliakh (Odessa region), Naddnistrians'ka zirka (Vinnitsa region), Novoe selo (Chernovits region), Pridunaiskaia pravda (Izmail region), Radians'ka Bukovyna (Chernovits region), Shliakh Il'icha (Vinnitsa region), Shliakhom Lenina (Vinnitsa region), Sotsialistychne selo (Odessa region), Sotsialistychnyĭ shliakh (Odessa region), Sovetskaia Moldaviia (Moldova), Stalins'kym shliakhom (Vinnitsa region), Stalinskii put′ (Vinnitsa region), Udarnik stepu (Odessa region), Vinnyts'ka pravda (Vinnitsa region), Za peremohu (Vinnitsa region), Za sotsyalistichnu peremohu (Vinnitsa region).

[51] Sud v Dubossarakh nad izmennikami Rodiny. Posobniki nemetsko-rumynskikh karatelei prigovoreny k rasstrelu, in: Sovetskaia Moldaviia, 29.10.1944. Chorni dila Vitenka, in: Komunar, 28.11.1944. Smert' za smert', in: Komunar, 11.03.1945. Sud nad zradnykom. Predateli, in: Sovetskaia Moldaviia, 30.05.1945.

[52] Oni ne ushli ot rasplaty, in: Pridunaiskaia pravda, 07.09.1945. Bandity ponesli zasluzhennuiu karu, in: Pridunaiskaia pravda, 19.10.1945. Bandyty stanut' pered sudom, in: Vinnyts'ka pravda, 05.04.1946.

[53] V prokuraturi URSR, in: Radians'ka Bukovyna, 29.11.1944. Grabiteli nakazany, in: Bol′shevistskoe znamia, 29.08.1945. Bandit prigovoren k rasstrelu, in: Bol′shevistskoe znamia, 14.12.1945. Bandytiv zasudzheno k rozstrilu, in: Vinnyts'ka pravda, 02.04.1946.

[54] Sud v Dubossarakh. Chorni dila Vitenka. Sud nad zradnykom. The fourth collaboration trial reported on is only mentioned in the last sentences of a primarily narrative piece describing the German occupation regime. The focus of the article is on the occupation itself, the Soviet judiciary only serves to bring closure. Predateli.

[55] V prokuraturi URSR. Grabiteli nakazany. Bandytiv zasudzheno.

[56] Chorni dila Vitenka. Sud nad zradnykom.

[57] Sud v Dubossarakh.

How might the people referred to with such terms have been treated by the investigators? Analyzing the press coverage also allows to hypothesize about whether defendants' confessions were a necessary feature of trials with a *broad local audience*. Mentions of confessions are rare in the press coverage of military tribunal trials. Interestingly, in both instances where confessions were reported, the defendant was either charged for collaboration, or his previous service in the German administration was noted to characterize him.[58] The respective formulations are odious:

> "During the preliminary investigation, Bursuk tried to evade prosecution and he diligently confused a lot, before, being pressed against the wall by the art of the investigators and the undeniable facts, he had to confess his crime."[59]

This is strongly reminiscent of how the defendants in the Moscow show trials were portrayed and how their confessions were explained.[60] It is not unlikely that Mr. Bursuk was quite literally pressed against walls during the preliminary investigation. This suggests that publicity lead to the use of prerogative state methods. On the other hand, one of the reports of the Military tribunal of the NKVD troops of the Ukrainian district indicates a less straightforward dynamic. The head of the tribunal reported that he had planned to hold the trial of one collaborator "in an open trial session with press coverage, given the great political and educational importance of such a trial for the working masses", but that this plan had crumbled. The defendant met a prosecutor for the first time during the presentation of the indictment. Promptly, the defendant complained about having been tortured by the investigators. This lead the head of the military tribunal to drop his plan of conducting an open trial.[61] Other reports also indicate that the military tribunals saw it as a public disgrace when defendants revoked their statements from the preliminary investigation during the trial and complained about "unobjective methods of investigation", which is a euphemism for torture.[62] This controlling influence of publicity, of the presence of outsiders, was not limited to open trials, but concerned closed trials too if the witnesses were summoned to the trials session.

Publicity, it appears, was always a double-edged sword in the context of collaboration trials. A trial with a large audience could be as detrimental for a defendant's wellbeing as a trial without any audience at all. If there was no audience at all, a defendant had no outsiders in front of whom he could complain about torture. This was almost as bad as having one's case go to the OSO. But if the audience was too large, and too great a propagandistic value was ascribed to the case, the defendant might be tortured until he would not dare to even complain about it in court. During

[58] Sud nad zradnykom. Bandity ponesli zasluzhennuiu.
[59] Bandity ponesli zasluzhennuiu.
[60] As Decker notes: "In order to explain Zinoviev and Kamenev and other defendants' sudden honesty without crediting them with being anything less than deceitful, the prosecutor Vyshinsky explained that new evidence had led them to confess to deviance to which they would not previously confess." DECKER: Public Confessions, p. 465–466.
[61] Work of the Military Tribunal in the 3rd quarter of 1943, TSDAHO, F1O23D684, p. 6.
[62] Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 37.

the infamous Moscow show trials, the NKVD had proven that its officers could get almost any defendant to say almost anything. Relying on its elaborate torture techniques and supplementing them with pressures such as taking defendants' relatives hostage, the officers created truly fantastic lies deprived of any contact to reality.[63] But the kind of torture that turned people into totally controllable puppets also demanded time and manpower – both of which were in short supply at the time when collaboration was prosecuted. Numerically, show trials were a highly exceptional occurrence. It seems that a minimal or medium local audience was a relatively safe middle ground – enough to get Soviet officials to behave, but not enough to make them switch to the logic of a show trial.

If press coverage extended beyond the local level, we can assume that some form of central planning and control was involved and hence, that we are likely dealing with a *show trial*, the final type in our typology. Then, the aspects of show trials in the analytical sense we had discussed above are likely to apply, resulting in the peculiar prerogative state / normative state hybrid. Based on the discussion of publicity so far, we can conclude that most collaboration trials were not conducted in open sessions. In the following chapters, the question is then whether a trial was at the fringes of administrative repression, or if it at least had a minimal local audience.

## Publicity and legal legitimization

But even such a minimal audience could have implications far beyond the question of torture. Publicity also concerned what happened between the state and the rest of its citizens at the place of each trial. Several authors have emphasized that Soviet collaboration trials were used for legitimizing the regime.[64] Besides their propagandistic features, this legitimizing function is seen as a result of collaboration trials' procedural correctness (sometimes termed "demonstrative lawfulness").[65] Penter asserts that this demonstrative lawfulness governed not only show trials, but also the other types of trials in our typology of publicity, including closed proceedings.[66] Yet the legitimizing function was necessarily linked to the presence of at least a *minimal local audience*. Penter points out that the presence of witnesses at a trial alone guaranteed that "many people knew about the trials against local collaborators from reports of witnesses who gave evidence at the trials or by word-to-mouth tradition" and urges us to "keep in mind that in a totalitarian state, these informal

[63] SCHLÖGEL, Karl: Terror und Traum. Moskau 1937, München 2008, p. 104–107.
[64] PENTER: Local Collaborators, p. 21. PENTER: „Urteil des Volkes", p. 130. PENTER: Kohle für Stalin und Hitler, p. 410. BOURTMAN: "Blood for Blood", p. 259. MELNYK: Stalinist Justice, p. 246. SOLONARI: Stalinist Purges, p. 220.
[65] PENTER: Local Collaborators, p. 21. In the literature surveyed for this study the term was first used by Zeidler, who speaks of "demonstrative Rechtsförmlichkeit". ZEIDLER, Manfred: Der Minsker Kriegsverbrecherprozeß vom Januar 1946. Kritische Anmerkungen zu einem sowjetischen Schauprozeß gegen deutsche Kriegsgefangene, in: Vierteljahrshefte für Zeitgeschichte 2 (2004), p. 211–244, here p. 217.
[66] PENTER: Local Collaborators, p. 21.

ways of communication were of enormous importance".[67] Furthermore, local populations' often unequivocally expressed demands for punishment of crimes committed during occupation converged with the regime's interests.[68] This gave the trials an "immense symbolic meaning for local societies".[69]

We think that this approach is promising, but demands further conceptual clarification, which is necessary to delimit its analytical range. Weber's typology of "legitimate domination" is useful for clarifying the concept of legitimization and his idea of legal-rational domination is useful to clarify the legitimizing function of the law.[70] Weber famously defined "domination" as "[…] the probability that certain specific commands (or all commands) will be obeyed by a given group of persons".[71] He furthermore contended that "[…] every genuine form of domination implies a minimum of voluntary compliance, that is, an *interest* (based on ulterior motives or genuine acceptance) in obedience."[72] While "custom, personal advantage, purely affectual or ideal motives of solidarity" are important motives for obedience according to Weber, they "do not form a sufficiently reliable basis for a given domination", which requires "a further element, the belief in legitimacy".[73] No regime, Weber contended, would

> "voluntarily limit itself to the appeal to material or affectual or ideal motives as a basis for its continuance […], every such system attempts to establish and to cultivate the belief in its legitimacy."[74]

Any stable rule demands this belief in its legitimacy and for Weber, "stability of an order" was "always an indication of its legitimacy".[75] Weber differentiated three main "types of domination according to the kind of claim to legitimacy typically made by each": traditional, rational-legal and charismatic.[76] Again, these concepts are ideal types – they do not exist in this pure form.[77] Rather, any given regime relies on a mix of all three elements. He defined them as follows:

> "1. Rational grounds – resting on a belief in the legality of enacted rules and the right of those elevated to authority under such rules to issue commands (legal authority). 2. Traditional grounds –resting on an established belief in the sanctity of immemorial traditions and the legitimacy of those exercising authority under them (traditional authority); or finally, 3. Charismatic grounds – resting on devotion to the exceptional sanctity, heroism or exemplary

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[67] Ibid., p. 18.
[68] PENTER: Kohle für Stalin und Hitler, p. 403.
[69] PENTER: Local Collaborators, p. 18.
[70] WEBER, Max: Economy and society. An outline of interpretive sociology, New York, NY 1978, p. 212.
[71] Ibid.
[72] Ibid. The German original refers to "Gehorchenwollen", the will to obey. WEBER, Max: Die Typen der Herrschaft, in: Wirtschaft und Gesellschaft. Grundriss der verstehenden Soziologie, Frankfurt, M. (2010), p. 157–222, here p. 157.
[73] WEBER: Economy and society, p. 213.
[74] Ibid.
[75] BREUER, Stefan: Soviet Communism and Weberian Sociology, in: Journal of Historical Sociology 3 (1992), p. 267–291, here p. 272.
[76] WEBER: Economy and society, p. 213.
[77] Ibid., p. 216. "The fact that none of these three ideal types […] is usually to he found in historical cases in 'pure' form, is naturally not a valid objection to attempting their conceptual formulation in the sharpest possible form.".

> character of an individual person, and of the normative patterns or order revealed or ordained by him (charismatic authority)."[78]

When speaking about the legitimizing function of judicial proceedings, the most important type of claim to legitimacy is the legal-rational. Weber identified key ideas on which legal-rational authority rests: Law can be established in a rational way ("by agreement or by imposition, on grounds of expediency or value-rationality or both") and then has a "claim to obedience" over the members of a given polity.[79] Law is a "consistent system of abstract rules", administering the law takes the form of subsuming concrete facts under these rules.[80] A superior (the "typical person in authority") giving commands is in this act himself only following an impersonal order – and those obeying the commands obey as equal "members" of an organization (or polity).[81] They obey the law, not the person giving the commands, whose role is more that of an intermediary.[82] Cotterrel thus contended that "[l]aw not only provides the technical apparatus for exercise of state power but also the ideological foundation of authority."[83] That such legal legitimization was and is important not only for liberal democracies but also for authoritarian regimes and dictatorships is emphasized in the political science literature on the topic.[84]

We can thus see Penter's "demonstrative lawfulness" as a form of legal legitimization. To delimit the analytical range of this concept, it is key to differentiate two dimensions of legitimacy in the Weberian sense: a *claim to legitimacy* and a *belief in legitimacy* ("Legitimitätsanspruch" and "Legitimitätsglaube").[85] The reader will easily recognize the intention-side and the effect-side of functions ascribed to the law in this distinction. For researchers, it is much easier to empirically measure claims to legitimacy than their actual effect on the recipients of such claims, i.e. individual or collective belief in legitimacy. As Pakulski noted, measuring the success of a regime's claim to legitimacy is difficult, since the "belief by the participants-actors […] should not be confused with simple empirical uniformity of action."[86] Weber himself already noted that people comply to commands for various reasons "all the way from simple habituation to the most purely rational calculation of advantage" only one of which is the belief in the legitimacy of an order.[87] Even if we accept Weber's dictum that this belief is a prerequisite of regime stability on the macro level, we

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[78] Ibid., p. 215.
[79] Ibid., p. 217.
[80] Ibid., p. 217–218.
[81] Ibid.
[82] Ibid.
[83] COTTERRELL: Legality and Legitimacy, p. 137.
[84] MOUSTAFA: Law and Courts, p. 283. LAUTH, Hans-Joachim: Legitimation autoritärer Regime durch Recht, in: Zeitschrift für Vergleichende Politikwissenschaft 2 (2017), p. 247–273, here p. 261.
[85] WEBER: Typen der Herrschaft, p. 157.
[86] PAKULSKI, Jan: Legitimacy and Mass Compliance. Reflections on Max Weber and Soviet-Type Societies, in: British Journal of Political Science 1 (1986), p. 35–56, here p. 35–36.
[87] WEBER: Economy and society, p. 212–213.

might add that empirically identifying it on the micro-level of individual actors remains difficult. This last point has been highly contentious in studies of Stalinism. In different permutations, questions of regime legitimacy and popular support have come up in various debates over decades (from the revisionism-totalitarianism debate to the newer discussions about "Soviet subjectivity").[88]

Put differently, with the concept of legal legitimization we assess a strategy for gaining popular support, rather than making a statement about the success of this strategy. Neither do we make any claims about the significance of this strategy relative to other types of legitimization, nor about the significance of legitimacy for the regime's stability relative to coercion and terror (the role of which cannot be overemphasized).[89] However, we think it noteworthy that several authors have already hypothesized that wartime and post-war punitive policies were softened due to a lack of human resources (see chapter 5) This, in turn, would suggest a heightened significance of other means for stabilizing the regime's rule – if you cannot subdue everyone into obedience by killing all the trouble-makers, you have to win people over.

Furthermore, we do not claim that considerations of legitimacy influenced the Soviet leadership's decisions on how to adjudicate collaboration. Examining this aspect is beyond the limits of this study, (if even possible at all based on the available archival record).[90] Rather, we once more want to draw attention to the institutional level of the bureaucracies tasked with investigating and adjudicating collaboration. As discussed above, Soviet officials in the Military tribunal of the NKVD troops of the Ukrainian district repeatedly pointed out the significance of public proceedings to their subordinates. This applied not only to open trials with *medium* or *broad local audiences*, but also to closed proceedings held without spectators, but also to trials attended only by the witnesses, i.e. those with *minimal local audiences*. Thus, in reporting about a closed trial regarding "violations of Socialist legality", the head of the tribunal stressed that even proceedings without spectators had an enormous "political effect" on local communities.[91] The same logic governed

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[88] See the following overviews / secondary analyses: WAGNER, Martin: Revisionismus. Elemente, Ursprünge und Wirkungen der Debatte um den Stalinismus „von unten", in: Jahrbücher für Geschichte Osteuropas 4 (2019), p. 651–681, here p. 660. GRIESSE, Malte: Soviet Subjectivities. Discourse, Self-Criticism, Imposture, in: Kritika: Explorations in Russian and Eurasian History 3 (2008), p. 609–624, here p. 611, 621.

[89] Khlevniuk provides the following summary regarding the extent of the terror under Stalin: "Those who were shot or sent to the camps included a fair number of ordinary criminals. But the exceptional severity of laws and the criminalization of all spheres of socioeconomic and political life meant that ordinary citizens who committed minor infractions or were swept up in various political campaigns were often classified as criminals. Furthermore, in addition to the 26 million who were shot, imprisoned, or subjected to internal exile, tens of millions were forced to labor on difficult and dangerous projects, arrested, subjected to lengthy imprisonment without charges, or fired from their jobs and evicted from their homes for being relatives of 'enemies of the people.' Overall, the Stalinist dictatorship subjected at least 60 million people to some sort of 'hard' or 'soft' repression and discrimination." KHLEVNIUK: Stalin, p. 38.

[90] As Bourtman notes: "To begin with, it is important to note that because most internal correspondence between high-ranking members of the Politburo remains classified, hypotheses concerning the Soviet leadership's decision to investigate German war crimes and hold military tribunals cannot be verified." BOURTMAN: "Blood for Blood", p. 259.

[91] Work of the Military Tribunal in the 3rd quarter of 1943, TSDAHO, F1O23D684, p. 12.

trials of "traitors" for which summoning the witnesses was obligatory since 1942.[92] Epifanov emphasizes that this served judicial functions (evidence) as well as for legal legitimization.[93] The Soviet judiciary's attention to this aspect is furthermore underscored by the fact that the Supreme courts Military Collegium returned around 50 cases per month to local judicial authorities, demanding that these cases be tried at the place of the crimes. [94] Concerns over legitimacy also feature in documents of investigative organs. Regarding crimes NKVD/NKGB officers, the People's Commissar of Internal Affairs complained that

> "[...] individual members of our organs, instead of a clear and impeccable performance of their official duties, grossly violate Soviet law, abuse their office and commit other unacceptable crimes and actions, thus undermining and discrediting the NKVD organs."[95]

Legitimacy was thus explicitly on the agenda of those investigating and adjudicating the criminal prosecution of collaboration.

Concerns with legitimacy are of special significance in the context of the re-Sovietization of formerly occupied territories. Several authors point out that the Soviet regime suffered from a serious "crisis of legitimacy".[96] Melnyk summed up its symptoms:

> "Widespread desertions and voluntary surrender by numerous Red Army soldiers; reluctance of many Communist Party members to evacuate and the virtual collapse of the Soviet partisan movement during the initial months of the invasion; extensive collaboration with the enemy throughout the occupied territories and the budding Nationalist insurgency in the western border regions – all this provided ample evidence of the serious crisis of legitimacy experienced by the Soviet government in the occupied territories."[97]

Axis occupation had also undermined Soviet legitimacy by propaganda efforts focusing on Soviet crimes in the 1930s.[98] Thus, Soviet claims to legitimacy were seriously challenged by the Axis occupation and the effects of this challenge were very visible.

Moreover, not only had the Soviet regime lost the sovereignty over these territories to the Axis for years but even after reconquering them, it was still battling a contender, the nationalist insurgents. In this situation, prosecuting Axis atrocities and various crimes of collaborators provided a unique opportunity for legal legitimization – and for an ex-post de-legitimization of

[92] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 206, 233.
[93] Ibid., p. 207.
[94] Ibid., p. 232.
[95] Order of the People's Commissar of Internal Affairs, USHMM, File 2436, Reel 57, RG-31.026M, p. 33.
[96] This is Melnyk's term: MELNYK: Stalinist Justice, p. 243. BOURTMAN: "Blood for Blood", p. 259. PENTER: Kohle für Stalin und Hitler, p. 379.
[97] MELNYK: Stalinist Justice, p. 245.
[98] PENTER: Kohle für Stalin und Hitler, p. 379.

those very competitors who had temporarily wrought sovereignty from the Soviets or were still attempting to do just that.[99]

And there seems to have been considerable demand from the population with which such a strategy could converge. Thus, the People's Commissar of Justice Rychkov noted in 1944 that the return of Soviet officials had triggered many citizens of the newly reconquered regions of Ukraine to bring crimes of "the Germans and their agents" to the attention of the authorities, demanding "protection of their rights".[100] Similar incidents were reported by the Ukrainian NKVD to the center in Moscow.[101] In the literature on the topic, this argument was first made and most strongly emphasized by Penter. [102] This provides a clear analytical task for the following chapters, namely examining witnesses' testimony for such pressure "from below", directed towards punishing crimes committed during the occupation. It will be necessary to assess this both regarding the content of witnesses' testimonies, their goals, as well as their strategies in the trials.

These considerations about publicity and legitimacy need to be tied into the dual-state-framework guiding the analysis in the present and the following chapters. As noted above, Fraenkel's ideal types of the prerogative state and normative state were linked to hypotheses about their function for the respective regime. Based on our discussion, we can assign the primary function of eliminating political enemies to the prerogative state. With the emphasis on procedure and rule-boundedness, we can easily categorize legal legitimization as the primary function of the normative state. As discussed above, these functions can be treated as hypotheses to explain how lower-level officials decided between competing normative and prerogative state incentives. We can assume that individual investigators and adjudicators tried to resolve this paradox by relying on assumptions about what their superiors wanted. And we can frame these assumptions in terms of the functions ascribed to the prerogative and normative states as the priorities of "elimination" or "legitimization".

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[99] Soviet authorities thus used their own version of what Lawrence Douglas called "didactic trials", which serve the goal of "re-imposing norms into spaces in which rule-based legality has been either radically evacuated or perverted". As much of the transitional justice literature, Douglas here writes about transitions from dictatorship/authoritarian regimes to democracies based in the rule of law. What the Soviets did was of course different. To be sure, Axis occupation had "evacuated or perverted" any form of "rule-based legality" but the Soviet justice system here substituted one perversion for another. DOUGLAS, Lawrence: The Didactic Trial. Filtering History and Memory into the Courtroom, in: European Review 4 (2006), p. 513–522, here p. 514.

[100] Head of the Collegium, People's Commissar of Justice of the USSR N. Rychkov: Resolution of the Collegium of the People's Commissariat of Justice of the USSR on the progress of organization and the state of work of the organs of the People's Commissariat of Justice and courts of the Ukrainian SSR, 12.07.1944, File 1372, Reel 43, RG-31.026M, Selected records from former Archives of the Communist Party of Ukraine, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 6.

[101] People's Commissar of Internal Affairs of the Ukrainian SSR Commissar of State Security Riasnoi to People's Commissar of Internal Affairs of the USSR, Commissar General Beria L. P.: Report on the situation in the city of Kharkov and the results of work of the NKVD organs for August 28, 1943, 28.08.1943, F16O1D543, p. 4–5, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU), p. 5.

[102] PENTER: Local Collaborators, p. 18.

## The "dual state" vs. "political justice" and "political trials"

Capturing the dynamic of legal legitimization is a major advantage of the dual-state-framework over its most important conceptual competitor, the concept of "political justice".[103] Trying to analyze Soviet collaboration trials in terms of "political justice" runs the risk of seeing only prerogative state elements as political and missing the political dimension of legal legitimization inherent in normative state elements. This problem stems from an insufficiently clarified contrast class for the concept of "political justice". On the one hand, all administration of justice is political to a degree. The contemporary sociology of law assumes that when legal professionals subsume concrete facts and deeds under legal rules, a political "preliminary understanding" influences this process. And this understanding is acquired during a legal professional's political socialization, not their legal training.[104] Meierhenrich and Pendas, in defining "political trials", additionally state: "All trials, in other words, may be political in the generic sense that they uphold the state's right to adjudicate and resolve social conflicts."[105] To tackle this problem, the authors refine their definition: "But political trials are political in a further and much more precise sense, in that they affect the distribution of power specifically within its political framework."[106] Werz follows a similar path, disentangles political justice and political trials and defines the latter as follows:

> "political trials [are] those trials which take place predominantly as criminal trials and have as their object the actions of persons or institutions, which are aimed at shaping public life and in which individual parties pursue specific political aims."[107]

It should be obvious that the trials discussed in this book fall within these broad definitions of political trials. But we see a problem in the insufficiently clarified contrast class of these conceptualizations. Above we had cited Goertz' idea that effective use of concepts in social science should always explicate both the positive concept as well as its negative counterpart or contrast class (see chapter 3). With political justice and political trials, it is not clear what this contrast class would be. One option would be to demarcate political from non-political justice by relying on concepts such as rule-of-law or German "Rechtsstaat". Political justice would then be outside the rule of law, and everything in it non-political. But concerning the contrast class of the "rule of law", it does little to categorize or explain the variation we see in the Soviet agencies' adjudication of collaboration. That these proceedings did not conform to rule-of-law-standards is as obvious as it

[103] We are discussing "political justice" as an analytical term here. Another possibility would be to base this concept on the source term of "special jurisdiction cases" ("dela spetspodsudnosti"), but this offers no new analytical insights.
[104] WERZ: Schauprozess, p. 38.
[105] MEIERHENRICH, Jens/PENDAS, Devin O.: "The Justice of My Cause Is Clear, But There's Politics to Fear". Political Trials in Theory and History, in: Political Trials in Theory and History, edited by Jens MEIERHENRICH / Devin O. PENDAS, New York 2017, p. 1–64, here p. 10.
[106] Ibid.
[107] WERZ: Schauprozess, p. 271.

is banal, this leads more to moral indictment than to a gain in knowledge.[108] If the rule of law remained even as an implicit contrast class, it could lead to identifying only prerogative state elements as politically loaded. Normative state elements would then appear as politically neutral or worse, as normatively positive approximations of rule-of-law procedures. This would mean missing the political dimension of legal legitimization inherent to normative state elements. We had already tackled this problem when discussing the general advantages of the dual-state-framework above (see chapter 3). Authors discussing the terms of political justice and political trials seem to be aware of the potential problem, and thus stress that these concepts do not overlap with the distinction of rule-of-law judicial systems and non-rule-of-law judicial systems.[109] Unfortunately, these authors do not clarify the contrast class of their respective concepts of political trials. We find certain aspects of Meierhenrich's, Pendas', and Werz's conceptualization insightful, but these aspects can effortlessly be detached from their discussions of political trials and transferred into the dual-state-framework proposed in this book.

## Conclusion

In the chapters leading up to the present one, we conceptualized Fraenkel's dual state, transferred the concept to the Soviet context, operationalized it, and applied it to the Soviet prosecution of collaboration. In doing so, we neglected a central aspect in our analysis: publicity. That issue is complicated enough to warrant a separate discussion in the present chapter. Its results are as follows.

It is difficult to just equate publicity with the normative state because the Soviets had a long tradition of staging show trials. And as part of their effort to prosecute Axis war criminals and collaborators, Soviet authorities staged a series of show trials, too. Scholars examining those trials often highlight many similarities to the 1930s Moscow show trials: centralized planning and control, pre-set outcomes, the central role of confessions, the use of torture to elicit these confessions, ostensible adherence to legal norms, and broad use of the trial in official propaganda. Besides historiography, other academic disciplines often base their conceptualizations of the term "show trial" on the 1930s Moscow trials as well. Within the dual state framework, such trials can be characterized as hybrids – prerogative-state proceedings which simulate being governed by normative-state principles. Thus, "show trial" is an important analytical term when analyzing the Soviet prosecution of collaboration, and the Soviets staged show trials as part of that effort.

[108] See Schroeder's discussion, which is based on an understanding of "Rechtsstaat" as developed by German legal studies: SCHROEDER: Sowjetrecht. See also: PRUSIN: "Fascist Criminals", p. 16–17.
[109] MEIERHENRICH/PENDAS: "Justice of My Cause", p. 5. WERZ: Schauprozess, p. 272.

Further complicating matters is the fact that "show trial" was also a source term – a phrase the people whose actions we analyze used. The term itself and similar phrases can be found in internal reports by investigative and adjudicative institutions, as well as in the press. However, the contemporaries' usage did often not overlap with the analytical term. Sometimes they called "show trial" something that does not fit the analytical term, and sometimes they use other terms for something we would call a show trial in the analytical sense. Clearly, a more refined understanding of publicity is needed to understand what people were talking or writing about when they used these source terms.

To not get lost in the chaos, we developed a typology of six different types of publicity. These types vary in five dimensions: whether defendants, witnesses, and an audience were present in court, as well as local and national/international press coverage. The resulting typology includes purely administrative proceedings, such as those of the OSO. It also includes closed trials that range from proceedings where the defendant alone faced the court (semi-administrative / semi-trial hybrids) to trials with a minimum local audience comprised of the witnesses. Open trials add a real audience made up of listeners who played no role in the trial. If there was no press coverage, this amounts to a trial with a medium local audience. Add local press coverage to arrive at a broad local audience, and national/international press coverage to arrive at the publicity characteristic of show trials. The variety of types should not be interpreted as an equal numerical distribution: even just localized press coverage was rare, and most collaboration trials were closed proceedings. Based on the typology, it becomes obvious that publicity was a double-edged sword for defendants. Not having any publicity meant that a defendant got no chance to disclose illicit methods of investigation to outsiders. Too much publicity meant that the authorities could attempt to "prepare" a defendant so thoroughly that he would likely not dare to disclose anything of the sort.

In the literature on Soviet collaboration trials, different scholars assume that the Soviets used these trials to legitimize the regime. However, a finer conceptualization is lacking in that literature. Here, we supplemented a concept of legal legitimization based on Weber – applying the law is a form of rational rule and can help a regime gain legitimacy. In turn, legal legitimization fits the dual state framework as an aspect of normative state procedures. However, only the regime's claim to legitimacy is measurable, what success such claims achieved remained opaque – we cannot know what went on in the heads of Soviet citizens confronted with that claim.

Conceptualizing legal legitimization as a part of the normative state also allows for avoiding potential pitfalls of competing analytical concepts, namely that of "political justice" and "political trials". Scholars using these concepts run the danger of equating any norm-bounded procedures with "apolitical" justice/trials. A dual state framework including the idea of legal legitimization

eschews this danger – it highlights that even when the Soviets stuck to their own rules, what they were doing was by no means apolitical and potentially had great significance for the success and continued existence of their regime.

# Jewish council members and ghetto policemen prosecuted for collaboration – A collective portrait

Who were the Jews the Soviets prosecuted as collaborators for their role in the ghettos of Transnistria? Moving on to analytical level C), we examine these men's demographic data and compile a collective portrait to identify who exactly was targeted by the respective Soviet agencies. This allows to answer the question whether *targeting* was category-based (ds2-3). In the next chapter, the "who" can then be correlated with the "how" – the question of how these people were *prosecuted*, *tried*, and *sentenced*. We begin by discussing which data were included in the collective portrait, and what the quality of these data is. The collective portrait begins with the analytically central distinction of regional origins (Romanian Jews vs. Soviet Jews). Examining defendants' regional origins raises the problem of arrest patterns versus service patterns. Are the proportions of different groups among the arrestees a result of who served in the ghetto administration (service pattern), or did Soviet authorities only disproportionally arrest some groups of former functionaries (arrest pattern)? To decide this issue, we also examine the place of arrest. Were former functionaries only arrested if they stayed at the place of the ghetto, or did Soviet authorities apprehend them wherever they went? We conclude that the proportions of different groups among the arrestees are more likely a service pattern. Briefly, we examine the arrestees' citizenship and their age, before moving on to the crucial issue of class. After expatiating upon the specifics of Soviet class terms, we discuss the compound or social origins, education, and social position. We review how Soviet authorities explicitly and, potentially, implicitly stigmatized certain arrestees as "enemies" or "aliens". Lastly, prior convictions, political affiliation, military service, and the positions the arrestees had held in the ghettos are discussed. We conclude that none of the factors examined in the collective portrait provide sufficient conditions for arrest and that targeting was thus not category-based.

To find out who was targeted, different demographic data were taken from the 51 men's investigative case files. The "questionnaire" for the collective portrait included: arrestees' nationality, sex, year of birth, marital status, number of children, place of birth, citizenship, possession of a passport, place of residence at the time of arrest, occupation, and employment at the time of arrest, education, social origins, prior military service (Soviet and other) as well as liability for service in the Red Army, party affiliation (mainly "All-Union Communist Party (Bolsheviks)", but including other political organizations), participation in WW II, prior repressions (both Soviet and other), service in "White" Armies during Civil War, prior convictions in the Soviet Union, family members serving in the Red Army and, of course, the ghetto (or ghettos) the arrestees were interned in and the positions they held there.

The data stem from various documents in the Soviet casefiles. These include the beginnings of interrogation protocols, arrest forms, indictments, protocols of trial sessions, and verdicts. Soviet investigators recorded at least some demographic data both about defendants and witnesses. As a minimum, there was a short paragraph at the beginning of each interrogation protocol.[1] Consider this example, from a witness statement:

> "Shnaider Shaia Osipovich, born 1913, born in the city of Shargorod, Vinnitsa region, nationality Jewish, not a party member, education 4 classes, from a workers' family, never married, was sentenced in 1934 in Romania to 1 year and 6 months of imprisonment for underground activities. Lives in the city of Shargorod, 220 Shulmalekhovich street."[2]

The investigators mostly recorded defendants' backgrounds more thoroughly. In most files, a detailed arrest form ("anketa arestovannogo") was filled out for each arrestee. Various, but overall similar forms were used in the files examined for this study. All of them listed more categories of information about the arrestee than the short paragraph about witness Shnaider. Beyond the basics, arrestees were sometimes also asked about prior service in the Tsarist military or White formations during the civil war and about past "tendencies" towards "anti-Soviet parties", such as the Mensheviks.[3] Furthermore, arrestees' family members were commonly listed in these forms, including their parents, siblings, spouses, and children.[4] Investigators and prosecutors also recorded data about arrestees' backgrounds recorded in the indictments, the protocols of the trial session, and the verdicts – again, usually in the form of a short paragraph similar to that at the beginning of each interrogation protocol. Beyond these instances, investigators often asked defendants to "briefly tell [their] autobiography" at the start of their very first interrogation. These short autobiographical accounts were also used to gather the data for the following collective portrait.[5]

There are different problems with the quality of the data, with whole categories recorded inconsistently across files and values assigned to categories changing within one file.[6] In the latter case, values assigned for a certain category in one document in the file contradict those assigned in other documents in the same file. For example, education might be recorded as "unfinished secondary, 8 classes" in the minutes of the first interrogation, but as "literate" in the indictment.[7] Not quite what one might call an insignificant difference. Adding to the inconsistencies within files are those across files. Some categories were recorded selectively across the different files – you might find such information about arrestee A, but not about arrestee B. For example, whether an

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[1] STROGOVICH, M. S.: Ugolovnyi protsess, Moskva 1946, p. 198.
[2] Zand Bruno Rafailovich, HDA SBU VO, D3033, p. 23. "Underground activities" here pertain to communist acitivism.
[3] Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 6.
[4] As an example, see the arrest form in: Dresher Iosif Solomonovich, HDA SBU ChO, D5126-o, p. 7–8.
[5] For example, see: Ibid., p. 14.
[6] Previous studies have highlighted these problem: BERNSTEIN/MAKHALOVA: Aggregate Treason, p. 38.
[7] Akhtemberg, Moisei Iakovlevich, USHMM, RG-54.003*01, p. 5, 48.

arrestee was liable for service in the Red Army was explicitly recorded only for 13 of the 51 arrestees.

Such variations seem to stem from the level of the individual investigator. As mentioned, different arrest forms were used, and the categories recorded at the beginning of interrogation protocols also varied. It seems that there were no unified sets of categories to be recorded – not across different agencies, not within one agency across regions, and not even within one agency, at one time, at one place. Even two SMERSH officers simultaneously working the same case might record different categories.[8]

Despite these problems, a core set of categories was recorded *almost* universally. These are nationality, sex, place of birth, citizenship, year of birth, marital status, education, social origins, party affiliation (mainly All-Union Communist Party (Bolsheviks), but including other political organizations), prior convictions in the Soviet Union, the ghetto (or ghettos) the arrestees were interned in and their positions in the ghetto. These categories can be found in almost every investigative case file. Beyond the core categories, data was recorded inconsistently.

Nothing can be done to offset the selective recording across files. But inconsistencies in single files can often be resolved precisely because data was recorded in multiple documents within these files. A first rule of thumb here is: More frequent values are more reliable. That one Soviet official got something wrong is more likely than that several did. If there are only two records for a category within a file and if those are contradictive, there remains an element of arbitrariness on how we resolved such contradictions. But this happened very rarely. Another rule of thumb is: Values recorded later in the investigation are more reliable. As more witness testimonies were collected and as the defendant was questioned multiple times, the chances increased that false information or recording errors would become apparent and get corrected.

Besides issues with the *recording* of the data, there are also issues with the *meaning* of some source terms for demographic indicators. Some of the categories listed above are self-explanatory and do not need additional commentary. Here, there is little difference in how the Soviet officers conceptualized the categories and recorded the data from how any other modern government agency at the time would have done that. The straightforward categories include such basic information as sex, age, marital status, number of children, place of residence at the time of arrest, and the ghetto (or ghettos) the arrestees were interned in.

But not all categories are self-explanatory. Some categories were based on specific Soviet concepts; some others were created for the current analysis summarizing various source terms into

[8] Grinberg Mikhail Iosifovich, HDA SBU ChO, D10092, p. 34, 38.

analytical terms. Additional information about these categories will be provided while presenting the data. The only longer digression concerns the specific Soviet concept of class.

However, the collective portrait should not begin with defendants' class, but with their geographic origins. As discussed in the introduction, regional origin became an important fault line for social conflicts in the ghettos of Transnistria (what Tibon aptly termed "communal-class separation").[9] It is thus useful to start with this category and to group other demographic data along these lines. It can then be determined if there are differences between Jewish council members and ghetto policemen from different regions. The main relevant regional distinction is that of Soviet vs. Romanian Jews. But the deported "Romanian Jews" encompassed Jews from Bessarabia, Northern Bucovina, Southern Bucovina, and the Regat – and there could be significant friction among these groups of deportees as well.[10] Initially, a detailed breakdown is thus provided as well.

Note that the category of "regional origins" was based on the birthplace recorded in the files. Of course, not everyone stayed in the regions they were born in. Ideally, the category should be based on the place an arrestee was deported from, but this is often much more difficult to assess from the files. Hence, birthplace was chosen as a substitute for pragmatic reasons.

| **regional origins: detailed** | | | | | |
|---|---|---|---|---|---|
| Southern Bucovina | Northern Bucovina | Bessarabia | Regat | Soviet | total |
| 7 | 18 | 12 | 1 | 13 | 51 |
| 14% | 35% | 24% | 2% | 25% | 100% |

*tab. 10*

| **regional origins: Romanian vs. Soviet** | | |
|---|---|---|
| Romanian | Soviet | total |
| 38 | 13 | 51 |
| 75% | 25% | 100% |

*tab. 11*

It is not surprising that most arrestees were Romanian Jews and that every group of deportees was represented among the arrestees. After all, the deportees spoke Romanian and were thus more likely to be recruited by the Romanian occupiers into positions of authority. Most Jews deported to Transnistria by the Romanian regime were expelled from Bessarabia and Bucovina. Deportations

[9] TIBON: Brother's Keeper, p. 113.
[10] Ibid., p. 114.

from Romania proper were rare, nevertheless, there is even one arrestee from the Regat (Bucharest).

Most noteworthy is the sizeable group of local Soviet Jews among the arrestees. Soviet Jews' ranked lowest in the hierarchy of victims the Romanian perpetrators created within Transnistria.[11] They are also commonly understood to have suffered from more deplorable conditions than Romanian deportees in the ghettos. Suspected of being latent communists and lacking Romanian language skills, Soviet Jews are also believed to have had fewer chances of getting into ghetto functionary positions. Considering that one out of four arrestees was a Soviet Jew, the assumption of an almost exclusively Romanian Jewish corps of ghetto functionaries seems dubitable.

It is difficult to determine whether this distribution of arrestees' regional origins reflects the proportions of each group in ghetto administrations. This problem might be termed "arrest-patterns vs. service-patterns", and it persists across all categories of demographic data discussed here.[12] The distribution of arrestees could be due to how many people of each group had held positions in the ghettos, or it could be a pattern of who was arrested by Soviet authorities.

The problem can be framed as one of "light field" versus "dark field". In criminology, the sum total of crimes that comes to the attention of law enforcement is referred to as the "light field."[13] However, the authorities only become aware of crimes that are reported by the public or that the authorities investigate on their own initiative.[14] In addition to the light field, there is also a dark figure of crimes that do not come to the attention of the authorities.[15] If the bright field grows or shrinks, this does not necessarily mean that crime is increasing or decreasing.[16] The causes can also be an increased willingness to report crimes on the part of the population or increased investigative activity on the part of the authorities.[17] It should also be noted that if the authorities only selectively accept reports from the public, the reported crimes will remain in the dark field.[18] Investigative

[11] Ibid., p. 109.
[12] This problem in collaboration trials was first addressed by Penter: "But we also have to be aware that the profile of convicted collaborators may have depended as well on either the German recruitment policies or, later, on the Soviet bias in bringing charges." PENTER: Collaboration on Trial, p. 784.
[13] STEFFEN, Wiebke: Grenzen und Möglichkeiten der Verwendung von Strafakten als Grundlage kriminologischer Forschung, in: Die Analyse prozeß-produzierter Daten, edited by Paul J. MÜLLER (Historisch-Sozialwissenschaftliche Forschungen. Quantitative sozialwissenschaftliche Analysen von historischen und prozeß-produzierten Daten, vol. 2), Stuttgart 1977, p. 89–108, here p. 96.
[14] Ibid.
[15] Ibid.
[16] Ibid.
[17] Ibid.
[18] To be part of the light field crimes need to be "reported to police, recorded by police, and retained in police data systems." See: MAXFIELD, Michael G./BABBIE, Earl R.: Research methods for criminal justice and criminology $^{7}$2013, p. 436.

casefiles thus only allow us to analyze those crimes that came to the attention of the authorities and which those authorities investigated to a degree sufficient to produce such a file.[19]

A service pattern would mean that the "light field" of Jewish ghetto functionaries the Soviets arrested was a more or less representative sample of everyone who had served in such a position. Thus, the distribution of sociodemographic factors among the individuals in the "dark field" would then be roughly the same as within the "light field". An arrest pattern would mean that the "light field" was not representative of the overall phenomenon and that the Jewish ghetto functionaries in the "dark field" differed significantly from those whom the Soviets arrested.

Pointing towards the idea of arrest-patterns is the fact that some Jewish functionaries left the ghettos immediately after the arrival of the Red Army and headed towards Romania, from where they had been deported to Transnistria. Once these Romanian Jews were gone, the share of Soviet Jews in the pool of possible arrestees increased. Some former functionaries from Romania left even before the ghettos were liberated by the Red Army. In the investigative case files, such instances are mostly referred to as "fled with the Romanians" ("bezhal c rumynami") or "fled to Romania" ("bezhal v Rumyniiu").[20]

At least some Jewish ghetto functionaries not only left for Romania but succeeded in repatriating to the country. This is apparent from the fact that they were subject to criminal prosecution in Romania. Thus, in 1945, Romanian authorities arrested and tried Romanian army officials for crimes committed in Transnistria. Among the ten defendants were general Ion Topor, who had played an important role in the mass murder of Jews in Northern Bucovina and Bessarabia and the deportations from those regions.[21] Another defendant was major Gheorghe Botoroagă, the Romanian gendarmerie commander of Mogilev-Podol′skii.[22] Alongside these and other Romanian officials, two Jewish functionaries were put on trial: Mihai Danilov and Marcu Goldemberg.[23] The charges against Danilov revolved around his work as the head of the Mogilev-Podol′skii ghetto's Jewish council, Goldemberg was accused of having served as a secret informer for the Romanian gendarmerie there.[24]

Since some Romanian Jews successfully repatriated before Soviet authorities could arrest them at the place of the former ghettos, the proportion of Soviet Jews among arrestees might be inflated

[19] LEUSCHNER/HÜNEKE: Möglichkeiten und Grenzen, p. 464.
[20] Rakhmut, Samuil Khaimovich, USHMM, RG-31.018M, R-2838, F03, 322, p. 122. Taikh Maer Mendelevich, DAVO, D633, p. 31.
[21] DELETANT: Romanian Solution, p. 165–167. SOLONARI: Patterns of Violence, p. 761. IOANID: Holocaust in Romania, p. 124-126, 142-145.
[22] HAUSLEITNER: Überleben durch Korruption, p. 255.
[23] Topor, Ion, File P 007795, RG-25.004M, Selected records from the Romanian Information Service, 1936-1984, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 3–4.
[24] Ibid., p. 37–38.

relative to how many of them had actually worked in ghetto administrations. After all, Soviet Jews had been interned in ghettos at or near their places of residence, were thus more likely to be arrested by Soviet agencies and accordingly over-represented among the arrestees – which speaks for an arrest-pattern.

For deciding the question of arrest vs. service-patterns, it is thus essential whether former functionaries were mostly arrested at the place of the ghetto or elsewhere. If Soviet investigators only arrested people they could apprehend directly at the place of their supposed crimes, Soviet Jews were likely to be overrepresented. If the investigators cast a wide net and arrested former functionaries wherever they went, the different groups among the functionaries are likely evenly represented among those arrested.

Indeed, some facts speak *against* arrest-patterns and *for* an approximately proportional representation of former functionaries among the arrestees. While some ghetto functionaries left for Romania, they never made it there, since they were arrested on their route to repatriation. These were more than isolated incidents. Seventeen of the 51 arrestees in the present study were tried in Chernovtsy. But only eight of them were originally from that city or villages around it. Between 1944 and 1946, Chernovtsy became a transit point for at least 12.000 Jews from Soviet territory to Romania.[25] This initially only concerned Jews from Southern Bucovina, but eventually encompassed Jews from Bessarabia and Northern Bucovina as well.[26] It is highly likely that many of the aforementioned arrestees had tried to leave for Romania when they were arrested by Soviet agencies in Chernovtsy – right at the crossing point.

But in the volatile situation immediately before and after the Red Army liberated the ghettos, there are fringe cases where this distinction becomes tricky. Consider Adol'f Gershman, who had been the head of the Zhmerinka ghetto's Jewish council. On March 31, 1944, he was arrested by the transport department of the NKGB Vinnitsa region railway, seemingly on a train or a train station somewhere in the region.[27] This possibly happened in Zhmerinka, but the arrest documents are unclear here, Gershman might thus also have been arrested further away from the ghetto and thus be closer to the cases of the above-mentioned Jews arrested in Chernovtsy.[28] What are we to

[25] ALTSKAN, Vadim: The Closing Chapter. Northern Bukovinian Jews, 1944–1946, in: Yad Vashem Studies 2 (2015), p. 1–31, here p. 21.
[26] Ibid., p. 23.
[27] Gershman Adol'f Samsonovich, D67437, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU), p. 17.
[28] Since he fell into the jurisdiction of the transport department, the investigation also became rather peculiar, with Gershman being brought to Moscow for three months before returning him to Zhmerinka for the rest of the investigation. See: Ibid., p. 175. Gershman also came to the questionable fame of being included in a NKGB circular as an example of bad investigative work. According to the circular, the officers arresting Gershman had first investigated the case only superficially, leaving many details of Gershman's activities unchecked. When someone finally cared to ask about these details, many witnesses had already relocated and were now hard to reach, the circular's authors complained. See: Circular of the People's Commissar of State Security of the USSR № 33 of 28.02.1945 On

make of this? Since Gershman had not yet successfully relocated when he was arrested and since he was arrested still in the same region as the former ghetto, we counted him as someone arrested at the place of the ghetto.

Even if they had made it to Romania, former ghetto functionaries were sometimes still arrested, brought back to the place of the former ghetto they had served in, and tried there. Such was the case with Pinkhos Rubinshtein, the former head of the Balta ghetto's Jewish council. When he was arrested in Bucharest in August 1947, Rubinshtein worked as a translator for the Allied Control Commission there.[29] A month later, he was sent to Balta by prisoner transport, where the rest of the investigation and Rubinshtein's eventual trial took place.[30]

In sum, the proportions of those arrested directly at the place of the ghetto to those arrested elsewhere speak *for* a more or less proportional representation of former functionaries among the arrestees. Altogether, only 21 arrestees were taken into custody at the place of the ghettos, but 30 elsewhere. This diminishes the likelihood of a bias introduced by the movements of arrestees after the ghettos were liberated. Such arguments notwithstanding, the question of whether the proportions of Jews from different regions among the arrestees are representative of those among the Jewish ghetto functionaries in Transnistria remains quite difficult to assess.

The diversity of regional origins is not mirrored in arrestee's citizenship, because the Soviet Union had occupied Bessarabia and Northern Bucovina after the Ribbentrop-Molotov pact and forced Soviet citizenship upon the regions' inhabitants. Only eight of the 51 arrestees were recorded as Romanian citizens. Among those eight Romanian citizens are the man from Bucharest, five of the seven men from Southern Bucovina, and two men from Bessarabia. We would expect those from Southern Bucovina to have been Romanian, those from Bessarabia to have been Soviet citizens by the time of arrests. The disparities between the effects of changing sovereigns and individual citizenship are mostly due to the fact that our categorization is based on birthplace. People moved around and thus wound up in other regions when the relevant events took place (such as the Soviet annexation of Bessarabia and Northern Bucovina).

On the other hand, it is safe to assume that almost 70% of the arrestees with Soviet citizenship were "new" Soviet citizens. Based on categorization by birthplace, these people only became Soviet citizens in 1940, when Bessarabia and Northern Bucovina were Sovietized. Of the 43 Soviet citizens arrested, only 13 had been subjects of that state before 1940. It is important to note that when we speak of "Soviet Jews" among the arrestees in the following, only those 13 men are meant. On the

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the next tasks of agent-operative work on for state criminals in transport, 28.02.1945, F9O1D5, p. 243–301, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU), p. 270.

[29] Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 6.

[30] Ibid., p. 92.

level of the collective portrait, birthplace, not citizenship is the decisive indicator for the communal-class separation in the ghettos.

In the mean, the 51 arrestees were middle-aged men, half of them from a rural, half from an urban background, most of them married (almost 90%), half of them with children. The Soviet sub-group has a more urban background (62% as compared to 50% for the Romanian Jews). A short look at the age distribution among the arrestees shows that the term "elder" (starosta), occasionally used to describe arrestees' positions, should not be taken literally.[31] Only 16% were older adults.[32]

| **age groups** | | |
|---|---|---|
| *age groups* | *individuals* | % |
| young adults (aged 18-35) | 13 | 25% |
| middle-aged adults (aged 36-55) | 30 | 59% |
| older adults (aged 56 and older) | 8 | 16% |
| total | 51 | 100% |

*tab. 12*

What about the social background of these people? Before discussing the numbers, it is imperative to digress and provide some background information about Soviet class terms. A peculiar understanding of class emerged after the revolution and Soviet class terms are anything but "neutral" depictions of socioeconomic status. Understanding the specific Soviet concept of class will help to ascertain whether investigators and judges showed class bias.

In the decades after they rose to power, the Soviets increasingly transformed the meaning and function of class terms. From a concept describing an individual's socioeconomic position, "class" was increasingly turned into a semi-hereditary, legalized category describing an individual's relationship with the state – and allowing the state to tell friends from foes. In content, Soviet class terms thus became similar to the estates of prerevolutionary Russia. Even after the Soviets officially ended outright legal discrimination based on ascribed class, the sorting of individuals into class categories potentially still greatly impacted their fate in the USSR.[33]

[31] Bosharnitsan, Samuil Samuilovich, USHMM, RG-54.003*06, p. 266. Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 54.

[32] Even if the age distribution is broken down in ten-year-brackets, those aged 46 and above make up only 33%.

[33] Recognizing that the Soviets transformed class terms into a tool for friend-foe distinction is a question of how we interpret class-related source terms. Whether it is necessary to study class in the sense of economic stratification on the analytical level is a completely separate issue. Mark Edele makes a good argument for this necessity. Responding to Edele, Depretto agrees that it is necessary to study stratification, but argues that stratification in the USSR was a political, rather than economic issue. It is important not to confuse issues of conceptualization with issues of measurement here. If one decides to study class as economic stratification, one has to figure out how to interpret the

During the 1920s and 1930s, class became a problem for the Soviets. The old "enemy" classes (such as the bourgeoisie and the aristocracy) were declared defeated, but this victory proved disorientating. Who was now to be blamed for social and political problems and to be fought against to solve them? Problems in identifying foes were worsened by similar confusion on the friend side. There was such strong social mobility, "typically, from blue-collar positions to white-collar managerial or from peasant to industrial working class" that it became difficult for the self-proclaimed vanguard of the proletariat to reliably identify its core constituency, the industrial workers.[34] How to deal with a worker turned manager and former well-off peasant turned worker?

One answer was to make class a legal category on which an individual's rights depended. From the 1918 constitution onwards, there was outright legal discrimination based on class. Only "toilers" had the right to vote.[35] When passports were reintroduced in 1932, they included a categorization by class (termed "social position"). [36] Every passport holder was categorized by police organs "occupationally, ethnically, and socially through categories written into the passport document".[37] In effect, class had now become quite similar to the estates of the prerevolutionary empire. [38] "Class" was no longer something only describing economic positions, but increasingly also something ascribing a certain relationship to the state.[39] Thus, class became one of the indicators determining an individual's position in an "increasingly complicated hierarchy of privileges and restrictions, of exclusions, partial exclusions, and graduated constraints on movement that affected the entire Soviet population."[40]

Further complicating the issue, "class" became a semi-hereditary and contradictive concept. To track friends', and especially foes' movements into new social positions, the Soviets increasingly asked about class origins, supplementing the question "'What are you?'" with "'What were you before?'".[41] Such a "genealogical" approach was not without controversy, but widespread. [42] As

ascribed Soviet class terms. Did they still say something about economic positions, or were they all largely fictitious, such as the term "kulak"? This last question is a problem of measurement, while the question whether class as economic stratification is a viable analytical category is one of conceptualization. See: EDELE, Mark: Soviet Society, Social Structure, and Everyday Life. Major Frameworks Reconsidered, in: Kritika: Explorations in Russian and Eurasian History 2 (2007), p. 349–373, here p. 351. DEPRETTO, Jean-Paul: Stratification without Class, in: Kritika: Explorations in Russian and Eurasian History 2 (2007), p. 375–388, here p. 377–380.

34 FITZPATRICK, Sheila: The Bolsheviks' Dilemma: Class, Culture, and Politics in the Early Soviet Years, in: Slavic Review 4 (1988), p. 599–613, here p. 612.

35 EADEM: Ascribing Class. The Construction of Social Identity in Soviet Russia, in: The Journal of Modern History 4 (1993), p. 745–770, here p. 752.

36 Ibid., p. 763.

37 SHEARER, David: Elements Near and Alien. Passportization, Policing, and Identity in the Stalinist State, 1932–1952, in: The Journal of Modern History 4 (2004), p. 835–881, here p. 845.

38 FITZPATRICK: Ascribing Class, p. 753.

39 DEPRETTO: Stratification without Class, p. 380.

40 SHEARER: Elements, p. 839.

41 FITZPATRICK: Bolsheviks' Dilemma, p. 612.

42 FITZPATRICK: Ascribing Class, p. 756.

Fitzpatrick noted: "On the one hand, class divisions were seen as something that had been overcome in Soviet society. On the other hand, the ascribed socio-legal categories had become highly hereditary. And even if enemy classes were gone as social compounds, Stalin argued, they still had a living biological substrate in the individual former members of these very compounds, whatever their new occupation and social position might be."[43] Identifying this "substrate" meant asking about social origins.

Even when official legal discrimination ended, ascribed class still had an enormous impact on people's treatment by Soviet agencies. With the 1936 Stalin constitution, the regime moved away from outright legal discrimination – at least on paper. [44] But class distinctions remained highly influential for access to resources, education, and party membership – and for the above-mentioned exclusions.[45] Admittedly, the influence of class categories on Soviet agencies' behavior was not static. For instance, the 1930s saw a shift in the friend-foe-distinctions used in policing from class categories towards "marginality and criminality", which meant that "socially harmful elements" were increasingly targeted.[46] But class categories still featured prominently in large-scale repression campaigns. Well into the 1940s, Soviet security agencies still included those deemed enemies by virtue of their class origins in successive waves of repressions (see chapter 3).[47] Thus, especially in the realm of state security which is the focus of this study, class mattered, and class stigmata carried a potentially deadly weight.

Judging by the complexity of Soviet class terms, any potential class bias with which investigators and judges potentially perceived former ghetto functionaries would thus have been based on an arrestee's education, occupation, current social position, as well as his social origins. Regarding all these categories, the arrestees present a fairly diverse group.

When examining class terms, data quality needs to be addressed once more. In the investigative case files, social origins were either recorded as the profession of a person's father ("Father tailor."), or as a class-category without any reference to concrete professions ("Social origins: Workers.") – or both ("Father professor of foreign languages. Social origins: employees.").[48] Most common was the isolated class-category. Nonetheless, there are cases when only fathers' professions were recorded. In these instances, we assigned class categories based on the available data, i.e. by the

[43] Ibid., p. 759.
[44] Ibid., p. 758.
[45] EDELE, Mark: Stalinist society, 1928-1953 (Oxford histories), Oxford 2011, p. 166.
[46] SHEARER: Elements, p. 851, 875.
[47] FITZPATRICK: Ascribing Class, p. 761. BUDNITSKII: Great Terror of 1941, p. 458.
[48] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 66. Belikovetskii Matvei Isaakovich, D2740, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Vinnyts′ka oblast′) (HDA SBU VO), p. 5. Gabor Gerbert Leonovich, D1601, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Chernivets′ka oblast′) (HDA SBU ChO), p. 6.

example of those instances in the dataset where both father's profession and class category were recorded.[49]

Regarding social origins ("What were you before?"), the arrestees were a heterogeneous group (see the following table). The different backgrounds in the group span the Soviet hierarchy of class terms, including everything from "desirable" working-class origins to undesirable "former people" such as merchants. Soviet bias towards "employees" is more difficult to assess and needs to be correlated with education, occupation, and regional origins.

| **social origins: all arrestees** | | |
|---|---|---|
| peasants | 3 | 6% |
| craftsmen | 2 | 4% |
| workers | 16 | 31% |
| employees (white-collar) | 23 | 45% |
| merchants | 6 | 12% |
| no data | 1 | 2% |
| *total* | 51 | 100% |

*tab. 13*

The sizeable group with worker parents could be a result of desirability bias. After all, the data was mostly self-reported, with no documentary evidence to back it up.[50] For an arrestee, it did not take a lot of creativity to assume that Soviet investigators and judges probably preferred people of working-class background. And in the immediate aftermath of the war, Soviet authorities often encountered "identity fraud" – individuals using the chaotic circumstances to hide specific facts about themselves or posing as someone else completely.[51]

On the other hand, arrestees often wound up in ghettos together with acquaintances from their prewar life. When they served as ghetto functionaries, arrestees had become visible persona of ghetto life and the subject of ghetto talk. Therefore, arrestees had to assume that some rudimentary information about them became public knowledge in the ghetto population. Once in custody, the arrestees had to suspect that the investigators might find witnesses who could corroborate at least

[49] Another approach would be to assign categories based on the Soviet dictionary of professions used for the Soviet census surveys. But it is dubitable that Soviet officers carried one with them – hence trying to emulate their practice as it can be grasped from the investigative casefiles seems empirically more sound. MERRIDALE, Catherine: The 1937 Census and the Limits of Stalinist Rule, in: The Historical Journal 1 (1996), p. 225–240, here p. 227.

[50] It is thus questionable whether relying on the biographical data Soviet officers recorded is effective in sidestepping problems with the reliability of depositions, as Bernstein and Makhalova suggest. The division seems somewhat artificial. Both the biographical data and the contents of testimonies are information self-reported by defendants under the conditions in NKVD/NGKB or SMERSH custody. BERNSTEIN/MAKHALOVA: Aggregate Treason, p. 40.

[51] EDELE: Stalin's defectors, p. 140.

the most basic information.[52] And getting caught lying about the most basic information might devaluate all following testimony in the eyes of the investigators, how truthful it might ever be. Based on such a risk-reward calculation, it seems implausible, though not impossible, that many arrestees gave false information about their social origins.

Broken down by regional origin, significant differences in the class origins of Soviet and Romanian Jews emerge.

| **social origins: Soviet Jews** | | |
|---|---|---|
| peasants | | 0% |
| craftsmen | 2 | 15% |
| workers | 7 | 54% |
| employees (white-collar) | 2 | 15% |
| merchants | 1 | 8% |
| no data | 1 | 8% |
| total | 13 | 100% |

*tab. 14*

| **social origins: Romanian Jews** | | |
|---|---|---|
| peasants | 3 | 8% |
| craftsmen | | 0% |
| workers | 9 | 24% |
| employees (white-collar) | 21 | 55% |
| merchants | 5 | 13% |
| no data | 0 | 0% |
| total | 38 | 100% |

*tab. 15*

From the viewpoint of Soviet class hierarchy, the Romanian Jews had less "desirable" social backgrounds than the Soviet Jews. Almost 70% of Soviet Jews are of worker or craftsmen backgrounds. A similar share of Romanian Jews is of employee and merchant background. The proportions of worker to employee backgrounds among Soviet and Romanian Jews are inverted – a bit more than half of both sub-groups had the respective social origins. Adding to this was the fact that all those with peasant backgrounds were Romanian Jews and all were from "middle peasant" (seredniaki) families.[53] This was not as bad as a "kulak" background, but not as good as

[52] For example, see this witness testimony specifying an arrestee's background. The witness claimed to have known the arrestee since 1930. Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 79.
[53] See for example: Akhtemberg, Moisei Iakovlevich, USHMM, RG-54.003*01, p. 55.

"poor" peasant (bedniaki) origins either.[54] Unambiguously undesirable was a merchant background, since merchants belonged to the "former people", a meta-category for people deemed "remnants" of Tsarist times that encompassed the aristocracy as well.[55]

The category of employees (sluzhashchie) is more difficult to fix in the Soviet class hierarchy. It is often translated as "urban white-collar workers".[56] "Employees" included those in free professions, as well as administrative personnel, etc. – practically "anyone who was not a worker or peasant".[57] According to Fitzpatrick, "employees" were perceived as one of the groups which was "neither clearly proletarian nor clearly bourgeois" and whose proponents "were supposed to be drifting between the two poles, capable of responding to the attraction of either."[58] Notably, "employees" also included the crucial group of "specialists", such as engineers and other personnel with some form of secondary or higher technical education.[59] Such "specialists" enjoyed certain privileges.[60] As a social position based on someone's occupation, the status of "employee" could therefore coincide with both "desirable" and "undesirable" social backgrounds. As a type of social origins in itself, the category seems rather ambivalent.

The fact that the Romanian Jews came from non-Sovietized or only briefly Sovietized territories probably reduced the ambivalence inherent in the "employee" category – in a negative direction. When we look at the concrete professions mentioned for Romanian Jews' fathers, the term "social origins: employees" probably becomes more similar to "bourgeois". The professions recorded include "owner of a small sawmill", "professor of foreign languages" and "physician".[61] While the last two are less odious, the "worst" from a Soviet viewpoint was probably "director of a bank" (in a capitalist country).[62]

Considering education, the arrestees again appear as a group both diverse and patterned according to the Soviet-Romanian divide. None of the arrestees were illiterate, but almost a third was merely semi-literate, literate, or had received only elementary education. More than 40% had

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[54] FITZPATRICK: Ascribing Class, 751, 764. In categorizing peasants, the investigators used a crude mix of 1920s and 1930s terms. We find both the trifold scheme of "poor peasants", "middle peasants" and "kulaks", as well as the later binary distinction of kolkhoz versus non-collectivized peasants. Closest to a "kulak" was probably defendant Vainshtok, who had employed seasonal laborers during harvest. Shtrakhman, Nakhman Mortkovich, USHMM, RG-54.003*44, p. 13. On the significance of employing laborers for being categorized as a "kulak", see: BINNER et al.: Massenmord und Lagerhaft, p. 363.

[55] EDELE: Stalinist society, p. 51. On the persecution of "merchants" among "former people" during the mass operations see: BINNER/JUNGE: "S etoj publikoj", p. 205.

[56] FITZPATRICK: Ascribing Class, p. 751. EDELE: Stalinist society, p. 166.

[57] LEWIN, Moshe: The Soviet Century, London, New York 2005, p. 55.

[58] FITZPATRICK: Ascribing Class, p. 751.

[59] LEWIN: Soviet Century, p. 55.

[60] Ibid., p. 58–59.

[61] Zand Bruno Rafailovich, HDA SBU VO, D3033, p. 40. Gabor Gerbert Leonovich, HDA SBU ChO, D1601, p. 6. Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 6.

[62] Gabor Gerbert Leonovich, HDA SBU ChO, D1601, p. 45.

received secondary education, almost a third had attended an institution of higher education. Of the most educated, only one was a Soviet Jew, and his higher education was incomplete. More than 90% of those with tertiary education were thus Romanian Jews. Among the Soviet sub-group, those with only basic education (up to and including elementary) make up more than 60%, among the Romanian sub-group only about 15%.

| **education** | | |
|---|---|---|
| semi-literate | 4 | 8% |
| literate | 5 | 10% |
| elementary | 5 | 10% |
| secondary | 22 | 43% |
| tertiary | 15 | 29% |
| *total* | 51 | 100% |

*tab. 16*

| **education: Romanian Jews** | | |
|---|---|---|
| semi-literate | | 0% |
| literate | 4 | 11% |
| elementary | 2 | 5% |
| secondary | 18 | 47% |
| tertiary | 14 | 37% |
| *total* | 38 | 100% |

*tab. 17*

Arrestees' current "social position" was not recorded as such, but can be extrapolated from the categories of profession and last occupation. Again, there are problems with the quality of the data. Professions ("spetsial'nost'") were recorded selectively, with no data available for 15 arrestees. Similarly, seven arrestees' last occupations ("rabota") were not recorded, for two other arrestees, their positions in the ghetto were counted as their last job. Both professions and occupations are fairly diverse among the arrestees, but most fall into administrative functions (primarily bookkeeping), handicrafts, and unskilled (industrial) labor. If we combine the available data on professions and the last occupations, this data can be sorted into the Soviet class categories discussed above.

| social position | | |
|---|---|---|
| employee | 25 | 49% |
| worker | 17 | 33% |
| unemployed ("b.o.z.") | 7 | 14% |
| peasant | 1 | 2% |
| student | 1 | 2% |
| *total* | 51 | 100% |

*tab. 18**

**In three cases neither job nor profession were recorded, the assignment of class terms was based on education and social origins.*

As with social origins, arrestees' "social positions" at the time of arrest include ambivalent, as well as "desirable" and "undesirable" categories. There is a similar worker-employee divide as in the category of social origins. Additionally, some arrestees' fall into the category of "unemployed" ("bez opredelennykh zaniatii"), which was highly stigmatized and synonymous with a "parasitic" lifestyle.[63] We thus have the ambivalently viewed "employees", to which we might add the student. To the undesirable "unemployed" we might add the peasant since his profession was recorded as "edinolichnik", i.e. non-collectivized peasant.[64] In summary, a third of arrestees had a desirable social position, half an ambivalent one, and the rest an undesirable position. The influence of this category on targeting seems thus limited.

Concerning targeting, it is also interesting to see whether Soviet authorities merely picked people who were already on file for prior convictions. This is not the case, the "organs" had only had two of the 51 arrestees in their sights before. One of those two men had not even been convicted of a crime but only been under investigation. Being an "old acquaintance" of the NKVD was thus not a necessary condition for being arrested as a former ghetto functionary.

A similar picture emerges when we look at political affiliation. Two arrestees were former Komsomol members, two were members of the Romanian communist party and one was a former member of a Zionist party ("Poale Zion"). Four of the arrestees had earlier been tried in Romania for communist underground activities. Neither activities in the Komsomol nor the Romanian communist movement thus protected former ghetto functionaries from arrest. Not even a job at

[63] That particular phrase was only once used in the files, the investigators noted "temporarily works nowhere" more often, which we subsumed under "b.o.z." in the collective portrait. For the role of this stigma in the mass operations see: BINNER/JUNGE: "S etoj publikoj", p. 193. Jones shows that this stigma was very much alive in the postwar years. JONES, Jeffrey: Everyday life and the "reconstruction" of Soviet Russia during and after the great Patriotic War, 1943–1948 (The Allan K. Wildman Group historical series, vol. 3), Bloomington, Ind. 2008, p. 190.

[64] On the one hand, this term did not signify the same stigma as "kulak".FITZPATRICK: Ascribing Class, p. 764. On the other hand, the categories could become somewhat fluid, as during the mass operations, when many "edinolichniki" were persecuted as former kulaks. BINNER/JUNGE: "S etoj publikoj", p. 188.

the NKVD did, since SMERSH arrested one of the NKVD's bookkeepers, albeit someone who worked for the Highway Construction Department (USHOSSDOR), and not the political police.[65] And in relation to the whole group of arrestees, these cases are few anyway – the overwhelming majority had no political affiliation whatsoever. Former functionaries' politics did not influence whether they were arrested.

Prior Red Army service was rare among arrestees. Nine out of ten arrestees had not participated in World War II – which is a natural result of our focus of interest. After all, we only collected investigation and trial documents for people who wound up in ghettos, and the chances for that were smaller for people who joined the ranks of the Red Army before the Romanians captured the territories which became Transnistria. Thus of the five arrestees who had fought in World War II, only one had been in Red Army uniform before he was interned in the ghetto. The other four were conscripted into the Red Army after their liberation from the ghetto. Soviet investigators also recorded prior military service in other armies. Three-quarters of the arrestees had not served in any other military, one had served in the Tsarist, four in the Austro-Hungarian, and eight in the Romanian army. Service in the Romanian armed forces was probably the most politically dubious for Soviet authorities, not only because of World War II but also because of the interwar tensions between the USSR and Romania.[66] Nevertheless, military service seems largely irrelevant to the question of targeting.

When we combine the various sociopolitical and biographical factors which were recorded about the arrestees, at maximum half of them had at least one "undesirable" trait. And we only arrive at a figure of about 50% if we define the criteria for whom Soviet investigators potentially viewed as "aliens" and "enemies" as wide as possible. Thus defined they even include people who at some point in their lives had been lawyers in a capitalist country. Hence, even if we combine all possible traits which could have triggered a category-based targeting (as in the prerogative-state 1930s mass operations), we can only explain why half of the arrestees were prosecuted.

Lastly, let us review the positions defendants had held in the ghettos. We are less concerned here with the concrete responsibilities and actions of arrestees in the ghetto as with the perspective of the Soviet authorities on them. The question of whether the hierarchy Soviet officers ranked arrestees in was adequate to what happened in the ghetto is largely independent of the question of whether that ranking influenced targeting, prosecution, and adjudication.

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[65] Treistman, Levi Moiseevich, RG-54.003*53, War Crimes Investigation and Trial Records from the Republic of Moldova, 1944-1955, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 7.

[66] Conversely, regular service in the Tsarist military did not turn one into an enemy of Soviet power in the eyes of investigators. See: BINNER et al.: Massenmord und Lagerhaft, p. 363.

We grouped the various source terms into four analytical categories: policemen, chiefs of police (and deputies), Jewish council members, heads of Jewish councils (and deputies). "Policemen" and "chiefs of police" closely follow the wording of the source terms, such as "policeman in the Jewish ghetto", "chief of the Jewish police".[67] The term "council" does not appear in the investigative case files, where "committee" ("komitet") is the most prevalent term, rivaled only by "community" ("obshchina"), which here referred to an organizational structure, rather than a collective.[68] We have thus grouped these source terms under the more familiar historiographical term "Jewish council". Various terms were used to describe the leading figures of the Jewish ghetto administrations. Most common are "primar", the Romanian term for mayor, "chairman of the Jewish committee", and the Russian "starosta" – "elder".[69] Phrases like "boss of the Jewish ghetto" and similar terms can also be found.[70] All of these terms signify an exposed individual who held the highest authority within the administration; we thus grouped them into the term "head of Jewish council".

Divided into these categories, those higher up in the hierarchy are strongly represented, and most likely over-represented among the arrestees. Police chiefs and heads of Jewish councils make up almost half of former ghetto functionaries targeted by Soviet authorities. This speaks for an arrest-pattern, rather than a service-pattern. We can assume that fewer people had served as *heads* of Jewish councils than those who had served as *members* of Jewish councils or policemen – but among those Soviet authorities arrested, the proportions are inversed. The fact that we counted heads and their deputies in one category does not change this – of the 21 people grouped together here, only three were deputies.

| **positions in ghetto** | | |
|---|---|---|
| heads of JC + deputies | 21 | 41% |
| JC members | 19 | 37% |
| police chiefs + deputies | 4 | 8% |
| policemen | 7 | 14% |
| total | 51 | 100% |

*tab. 19*

[67] Kutsenko Zus′ Iosifovich, D28772, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Vinnyts′ka oblast′) (HDA SBU VO), p. 10. Sherf Isaak Lazarevich, HDA SBU VO, D20752, p. 4.
[68] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 2. Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 3.
[69] Shtrakhman, Nakhman Mortkovich, USHMM, RG-54.003*44, p. 1. Vaitsman Iulii Oseevich, D5399-o, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU), p. 43. Zaslavskii Iosif Borukhovich, D22904, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU), p. 3. The term "elder" should not be taken literally – the age distribution among the heads of Jewish councils is almost the same as that among all arrestees and the youngest head of a Jewish council was born in 1925.
[70] Gershman Adol'f, HDA SBU, D67437, p. 2.

The positions arrestees had held in the ghettos (at least according to the Soviet categorization) were strongly patterned along the lines of geographical origins. For the heads of Jewish councils, the proportions of Romanian to Soviet Jews are the same as for the arrestees as a whole. We see here that even the highest positions of authority in the Jewish ghetto administrations were open to Soviet Jews, although they ranked lowest in the Romanian perpetrators' hierarchy of Jewish victims. But on the lower levels of authority, the distribution of geographical origins is disproportionate. Romanian Jews are strongly overrepresented among regular Jewish council members. To a lesser, but significant degree, Soviet Jews are overrepresented in police functions, including leading positions. This divide between the groups also coincides with their different educational levels – the more educated Romanian Jews were better qualified for administrative tasks.

| **positions in ghetto: Romanian vs. Soviet Jews** | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | heads of JC + deputies | | JC members | | police chiefs + deputies | | policemen | |
| Romanian Jews | 16 | 76% | 18 | 95% | 2 | 50% | 2 | 29% |
| Soviet Jews | 5 | 24% | 1 | 5% | 2 | 50% | 5 | 71% |
| total | 21 | 100% | 19 | 100% | 4 | 100% | 7 | 100% |

*tab. 20*

Again, we encounter the problem of arrest vs. service-patterns. Those tried for having served in mid-level positions were almost exclusively Romanian Jews and among those tried for having served in police functions, Soviet Jews were overrepresented. Is this a result of who served in such positions or who was targeted for arrest? We argued that the overall overrepresentation of higher positions of authority compared to mid-and lower-level positions likely reflects an arrest-pattern. But the proportions of Romanian to Soviet Jews on the lower levels of authority might well reflect a service-pattern. After all, putting Soviet Jews primarily into the "dirtiest" and most "hands-on" positions would fit the perpetrators' hierarchy of victims well. But ultimately, without a larger study of the Jewish ghetto administrations of Transnistria which goes beyond Soviet trials, these interpretations remain somewhat speculative.

## Conclusion

The collective portrait presented here yielded results often in line with the findings of similar previous research into the background of arrestees in Soviet collaboration trials in general.[71] Earlier

[71] To date, the largest such study was conducted by Bernstein and Makhalova, who analyzed the metadata of 955 trials from Crimea and Ukraine. The materials originate from the archives of the Ukrainian Secret Service SBU and were studied by the authors at the USHMM, which holds copies. Regarding representativeness, Bernstein's and Makhalova's study thus has many similar problems as the present analysis (see chapter methods). BERNSTEIN/MAKHALOVA: Aggregate Treason, p. 33, 36-39.

studies found that neither social origins nor prior convictions played a role in who was targeted for criminal prosecution as a collaborator.[72] More educated arrestees were more likely to be charged with having held administrative positions, less educated with having held police positions.[73] The same "loyalty standards" were applied to "new" Soviet citizens from territories annexed by the USSR in 1939/1940 as to those from the "old" territories.[74] And we might add: even to people who were not Soviet citizens at all, since our 51 arrestees include Romanian citizens as well. Arrestees in collaboration proceedings were representative of the urban-rural divide of the overall population, but it is unclear if the same is true for Communist party membership.[75] Only a few women were arrested under collaboration charges, which again fits the present collective portrait well – for former Transnistrian ghetto functionaries, not a single case of a woman could be found.[76]

In sum, the arrestees present a demographically and socially diverse, yet patterned group. That collective did not only consist of educated "bourgeoise" Romanian Jews, as Diana Dumitru wrongly argued.[77] The defendants present a stratified group and also include a significant number of Soviet Jews. Hence, Soviet authorities faced a set of defendants who did not, or only partially, fit these authorities' ideological clichés. To be sure, some exhibited traits which were deemed undesirable in the 1940s USSR, such as the "wrong" social backgrounds. But these traits were not necessary conditions for a former ghetto functionary to be targeted by Soviet authorities. Even the "right" social background and the "right" political credentials did not shield former functionaries from arrest and prosecution. This is a first indicator that *targeting* ghetto functionaries for criminal prosecution was not category-based and thus not driven by the principles of the prerogative-state. It might still have influenced the modes of *prosecution* and *adjudication* or the severity of *sentencing*, but that stands to clarify (ds2-3, 14). Another result is the observation that former functionaries in higher positions of authority were disproportionally targeted for prosecution. This too speaks for a mode of targeting oriented towards individual behavior and proof of individual guilt, rather than group affiliation.

[72] Ibid., p. 41–42.
[73] Ibid., p. 45.
[74] PENTER: Local Collaborators, p. 12.
[75] BERNSTEIN/MAKHALOVA: Aggregate Treason, p. 45.
[76] Ibid., p. 46. This is not to say that there were no women ghetto functionaries. In Ukraine, Ida Teplitskaya-Shkodnik was tried in 1946 for her activities in the Uman' ghetto. See: Teplitskaia-Shkodnik, Ida Elovna, USHMM, RG-31.018M, R-62, 20950.
[77] These faulty assumptions highlight the danger inherent in only working with the USHMM collections. DUMITRU: Gordian Knot, p. 735.

# How were former ghetto functionaries prosecuted and tried? An overview

After examining the question of who was prosecuted, let us turn to the question of how these people were prosecuted (still on analytical level C)). Three questions guide the analysis. First, which prerogative-state and normative-state elements can be identified in the prosecution of former ghetto functionaries? Second, did Soviet authorities treat these defendants different from other people accused of collaboration? Third, in this and the following chapter, an overarching question is whether convictions and sentences were category-based (ds2-3, 14). Did Soviet authorities arrest people more often and/or punish them harsher if they perceived them as "aliens" or "enemies" according to some inherent trait? Or were these authorities prosecuting concrete acts and subsuming them under the respective statutes of criminal law? We begin by examining the timing of arrests, the length of investigative custody and other basic facts about the investigation phase. We then turn to the adjudication phase, including crucial issue of conviction rates, the severity of sentences, and the legal instruments the Soviet judiciary used, comparing patterns in the prosecution of former ghetto functionaries to general trends. The sentencing bodies and the question of legal counsel are examined as well. A last significant complex is that of confessions, witness testimony and the publicity of trials, which we describe in detail. Concluding the chapter, we correlate the prosecution of former functionaries with the findings of the collective portrait. We conclude that a possible category-based pattern in how Soviet officials adjudicated cases of former functionaries is the more severe treatment of Soviet Jews.

## Investigation phase

Jewish ghetto functionaries faced criminal prosecution early after the Red Army liberated the ghettos. Almost all arrestees were taken into custody in 1944, only a few between 1945 and 1949. Compared to Mozokinh's union-wide data, this is unusual, since there is no such sharp decline in arrests after 1944. Compare the following two tables:

| **year of arrest: ghetto functionaries** | | |
|---|---|---|
| 1944 | 38 | 78% |
| 1945 | 7 | 14% |
| 1946 | 1 | 2% |
| 1947 | 2 | 4% |
| 1949 | 1 | 2% |
| total | 49 | 100% |

*tab. 21**

**no data available for two arrestees*

| arrests under article 58-1 / 58-3 (Mozokhin's data) | | |
|---|---|---|
| 1944 | 58875 | 26% |
| 1945 | 56661 | 25% |
| 1946 | 44906 | 20% |
| 1947 | 18295 | 8% |
| 1948 | 23912 | 11% |
| 1949 | 19567 | 9% |
| total | 222216 | 100% |

*tab. 22***

***1944-1946 – "Treason to the Motherland (art. 58-1 "a" and "b" Criminal Code)"; 1947-1949 – "Treason and assistance to the occupiers (art. 58-1 "a" and "b" and 58-3 Criminal Code)"*

Note that the Soviet statistics Mozokhin reproduced have some problems. Initially, article 58-1 was explicitly delimited from other statutes. Then "traitors" (58-1) and "accomplices" (58-3) were thrown together from 1947 onwards. But even if we consider only the years 1944-1946 in Mozokhin's data, we do not see a similar drop in arrests as in the group of Transnistrian ghetto functionaries. In the union-wide statistics, there is only a slow decline (37% in 1944, 35% in 1945, 28% in 1946). Compared to union-wide data, our group of arrestees thus stands out.

Besides Mozokhin's statistics, the data collected by Bernstein and Makhalova offers another contrast class, namely Ukraine and Crimea *as those regions appear in the USHMM collections*.[1] The authors analyzed the metadata of 955 trials from Crimea and Ukraine based on materials collected at the USHMM which originated in the archives of the Ukrainian Secret Service SBU.[2] The authors made the resulting data available online.[3] Based on these data, it appears highly likely that the USHMM collection is not a representative sample of all Soviet collaboration trials in Ukraine. Filtering the data for the crucial years of 1944 and 1945, the USHMM collection contains no cases that were terminated at the pretrial stage, while it should contain between ten and fifteen percent of such cases (see chapter 5). Moreover, the rate of death sentences is 26% when it should be around 5% (see statistics provided below) if the USHMM collection were a representative sample of all collaboration trials. Keeping these problems in mind, a comparison to Bernstein's and Makhalova's figures is instructive nevertheless. There are so few data sets available that any tendency that can be observed across the different sets with their specific problems can be

[1] Note that comparability between the different data sets is limited, since the legal instruments they account for vary. Yet for a broad overview of arrest trends, these differences are negligible.
[2] BERNSTEIN/MAKHALOVA: Aggregate Treason, p. 33, 36-39.
[3] https://hist.hse.ru/data/2018/10/26/1142268202/rg31018english%20anonymized.xlsx

considered robustly established. Regarding the relevant years, there is a drop in arrests after 1944, but a less significant one than for the ghetto functionaries:

| year of arrest: USHMM files | | |
|---|---|---|
| 1944 | 406 | 53% |
| 1945 | 71 | 9% |
| 1946 | 78 | 10% |
| 1947 | 68 | 9% |
| 1948 | 79 | 10% |
| 1949 | 57 | 8% |
| total | 759 | 100% |

*tab. 23*

The timing of arrests is thus specific for our group of arrestees. We might attribute this to chance, or the specific circumstances of the ghettos, or a regional pattern in Ukraine/Moldova, or to a bias introduced by how the investigative case files for this study were retrieved. Unfortunately, none of these explanations are satisfactory. Some are less convincing than others, but even the better ones remain speculative.

We could assume that former functionaries were likely to be arrested immediately after liberation since their confinement in the ghettos up until liberation decreased their chances to go someplace else before they were arrested. But this is not true. As shown above, only 21 of the 51 former functionaries were arrested directly at the place of the former ghetto (see chapter 7). What is more, being arrested at the place of the ghetto did not always equal being arrested immediately after liberation. Among those arrested at least a year after liberation, some were detained in places outside of Transnistria such as Bucharest, Kiev, or Kazan'.[4] But others were arrested right where they had been liberated.[5]

A regional time pattern of arrest could have had an influence since in Bernstein's and Makhalova's data there is at least a similar *tendency*, which we do not see in the union-wide statistics. But the contrast between 53% of arrests in 1944 in Bernstein's and Makhalova's data and 78% of arrests in our data remains stark. Lastly, as argued in the methods chapter, the way we retrieved casefiles for the present study has a significant element of snowball sampling from the USHMM's collections (see chapter 1). Hence, the similarity between Bernstein's and Makhalova's data might stem from this archive. Regardless of how we try to explain this pattern and whatever implications

[4] Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 4–7. Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 57. Kutsenko Zus′ Iosifovich, HDA SBU VO, D28772, p. 8.

[5] Leiderman Motel' Berkovich, D28231, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Vinnyts′ka oblast′) (HDA SBU VO), p. 2-7, 116-117.

to cases unobserved we assume it has, one thing remains clear: Most of the 51 arrestees were caught in the Soviet sweep-up of putative collaborators in the months immediately after liberation.

Once arrested, former ghetto functionaries spent considerable time in investigative custody before their prosecution ended, which is a significant difference to the prerogative state mass operations. We conceptualized the end of prosecution either as a definitive verdict or acquittal, the termination of the case (usually at the pretrial stage), or an arrestee's death in custody before the adjudication of their case. Note that some arrestees were tried multiple times since the verdicts were appealed. In such cases, we counted the first stable decision as the end of a prosecution.[6] In the median, former ghetto functionaries spent 184 days in investigative custody. There are notable outliers, the range is 45 to 935 days.[7] But for 96% of arrestees, their prosecution ended within a year after arrest – they were either freed, incarcerated without any immediate further chance for appeal – or dead. Whatever investigators, procurors, and judges did to arrestees, the time they took suggests significant differences to the conveyor belt (arrest, torture, confession, verdict) of the mass operations.

Half of the defendants were tried in individual trial sessions, the other half in sessions for two, three, or four defendants (with declining percentages, i.e. 25%, 15%, and 10% for the increasing group size). It is sometimes inexplicable why defendants were tried individually or collectively. For example, the Rybnitsa NKVD had three former functionaries of that city's ghetto in custody by the end of March 1944. However, the competent military tribunal did not summarize the cases of all three defendants. It judged two of them together, but the third defendant in a separate session, without any apparent reason.[8]

## Adjudication phase

The conviction rate of former ghetto functionaries was lower than in other "special jurisdiction" trials at that time and place, and thus also significantly more "liberal" than in the mass operations. This speaks for a normative state element of the whole process (but, of course, not of each individual prosecution and trial). To be more specific, two arrestees died in custody, 37 were convicted, two were acquitted in trial, and the cases of ten men were terminated. Excluding the two deaths during investigative custody, this amounts to a conviction rate of 76%. Hence, one in four of those arrested were cleared of charges and set free (if they survived investigative custody, which 95% of all arrestees did). As discussed above, the combined rates of acquittals and case

[6] Later amnesties, such as the wave of Gulag releases after Stalin's death, are a completely separate issue.
[7] The latter number stemming from multiple trials and appeals, which ultimately lead to an almost continuous investigation over that time span.
[8] Shtrakhman, Nakhman Mortkovich, USHMM, RG-54.003*44, p. 192–193. Roizman, Khaim Falikovich, USHMM, RG-54.003*38, p. 80.

terminations in Ukraine and Moldova in 1944-1945 were around 10-15% in "special jurisdiction" cases. Above we compared this rate of terminations and acquittals to the mass operations and concluded that the rate of 10-15% points towards normative state, rather than towards prerogative state procedures. This conclusion is then even more valid for the proceedings examined here.

| **prosecution outcomes** | | |
|---|---|---|
| convicted | 37 | 76% |
| case terminated | 10 | 20% |
| acquitted | 2 | 4% |
| total | 49 | 100% |

*tab. 24*

The crucial phase in which an arrestee still could hope to be set free is the pretrial stage. Once a case went to trial, there was almost no chance to be acquitted. As soon as a defendant saw a judge, the chances for acquittal were only around five percent. Note that this calculation includes one arrestee we had designated as "case terminated" above whom we here counted as someone convicted by a court. The man had actually been tried and sentenced, but after an appeal and an additional investigation, the case was terminated without a second trial on orders of the Military Collegium of the USSR Supreme Court, the country's highest judicial authority operating in our sphere of interest.[9]

Compared to the mass operations, the punishments meted out against former functionaries were milder and thus broadly in line with the general trends in the Soviet prosecution of collaboration. Of those former functionaries who were convicted, the majority (almost 70%) received terms in corrective labor camps (the Gulag) and a sizeable group (almost 30%) was punished with incarceration in the new "katorga" camps. Only one defendant was sentenced to death. The mean length of Gulag terms was 9.3 years, that of katorga terms 16.5 years. Compare these figures to the ratios of imprisonments to executions of the mass operations, which ranged from 50/50 to 33/77 (see chapter 4). The prosecution of former ghetto functionaries thus follows the larger trends of the overall prosecution of collaboration in the USSR at the time (see chapter 5). Current scholarship agrees that here, Gulag sentences of 10 years became the norm.

Based on union-wide and regional statistics, a more precise comparison between the prosecution of former ghetto functionaries and other "special jurisdiction" or collaboration trials is possible. Mozokhin's data only allows for a comparison to all union-wide "special jurisdiction" cases. A comparison based on the concrete articles of the criminal code is, unfortunately, impossible. For all "special jurisdiction" cases adjudicated union-wide in 1944, we see similar rates of Gulag,

[9] Fabrikant Isaak Toivievich, D1374, Derzhavnyi arkhiv Vinnyts'koi oblasti (DAVO), p. 56, 76-99.

katorga, and death sentences – 74%, 18%, and 4% respectively. The variation to 1945 is negligible (73%, 22% and 3%). Former ghetto functionaries thus received similar punishments to everyone tried under "special jurisdiction", with a slightly larger group receiving katorga-sentences.

A detailed article-to-article comparison of sentences is possible based on the reports of the Kiev district military tribunal. Minor differences notwithstanding, the punishments meted out to former ghetto functionaries were similar to those everyone else received who was tried under the same articles of the criminal code at that time and place. Since the statistical reporting of the Military tribunal is discontinuous in the available documents, the comparison can only be based on a snapshot from the second quarter of 1945.[10] Consider the following two tables. The first was copied from the military tribunal's reports, the second is compiled from the data of our 51 arrestees (applied to the tribunal's format).

| **Kiev MT 2nd quarter 1945: articles and sentences** | | | | | | | |
|---|---|---|---|---|---|---|---|
| article | 4–5 years | 6–9 years | 10 years | < 10 years | katorga | death | total |
| 54-1 and Ukaz 43 | 2 | 60 | 4371 | 61 | 4190 | 331 | 9015 |
| 54-10 | 9 | 168 | 403 | | | | 580 |
| 54-3 | 2 | 295 | 572 | | | | 869 |
| article | 4–5 years | 6–9 years | 10 years | < 10 years | katorga | death | total |
| 54-1 and Ukaz 43 | 0% | 1% | 48% | 1% | 46% | 4% | 100% |
| 54-10 | 2% | 29% | 69% | | | | 100% |
| 54-3 | 0% | 34% | 66% | | | | 100% |

*tab. 25*

**We include arrestee Fabrikant, who was sentenced but had his case terminated in a following, continuous investigation, because we are interested in court behavior regardless of ultimate prosecution outcome – i.e., the question: Which sentences were determined for each relevant article of the criminal code, and was that different for ghetto functionaries than for others?*

[10] While this remains problematic, the general data about sentencing under the jurisdiction of the Kiev district military tribunal relate to a time in which 40% of the sentences of former ghetto functionaries were passed too. This fact does not make up for the lack of data on other periods, but at least a semi-valid comparison is possible.

| Transnistrian ghetto functionaries | | | | | | | |
|---|---|---|---|---|---|---|---|
| article | 4–5 years | 6–9 years | 10 years | < 10 years | katorga | death | total |
| 54-1 and Ukaz 43 | | | 13 | 1 | 11 | 1 | 26 |
| 54-10 | | 1 | 1 | | | | 2 |
| 54-3 | 3 | 2 | 5 | | | | 10 |
| article | 4–5 years | 6–9 years | 10 years | < 10 years | katorga | death | total |
| 54-1 and Ukaz 43 | 0% | 0% | 50% | 4% | 42% | 4% | 100% |
| 54-10 | 0% | 50% | 50% | | | | 100% |
| 54-3 | 30% | 20% | 50% | | | | 100% |

*tab. 26*

**counting 54-2 as 54-3*[11]

Ghetto functionaries tried under article 54-1 and Ukaz 43 received almost exactly the same sentences as other defendants to whom these legal norms were applied. The numbers for article 54-10, counterrevolutionary propaganda, are problematic. First, since only two ghetto functionaries were tried under that article, second because those two men were also charged with article 54-3. If we include those two men in the category of article 54-3, we see that 25% of those arrestees received sentences of 4 to 5 years, 25% sentences of 6 to 9 years, and 50% sentences of 10 years in the Gulag. Whether we combine articles 54-10 and 54-3 or keep them separate, it appears sentences for former functionaries tried under these articles were slightly softer than for other defendants. The reasons for this softer sentencing are discussed below in the analysis of indictments and verdicts.

At the same time, former ghetto functionaries were disproportionally often charged with article 54-3 (see tables 27 and 28). Within the contemporary Soviet legal framework, this article was reserved for the least severe types of collaboration (article 54-1 and both articles of Ukaz 43 provided more severe punishments). It stands to clarify whether this means that Soviet officials

[11] Note that for five former ghetto functionaries, we counted the articles used in the verdicts in a simplified form. As noted in the methods chapter, [see above] some former ghetto functionaries were not tried under the most common legal instruments the Soviets applied to those deemed collaborators. These arrestees were charged with "Armed insurrection or counter-revolutionary invasion of Soviet territory by armed bands, seizure of power in the center or in the regions for the same purposes". Interestingly, only one defendant was tried under this article without further qualification. In the verdicts of the other four, we find the formulation "article 54-3 with the sanction of article 54-2". It appears that Soviet officials resorted to this kind of legal gymnastics to grapple with arrestees' ambiguous relationship to the Soviet state. One of the five men was a Romanian citizen, the others were Soviet citizens, but had only received this questionable blessing with the Soviet takeover of Bessarabia and Northern Bucovina in 1940. Sherf Isaak Lazarevich, HDA SBU VO, D20752, p. 138. Treistman, Levi Moiseevich, USHMM, RG-54.003*53, p. 133.

explicitly recognized the special circumstances under which Jewish functionaries had acted. We examine this question in our analysis of decision documents in the next chapter.

| **Kiev MT 2nd quarter 1945: articles** | | |
|---|---|---|
| 54-1 and Ukaz 43 | 9015 | 86% |
| 54-10 | 580 | 6% |
| 54-3 | 869 | 8% |
| total | 10464 | 100% |

*tab. 27*

| **Transnistrian ghetto functionaries: articles** | | |
|---|---|---|
| 54-1 and Ukaz 43 | 26 | 68% |
| 54-10 | | 0% |
| 54-3 | 12 | 32% |
| total | 38 | 100% |

*tab. 28**

**combinations of 54-3 and 54-10 counted as 54-3*

For locating Jewish ghetto functionaries' prosecution and trials on the prerogative state – normative state spectrum, it is also helpful to look at sentencing bodies. Here, the proportions of cases handled by each of the relevant sentencing bodies (High courts, military tribunals, and the OSO) mirror the union-wide dynamic for special jurisdiction cases at that time. The majority of cases were adjudicated by military tribunals, a sizeable part handled by the OSO, and only very few tried cases by Republic or Union High Courts. Above we had identified the OSO as a prerogative state organ par excellence and discussed the ambiguous status of military tribunals as prerogative state organs with potential normative state elements. Notably, no defendants from our group were tried by military field courts and the death sentence passed against one defendant was enacted non-publicly by shooting, both of which speak against applying Prusin's otherwise helpful label of "lynch-format trials".[12]

| **sentencing bodies** | | |
|---|---|---|
| MSSR High Court | 1 | 2% |
| MT | 34 | 83% |
| OSO | 6 | 15% |
| total | 41 | 100% |

*tab. 29*

[12] PRUSIN: Traitors, p. 89.

As discussed above, military tribunals consisted of four officials, a chairman, two members, and a secretary, but often only the chairman had received legal training. The same holds true for the trials examined here. Of 34 verdicts examined, in 90% neither secretaries nor members had legal training. Most of the time, tribunal members are either referred to only by rank ("lieutenant Korolev" etc.), the organization they belonged to ("Red Army members Bogdan and Kriukov"), or both ("junior lieutenants of state security Mashin and Sorokin").[13] For tribunal members and secretaries, we rarely find descriptions that point toward legal expertise, such as "captain of justice".[14] Conversely, for 80% of the chairmen, ranks showing legal expertise are provided. Hence, military tribunals' composition was quite similar to that of troikas, were at best the representative of the procuracy brought some legal expertise to the table (although this was rendered completely meaningless). Tribunals' composition can thus be located on the prerogative state side of the spectrum.

On the other hand, military tribunals operated quite differently from troikas. Where the latter often sentenced hundreds of people in mere hours, the tribunals examined here took considerably more time for their decision making. In the mean, it took them more than four hours to arrive at a verdict in any given case (of up to four defendants). There were notable outliers, with one case being adjudicated in a mere eighty minutes and another one taking two days and five hours from the opening of the first session to the reading of the verdict. But the overall difference is clear: these tribunals did not operate as sentencing factories. Tribunals' timing was thus closer to normative state procedures.

Notably, procurors were almost completely absent from the proceedings. Only in two instances was a procuror present at a trial. This means that the accusation's part in the trial was played by the tribunal itself, for which it was probably helpful that tribunal members were often recruited from those agencies that had conducted the investigation in the first place – the NKVD and NKGB. We should not mistake procurors' absence as principally beneficial for the defendants. After all, the procuracy was the agency which most strongly pursued the observation of procedural norms. Missing procurors should thus be seen as a prerogative state element.

There is another significant factor that potentially influenced trial outcomes: the presence of lawyers. It was not uncommon for defendants in the trials examined here to be represented by a lawyer. That fact further adds to the ambiguous status of military tribunals as sentencing bodies. A

[13] Leiderman Motel' Berkovich, HDA SBU VO, D28231, p. 176. Gershman Adol'f, HDA SBU, D67437, p. 189. Trakhtenbroit Leib Moiseevich, D3822, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Vinnyts′ka oblast′) (HDA SBU VO), p. 50.

[14] Gorovits Salomon Iakubovich, D9898-o, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Chernivets′ka oblast′) (HDA SBU ChO), p. 76.

third of former ghetto functionaries tried in these courts were represented by a lawyer. This is a normative state element of former functionaries' prosecution (ds19). Even if we include the one case tried at the MSSR Supreme court and those cases handled by the OSO, purely administrative procedures which did not even constitute a trial and accordingly did not allow for lawyers, the figure changes only slightly – still, one in three defendants had a lawyer. What is more, representation by legal counsel was apparently admitted in some military tribunals even before the directive of the People's Commissariat of Justice made it officially possible on October 22, 1945 (see chapter 5). Five of the twelve defendants who had legal counsel were granted that right before this directive was passed.

Apparently, a lawyer's presence increased a defendant's chances to be acquitted and to receive a shorter and softer sentence. Lawyers were only present at military tribunals, and in one case, at the Supreme Court of the Moldovan SSR. Therefore, our following comparisons exclude cases terminated at the pretrial stage, as well as those adjudicated by the OSO as an administrative sentencing body. Since we lack sufficient data on two trials, we are left with 33 trials we can examine. Consider the following tables:

| **rate of acquittal in all trials (MTs and MSSR Supreme Court) with and without lawyer** | | |
|---|---|---|
| | **with lawyer** | **without lawyer** |
| convicted | 10 | 21 |
| acquitted | 2 | 0 |
| total | 12 | 21 |
| convicted | 83% | 100% |
| acquitted | 17% | 0% |
| total | 100% | 100% |

*tab. 30*

| types of sentences all trials (MTs and MSSR Supreme Court) | | |
|---|---|---|
| **with lawyer** | | |
| ITL | 9 | 90% |
| katorga | 1 | 10% |
| death penalty | 0 | 0% |
| total | 10 | 100% |
| **without lawyer** | | |
| ITL | 11 | 52% |
| katorga | 9 | 43% |
| death penalty | 1 | 5% |
| total | 21 | 100% |

*tab. 31*

As can be seen, the chances for the death penalty and the harsher "katorga"-sentences are significantly higher for those defendants who did not have a lawyer, and their chances for an acquittal are lower. However, the figures both for the death penalty, as well as those for acquittals are based on individual cases – two acquittals, one death sentence – and should therefore not be overinterpreted.

More solid is a comparison of average sentences for those who had a lawyer and those who did not. As the following table shows, those defendants who could rely on legal counsel in court faced significantly shorter terms of incarceration – by three years on average.

| average sentence in all trials (MTs and MSSR High Court) | |
|---|---|
| **with lawyer** | |
| all types | 10,3 |
| ITL | 9,77 |
| katorga | 15 |
| **without lawyer** | |
| all types | 13,1 |
| ITL | 10,45 |
| katorga | 16,33 |

*tab. 32*

To double-check this comparison, the following table is based on a narrower selection of trials. We focus strictly on trials before military tribunals and exclude the somewhat outlier case of the one defendant tried by the MSSR Supreme Court. Moreover, we exclude those trials at military

tribunals which belong to the semi-administrative/semi-trial type of publicity, which was somewhat closer to the proceedings of the OSO. The pattern is weaker, but nevertheless holds:

| **average sentence: MT trials with minimal audience** | |
|---|---|
| **with lawyer** | |
| all types | 10,33 |
| ITL | 9,75 |
| katorga | 15 |
| **without lawyer** | |
| all types | 12 |
| ITL | 10 |
| katorga | 16,66 |

*tab. 33*

However, these findings need to be double checked with an analysis of decision documents – indictments, case termination orders, and verdicts. Without analyzing these documents, we may misattribute the difference in outcomes. If we only correlate trial outcomes with the presence or absence of lawyers, then legal counsel appears as highly impactful. But the authorities admitted lawyers only selectively. Maybe the defendants who were granted the right to a lawyer faced different accusations than those who were denied this right? Maybe those facing more severe accusations were less likely to be represented by a lawyer? If this was the case, then the difference in outcomes would not be due to the lawyers, but due to the different charges brought against the defendants. In other words: We can only ascribe an effect to legal counsel if those represented by lawyers faced similar charges as those not granted that right. To determine this, and the answers to other questions, we turn to an analysis of decision documents.

## Confessions, witness testimony and the publicity of trials

Another crucial question for judging the quality of former ghetto functionaries' prosecution is that of confessions. Most arrestees confessed at least partially, but this was definitely not the only relevant evidence and should not too hastily be identified with the procedures of the mass operations. One in five arrestees gave a full confession, three in five confessed to a part of the accusations and another one in five refused to confess even partially.[15] It is noteworthy that a partial and in one case even a full confession did not automatically lead to a conviction. Of the thirty men who partially confessed, two were acquitted in court and five had their cases terminated. Thus, these confessions were not the only evidence adjudicators took into consideration when they

[15] No data available for one arrestee.

reviewed these cases. A high rate of at least partial confessions should be treated as suspicious, given Soviet state security's record of torturing suspects. But that most confessions were only partial and that these confessions did not automatically determine the verdicts points towards a somewhat mitigated continuity with the mass operations. It appears that especially full confessions demand closer scrutiny since they were possibly attained by torture. Again, the prosecution of former ghetto functionaries entails both prerogative and normative state elements.

The significance of confessions can be ascertained by relating it to the other primary type of evidence – witness testimony (since material evidence played only an insignificant role and featured only in two convictions, both times to prove accusations of anti-Soviet agitation).[16] The issue of witness testimony is closely related to that of publicity of trials, so we discuss both together. Most defendants were tried in front of a minimal local audience, i.e. the witnesses in their cases. While witnesses were absent from a significant portion of proceedings, their testimony regularly figured as evidence even in semi-administrative proceedings – the courts based their verdicts on witness testimony, even if they did not summon the witnesses. Accordingly, two-thirds of all decision documents (verdicts and case termination orders) mention individual witnesses for concrete accusations.

All proceedings against former functionaries were non-public and belong to the types of administrative repression, semi-administrative/semi-trial adjudications, or had a minimal local audience. Most proceedings, around 60%, featured at least a minimal local audience comprised of the witnesses in the case. Around a quarter were semi-administrative proceedings – there was a trial with the defendant present, but he faced the tribunal in the absence of any witnesses. The remainder were purely administrative proceedings, with cases going to the OSO and the defendant unable to even meet the adjudicators.

| **types of publicity** | | |
|---|---|---|
| minimal local audience | 22 | 59% |
| semi-administrative/semi-trial | 10 | 27% |
| administrative | 5 | 14% |
| total | 37 | 100% |

*tab. 34 *no data on 3 defendants*

As discussed above, it was generally difficult for military tribunals to summon witnesses to court sessions. This holds true for the trials in focus here too. Witnesses were summoned to 16 trial sessions of 22 defendants, but only to three of these sessions everybody summoned also appeared

[16] Rakhmut, Samuil Khaimovich, USHMM, RG-31.018M, R-2838, F03, 322, p. 106. Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 143.

and testified.[17] In cases where defendants were tried multiple times, one of the most common reasons was that witnesses failed to appear.[18] But this does not explain the semi-administrative proceedings. Only in one case were witnesses summoned and the defendant was then tried merely based on the investigative case file when no witnesses appeared. In the other nine instances, no witnesses were summoned in the first place. If "legal legitimization" was among Soviet officials' motives, it played no role in these trials, or other motives superseded it. Therefore, we should not overestimate the normative-state element of "demonstrative lawfulness" when weighing the apparatus' competing goals of legitimization and elimination. For some 40% of proceedings, legal legitimization played no role.

Publicity and the use of witness testimony as evidence were, however, largely independent. All criminal prosecutions which ended in semi-administrative proceedings spawned investigative case files that contain witness testimony. In these cases, too, witness testimony served as evidence. This beckons the question: Why not summon those witnesses? The tribunals relinquished both the chance to verify what investigators fed them, as well as the chance to present the Soviet judiciary as the guardian of legality in front of ordinary citizens. Why forgo the opportunity to evaluate the evidence and to show the Soviet judiciary in a positive light? This is even more noteworthy since there were institutional incentives meant to prevent this exact kind of court behavior. As discussed above, verdicts that were reached without the tribunal having summoned witnesses could be overturned by supervising instances (see chapters 5 and 6). Furthermore, summoning witnesses was mandatory for trials under the charge of treason. And for everybody whose case was heard in a semi-administrative fashion the indictment was based on article 54-1 – i.e., treason. Which other considerations proved strong enough to trump all those incentives? Combined, these factors make such proceedings highly suspicious and we should locate them further on the prerogative state side of the spectrum than their counterparts with a minimal local audience.

Moreover, whether Soviet authorities summoned witnesses to the trials or did not beckons the question of a trial's propagandistic suitability. Was there something in the person of the defendant or in the type of actions he was accused of which tipped the scale in favor of a semi-administrative/semi-trial approach or in favor of holding the trial in front of a minimal local audience? In other words: What did Soviet authorities want to publicize, what did they prefer to hide from the population's eye?

[17] Only counting those trial sessions which ended criminal prosecution with a definitive verdict, including defendant Fabrikant, whose case was subsequently terminated by the Military Collegium of the USSR Supreme Court.
[18] See, for example, the case of Bosharnitsan: Bosharnitsan, Samuil Samuilovich, USHMM, RG-54.003*06, p. 41, 51, 57-60, 67-70.

One possible thing the authorities did not want the public to know were the investigation methods, namely torture. Above we had discussed the peculiar relationship between confessions and publicity (see chapter 6). For the authorities, confessions could have great propagandistic value and impress the audience. But confessions elicited by torture could also lead to uncomfortable situations if defendants recanted their earlier statements during the trial and told the audience about the methods the investigators had used. Soviet officials included in the indictments whether the accused had confessed, fully, partially, or not at all, which allows to correlate both aspects – confessions and publicity – for our sample.

Full confessions were no prerequisite for the Soviet judiciary's public claims to legal legitimacy, and the judiciary had at least limited trust that investigators only achieved confessions in legal ways. In a similar share of cases that were tried in front of a minimal local audience, as in those tried non-publicly, Soviet investigators recorded that the accused had confessed fully during the pretrial investigation. Soviet officials did thus not see full confessions as a necessary condition to hold a trial at least semi-publicly. In most instances, Soviet adjudicators made their claims to legal legitimacy without having secured a full confession from the accused. At the same time, the courts trusted the investigators methods enough to "test" at least some defendants' confessions from the pretrial stage in front of the witnesses. Either the judges did not care if defendants talked about torture in front of an audience, or they welcomed this possibility as a lever for controlling the investigators.

Conversely, those instances where defendants gave a full confession and were then tried without the controlling influence of an audience should raise eyebrows and demand attention in the case studies. It stands to ask whether investigators forced these defendants to confess, and whether the same investigators then somehow managed to convince the judges that it was better to hear this particular case without any outside attention. Judges may well have welcomed the possibility. After all, everyone involved faced an enormous caseload that made "shortcuts" all the more inviting. Therefore, we will examine this problem in the detailed case studies.

Ultimately, trials in front of a minimal local audience were less concerned with defendants' confessions than with witnesses' testimonies. Besides the 25% of semi-public trials in which a defendant had confessed fully, in some 20% of these trials, defendants had not confessed at all, and in the rest of the trials the accused had given only the largely insignificant partial confessions (to the fact of their service). The trials were thus far more about the witnesses, who both provided evidence and served as the audience.

The propagandistic value of semi-public trials was apparently also correlated to the type of defendant. There is a notable correlation between the positions which defendants had held in the

ghettos and the publicity of proceedings. When the Soviets identified someone as a having served in a leading function (as head of a Jewish council), they were more likely to try him in front of a minimal local audience. Compared to the share they make up of all arrestees, heads of Jewish councils are overrepresented among those tried such settings. Conversely, rank-and-file Jewish council members and former policemen and heads of police are underrepresented here. Apparently, Soviet authorities preferred to present collaboration as a crime of people in commanding positions, rather than of those who had fulfilled the commands.

| **publicity and functions** | | | |
|---|---|---|---|
| | all arrestees | minimal local audience | semi-administrative and administrative proceedings |
| heads of JC + deputies | 21 | 15 | 3 |
| JC members | 19 | 3 | 7 |
| all police functions | 11 | 4 | 5 |
| total | 51 | 22 | 15 |
| heads of JC + deputies | 41% | 68% | 20% |
| JC members | 37% | 14% | 47% |
| all police functions | 22% | 18% | 33% |
| total | 100% | 100% | 100% |

*tab. 35*

## Category-based convictions and sentences? Investigation and trial outcomes in light of the collective portrait

Maybe similar considerations influenced not only the publicity of proceedings, but also the rate of convictions and the severity of sentences? Above we had seen that targeting was not category-based and that former ghetto functionaries of diverse socio-political backgrounds were arrested. But maybe the way Soviet authorities treated those people once arrested differed according to socio-political categories? This was not the case.[19]

When we examine social origins, it might appear that people of "undesirable" origins received harsher sentences. But this impression is counter-balanced when we look at arrestees' "social position" at the time of the arrest. To simplify matters, we grouped all manual laborers together (craftsmen, workers), as well as those of undesirable origins (merchants, peasants), with the third category being the ambiguous "employee" background.

[19] This mirrors the findings of historians examining other groups charged with collaboration. See: RUDAKOVA: Soviet Women Collaborators, p. 545.

| **prosecution outcomes by social origins** | | | |
|---|---|---|---|
| *outcome* | peasants + merchants | workers + craftsmen | employees |
| death sentence | | | 1 |
| katorga | 1 | 6 | 4 |
| Gulag | 7 | 8 | 10 |
| acquitted | | 1 | 1 |
| case terminated | 1 | 3 | 5 |
| total | *9* | *18* | *21* |
| *outcome* | peasants + merchants | workers | employees |
| death sentence | 0% | 0% | 5% |
| katorga | 11% | 33% | 19% |
| Gulag | 78% | 44% | 48% |
| acquitted | 0% | 6% | 5% |
| case terminated | 11% | 17% | 24% |
| total | *100%* | *100%* | *100%* |

*tab. 36*

**no data available for one arrestee*

As we see from the table, those of undesirable backgrounds had a higher conviction rate than the other sub-groups. On the other hand, arrestees with working-class backgrounds were far more likely to receive katorga sentences. Even if we assume that "undesirable" social origins made a conviction more likely, such a background hardly determined the severity of sentences.

When we examine the current social position and its potential influence on sentencing, it becomes even clearer that social categories played at most a minor role in adjudication. Here, we sorted 47 of the arrestees into three categories: unemployed ("bez opredelennykh zaniatii"), workers, and employees. Again, it does not appear that an "undesirable" social position such as being unemployed pre-determined trial outcomes. Those in the "desirable" social position of workers were sentenced most often to katorga terms and had the highest sentencing rate.

| prosecution outcomes by social position | | | |
|---|---|---|---|
| | unemployed ("b.o.z.") | worker | employee |
| death sentence | | | 1 |
| katorga | | 5 | 5 |
| Gulag | 5 | 9 | 11 |
| acquitted | | | 2 |
| case terminated | 2 | 3 | 4 |
| total | 7 | 17 | 23 |
| | unemployed ("b.o.z.") | worker | employee |
| death sentence | | | 4% |
| katorga | | 29% | 22% |
| Gulag | 71% | 53% | 48% |
| acquitted | | | 9% |
| case terminated | 29% | 18% | 17% |
| total | 100% | 100% | 100% |

*tab. 37*

**excluding two deaths in custody and two other arrestees (one student, one peasant)*

Above we had introduced the category of "enemies" to summarize our discussion of arrestees' socio-political backgrounds and other relevant facts of their life before the arrest, such as prior convictions. Neither did this distinction influence conviction rates nor were "enemies" sentenced more harshly. In fact, both sub-groups have identical conviction rates, but the non-enemies were sentenced to longer terms of incarceration. The fact that the single death sentence among the arrestees was passed against an "enemy" is counter-balanced by the higher rate of katorga-sentences among "non-enemies".

| prosecution outcomes: enemies | | |
|---|---|---|
| | enemies | non-enemies |
| death sentence | 1 | |
| katorga | 4 | 7 |
| Gulag | 15 | 11 |
| acquitted | | 2 |
| case terminated | 6 | 3 |
| total | 26 | 23 |
| | enemies | non-enemies |
| death sentence | 4% | |
| katorga | 15% | 30% |
| Gulag | 58% | 48% |
| acquitted | | 9% |
| case terminated | 23% | 13% |
| total | 100% | 100% |

*tab. 38*

If we examine the individual factors from which we comprised the meta-category of "enemies", we see that their presence did not mean an automatic conviction. Consider prior service in the Romanian army: of the eight men who had served in that military, six were sentenced to Gulag terms, one to katorga, and the case of the last man was terminated. The same is true for prior convictions. According to the arrest warrant for Moisei Zabakritskii he had been "sentenced to 10 years imprisonment in 1926 by Soviet authorities for the misappropriation of a large sum of money" but "did not serve the sentence because he escaped".[20] Zabakristkii was later acquitted by the court and freed.[21]

Disproportions between different groups emerge when we examine conviction rates and the severity of sentences for different regions of origin. Soviet Jews, it appears, were punished more often and more harshly. Their overall conviction rate is higher, as well as the proportion of katorga-sentences. What is more, on average, Soviet Jews were sentenced to more years of confinement in Gulag or katorga camps than their Romanian Jewish counterparts (12,9 vs. 10,8 years).

[20] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 54.
[21] Ibid., p. 294.

| prosecution outcomes: regional origin | | |
|---|---|---|
| | Romanian | Soviet |
| death sentence | 1 | 0 |
| katorga | 6 | 4 |
| Gulag | 20 | 7 |
| acquitted | 0 | 2 |
| case terminated | 9 | 0 |
| total | 36 | 13 |
| | Romanian | Soviet |
| death sentence | 3% | 0% |
| katorga | 17% | 31% |
| Gulag | 56% | 54% |
| acquitted | 0% | 15% |
| case terminated | 25% | 0% |
| total | 100% | 100% |

*tab. 39*

Judges also classified Soviet Jews' actions under more severe offense categories. As discussed above, Soviet authorities had created a two-tiered system of traitors and accomplices. Therein, they combined four distinct articles, thus grading both categories into a lighter and a severer version. Article one of Ukaz 43 was the severer version of "traitor" than article 54-1, just as article 2 of Ukaz 43 was the severer version of "accomplice" than article 54-3. Among Soviet Jews, twice as many were categorized as traitors, and those Soviet Jews categorized as accomplices were exclusively sorted into the more severe sub-category.

| **legal basis sentences: Romanian vs. Soviet** | | |
|---|---|---|
| | Romanian | Soviet |
| article 1 ukaz 43 | 1 | |
| article 2 ukaz 43 | 5 | 4 |
| 54-1 | 8 | 7 |
| 54-3 | 13 | |
| total | 27 | 11 |
| | Romanian | Soviet |
| article 1 ukaz 43 | 4% | |
| article 2 ukaz 43 | 19% | 36% |
| 54-1 | 30% | 64% |
| 54-3 | 48% | |
| total | 100% | 100% |

*tab. 40*

It is tempting to analyze these numbers as the application of differentiated loyalty standards. Soviet Jews, it would then appear, were held to a stricter standard and punished more harshly. This would loosely resemble a pattern described in previous studies: lighter sentences for those deemed disloyal anyway, harsher sentences for those whose actions constituted a breach of trust.[22] However, there is a competing hypothesis based on potentially different charges brought against Soviet and Romanian Jews. In turn, these different charges are linked to a different representation of both groups in different positions in the ghetto administration, especially in police functions.

[22] Thus, Bernstein and Makhalova describe the situation of Crimean Tatars tried as collaborators as follows: "In all likelihood, the perception of Crimean Tatars as disloyal also played a role in the relatively light punishments they received. It is perhaps the irony or their punishment as an entire nation that judges may have considered specific acts of collaboration less sinister." BERNSTEIN/MAKHALOVA: Aggregate Treason, p. 47–48.

| prosecution outcomes - position in ghetto | | | |
|---|---|---|---|
| | **heads of JC + deputies** | **JC members** | **all police functions** |
| death sentence | 1 | | |
| katorga | 5 | 3 | 3 |
| Gulag | 12 | 7 | 7 |
| acquitted | 2 | | |
| case terminated | 1 | 7 | 1 |
| total | 21 | 17 | 11 |
| | **heads of JC + deputies** | **JC members** | **all police functions** |
| death sentence | 5% | | |
| katorga | 24% | 18% | 27% |
| Gulag | 57% | 41% | 64% |
| acquitted | 10% | | |
| case terminated | 5% | 41% | 9% |
| total | 100% | 100% | 100% |

*tab. 41*

Several things are noteworthy about table 41. First, the low conviction rate for rank-and-file Jewish Council members and the high rate for policemen and heads of police. Consider that in the of the rank-and-file Jewish Council members only five percent were Soviet Jews, while they made up two-thirds of those charged for serving in the ghetto police and a quarter of those tried for serving as heads of Jewish councils and their deputies. In other words: Soviet Jews were either in the "hands-on" police functions, where it was likely necessary to use force or in the highest positions of power in the ghetto administration – both of which was punished more harshly under Soviet law than a regular administrative position. We are faced with two competing hypotheses: different loyalty standards vs. different quality of charges. Different loyalty standards would amount to a form of category-based adjudication, a prerogative-state practice. Different quality of charges would mean that an individual's concrete acts were subsumed under criminal law, a normative-state practice (ds2-3, 14). To decide which alternative applies, we need to examine indictments, case termination orders, and verdicts.[23]

[23] On the level of anecdotal evidence, rather than a systematic comparison, it is possible to support this hypothesis by looking at trials of former Kapos from Transnistrian camps. During our archival research, we came across the files of eleven Kapos of different camps, including five Kapos of the infamous Pechora and Domanevka extermination camps. These finds were purely accidental, the investigative casefiles were mostly suggested to us by historians or archivists who were aware of them and made the connection to our topic. The problems inherent in our sampling are thus exacerbated when it comes to these files. A comparison is quite suggestive, but we emphasize that this is anecdotal evidence at best. How were these cases adjudicated by Soviet authorities? Of the eleven Kapos, four were sentenced

## Conclusion

As a result of the collective portrait, it became obvious that Soviet authorities did not target former ghetto functionaries for criminal prosecution based on social categories. The present chapter expanded this finding by examining the ways in which the authorities investigated and adjudicated the criminal cases of such functionaries. The chapter provided a general overview and identified prerogative-state and normative-state elements in the prosecution of these men. Moreover, the chapter examined whether the Jewish functionaries were treated differently than other defendants and whether there were any category-based patterns in the prosecution.

An examination of the adjudication phase uncovered a first apparent difference in how the authorities treated the ghetto functionaries: an unusually low conviction rate. One in four defendants was released in the pretrial phase or acquitted in court, which constitutes a normative state feature. The pretrial phase was decisive because case termination during this time was usual mode of release. Acquittals in court turned out to be a bottleneck almost nobody could pass, which matches the overall tendency in the Soviet prosecution of collaboration discussed earlier (see chapter 5). The low conviction rate demands an explanation and features prominently in the following chapters, both in the qualitative content analysis of decision documents, as well as in the case studies.

For adjudicating cases of ghetto functionaries, the Soviets primarily used military tribunals, but also the OSO. Given the composition of the tribunals and the purely administrative procedures of the OSO, former ghetto functionaries thus faced sentencing bodies on the prerogative state side of the spectrum.

The types of sentences these bodies passed on former functionaries were distributed similarly to anyone else convicted during these years in the USSR under "special jurisdiction". And in Ukraine and Moldova, former ghetto functionaries ended up with the same punishments for the same articles as anyone else. However, the authorities in this region charged functionaries more often with the "lighter" article 54-3 than they did on average. Whether this represents an explicit recognition of the "gray zone" is discussed below in the qualitative content analysis of decision documents and in the case studies.

An unexpected normative state feature of how the Soviets prosecuted ghetto functionaries is that one in three of these defendants had a lawyer. And those who did not have a lawyer faced higher

to death, three of whom had been Kapos at the extermination camps. The other two men who had served in those camps were sentenced to katorga-terms. With one exception who was acquitted, the Kapos of non-extermination camps were sentenced to Gulag terms. Again, this suggests an approach to sentencing based on wartime conduct, rather than a category-based one.

conviction rates, longer sentences and a higher chance of receiving the harsher "katorga" punishment. However, the qualitative content analysis of decision documents will have to establish whether those defendants represented by a lawyer were accused of the same things as those who could not rely on legal counsel. And the case studies will have to determine how lawyers actually defended their clients.

A high rate of at least partial confessions characterized the investigations and trials of former ghetto functionaries, which we can describe as a prerogative state feature. Nevertheless, there were apparently normative state countertendencies. Confessions were neither a determining factor for convictions, nor for the severity of sentences the Soviet judiciary passed on those defendants. Witness testimony was the far more important type of evidence.

There were no show trials against former ghetto functionaries. All trials on level C) belong to the types of administrative repression, semi-administrative/semi-trial adjudications, or had a minimal local audience. The last type is quite important: 60% of proceedings had such an audience. On the other hand, this means that 40% were completely closed off from the public, and that legal legitimization played no role whatsoever in that 40% of the proceedings.

For deciding which case to try semi-publicly, it apparently played no role whether a defendant had confessed. Such proceedings were more focused on witnesses' statements. Suggestive that witnesses were important as an audience is also the distribution of defendants' earlier functions in the ghetto. It appears Soviet authorities chose to summon witnesses to trial more often in the cases against former heads of Jewish councils. In settings with a minimal local audience, rank-and-file Jewish council members, former policemen and heads of police were underrepresented. Soviet authorities probably wanted to show publicly that they were going after the most visible and highly placed figures.

Correlating the different demographic data gathered about the defendants in the collective portrait with the way the Soviets prosecuted these men yielded only one significant outcome. Soviet Jews were convicted more often and punished more harshly. Two competing hypotheses emerged: First, that Soviet authorities held "their own people" to higher standards of loyalty and therefore treated them more severely. This would constitute category-based sentencing and a prerogative state mechanism. Second, that Soviet Jews faced different charges and their sentences related to different acts than those of the Romanian Jews – a normative state feature. The second hypothesis is somewhat credible because Soviet Jews were overrepresented in specific positions of the ghetto administrations, namely police functions. However, only an analysis of the decision documents from the casefiles can determine which hypothesis is right.

Nevertheless, one thing is clear: defendants had at least a realistic chance that the authorities would grant them some procedural rights and attempt to establish individual guilt for concrete criminal acts. In turn, witnesses could therefore hope that the authorities might take their experiences seriously and listen to their grievances and demands.

# What counts as collaboration? Analyzing accusations against former ghetto functionaries in the Soviet judiciary's decision documents

To conclude the analysis of the 51 former functionaries' criminal prosecution (level C)), several questions need to be answered. What did Soviet authorities accuse former ghetto functionaries of? That is, which actions of the functionaries counted as collaboration? How did different accusations influence convictions and sentences? Were Soviet Jews punished differently because they were Soviet Jews, or because Soviet authorities accused them of different crimes (ds2-3, 14)? Finally, did Soviet judges consider the gray zone the defendants had acted in during their time in the ghetto and did this influence sentencing? These questions are answered based on a qualitative content analysis of the decision documents in former functionaries' cases. We discuss the range of accusations in these documents and clarify which accusations we summarized using concept-driven categories, and for which other accusations we created data-driven categories. We list the most common accusations, discuss their relative prevalence, and how they correlate both to the question of conviction or release, as well as to the severity of sentences. The question of whether defendants were accused of physical involvement in actions such as deportations, or whether they were accused of an indirect, organizational involvement emerges as the most important pattern of the decision documents. We argue that physical involvement was punished harder, especially since the various "hands-on" activities such as forced labor mobilization provided the situational contexts in which defendants committed acts of violence. In turn, accusations of violence emerge as the strongest predictor both for convictions, as well as for the severity of sentences. As a more detailed review of the legal basis shows, this sentencing pattern was in line with the contemporary Soviet legal framework for adjudicating collaboration. Concerning the role of lawyers, we argue that their capacity to reduce a defendant's sentence should not be overestimated. It was simply less common for those defendants who faced the more severe accusations to be represented by lawyers. It thus appears Soviet authorities admitted legal counsel more frequently to trials of those they deemed less dangerous and whom they would have sentenced to shorter terms of imprisonment anyway. With notable exceptions, the sentencing pattern also correlates with the way Soviet officials decided whom to try in semi-public, and whom to try in completely non-public proceedings. However, we argue that the degree of a trial's publicity does not fully fit the expected propagandistic value of all the different accusations. Concerning the propagandistic value, it stands to compare the accusations that made it into Soviet decision documents with those that the witnesses had voiced. As a qualitative content analysis of the witness testimonies on analytical level D) shows, witnesses' accusations and grievances were not just matched in those documents. Soviet authorities showed

clear priorities and overrepresented accusations such as forced labor recruitment and violence in their decision documents. Lastly, we examine releases and acquittals, concluding that they were almost never based on a recognition of the gray zone in which defendants had acted.

## Key accusations and their effects on conviction and severity of sentences

To clarify what the accusations were and how they influenced convictions and sentences, we approached these documents with a set of concept-driven categories derived from the historiographical literature on ghettos. These categories included violence, executions, forced labor, deportations, enforcement of curfews and the ghetto boundaries, resistance, escape from the ghetto, smuggling and the black market, social welfare and education, cultural and religious life, as well as social conflicts and stratification. All these concept-driven categories encompass topics that potentially posed an interest to Soviet investigators.[1]

For those of the concept-driven categories which were represented in the materials, we created data-driven sub-categories based on the verdicts. We split some concept-driven categories and added further data-driven categories where our initial set of terms did not match the materials. Such completely data-driven categories especially sprang from specific Soviet phrases. The initial concept-driven categories featured in the materials to different degrees, with some topics completely absent. Based on accusations appearing at least in every tenth of the decision documents, we arrived at the following most prominent categories: mode of appointment, implementing orders / supporting the regime, deportations – role, deportations – results, forced labor – role, property crimes, arrests – role, creating unbearable living conditions, home searches, violence – role, victims, privileges of movement, connections ("sviazi") and anti-Soviet attitudes and statements. Additionally, we analyzed instances in which defendants were referred to as victims, i.e. as deportees or ghetto inmates. The prevalence of the most common accusations across the decision documents is depicted in the following table.

[1] Theoretically, even religious activities could have aroused the curiosity of state security officials and "special jurisdiction" judges who represented a fiercely antireligious regime. In territories undergoing Sovietization, it would come to no surprise to see persecution based on faith.

| category of accusations | prevalence in decision documents |
|---|---|
| mode of appointment | 94% |
| forced labor - role | 58% |
| violence - role | 46% |
| implementing orders / supporting regime | 44% |
| property crimes | 29% |
| deportations - results | 27% |
| deportations - role | 27% |
| arrests - role | 27% |
| victims | 19% |
| creating unbearable living conditions - results | 15% |
| connections ("sviazi") | 10% |
| home searches | 10% |
| anti-Soviet attitudes and statements | 10% |
| privileges of movement | 10% |

*tab. 42*

The range of accusations featured in the materials is much broader than those encompassed by the category-system depicted in the table. But other accusations occur too rarely to meaningfully correlate them with sentences. Accusations even go beyond some defendants' time in the ghetto. Thus, apart from charges related to his activities in the Odessa ghetto, Igor' Fidler was accused of divulging state secrets. In 1946, Fidler was recruited as an informer for the Izmail MGB (Ministry of State Security, the NKVD's name from March 1946 on). His employers later accused him of having told his wife and his relatives about "his affiliation to the MVD, the tasks he received and the working methods of the MVD organs".[2] Other post-liberation accusations were directly related to the investigations into former functionaries' role in the ghettos. Defendants Brender and Veshler were accused of attempting to bribe witnesses so that they would not testify about both men's activities in the Tul'chin ghetto.[3] Such rarer accusations need to be considered when examining individual investigations and trials. For identifying patterns of adjudication, rarer accusations can be ignored, and attention must focus on the most common accusations.

Let us review these most common accusations. In almost all documents, Soviet officials specified how a given defendant came into his position in the ghetto administration. Different wordings

[2] Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 176–177.
[3] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 176–179.

seem to suggest varying degrees of initiative on the defendants' part. Most common are formulations such as "he entered into the occupiers' service" ("postupil na sluzhbu k nemetsko-rumynskim okkupantam") or "he voluntarily entered the occupiers' service" ("dobrovol'no postupil na sluzhbu").[4] Especially the latter wording explicitly suggests that it was the defendant's choice to enter a position in the administration, rather than he was forced into it. Compare this to the equally common "was appointed by the occupiers", suggesting no initiative on the defendant's part, or recurrent wordings which plainly state a defendant's service as a matter of fact, not specifying the mode of appointment and the defendant's initiative ("he worked as the secretary of the ghetto committee").[5]

These varying degrees of initiative suggested could have influenced adjudication since supervisory organs advised their subordinate military tribunals to consider exactly this factor when deciding a given case. Already in 1943, the Kiev District Military Tribunal had laid out guidelines for handling cases of "traitors" and provided a list of "a number of circumstances" which were deemed "of significant meaning for the case" and demanded "a more careful analysis".[6] The list included the "circumstances, motives and conditions of the criminal act (voluntary consenting to work in the interests of the enemy, consenting under the influence of threats, physical violence and so on)".[7] Hence, theoretically, the formulations we find in verdicts and release orders should matter.

In fact, the different formulations correlate, albeit inconsistently, to how Soviet authorities adjudicated the respective cases. The decisions of conviction or release fit with the ascribed degrees of initiative, but the severity of sentences does not. Regarding the question of conviction or release, we see that for almost everyone who was released, their appointment was stated matter-of-factly.[8] Thus, when investigators and judges decided to release a defendant based on a successful investigation, they referred to his appointment only in vague terms. But the different modes of appointment ascribed in verdicts only loosely correspond to the severity of sentences. For simplicity's sake, let us group the sentences into three categories: light (up to nine years), average (ten years), and severe (eleven and more years plus death sentences). The most damning formulation ("voluntarily entered …") about joining on one's own initiative appears across all three types of sentences, with an equal share for severe and light sentences (around a third). Apart from

[4] Grinberg Mikhail Iosifovich, HDA SBU ChO, D10092, p. 74. Belikovetskii Matvei Isaakovich, HDA SBU VO, D2740, p. 161–163.
[5] Sherf Isaak Lazarevich, HDA SBU VO, D20752, p. 137. Gabor Gerbert Leonovich, HDA SBU ChO, D1601, p. 119–120.
[6] Work of the Military Tribunal in the 3rd quarter of 1943, TSDAHO, F1O23D684, p. 14.
[7] Ibid.
[8] The exception is defendant Landverg, who was deemed to have "voluntarily joined the police on the post of a policeman". However, Landverg's case was terminated not because he had been found not guilty, but because he became so sick that "conducting the investigation is impossible". Landverg Berngard Meshilimovich, D4949, Derzhavnyi arkhiv Vinnyts'koi oblasti (DAVO), p. 43.

this, the remaining documents explaining a light sentence far more often refer to an appointment by the occupiers than those motivating average or severe sentences, thus limiting the ascribed initiative. Verdicts containing severe sentences only very rarely describe the defendants' appointment matter-of-factly. Average sentences contain every possible formulation, with the lowest share of "voluntariness" (only around one in ten). Hence, there is a tendency towards a correlation between the severity of sentences and the degree of initiative ascribed in sentences, but other accusations were likely more significant for determining convictions and sentences.[9]

Besides talk of appointment by the occupiers, a typically Soviet phrase about defendants' relationships appears in various documents. Here, the defendant's "connections" ("sviazi") to the Romanian authorities are mentioned (or, in rarer cases of defendants in lower-level positions, their connections to the Jewish council).[10] Such an interest in people's contacts was common for Soviet security organs, especially when it came to inventing elaborate anti-Soviet conspiracies.[11] This had been an important feature of the propaganda narrative developed in the 1930s Moscow show trials, where the defendants' "connections" had constituted a worldwide network of conspirators.[12] For the decision documents examined here, such talk of "connections" is of minor importance. When we look at convictions, phrases about convicts' connections most frequently appear in the verdicts of those who received light sentences. Almost nine out of ten verdicts for severe and average sentences do not mention "connections" – so the accusation was hardly damning. The similarity of "connections" in the decision documents to the "connections" of 1930s show trials appears to be one of phrasing, rather than one of content and sentencing.

Like "connections", another typically Soviet accusation is that of anti-Soviet attitudes and/or statements. In the court decisions examined here, that accusation did not have a big impact on whether the adjudicators decided to convict or release a defendant or on how severe a sentence they would pass. Accusations anti-Soviet attitudes and/or statements appear in ten percent of decision documents and in almost fifteen percent of convictions. They are equally prevalent across light and average sentences and less common for severe sentences, where they feature in less than one in ten documents. Only defendant Akthemberg was accused of harboring only anti-Soviet

[9] Note that we discuss each accusation separately, but that most defendants faced a compound of different accusations. Correlating accusations to trial outcomes can thus only show their relative significance vis-à-vis other accusations, but we cannot claim that any single accusation was a sufficient condition for these outcomes.
[10] "During the time of his service in the aforementioned position, the defendant was closely connected to the head of the gendarmerie and police of the city of Balta […]." Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 164–165. "Being closely connected to the heads of the [Jewish, WS] community, Leiderman helped the elder of the community and his assistants, German-Romanian proteges, to implement all orders of the occupers: […]." Leiderman Motel' Berkovich, HDA SBU VO, D28231, p. 176.
[11] GRIESSE: Soviet Subjectivities, p. 621. VIOLA: Stalinist perpetrators, p. 13.
[12] SCHLÖGEL: Terror und Traum, p. 103–110.

attitudes. In all other instances, the accusations also refer to statements the defendants made.[13] We can thus assume that neither ascribing an anti-Soviet "mens rea" nor finding someone guilty of anti-Soviet statements had a strong effect on convictions and the severity of sentences for the trials examined here.

According to other conspicuous phrases, defendants implemented the orders of the enemy and/or supported the regime the enemy had created. Such phrases appear in some forty percent of all decision documents. Thus, supposedly, defendant Rubinshtein "actively implemented the orders of the occupiers" in the Balta ghetto, and Vainshtok and Shtrakhman supposedly "supported the fascist regime created in the [Rybnitsa] ghetto".[14] Similar phrases appear in about half the verdicts and release orders. As the wording of the last example shows, the language is politically loaded, and these accusations thus might correlate to a higher rate of convictions and higher sentences.

However, this is not the case. On the one hand, such phrases often appear as mere introductory formula followed by a list of more specific acts attributed to the accused. Consider the following example: "As a police officer, Kutsenko zealously obeyed all orders and instructions of the German administrative authorities, chased the Jewish population of the ghetto out for forced labor, guarded the ghetto administration and territory, controlled the entry permits, took part in the arrests of Soviet citizens and beat the Soviet citizen Rof […] at the end of 1943."[15] On the other hand, phrases about orders and the regime sometimes implicitly contain aspects of ghetto reality we had expected to be mentioned in indictments and verdicts, but which are virtually absent from them. Consider the following example:

> "To please the German-Romanian occupiers, Shtrakhman personally subjected to beatings citizens Shuster, Titievskii, Gaferman and R[*illegible*] for evading to work for the occupiers and violations of the established regime."[16]

Here, the phrase "regime" relates to a topic we had expected to frequently find in indictments and verdicts, but which was not explicitly mentioned in those documents. The topic is the enforcement of curfews and the ghetto boundaries. Divulging from the verdict into the rest of the investigative case file, we see that Shtrakhman's encounter with the aforementioned girl named

[13] "The materials of the preliminary and court investigations prove that defendant Akhtemberg is guilty of, having been hostile towards Soviet power, took the path of betrayal of Soviet citizens."Akhtemberg, Moisei Iakovlevich, USHMM, RG-54.003*01, p. 64. "Rubinshtein held anti-Soviet convictions; more than once he replied to Soviet citizens' pleas for help with vulgarities and anti-Soviet statements, and during his arrest in the present case in 1947 a fascist emblem was confiscated from Rubinshtein, which had been in his possession for a prolonged period of time." Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 142–143.

[14] Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 142–143. Shtrakhman, Nakhman Mortkovich, USHMM, RG-54.003*44, p. 192.

[15] Kutsenko Zus′ Iosifovich, HDA SBU VO, D28772, p. 159.

[16] Shtrakhman, Nakhman Mortkovich, USHMM, RG-54.003*44, p. 192.

Gaferman took place on the market of Rybnitsa. Jews were only allowed to go there after 11 am (when there was nothing left to buy, we might add). Naturally, malnourished ghetto inmates went to the market earlier, and Gaferman was caught there by Shtrakhman.[17] Enforcing orders and upholding the "regime" thus provided a situational context for violence, which can be seen in another example from the verdict of defendant Gorovits: "In supporting the regime established by the Romanian occupiers […] Gorovits applied physical measures of influence to violators of the regime."[18]

Phrases about "orders" and the "regime" were thus either used to introduce other offenses or to summarize a particular set of situational contexts for violence, namely those we had expected to find represented in our concept-driven categories, namely enforcement of curfews and the ghetto boundaries, resistance, as well as smuggle and the black market. For phrases about orders and the regime, there is no discernable correlation with convictions or the severity of sentences – they are found almost equally across convictions and releases, as well as across light, average, and severe sentences. Carrying little content of their own, these seemingly loaded phrases appear as a largely irrelevant re-iteration of the mere fact that a defendant served in the ghetto administration. When such phrases have a discernable content of their own, they describe various aspects of ghetto reality which provided the situational contexts in which defendants supposedly committed acts of violence.

Across various other categories, we encounter a similar structure. Mentions of deportations, forced labor mobilization, property crimes, arrests, and home searches often provide the situational contexts in which violence occurred, which thus has a distinctive place in the structure of all accusations. The categories of arrests and home searches describe purely physical acts. But mentions of deportations, forced labor mobilization, and property crimes are split into a direct and an indirect involvement. For these categories, the documents consistently differentiate between ordering, organizing, informing on the one hand, and physically implementing the respective measure on the other hand. The category of violence itself is split similarly (doing the beating versus ordering someone to do it or informing on someone which lead to the beating).

Consider the topic of deportations, which features in slightly more than a quarter of decision documents.[19] The accusations differentiate between an organizational role and the physical

[17] Ibid., p. 22, 157.

[18] Gorovits Salomon Iakubovich, HDA SBU ChO, D9898-o, p. 76. Note that the authors of the document referred to the defendant's actions with a euphemisim for beating and torture Soviet security organs often described their own working methods with. VATLIN: Agents of Terror, p. 23. VIOLA: Stalinist perpetrators, p. 18.

[19] We understand this term as an at least temporary forced departure of one or more inmates from the ghetto which occurred on the orders of the Romanian authorities. We are unconcerned here with the goals of this forcible removal, which can include forced labor at another place. Deportations are differentiated from forced labor beyond the boundaries of the ghetto if the laborers returned to the ghetto daily. We are loosely basing this definition on the one

conducting of deportations.[20] One in five documents contains accusations of organizational, and one in ten accusations of direct physical involvement in deportations. In addition to specifying a defendant's role, the documents often also refer to the results of their actions. For deportations, only rarely do we find no reference to how things ended for those forced to leave (less than one in ten documents).[21] More often, specific phrases such as "who did not return to the ghetto" or "the fate of whom remains unknown" insinuate an ominous outcome for the deportees (around one in five documents).[22] Also rarely, it is explicitly stated that the people sent away from the ghetto died at their destination (less than one in ten documents).[23] In the last category, we also included instances when the destination was designated as "to the Germans" or "to German territory" since based on witness testimony we can assume that investigators and judges were aware that this was practically synonymous with the deportee's death.[24]

Accusations of facilitating deportations feature in more than 35% of convictions, with organizational involvement being twice as prevalent as physically carrying out the deportation. The differentiation of these accusations into roles and results correlates with conviction rates and the severity of sentences. Notably, nobody who was released was found guilty of any involvement in deportations. For severe sentences, organizational and physical roles have equal shares, but for average sentences, organizational roles are twice as common as physical involvement. Most noteworthy, the verdicts passing average sentences do not refer to the results of the deportations or use the ominous, but vague phrase of an "unknown fate" or deportees' failure to return.[25] Conversely, almost all documents explaining severe sentences directly state that the deportees died. Roles were thus decisive in differentiating light from average and severe sentences, but results

found here: SMALLMAN-RAYNOR, Matthew R./CLIFF, Andrew D.: Theresienstadt. A Geographical Picture of Transports, Demography, and Communicable Disease in a Jewish Camp-Ghetto, 1941–45, in: Social Science History (2020), p. 1–25, here p. 6.

[20] "Treistman […] drew up lists of population in the camp and handed them over to the gendarmerie and labor bureau, from where healthy men were sent to work in Balta, Nikolaev, and from where people never returned." Treistman, Levi Moiseevich, USHMM, RG-54.003*53, p. 132–133. "In June 1942, Belikovetskii, as chief of police, took part in the gathering of the Jewish population who had fled the German shootings in Brailov to the Zherminka Jewish ghetto." Belikovetskii Matvei Isaakovich, HDA SBU VO, D2740, p. 161–163.

[21] "Furthermore, as witnesses testified, Taikh […] sent Jews off to concentration camps from the Shargorod ghetto […]." Taikh Maer Mendelevich, DAVO, D633, p. 52.

[22] "In the autumn of 1941, Vainshtok and Shtrakhman sent from the ghetto to camps around 600 Soviet citizens of Jewish nationality, the fate of whom remained unknown." Shtrakhman, Nakhman Mortkovich, USHMM, RG-54.003*44, p. 192.

[23] "When he found citizen Brenner on the territory of the "ghetto" in 1944, Eidler sent him to the city of Balta, where Brenner was burned to death together with the Jewish children sent away at the same time from the Tul'chin ghetto." Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 292.

[24] Gershman Adol'f, HDA SBU, D67437, p. 177–178. Witnesses sometimes also claimed that deportees must have died, since they did not return. Nevertheless, it is mostly unclear how exactly Soviet adjudicators understood the more open phrases about "no return" and an "unknown fate". Therefore, the two categories should be kept separate. For such a witness testimony, see: Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 53–55.

[25] Individual Transnistrian Jewish ghetto functionaries later protested against the vagueness of such formulations in their appeals. See: DUMITRU: Gordian Knot, p. 750.

decided between average and severe sentences. Note that the number of deportees was apparently of secondary importance here. Thus, Vainshtok received only an average sentence, although he was found guilty of having organized the deportation of some 600 inmates of the Rybnitsa ghetto.[26] In contrast, Eidler was found guilty of deporting a single individual from the ghetto which resulted in this person's death, and Eidler was sentenced to fifteen years of katorga.[27]

Besides involvement in deportations, accusations of forced labor mobilization play a central role in the body of decision documents examined here. With almost 60% of all decision documents, forced labor mobilization is the most common meaningful accusation after the modes of appointment. For forced labor mobilization, two different roles are differentiated within the documents. As organizational involvement we construed the drawing up of lists, determining who is to be recruited and when, and authorizing others (such as the ghetto police) to enforce this.[28] We also included instances where defendants informed Romanian authorities when ghetto inmates evaded forced labor.[29] As physical involvement, we construed when defendants met ghetto inmates or visited them at their homes and chased them to work, or assisted Romanian officials in doing so.[30]

How do such accusations of forced labor mobilization relate to convictions and sentences? Almost 70% of convictions feature such accusations, and even for a third of those who were released, the courts accepted it as a fact that they had mobilized ghetto inmates for forced labor. Only half of those receiving severe sentences were found guilty of having been involved with forced labor. The accusation is most common for those sentenced to ten-year terms (four out of five). As with deportations, two in three of those who were sentenced to shorter terms were found guilty of having recruited ghetto inmates for forced labor. For severe sentences, physical and organizational roles were equally common, but for average sentences, physical involvement was twice as prevalent. Note that everybody receiving a light sentence was found guilty only of having played a role in the organization of forced labor. The accusations thus correlate with the severity of sentences, but not completely coherently. The accusations had an influence, but a limited one.

Another relevant accusation is that of property crimes, which means that defendants received money, valuables, or goods either as bribes, extorted those items with threats, or took them away, at times forcibly. The items were either handed to the occupiers or kept by the defendants. Like

[26] Shtrakhman, Nakhman Mortkovich, USHMM, RG-54.003*44, p. 193.
[27] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 294.
[28] "As the head of the ghetto labor department, Moskovich drew up lists of the Jews confined in the ghetto and sent them to forced labor […]." Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 164.
[29] Treistman, Levi Moiseevich, USHMM, RG-54.003*53, p. 133.
[30] "As a policeman Kutsenko […] chased the ghetto's Jewish population to forced labor […]." Kutsenko Zus′ Iosifovich, HDA SBU VO, D28772, p. 159.

other accusations, property crimes thus fall into two sub-categories. First, there were theft and robbery, i.e. physically taking away things from ghetto inhabitants.[31] Second, there were bribes and extortion, i.e. having ghetto inmates hand over things to attain a favor or prevent a threat from being realized, which could concern deportations, forced labor, etc.[32] Accusations of property crimes appear in a bit less than a third of decision documents and a bit more than a third of convictions.

Again, we see that the physical activity (theft and robbery) does not occur in verdicts containing light sentences. Only about 15% of those verdicts refer to bribes and extortion. For average sentences, around half of the verdicts mention property crimes, with theft and robbery being slightly more common. Property crimes appear in one out of four verdicts with severe sentences. Of those appearances, two out of three refer to theft and robbery, the "hands-on" way of expropriating ghetto inmates. Accordingly, the accusations concur with the tendency identified for other accusations – physical involvement was punished more often and more severely.

Furthermore, defendants were often accused of participating in arrests of ghetto inmates for various reasons. Once more, the accusations are differentiated into direct or indirect involvement, i.e., performing the physical arrest or informing on someone so that person was arrested by the Romanian gendarmerie.[33] One in four decision documents contains accusations of participating in arrests. For convictions, the portion rises to a bit more than a third. The accusation of informing is most prevalent in verdicts with light sentences (around 15%), again, the physical act is absent from such verdicts. A third of the average and half of the severe sentences coincide with accusations that the defendant was involved in arrests. Both for severe and average sentences, four out of five of such accusations deal with the physical act of arresting someone. Accusations, too, loosely match the pattern discussed above.

An accusation lacking the typical differentiation into ordering, informing, or organizing a measure on the one hand and the physical implementation of that measure is the accusation of home searches – it is only mentioned in decision documents as a physical act.[34] Only about one in ten of all decision documents contain such accusations. The accusation is absent from release orders and

[31] "As the head of police the defendant appeared in the flat of citizen Land together with several policemen, beat up Land and took a blanket, a duvet cover, and a wristwatch." Sherf Isaak Lazarevich, HDA SBU VO, D20752, p. 137.
[32] "Exploiting his official position, Grinberg extorted money from the Jewish population and took bribes, thus he took money from Fortman and Vainshtein for freeing them from work duty." Grinberg Mikhail Iosifovich, HDA SBU ChO, D10092, p. 74.
[33] "In March 1943, Belikovetskii went and arrested Koifman. In July 1943, Belikovetskii arrested the Bidlev brothers for allegedly stealing 10 geese from a German official." Belikovetskii Matvei Isaakovich, HDA SBU VO, D2740, p. 162. See also: Kutsenko Zus′ Iosifovich, HDA SBU VO, D28772, p. 159.
[34] "Together with his assistant and fellow community member Shamis, he went to citizen Raif, where a search of the home was conducted and things were confiscated, also a home search was conducted and things were confiscated at citizen Roizman's residence." Leiderman Motel' Berkovich, HDA SBU VO, D28231, p. 176.

acquittals, as well as the verdicts of all those convicted to light sentences. It features in around 15% of the verdicts of those convicted both to average and severe sentences. Again, the "hands-on" activity of searching someone's home seems to have precluded the chance of being released or receiving a light sentence.

A more abstract accusation concerns the creation of "unbearable living conditions", which is sometimes accompanied by stating that those conditions lead to the death of ghetto inmates. We also included all mentions of hunger, disease, etc., and conditions of material want in this category, if it was implied that people faced these ailments because of a defendant's actions (or his negligence). Thus, the court found that defendant Vitner had "intentionally obstructed the distribution of food and clothing to the population […]".[35] More broadly, defendant Rakhmut was found guilty of having "[…] as an administrative worker of the committee, created unbearable conditions in the ghetto, as a result of which the population suffered from hunger and many died."[36]

About 15% of all decision documents feature similar accusations, with the figure rising to 20% for convictions. Surprisingly, such accusations are most common in the verdicts for light sentences, where they are found in four out of five documents. Both for average and severe sentences, similar accusations are found in less than one in ten documents. We thus think it safe to assume that the influence of such accusations on sentences was limited.

More benign were accusations that the defendants had enjoyed privileges of free movement within and/or outside the ghetto.[37] Occurring in around one in ten decision documents and around 15% of convictions, these accusations seem to have been included in the documents primarily to highlight the defendant's status vis a vis the Romanian authorities.

There are manifold accusations of violence in the decision documents, which again appear differentiated into indirect and direct involvement, i.e. being a perpetrator or an accomplice of violence. The accusations almost exclusively revolve around beatings. When a defendant was said to have done the beating, we subsumed this under "perpetrator of violence".[38] As accusations of having assisted in violence we construed instances when a defendant was said to have physically handed over ghetto inmates or informed on them, who then were beaten by ghetto policemen or by the Romanians, or when a defendant was said to have ordered the ghetto police to beat those

[35] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 176.
[36] Rakhmut, Samuil Khaimovich, USHMM, RG-31.018M, R-2838, F03, 322, p. 105.
[37] "As did Leiderman, Shamis, too, enjoyed free passage out of the 'ghetto' organized by the occupying authorities, based on a badge issued by the occupying authorities, he drove from village to village where he implemented the procurement of food." Leiderman Motel' Berkovich, HDA SBU VO, D28231, p. 177.
[38] "As the police chief, Sherf received a bribe from citizen Egdysh, so that he, Egdysh, would not be sent to work, when Egdysh learnt, that he had not been designated for work, and that the defendant did not have anything to do with that, Egdysh demanded his money back from the defendant, but Sherf did not return the money and beat Egdysh up." Sherf Isaak Lazarevich, HDA SBU VO, D20752, p. 137.

inmates.[39] Occurring in almost half of decision documents and almost 60% of all convictions, allegations of violence are the second most common meaningful accusations leveled against the arrestees.

Both regarding correlations with convictions and releases, as well as with different severities of sentences, violence appears as one of the most potent predictors for trial outcomes.[40] Among those released, there is only a single person where the court saw it as proven that he had physically abused ghetto inmates. Conversely, for 60% of those who were convicted, Soviet adjudicators saw it proven that they had directly or indirectly participated in violence against ghetto inmates.

Violence's influence on the severity of sentences is even greater. Violence was absent from the documents explaining light sentences, featured in almost six out of ten of the verdicts for average sentences, and appear in nine out of ten of those for severe sentences. Looking at average and severe sentences, we also see the significance of a direct involvement, of doing the beating rather than facilitating it. Of the severe sentences, three quarters were based on verdicts describing defendants as perpetrators of violence, as were half of the documents relating to average sentences. For the accusation of being an accomplice to violence, the respective figures are 40% (severe sentences) and 15% (average sentences).

How are we to explain the severe sentences which were not based on accusations that the defendant had beaten ghetto inmates? Out of a total of twelve such verdicts, three do not contain that accusation, but two nonetheless show a certain link to violence. Defendant Eidler was not charged with beating people, but with conducting several deportations, one of which lead to the death of the person forcibly removed from the ghetto.[41] Defendant Raikher was neither accused of beating people himself nor of deporting people who subsequently died. But the court found that he had arrested three ghetto inmates and handed them over to Romanian gendarmes, who then beat those ghetto inmates up and eventually shot them.[42] This is the only instance in all decision documents where what we construed as assistance to violence lead to executions. The similarity to deportations resulting in deportees' deaths is obvious. The remaining "inexplicable" severe sentence was passed on Pavel Moskovich. The document stands out since Moskovich was neither accused of beating people nor did his supposed assistance to violence result in someone's death. He also was not accused of having been involved in deportations. Moskovich's fate seems to be

[39] "In his practical work he showed great activity, consisting in the persecution and repression of those who evaded work. Together with the police and the gendarmerie he searched them out and arrested them. The arrestees were subsequently subjected to beatings by the gendarmerie." Dresher Iosif Solomonovich, HDA SBU ChO, D5126-o, p. 43.

[40] On the significance of violence, see also: SCHNEIDER: From the ghetto, p. 92, 96.

[41] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 292.

[42] Raikher Boris-Berngard Alekseevich, D3709, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Vinnyts′ka oblast′) (HDA SBU VO), p. 79.

the only instance where there is a discernable link between the severity of the sentence and the defendant's alleged "connections". The verdict did not mention it, but in the indictment, investigators claimed that Moskovich, "[b]eing personally acquainted from Bucharest with the governor of Transnistria Alexianu, […] received the post of the chief of the 'ghetto' labor bureau of the Balta region."[43] We might assume that this detail did not escape the judges deciding Moskovich's case and that his high-profile "connections" influenced the verdict.

As we have seen in discussing each individual accusation, there is a tendency towards a patterned distribution of "physical roles" across both convictions and releases, as well as across the severity of sentences – the more "hands-on" someone's actions were, the likelier he was to be convicted and to receive a higher sentence. The more "organizational" someone's actions were, the likelier he was to be released or to receive lighter sentences. This is a tendency – not more. And that tendency is clearly linked to violence since the "physical" roles provided the situational contexts in which violence would occur. Herein lies the main structural feature linking the different types of accusations in the decision documents.

The last category of accusations discernable in the decision documents specifies who the victims of certain actions were, i.e. who had to perform forced labor, was arrested, beaten, deported, or denied food and clothing. Such accusations either identify the victims as helpless ("elders, women and children") or as Red Army members, Soviet activists, etc. ("[…] in the presence of a Romanian sergeant he stated that Sirota is a Komsomol member and that he needs to be arrested. As a result of this, Sirota was arrested.").[44] Such accusations were common, they appear in a fifth of decision documents and a quarter of convictions. However, these additional specifications do not carry any discernable weight, neither for the question of conviction and release nor for the severity of sentences.

So much for accusations – but what about extenuating circumstances? Maybe, we might ask, Soviet authorities recognized the special circumstances defendants had acted in? In other words, do we find phrases that describe Levi's gray zone in these documents, (above our threshold of one in ten decision documents)? Notably, out of the 48 available documents explaining how cases were adjudicated, only ten explicitly acknowledge the defendants' status as deportees or ghetto inmates. At first glance, these formulations could be mistaken for a recognition of the gray zone defendants had acted in as extenuating circumstances.[45] But a closer look at the other accusations leveled

[43] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 145.
[44] Gershman Adol'f, HDA SBU, D67437, p. 189. Akhtemberg, Moisei Iakovlevich, USHMM, RG-54.003*01, p. 64.
[45] Conversely, one indictment describes another defendant as an agent of the Romanian secret service and thus as an occupier, rather than a victim of the occupiers. However, this is not mirrored in the verdict. Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 145–148, 164-165.

against these defendants reveals that Soviet adjudicators were just more likely to frame a defendant's role as ambiguous when the other accusations against that person were less severe.

In the decision documents of ten defendants, we find formulations such as "[…] as a Jew by nationality, he was arrested by the Romanian evildoers and interned in the 'ghetto' located at the outskirts of Odessa in the Slobodka village".[46] Of those eight convicts whose status as victims of the occupation was explicitly acknowledged, no one received a severe sentence. Equal shares were convicted to light and average sentences.[47] Two additional men who were recognized as victims were released and not convicted. Yet, this hardly means that Soviet adjudicators treated as extenuating circumstances the gray zone Jewish functionaries had acted in. Rather, the severity of sentences mirrors that for other defendants accused of similar actions, but the verdicts of whom do not frame these other defendants as victims. Concerning those defendants described as victims, the crucial aspect of violence is absent from the verdicts for light sentences, as are accusations of property crimes, participation in arrests and searches of ghetto inmates' homes. Less severe accusations of forced labor recruitment are mirrored by less severe sentences. Describing defendants as deportees or ghetto inmates in the verdicts is an effect of less severe accusations, rather than a cause of lighter sentences.

Based on our review of the accusations, we can answer several questions which had emerged when we checked for correlations between sentencing and the collective portrait of arrestees. First, let us examine whether the presence of a lawyer really increased the chance for a shorter and less harsh sentence. Above we had seen this to be the case as long as we only correlated the presence of a lawyer with trial outcomes. But to be sure that the effect is real we need to be sure that one of two conditions was met: Either the accusations against those defended by a lawyer were the same as the charges brought forward against those not represented by legal counsel in court. Or the accusations against those represented by lawyers were even harsher. In both cases, having a lawyer would clearly have had an effect – facing the same or worse charges, a defendant was treated less harshly. However, as the following table shows, the charges differed significantly, especially in the crucial accusations of violence:

[46] Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 176.

[47] Just as the different types of accusations discussed above, these formulations are no idiosyncrasies of any one tribunal or judge. See: Dresher Iosif Solomonovich, HDA SBU ChO, D5126-o, p. 43. Moldovan SSR MT: Grinberg, Moisey Peysakhovich, RG-54.003*16, War Crimes Investigation and Trial Records from the Republic of Moldova, 1944-1955, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 140. Odessa MT: Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 176–177.

| verdicts of all trials, including MSSR Supreme Court | | |
|---|---|---|
| | no lawyer | lawyer |
| deportations: conducting | 4,8% | 25,0% |
| deportations: organization/lists | 19,0% | 16,7% |
| forced labor recruitment: physical recruitment | 38,1% | 41,7% |
| forced labor recruitment: organization / lists | 28,6% | 58,3% |
| theft / robbery | 23,8% | 33,3% |
| bribes / extortion | 19,0% | 8,3% |
| arrests: informing | 9,5% | 0 |
| arrests: active participation | 42,9% | 8,3% |
| accomplice to violence | 33,3% | 8,3% |
| perpetrator of violence | 71,4% | 25,0% |
| N = documents | 21 | 12 |

*tab. 43*

Note that several of the more "hands-on" accusations are either equally common in the verdicts passed against defendants who had a lawyer and those who did not, or those represented by a lawyer even faced such accusations more often (see the frequencies for physical involvement in forced labor recruitment, theft/robbery, and especially the conducting of deportations). However, crucial differences emerge when one considers active participation in arrests and, most importantly, direct involvement in physical violence – which was three times more common in verdicts of those who did not have a lawyer. It appears that the defendants who had a lawyer on average faced accusations that the Soviet judiciary punished less severely.

One might ask whether the charges incriminated in the verdicts are a suitable indicator to determine that proposition. Maybe the difference in accusations was already a result the lawyers had achieved by deflecting the more severe charges from their defendants in court? However, an analysis of the indictments from cases of defendants with and those without lawyers shows the opposite to be the case. The pattern remains consistent, albeit with slightly different numbers. Therefore, the fact that Soviet adjudicators treated defendants with lawyers less severely does not prove that lawyers were particularly successful in supporting their clients. Rather, it appears that lawyers were more often admitted in cases where the accusations a defendant faced were less severe. Consider the following table:

| indictments of all trials, including MSSR Supreme Court | | |
|---|---|---|
| | no lawyer | lawyer |
| deportations: conducting | 9,5% | 25,0% |
| deportations: organization/lists | 19,0% | 16,7% |
| forced labor recruitment: physical recruitment | 33,3% | 25,0% |
| forced labor recruitment: organization / lists | 28,6% | 16,7% |
| theft / robbery | 38,1% | 33,3% |
| bribes / extortion | 42,9% | 25,0% |
| arrests: informing | 19,0% | 8,3% |
| arrests: active participation | 23,8% | 0 |
| accomplice to violence | 23,8% | 16,7% |
| perpetrator of violence | 66,7% | 33,3% |
| N = documents | 21 | 12 |

*tab. 44*

Another question that remained open when we correlated the details of sentencing with the collective portrait of arrestees was whether Soviet Jews were punished harder because they were Soviet Jews, or because of what they were accused of. The harsher punishments Soviet Jews faced were consistent with the patterns in the sentencing of all former functionaries. Soviet Jews were more often accused of being perpetrators of violence, conducting home searches, actively participating in arrests, committing theft or robberies, and conducting deportations. Only for one type of accusation, playing a physical role was more often ascribed to Romanian Jews, and that is forced labor recruitment. But even here, Soviet Jews faced this accusation almost equally often. Hence, it is safe to assume that rather than being category-based, Soviet Jews' harsher punishments were indeed connected to the more "hands-on" aspects of the ghetto police duties in which they were overrepresented compared to their Romanian Jewish counterparts. The patterning of accusations is depicted in table 45 both according to defendants' regions of origin, as well as to their positions in the ghetto.

| accusations - roles | Jewish council members | ghetto policemen | Romanian Jews | Soviet Jews |
|---|---|---|---|---|
| deportations | | | | |
| deportations: conducting | 5,4% | 18,2% | 5,7% | 15,4% |
| deportations: organization/lists | 24,3% | 9,1% | 25,7% | 7,7% |
| forced labor | | | | |
| forced labor recruitment: physical recruitment | 21,6% | 54,5% | 28,6% | 30,8% |
| forced labor recruitment: organization / lists | 43,2% | 9,1% | 37,1% | 30,8% |
| property crimes | | | | |
| theft / robbery | 10,8% | 45,5% | 5,7% | 53,8% |
| bribes / extortion | 13,5% | 9,1% | 17,1% | 0,0% |
| arrests | | | | |
| arrests: informing | 8,1% | 0,0% | 8,6% | 0,0% |
| arrests: active participation | 13,5% | 45,5% | 11,4% | 46,2% |
| home searches | 0,0% | 45,5% | 2,9% | 30,8% |
| violence | | | | |
| accomplice to violence | 18,9% | 9,1% | 20,0% | 7,7% |
| perpetrator of violence | 29,7% | 72,7% | 31,4% | 61,5% |
| | | | | |
| N = documents | 37 (77,1%) | 11 (22,9%) | 35 (72,9%) | 13 (27,1%) |

*tab. 45*

Thus, the analysis of decision documents allows to tentatively answer another question raised in the prosecution overview. It appears that the sentences former ghetto functionaries received under article 54-3 were a little less severe than the sentences other groups of defendants faced. However, the decision documents show that the severity of senteces varied according to the concrete accusations the investigators brought forward against a defendant. Thus, it appears less likely that Jews were treated differently than other groups.

## Subsuming different accusations under Soviet law

This leads to a more general question which is essential to situating the cases of former ghetto functionaries on the normative state – prerogative state continuum: Did adjudicators subsume concrete offenses of individuals under criminal law? To answer this question, we need to examine in some more detail the Soviet legal framework for prosecuting collaboration.

As discussed above, the legal framework consisted of two meta-categories, "traitors" and "accomplices", for both of which two competing legal instruments were available (article 1 of Ukaz 43 and article 58-1 of the criminal code for "traitors"; article 2 of Ukaz 43 and article 58-3 for "accomplices"). Sorting defendants into these categories was far from straightforward. On the one hand, the defendant's former position had to be considered, as the Supreme Court had clarified in November 1943. The higher-ups were traitors, the small cogs were accomplices. On the other hand, the mere fact of service for the occupiers was not enough – the principle of positions and hierarchies was in tension with that of offenses. From Ukaz 43 onwards, offenses became important in determining who had collaborated and what was to be done with them. And the core offenses were violence and murder. Hence, adjudicators had to answer three questions: into which category was a defendant to be sorted, which legal instrument from that category was to be chosen, and what exact sentence stipulated by that legal instrument was to be applied (if there was a range of possible sentences)? The answer to any one of those could lead to tensions with the answers to the others. Three of the four available articles had the death sentence as their standard sentence. At the same time, supervising agencies increasingly demanded that adjudicators under their jurisdiction refine the sentencing to reflect the specific facts of the case. Furthermore, a general moderation of punitive policies had set in, which made ten-year Gulag terms the standard sentence, instead of the death penalty. Privileging offenses over positions and this general moderation of punitive policies meant that determining sentences became somewhat independent from the categories of "traitors" and "accomplices". According to an order issued by the General Directorate of Military Tribunals in 1944, when the offenses of "traitors" included assisting the occupiers in "reprisals and violence", these traitors should face katorga terms, not just incarceration in the Gulag.[48] This order mostly substantiated what military tribunals had already been doing. When a defendant's offenses were deemed too serious to sentence them to ten years in the Gulag, but not serious enough to have him executed, courts had already applied katorga sentences.[49] But in the framework of "traitors" and "accomplices", katorga was a punishment reserved for accomplices.[50] Simultaneously, courts were not allowed to transfer the punishments from one legal instrument to cases where they applied another (this was considered a subsumption error).[51] Hence a paradoxical situation emerged: When someone was categorized as a "traitor" and charged under article 54-1, but their role in violent offenses was deemed both too serious for a ten-year sentence and not serious enough for the death penalty, they had to be re-categorized as an "accomplice" so that an alternative punishment became available. It comes as no surprise that the application of

[48] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 79–80.
[49] Ibid., p. 78.
[50] Ibid., 76, 404. EXELER: Ambivalent State, p. 616.
[51] EPIFANOV: Organizatsionnye i pravovye osnovy, p. 80.

this convoluted legal framework, especially concerning Ukaz 43, remained somewhat contradictive.[52] On the other hand, one central current cannot be denied: Accusations of violence played a central role in determining the sentences of those deemed collaborators.

We can thus assert that the harsher sentences connected with accusations of violence we see in the group of former ghetto functionaries were passed according to the contemporary legal framework. This included the framework's paradoxes and its somewhat chaotic application: For example, defendants Eidler and Raikher were among those who were sentenced under article 54-1, but the courts applied the punishment stipulated in article 2 of Ukaz 43 to those defendants.[53]

On the other hand, sorting defendants into the categories of "traitors" and "accomplices" according to their positions in the ghetto hierarchy seems to have played a role as well, but a limited one. The following table depicts which legal instruments were applied to which positions:

| **positions in ghetto: artciles as basis of convictions** | | | | |
|---|---|---|---|---|
| article | heads of JC + deputies | JC members | police chiefs + deputies | policemen |
| 54-1 and Ukaz 43 article 1 | 11 | 3 | 1 | 4 |
| 54-3 and Ukaz 43 article 2 | 9 | 7 | 3 | 2 |
| total | 20 | 10 | 4 | 6 |
| article | heads of JC + deputies | JC members | police chiefs + deputies | policemen |
| 54-1 and Ukaz 43 article 1 | 55% | 30% | 25% | 67% |
| 54-3 and Ukaz 43 article 2 | 45% | 70% | 75% | 33% |
| total | 100% | 100% | 100% | 100% |

*tab. 46**

**counting 54-2 as 54-3 and counting "54-1 with sanction of Ukaz 43 article 2" as 54-1*

Though their leading positions should have made them "traitors", half the heads of Jewish councils were sorted into the category of "accomplices". Similarly, most rank-and-file policemen were deemed "traitors", but some of their police chiefs were only categorized as "accomplices". Only for the regular Jewish council members do the legal instruments applied fit the categorization according to positions. Thus, the defendants as a whole fit into the framework only if we assume

[52] Ibid.
[53] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 294. Raikher Boris-Berngard Alekseevich, HDA SBU VO, D3709, p. 80.

that the differentiation according to positions really meant "lower administrators versus everybody else (higher-ups and executive/police functions)".

In the group of former ghetto functionaries, we also see a significant "emancipation" of sentencing from the meta-categories of "traitors" and "accomplices". The 20 "accomplices" faced shorter Gulag terms than the 18 "traitors". But more often than the "traitors", the "accomplices" were convicted to katorga terms, the length of which equaled those applied to "traitors". Consider the following tables:

| **types of sentences** | | |
|---|---|---|
| sentence | traitors | accomplices |
| death | 1 | |
| katorga | 3 | 8 |
| ITL | 14 | 12 |
| total | 18 | 20 |
| sentence | traitors | accomplices |
| death | 6% | 0% |
| katorga | 17% | 40% |
| ITL | 78% | 60% |
| total | 100% | 100% |

*tab. 47*

| **average sentences** | |
|---|---|
| accomplices | 11,5 |
| traitors | 11,5 |
| average Gulag | |
| accomplices | 8,16 |
| traitors | 10,35 |
| average katorga | |
| accomplices | 16,5 |
| traitors | 16,5 |

*tab. 48*

Comparing these figures with the correlations between concrete accusations and sentences, the significance of the meta-categories "traitors" and "accomplices" for trial outcomes appears limited. Nevertheless, the texts of the decision documents show that Soviet adjudicators widely used the categories of "traitors" and "accomplices", albeit less coherently than stipulated in the legal framework. Adjudicators often use the terms "complicity" ("posobnichestvo", i.e. "accomplices") and "treason" ("izmena" or "predatel'stvo", i.e. "traitors") in odd combinations or even

interchangeably. It is rarer to find clear differentiations (such as: "[…] there was no treason from their side, but assistance to the Romanian occupying authorities is a proven fact […]") than almost synonymous usage (such as: "On the basis of the facts laid out here, the military tribunal found Belikovetskii, Teplitskii and Vovsianiker guilty of treason of the motherland and assistance to a fascist state […]."), which found its strongest expression in the phrase "complicit-treacherous activity" ("posobnicheskaia predatel'skaia deiatel'nost'").[54] Such chaotic usage notwithstanding, the terms used in convictions loosely correlate to the severity of sentences. When passing light sentences, adjudicators wrote either about "complicity" or simply of "criminal activity". For harsh sentences, "treason" is the most common term, although in half of the instances the word is used together with "complicity". Average sentences rarely correlate with exclusive usage of "complicity", mostly we see combinations with "treason". These combinations are used slightly less often than in the documents for severe sentences. Notably, half the documents for both severe and average sentences do not contain such terms at all.

## Trial publicity and accusations

The publicity of trials also correlates to concrete accusations, and these correlations partially match the pattern of harsher sentencing for more "hands-on" actions. Above we had seen that when they chose whom to try in front of a minimal local audience and whom to try in non-public proceedings, Soviet authorities considered the defendant's former position in the ghetto administration.[55] But the things Soviet officials accused the defendant of also played a role in their decision. When a defendant was accused of a physical, rather than indirect involvement in forced labor mobilization, deportations, and property crimes, he was also more likely to be tried in a semi-public setting. The respective accusations are more common in decision documents for cases tried in front of minimal local audiences than the share of all proceedings such semi-public trials take up. But regarding arrests, home searches, and, most importantly, violence, the pattern in the conviction rate and the severity of sentences is not mirrored by a similar pattern in the publicity of proceedings. Whether a defendant was accused of violence was important for the decision of whether to convict him and for determining the sentence. But Soviet officials apparently did not consider this accusation when they chose to whose trial witnesses should be invited. This is counter-intuitive since one would expect that Soviet officials saw great propagandistic value in punishing violent crimes committed during occupation.

[54] Treistman, Levi Moiseevich, USHMM, RG-54.003*53, p. 133. Belikovetskii Matvei Isaakovich, HDA SBU VO, D2740, p. 162. Shtern Ignatii Samoilovich, HDA SBU ChO, D85-p, p. 61.

[55] For simplicity's sake, we here divide all proceedings into semi-public ones, held in front of a minimal local audience, and non-public ones, held in a military tribunal without the witnesses or adjudicated by the OSO in Moscow.

Equally counterintuitive, some other accusations with a high expected propagandistic value are also underrepresented in semi-public trials. Thus, the accusation that a defendant's victims had been especially helpless, i.e. women, elders, or children, is more common for defendants who were tried in non-public settings. The same is true for claims that the defendant had voluntarily entered the occupiers' service. Since Soviet propaganda depicted collaboration as pathological behavior of individuals, rather than as the widespread social phenomenon it was, this accusation would have fit propaganda goals. Thus, the propagandistic utilization should not be overemphasized.

On the other hand, there are accusations closely fitting the propaganda goals that we can assume Soviet officials had, namely accusations of anti-Soviet attitudes and statements. Of the five people who were accused of such crimes, four were tried in semi-public settings. When the chance arose to equate collaboration with enmity to the Soviet regime, the Soviet officials used it. There is still debate regarding the extent to which earlier labeling as "enemies" of the Soviet regime and repressions such de-kulakization etc., predisposed Soviet citizens to collaborate with the Axis occupiers.[56] But regardless of the real causal relation between prior "enmity" and wartime collaboration, in the case of the 51 defendants examined here, Soviet officials used almost every opportunity to portray these men as enemies semi-publicly.

Soviet authorities also showed clear priorities in how much they took up the contents of witness testimonies in the decision documents. A qualitative content analysis of 310 pretrial witness testimonies on analytical level D) shows this. These witness testimonies pertain to the 26 defendants on level D). Therefore, the contents of the witness testimonies can be matched with the contents of 24 decision documents that Soviet authorities drew up for the same defendants (minus the two men who had died while in pretrial custody). Consider the crucial accusations around deportations, anti-Soviet agitation/convictions, forced labor, and violence. For the comparison, we used column percentages, i.e. we counted in how many of the witness testimonies and decision documents these issues came up at least once and then divided this by the respective total of 310 documents. The result is the following table:

[56] MAKHALOVA: Kollaboratsionizm v Krymu, p. 34.

| accusation | witness testimonies | decision documents |
|---|---|---|
| deportations: organization/lists | 29% | 33% |
| deportations: conducting | 17% | 4% |
| anti-Soviet agitation or convictions | 18% | 21% |
| forced labor recruitment: organization / lists | 28% | 50% |
| forced labor recruitment: physical recruitment | 26% | 33% |
| accomplice to violence | 19% | 21% |
| perpetrator of violence | 18% | 29% |
| | N = 310 documents | N = 24 documents |

*tab. 49*

The first interesting result is that the issue of deportations is underrepresented – it appears that the authorities found it less important than the witnesses. Moreover, the direct physical involvement in conducting deportations is mentioned much less frequently in the decision documents than in the witness testimonies. However, the reason for this may be that we coded only those instances in the decision documents as "conducting" deportations where the description was unambiguous. More broad formulations such as "he sent people" away were coded as "organizing". Therefore, we may be dealing with a limitation of the method. Nevertheless, the general result holds: that the frequency with which witnesses talked about deportations was not represented in the decision documents.

On the other hand, the codes dealing with the results of deportations show that Soviet authorities took up this issue in a highly specific way. Taking a step back from the column percentages presented above, one can also count the total codings for a topic like deportations and put the number of codings for the subcodes in relation to the total for the first-level code. Interestingly, when witnesses talked about deportations, they claimed that those deported had died at their destinations almost half of the time (45%). Another 45% of the times that witnesses talked about deportations they did not talk about results at all. In contrast, decision documents most often, three out of four times, use the more ambiguous formulations of "did not return" and of an "unknown faith" of those deported. A deadly result is mentioned not even one in ten of the times that deportations come up in decision documents. It appears the authorities were very cautious with claims they could not corroborate since these things had allegedly happened at another place.

Besides some issues the authorities picked up only selectively and in very particular ways, there were also accusations witnesses made that Soviet officials ignored completely. As our discussion in

the case study on the Odessa ghetto shows, one such issue was that of sexual exploitation and sexual violence (see chapter 14). In two of the cases on analytical level D), witnesses informed investigators that a defendant had supposedly used their position as a functionary to extort sex from women in the ghetto. However, the investigators did not pick up these allegations in the decision documents.

It should come to no surprise that Soviet authorities were quite attentive in taking up witnesses' accusations of anti-Soviet convictions. The frequency of such accusations in both groups of documents is almost a perfect match. Thus, the authorities were attentive when witnesses reported such accusations and included them in the decision documents. However, the authorities did not blow such accusations out of proportion.

Accusations of forced labor recruitment are much more common in decision documents than in the witness testimonies – the difference is almost 30%. Notably, the difference here contradicts the sentencing pattern. The overrepresentation is a result of the authorities blowing the more benign accusations of organizing forced labor out of proportion. Thus, not only did the authorities carefully mirror witnesses' accusations that someone had physically recruited ghetto inmates for forced labor. They also found the issue generally important enough to record any involvement with forced labor in the decision documents, even if the accusation was less prevalent in the witness testimonies. One may hypothesize that there was an underlying military logic according to which supplying the enemy with forced laborers meant supporting his war effort.

The distribution of the crucial accusation of violence fits the sentencing pattern perfectly. This issue, too, is overrepresented in the decision documents. However, the difference here stems from the crucial accusation that someone was a perpetrator, rather than an accomplice to violence.

In sum, the comparison of witness testimonies and decision documents shows another layer of how selectively state representatives paid attention to what witnesses had to say. The basic layer was that of the recording practices and biases outlined in the chapter on source criticism (see chapter 2). The information that the investigators selectively gathered then had to pass another bottleneck – that of judicial decision-making. Again, part of the information was lost, part of it diminished in its significance and part of it overrepresented – the authorities only selectively recognized witnesses' experiences as judicially relevant.

## Case terminations and acquittals – Was there room for the gray zone in red courts?

A separate issue from convictions and the severity of sentences is that of case terminations and acquittals in court. The respective decision documents offer some further important insights into how Soviet authorities adjudicated cases of former ghetto functionaries. We will consider the

institutional procedures for releases and the most common formal and substantial reasons provided.

The most straightforward reason was given for releasing Berngardt Landverg, whose case was terminated because he was too sick to be questioned and who had to be transferred to a hospital. Landverg was far from the only one held in investigative custody who fell ill due to the catastrophic conditions in jails at the time. In a report the head of the Kiev district military tribunal sent to the central committee of the Ukrainian Communist Party, he listed the most common reasons why his subordinates failed to bring cases to trial in the second quarter of 1945. He included "Illness of arrestees and quarantines in places of confinement" into the list of the five most common reasons.[57] Among the regions specifically mentioned here was the Vinnitsa region – exactly where Landverg fell ill while in investigative custody, leading to his eventual release.

Release orders and acquittals also mention other formal reasons for setting defendants free. These reasons include that accusations were disproven by witness testimony, that witnesses who had accused an arrestee had left for Romania and could no longer testify, and that witnesses had withdrawn their accusations when questioned repeatedly.[58]

Even primarily prerogative state institutions sometimes recognized the problem of insufficiently substantiated accusations and arrests. Four of the case terminations examined here show that even the "Special board of the People's Commissariat of Internal Affairs" (OSO) was regulated in its operation by some minimal standards of procedure. As discussed above, the main underlying principle of the OSO could be formulated as "sentence anyway". It was meant to pass sentences in cases that would not hold up in court, but in which the defendants were meant to be punished anyway since, oddly enough, their guilt was declared a matter of fact. In the case of four defendants examined for the present study, the OSO representatives showed restraint in fulfilling this function.

The cases of Gabor, Gendel', Gol'dfel'd, and Rasp, all charged for their role in the Obodovka ghetto, were returned for additional investigation to the Chernovtsy NKGB, which had sent the case to the OSO for sentencing. Before being adjudicated by the OSO, casefiles needed to be approved for sentencing by the USSR prosecutor for special jurisdiction cases. He essentially conducted a one-man pretrial session. On June first, 1945, the prosecutor found that the Chernovtsy NKGB had failed to investigate the accusations against Gabor, Gendel', Gol'dfel'd, and Rasp. The investigators had only produced partial confessions and mutual accusations of the defendants, which the prosecutor found clearly insufficient for a conviction.[59] It thus appears that

[57] Work of the Military Tribunal in the 2nd quarter of 1945, TSDAHO, F1O23D2374, p. 34.
[58] Taikh Maer Mendelevich, DAVO, D633, p. 52, 54. Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 293.
[59] Gabor Gerbert Leonovich, HDA SBU ChO, D1601, p. 95.

even the operation of a prerogative state organ such as the OSO was at least partially regulated by a minimal set of normative state procedures. Apparently, investigators failing to investigate was no isolated incident. In a report to the Communist Party's central committee, the military prosecutor of L'vov military district, Lipatov, mentioned a case in which the investigators had not done anything for a full four months.[60] After the OSO returned the case of Gabor, Gendel', Gol'dfel'd, and Rasp for additional investigation, the Chernovtsy NKGB finally found some witnesses. But when these witnesses gave only exonerating testimonies and stressed how the accused had supported the ghetto population, the NKGB set Gabor, Gendel', Gol'dfel'd, and Rasp free for lack of evidence. The men had spent 274 days in investigative custody.

Similar substantial reasons were provided for releasing Morits Shtainbok and Pedutsii Shraiber, who had both been arrested for their suspected activities in the Tul'chin ghetto. Soviet investigators found no evidence of any wrongdoing. Shraiber's only responsibility had been running a shoemaker's workshop.[61] Shtainbok had been hired by the Jewish committee for a short term to bring the committee's books in order after the responsible bookkeeper had thoroughly messed them up.[62] Both men fit the criterion for release that the Supreme court had put forward in November 1943. According to this order, "minor employees of administrative institutions, workers and specialists practicing their profession (doctors, veterinarians, agronomists, engineers, teachers, etc.)" should not face prosecution if they had not committed any crimes.[63] Since the investigators found no evidence of any criminal activities, they released Shtainbok and Shraiber.

Perhaps even more importantly in Shraiber's case, he was one of three people whose release orders explicitly highlight that he had supported Soviet partisans during the Axis occupation.[64] Again, the Supreme Court's November 1943 instructions had stated that supporting the partisans could get someone off the hook (see chapters 5 and 8). Theoretically, this should only have been possible when other serious accusations were absent. Hence, although a former partisan testified to Iosif Zaslavskii's support active support for the Soviet underground, Zaslavskii was sentenced to ten years in the Gulag. The court found him guilty of having both been an accomplice to as well as a perpetrator of violence, of having arrested ghetto inmates, having searched their homes, and having stolen their property.[65] Isaak Sherf's situation was similar, but the partisan who testified on his behalf during the court session did not even make it into the verdict, where the court did not

[60] Lipatov to Khrushchev, USHMM, File 2374, Reel 57, RG-31.026M, p. 16.
[61] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 40–41.
[62] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 168.
[63] MALIARENKO: Reabilitatsiia reprecovanykh, p. 49.
[64] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 40–41.
[65] Zaslavskii Iosif Borukhovich, HDA SBU, D22904, p. 3–4.

mention his support for the partisans.[66] Even more unusual is then the release order for Isaak Fabrikant. The Military Collegium of the Supreme Court did not question the fact that Fabrikant had physically mobilized ghetto inmates to forced labor and that he had beaten several of them. Nevertheless, his ten-year Gulag sentence was nullified and Fabrikant was freed.[67] This decision, reached by the highest judicial authority in the USSR, was simply illegal. It shows that under certain circumstances, political expedience could supersede legality even at the highest levels of the judiciary – the prerogative state was clearly not relegated to the spheres of repression and the executive organs. As we have argued elsewhere, something similar happened in the case of Maer Taikh. But here, the authorities at least saw it necessary to dismiss eyewitness accounts of Taikh's alleged complicity in arrests and violence as unreliable.[68] Not having any supervising authority above itself, the Military Collegium did not care to put up such window dressing – its decision was final anyway and no procuror or higher judicial instance could interfere. For the following case studies, this shows that it is just as important to examine the potential political underpinnings of releases as those of convictions.

Also in the case of Taikh, investigators concluded that besides supporting the partisans, he had helped the ghetto population by organizing food, shelter, and better sanitary conditions.[69] In other cases, defendants are said to have protected ghetto inmates from arrest and persecution by the Romanians.[70] Similar mentions of a defendant's positive role in the ghettos are the most common substantial reason mentioned in release orders and acquittals. We find them in seven out of twelve such documents. Only one of the 36 convictions contains a similar acknowledgment. Again, this concerns Iosif Zaslavskii, which emphasizes just how rarely a defendant's positive deeds are recognized in conviction documents.[71] If Soviet judges found a former ghetto functionary to have done bad things, they seemingly did not want to overcomplicate matters by acknowledging that he had also done good things.

The same unease with ambiguity is apparent in convictions and releases. Out of the twelve individuals found not guilty, the actions of nine are described as exclusively positive. Fabrikant's questionable actions are acknowledged but ignored for political expediency. Only in the verdicts of Abram-Khaim Khusid and Moisei Zabakritskii do we find an actual recognition of the "gray zone". The court considered it a proven fact that both men had been members of the Tul'chin ghetto's Jewish council, and that both had temporarily headed the council. Furthermore, it found

[66] Sherf Isaak Lazarevich, HDA SBU VO, D20752, p. 133, 137-138.
[67] Fabrikant Isaak Toivievich, DAVO, D1374, p. 99.
[68] SCHNEIDER: From the ghetto.
[69] Taikh Maer Mendelevich, DAVO, D633, p. 53.
[70] Shtern Ignatii Samoilovich, HDA SBU ChO, D85-p, p. 61.
[71] Zaslavskii Iosif Borukhovich, HDA SBU, D22904, p. 3–4.

them both guilty of organizing "heavy forced labor of Soviet citizens who were confined in the ghetto for the benefit of the occupiers".[72] Zabakritskii, the court proclaimed, had also committed theft of ghetto inmates' property and handed the loot to the Romanians.[73] Nevertheless, the court "did not find criminal acts as provided by article 54-1 "a" or article 54-3 of the Ukrainian SSR Criminal Code" in their actions. The court explicitly stated that to reach this decision, it took into consideration "the situation of the Jewish population on occupied territory during the period of occupation, the total lack of any administrative rights whatsoever, both for the elder, as well as for the members of the community" (i.e. the Jewish council and its head).[74] In other words: Khusid and Zabakritskii lacked the necessary agency for making their actions subject to criminal prosecution.[75]

The two men's astonishing acquittal allows us to see the convictions, and even the case terminations, in another light. We clearly see which questions Soviet investigators and adjudicators chose not to ask and which issues they chose not to consider: the fundamental imbalance of power between Romanian occupiers and Jewish ghetto administrators, as well as the inherent ambiguity of the functionaries' role. Convictions and releases sort those functionaries into bad ones and good ones – anything in between was apparently taboo for Soviet authorities. In the decision documents of red courts, there was no place for gray zones.

## Conclusion

As listed above, the Soviet decision documents from the cases on analytical level C) feature a broad variety of different accusations. Common themes include forced labor recruitment, violent acts, property crimes, deportations, arrests, and the generally harsh living conditions in the ghetto. A pattern that emerges when these themes are correlated with convictions and the severity of sentences: Conviction rates and severity of sentences are higher for accusations that describe a direct, physical involvement rather than an indirect one and an organizational role.

Moreover, the accusation of violent acts and especially of committing them directly is the best predictor for convictions and the severity of sentences. In turn, the direct involvement in other activities such as deportations or forced labor mobilization provided likely situational contexts in which a defendant might commit such direct acts of violence.

[72] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 293–294.
[73] Ibid.
[74] Ibid., p. 294.
[75] That this verdict was most likely highly exceptional is also corroborated by Exeler's studies. Exeler has studied the Soviet prosecution of collaboration in Belarus extensively and she contends that she could not find a single case in which "external constraints, pressures or factors were taken into consideration". EXELER: Ambivalent State, p. 620.

Based on this pattern, it is clear which of the two hypotheses from the prosecution overview in the previous chapter is adequate. Soviet Jews were not treated more severely than Romanian Jews qua their belonging to a different group. They were treated more severely because they were overrepresented in police functions and in these functions, they directly implemented things such as recruiting people for forced labor. In turn, this direct involvement made it more likely that they would use violence to enforce certain decisions, such as who had to leave the ghetto in a deportation contingent. Therefore, not only were Jewish ghetto functionaries not targeted merely based on social categories, but the way they were prosecuted was also largely independent of Soviet social categorizations – a normative state feature. Thus, defendants could hope that Soviet authorities would treat them according to alleged actions, not social categories.

While the Soviet legal framework of the time was convoluted and somewhat contradictory, the conviction and sentencing pattern identified in the documents adhered to one of the central tendencies of this framework. Soviet adjudicators' decisions were thus not arbitrary, which constitutes a further normative state feature.

The qualitative content analysis of decision documents also allowed to further specify the role of lawyers. Their influence on the proceedings was likely more limited than the prosecution overview had suggested. It appears that lawyers were admitted to those cases in which defendants faced less severe accusations and for which they would have received less harsh punishments anyway. Such a selective admission of legal counsel is indicative of underlying prerogative state principles.

The sentencing pattern identified in this chapter only partially correlated with the publicity of proceedings. For some themes, accusations of more direct involvement raised the chance that the defendant would be tried in front of a minimal local audience. But for other themes, this was not the case. Especially significant is the crucial accusation of violence, which one would expect to have carried great propagandistic weight, but played no measurable role in Soviet authorities' decision on whom to try semi-publicly.

Similarly, the decision documents represent another layer of selection that witnesses' experiences, grievances, and interests had to pass. Even if the witnesses' words had made it into the protocols of their pretrial testimonies, it did not mean that the adjudicating authorities would grant those words any judicial significance. Thus, a comparison of what witnesses said in the cases on analytical level D) and the decision documents from these cases show that Soviet authorities had their own priorities – these documents were no mere mirrors of the accusations that witnesses had collectively brought forward.

An examination of pretrial case termination orders and acquittals showed that assisting the partisans during occupation could later become a lifeboat for defendants when they wound up in the hands of the Soviet security organs. These organs took such assistance seriously enough that they not only afforded a normative state treatment to those they defendants they deemed friends rather than foes. In individual cases, even the highest organs of Soviet justice were ready to ignore their own laws and use prerogative state interventions to free defendants who had supported the partisans. The following case studies supplement this finding by showing what exactly defendants and former partisans had to do to achieve a release. The analysis of case termination orders and acquittals also revealed that these decisions were almost never based on a recognition of the gray zone – the one document containing such deliberations is unique. In contrast, that document highlights just how little attention the Soviet judiciary generally paid to the specific situation the defendants had acted in.

# Case study 1: Initial Soviet procedures against Tul'chin ghetto Jewish functionaries in Chernovtsy – Assisting the partisans, support campaigns for the accused and extortion

The following two case studies deal with two Soviet investigations, one initiated in Chernovtsy in 1944, the other in Tul'chin in 1945. Both dealt with events in the Tul'chin ghetto and, to a degree, also in the nearby Pechora death camp. These investigations unfolded in radically different fashions. One shows the Soviets at their worst, the other at their best, one was about extortion, the other about the law. Our analysis progresses as follows.

We begin by providing the necessary general background information about the Tul'chin ghetto. We then explain why the city of Chernovtsy became one focal point of the following Soviet investigations. Since many Bucovinian Jews were confined in the Tul'chin ghetto, many of its survivors left for Chernovtsy after the ghetto was liberated in March 1944. They either were from that city or wanted to use it for emigrating to Romania. With survivors living in close quarters, former ghetto functionaries were easily recognizable on the streets, and the Soviet security organs soon began an investigation into allegations of collaboration.

Focusing on this investigation in Chernovtsy, we analyze how the Soviet judiciary recognized when ghetto functionaries had supported the communist underground during the occupation. We describe how exactly two of the defendants, Shraiber and Shtainbok, had worked with the underground and how they sheltered the ghetto population from harm. We then discuss the significance of support networks and campaigns for bringing such things to the attention of Soviet authorities and for proving their veracity to these authorities. Here, we draw extensive comparisons to other cases.

However, we conclude that the release of Shraiber and Shtainbok and the conviction of four other former functionaries were also heavily influenced by extortion. In Chernovtsy, local Soviet investigators used a "provocateur" to hold the defendants to ransom. We present a host of direct and circumstantial evidence to prove that such an extortion scheme existed and place it in the context of Chernovtsy after the return of the Soviets. We argue that the extortion scheme explains many aspects of the Chernovtsy investigation, such as selective prosecution of potential suspects, selective weighing of the available evidence, and the use of prerogative-state administrative sentencing procedures.

## The Tul'chin ghetto

On July 23, 1941, German and Romanian troops occupied Tul'chin, a town some 18 kilometers west of the Southern Bug river, in the northeastern corner of what would soon become

Transnistria.[1] In 1939, some 40% of the town's 13.500 inhabitants had been Jews.[2] Only some of the Jewish inhabitants managed to evacuate from the advancing Axis troops.[3] Evacuation was difficult because it was 14 kilometers to the nearest railway station.[4] Initially, the Germans recruited Jews randomly for forced labor, directly off the streets.[5] The occupiers soon put the burden of that task on the Jews themselves. Not long after the town was occupied, around mid-August, a first Jewish council was formed on orders of the Germans.[6] They also directly appointed at least one of its members, Iakov Bentsionovich Eidler, and selected local pharmacist Iosif Solomonovich Rudov as the council's head, who had to choose the rest of the members.[7] The council was comprised of ten men, most of them in their 50s – here an association with the term "council of elders" is not entirely out of place.[8] The Germans' apparent reason for appointing two of the men specifically was that they spoke German; once the occupiers had ensured that at least two people on the council did, they left it to Rudov to sort out the rest.[9] The occupiers first tasked the council with conducting a census of the Jewish population.[10] One council member later claimed that around 4.500 Jews were counted in Tul'chin at that time.[11] The new register was then used to organize forced labor, which was the second task the Germans set for the Jewish council.[12]

In early September 1941, Tul'chin's Jews found themselves under Romanian civil administration.[13] Later that month, the new administration forced the town's Jews to move into a closed ghetto.[14] Tul'chin was effectively split into two parts, into one of which the Jews were forced

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[1] CREANGĂ, Ovidiu: Tulcin, in: Camps and ghettos under European regimes aligned with Nazi Germany, edited by Joseph R. WHITE / Mel HECKER / Geoffrey P. MEGARGEE (The United States Holocaust Memorial Museum Encyclopedia of camps and ghettos, 1933–1945, vol. 3), Bloomington 2018, p. 806–808, here p. 806–807.
[2] Ibid., p. 807.
[3] Ibid. Survivor Mikhail Bartik later assumed that "no more than 500 people successfully managed to evacuate from Tul'chin". BRONSHTEIN, Moris (ed.): "Mertvaia Petlia". Interv'iu s uznikami Pechorskogo kontslageria, New York 2013, p. 16.
[4] VYNOKUROVA, Faina: Evrei v adu. Lager'-getto v Pechore (Transnistriia), in: Problemy istorii Holokostu: Ukrains'kii vymir (2016), p. 40–88, here p. 67.
[5] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 14, 243.
[6] Ibid., p. 75-77, 141-142, 143-145, 14, 125-127.
[7] Ibid., p. 125–127, 243.
[8] Ibid., p. 199, 201.
[9] Ibid., p. 125–127.
[10] Ibid., p. 125-127, 243.
[11] A witness unconnected to the Jewish council provided a higher estimate of 5.000 to 7.000, but admitted it was based on hearsay. Therefore, the number of 4.500 seems more reliable. That number is around 1.100 people lower than the 1939 census and can therefore account both for fluctuations in the population, as well as for the evacuation and conscription into the army of at least a part of the town's Jews. Ibid., p. 125–127, 79-80.
[12] Ibid., p. 125-127, 243. Triangulation with oral history accounts and other sources confirms this, see: TOLKOVETS, Anatolii, Interview 21228. Interviewed by Yacov Eliashevich. Visual History Archive, USC Shoah Foundation 13.10.1996, https://vha.usc.edu/viewingPage?testimonyID=22376&returnIndex=0#, last accessed October 07, 2021, segments 20–21. Obshchestvo Evreiskoi Kul'tury im. E. Shteinberga/Assotsiatsiia Uznikov Fashistskikh Getto i Kontslagerei/Gosudarstvennyi Arkhiv Chernovitskoi Oblasti: Liudi ostaiutsia liud'mi. Svidetel'stva uznikov fashistskikh lagerei-getto (vol. 3), Chernovtsy 1994, p. 100.
[13] CREANGĂ: Tulcin, p. 807.
[14] Ibid. Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 204.

to move.[15] When the Jews did not "move from the right side of the street to the left side" quickly enough, the Romanians staged a public beating of the Jewish council's members.[16] In November, the Romanian prefect, colonel Ion Lazăr, issued order Nr. 6, prohibiting Jews to leave the ghetto and threatening harsh reprisals for noncompliance.[17] Between late November and December 20, some 3.200 Jews were deported from the ghetto to the Pechora death camp (22 kilometers from Tul'chin).[18] The Jews were gathered in a school building and then sent from there in groups to the camp on foot.[19] The last contingent had to leave in the final days of December.[20]

Only a few were allowed to remain, skilled workers and artisans whose exploitation the Romanians considered economically significant.[21] The group of 118 people permitted to stay was comprised of 25 or 26 artisans and their families.[22] These selections were based on the census lists which Germans had forced the Jewish council to create.[23] Those permitted to stay were quarantined in the ghetto hospital for some time before they could return to their homes in the ghetto.[24]

Some of the Jewish council's members were included in the deportations to Pechora.[25] Among the deportees was Rudov, who was not counted as a specialist and included in the first contingent that left for Pechora.[26] That categorization is surprising, since Rudov had stepped down from his post as head of the Jewish council in November and returned to working in his profession at a pharmacy.[27] Rudov later died, but the witness testimony about the exact circumstances is

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15 Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 204.
16 Ibid., p. 252.
17 CREANGĂ: Tulcin, p. 807.
18 The USHMM encyclopedia puts this event in November, the Yad Vashem encyclopedia on December 13. The former head of the Jewish council, Zabakritskii, dated the final deportations to Pechora on December 18-20. See: Ibid. Tulchin, in: The Yad Vashem encyclopedia of the ghettos during the Holocaust, edited by Guy MIRON, Jerusalem 2009, p. 851, here p. 851. Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 64. The distance between Tul'chin and Pechora is given in: CREANGĂ, Ovidiu: Pecioara, in: Camps and ghettos under European regimes aligned with Nazi Germany, edited by Joseph R. WHITE / Mel HECKER / Geoffrey P. MEGARGEE (The United States Holocaust Memorial Museum Encyclopedia of camps and ghettos, 1933–1945, vol. 3), Bloomington 2018, p. 742–744, here p. 742.
19 Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 285. Obshchestvo Evreiskoi Kul'tury im. E. Shteinberga et al.: Liudi ostaiutsia liud'mi, vol. 3, p. 100. BRONSHTEIN: "Mertvaia Petlia", p. 75.
20 Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 204.
21 CREANGĂ: Tulcin, p. 807.
22 Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 17, 30, 33, 34, 35, 64, 79–80, 82, 91. The number of 118 people is given in: CREANGĂ: Tulcin, p. 807. It is imperative not to confuse the total number of people allowed to stay with the number of artisans among them, as some scholars do. For an example of such confusion, see: VYNOKUROVA: Evrei v adu, p. 54.
23 Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 204, 250.
24 Ibid., p. 85, 204, 253, 277, 286.
25 Ibid., p. 64. ROTFORT, Ganna, Interview 18366. Interviewed by Alexander Kaganovich. Visual History Archive, USC Shoah Foundation 08.08.1996, https://vha.usc.edu/viewingPage?testimonyID=19293&returnIndex=0#, last accessed October 07, 2021, segment 34.
26 Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 261, 263.
27 Ibid., p. 76, 95, 243, 251, 261.

inconclusive. It is not clear whether he perished in Pechora, or a German camp he was allegedly transferred to.[28] The remaining Jewish council members continued their work.

In the summer of 1942, the Romanians opened the so-called "peat camp" in Nestervarka, about one kilometer from Tul'chin. Jewish men aged 17 to 50 had to dig peat there, which was later processed into briquettes in a small factory created in the former Tul'chin synagogue. Many camp inmates succumbed to typhus.[29] Small groups of Jews from the Tul'chin ghetto were occasionally sent to this camp.[30] For instance, a group of 40 ghetto inmates was transferred to the peat camp in June 1943.[31] Some of the other Jews in the peat camp were likely brought there from Chernovtsy, from where the Romanians deported some 5.000 Jews mainly to the Tul'chin district in June 1942.[32]

These Chernovtsy Jews were scattered across different camps and ghettos in the district.[33] The Romanians had already deported some 30.000 Jews from Chernovtsy to Transnistria in October and November of 1941.[34] The Romanians deported Jews from Northern Bucovina primarily on foot, yet put the Jews of Chernovtsy in freight trains, heightening their chances of survival.[35] A few of the Jews deported from Chernovtsy during the first wave in 1941 wound up in the Tul'chin ghetto around the time the second wave of deportations in June 1942.[36] In August 1942, the Romanians handed over some 3.000 of the Jews they had recently deported from Chernovtsy to the Germans for road construction at Thoroughfare IV (Durchgangsstraße IV).[37] There, the Jews succumbed to sickness, malnutrition, and hard labor, or the Germans shot them once they considered the Jews unfit for work.[38] According to one witness who testified against Jewish council members in a Soviet trial, Jews from the Tul'chin ghetto were also sent to Bratslav, one of the camps the inmates of which had to build Thoroughfare IV.[39] Many Chernovtsy Jews remained in

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[28] Ibid., p. 14, 63, 76, 261.
[29] KRUGLOV, Alexander/UMANSKYI, Andrei/SHCHUPAK, Igor': Kholokost v Ukraine. Reikhskomissariat "Ukraina", Gubernatorstvo "Transnistriia", Dnipro 2016, p. 77.
[30] CREANGĂ: Tulcin, p. 807.
[31] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 93–95. Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 24–27.
[32] ARAD: Holocaust in the Soviet Union, p. 300.
[33] IOANID: Holocaust in Romania, p. 190, 216.
[34] Ibid., p. 141. Chernovtsy mayor Traian Popovici managed to have some of the 50.000 Jews who were confined in the local ghetto exempt from deportation. See: BURMISTR: Transnistrien, p. 399.
[35] BURMISTR: Transnistrien, p. 399–400.
[36] See the testimony of witness Lavner, who was initially deported to a farm near Kernasovka in the fall of 1941, and then after eight months transferred to the Tul'chin ghetto: Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 106.
[37] IOANID: Holocaust in Romania, p. 190, 216.
[38] ANGRICK, Andrej: Annihilation and Labor. Jews and Thoroughfare IV in Central Ukraine, in: The Shoah in Ukraine. History, testimony, memorialization, edited by Ray BRANDON / Wendy LOWER, Bloomington 2008, p. 190–223, here p. 207–211.
[39] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 113–114. ANGRICK: Annihilation and Labor, p. 207.

the camps and ghettos of the Tul'chin district, including the peat camp, until it was temporarily shut down because of strong frosts in December 1942.[40]

Between November 1942 and January 1943, the Romanians transferred some 300 Jews from the other camps and ghettos in the district to the Tul'chin ghetto.[41] Most witnesses testifying in a 1944/1945 Soviet investigation in Chernovtsy had been at the camp in the Ladijin stone quarry before the Romanians transferred them to Tul'chin.[42] According to the interrogation protocols of the four defendants later investigated for their role as Jewish ghetto functionaries (Brender, Shraiber, Shtainbok, and Vitner) they all were deported from Chernovtsy to the Ladijin camp in June 1942 and transferred to Tul'chin in January 1943.[43] Another would-be defendant, Mozner arrived in January 1943 as well, but it is not explicitly stated that he was in Ladijin.[44] The route to Tul'chin the Romanians forced defendant Veshler to take is unknown.[45] Besides the influx from Ladijin, other ghetto inmates arrived from places like Belousovka or Kernasovka.[46] Moreover, up until 1944, Jews who escaped from other places of confinement came to the ghetto. Such places included Bratslav in the Vinnitsa region and, most notably, nearby Pechora.[47]

After the bulk of the official transfers was completed in January 1943, a new Jewish council was formed, mainly comprised of deportees who had arrived from Ladijin, but also including representatives of the local Jews.[48] With the new arrivals, the ghetto's population had again grown to some 500 Jews as of March 1943.[49] In April 1943, between 100 and 200 of them were sent from the ghetto to perform forced labor on farms in the Tul'chin district, primarily in Kernasovka.[50] The Romanians transferred between 30 and 70 of them further, to the Germans across the Bug, who

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[40] KRUGLOV et al.: Kholokost v Ukraine, p. 77.

[41] The month of November was given by defendant Eidler. Both the USHMM and the Yad Vashem encyclopedias date this transfer to December 1942. Defendant Khusid claimed that the transfer occurred only in January 1943. See: CREANGĂ: Tulcin, p. 807. YVEG: Tulchin, p. 851. Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 128-131, 20-23.

[42] At least 200 of the new arrivals came to Tul'chin from that camp. CREANGĂ, Ovidiu: Ladijin / Stone quarry, in: Camps and ghettos under European regimes aligned with Nazi Germany, edited by Joseph R. WHITE / Mel HECKER / Geoffrey P. MEGARGEE (The United States Holocaust Memorial Museum Encyclopedia of camps and ghettos, 1933–1945, vol. 3), Bloomington 2018, p. 700–702, here p. 701. Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 104-105, 109-111, 112-114, 120-123, 133-135, 139.

[43] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 12, 46-50, 89, 96-97. Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 12. The memoirs of Shraiber's son confirm this at least for Shraiber and Shtainbok: SCHREIBER, Gerhard Bobby: A Tale of Survival. Or If Stalin Could Have Swallowed Hitler and Choked on it, p. 25, online: http://czernowitz.ehpes.com/stories/schreiber/schreiber_memoirs2.pdf, last accessed March 10, 2018.

[44] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 34–36.

[45] Ibid., p. 71–72.

[46] Ibid., p. 104–105, 106.

[47] Ibid., p. 115, 130-132.

[48] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 20, 21-23. Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 15–16.

[49] CREANGĂ: Tulcin, p. 808.

[50] See the varying numbers provided by Ioanid and in the witness testimonies and defendants' depositions stemming from the Chernovtsy investigation: IOANID: Holocaust in Romania, p. 222. Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 14, 17-19, 120-123, 127-129, 136-138, 143-149.

shot those Jews.[51] On August 2, 1943, the Romanians sent another 200 Jews from the ghetto to the Germans, who shot these deportees.[52] By bribing Romanian officials, the deportees managed to have 52 children exempted from the deportation.[53] As of September 1943, there were some 220 Bukovinian, 7 Bessarabian, and several hundred local Jews in the Tul'chin ghetto.[54] According to another count in November 1943, the total population of the ghetto was 480.[55] In December 1943, the peat camp was closed and some of its inmates returned to the Tul'chin ghetto.[56]

As some inmates returned, others were fortunate enough to leave: In Winter 1943, the repatriation of the Romanian Jews began, and children under 15 were sent back to Romania, where they began to arrive in February 1944.[57] Together with CER ("Centrala Evreilor din Romania", "Center of the Jews in Romania", the Bucharest-based "Judenvereinigung"), the Tul'chin Jewish council organized the repatriation of some 90 orphans from the ghetto.[58] In January 1944, there were still 457 Jews in the Tul'chin ghetto.[59] For a final time during the occupation, these people's lives came in acute danger when the retreating Germans came through Tul'chin and wanted to murder the ghetto population. Romanian gendarmerie commander Fetecău refused the German demands to do so, thus saving the Jews in the ghetto.[60] The Red Army finally liberated the ghetto on March 15, 1944.[61] Because Tul'chin was so close to formerly German-controlled territory, the ghetto survivors were the first Jews the arriving Red Army officers encountered on the territories they had reconquered from the Axis forces.[62] Some of the remaining 230 Romanian Jews were recruited into the Red Army, but the majority soon set out for the places from whence they had been deported.[63]

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[51] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 20-22, 120-123, 133-135.
[52] CREANGĂ: Tulcin, p. 807.
[53] IOANID: Holocaust in Romania, p. 191.
[54] CREANGĂ: Tulcin, p. 808.
[55] Ibid.
[56] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 101.
[57] CREANGĂ: Tulcin, p. 807.
[58] See the testimonies of defendant Vitner and witness Reznik: Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 14, 101-103, 120-123.
[59] See the document in: HOPPE, Bert/GLASS, Hildrun (ed.): Sowjetunion mit annektierten Gebieten I. Besetzte sowjetische Gebiete unter deutscher Militärverwaltung, Baltikum und Transnistrien (Die Verfolgung und Ermordung der europäischen Juden durch das nationalsozialistische Deutschland 1933–1945, vol. 7), München 2011, p. 828.
[60] CREANGĂ: Tulcin, p. 808.
[61] Ibid.
[62] At least the soldiers who talked to survivor Roza Shtaif were surprised to see Jews living and breathing. SHTAIF, Roza, Interview 45656. Interviewed by Yakov Priborkin. Visual History Archive, USC Shoah Foundation 10.09.1998, https://vha.usc.edu/viewingPage?testimonyID=48275&returnIndex=0#, last accessed October 07, 2021, segment 88. For the broader encounter between Red Army soldiers and Jewish survivors in Transnistria and elsewhere, see: MAJSTOROVIĆ, Vojin: Red Army Troops Encounter the Holocaust: Transnistria, Moldavia, Romania, Bulgaria, Yugoslavia, Hungary, and Austria, 1944–1945, in: Holocaust and Genocide Studies 2 (2018), p. 249–271, here p. 260.
[63] CREANGĂ: Tulcin, p. 808.

## Chernovtsy – Plenty of survivors, plenty of witnesses, plenty of potential defendants

Not long thereafter, Soviet security organs initiated criminal proceedings against the Tul'chin ghetto's former Jewish functionaries. Interestingly, it took the local authorities in Tul'chin until January 1945 to begin their investigation, and thus much longer than their colleagues some 200 kilometers further west, in Chernovtsy.[64] Already in mid-July 1944, the Chernovtsy NKGB started an investigation against six men whom the agency suspected of having served as ghetto functionaries with the Tul'chin ghetto's second Jewish council.[65] Four of these men, Gerbert Vitner, Shulim Brender, Samuil Mozner, and Markus Veshler, were eventually found guilty and sentenced in August 1945.[66] The cases of two others, Morits Shtainbok and Pedutsii Shraiber, were terminated at the pretrial stage and the two men were released in January and March 1945 respectively.[67] Eleven witnesses, primarily former ghetto inmates, had testified.

Since so many ghetto inmates in Tul'chin had come from Chernovtsy, it is perhaps not surprising that the city became a central place for the ghetto's judicial aftermath. For most of the witnesses, and all of the defendants, going to Chernovtsy meant returning home. Six witnesses were born in Chernovtsy or in the Chernovtsy oblast'.[68] Another witness was born elsewhere but had lived in Chernovtsy most of his life, from 1895 on, which made him practically a native.[69] Four more were also not born in the city and had lived there only more briefly. One of them had resided in Chernovtsy at least already before the war began.[70] Another of these witnesses was a native of Tul'chin, who had endured the ghetto, and then moved to Chernovtsy to study at the local medical institute.[71] For the two remaining witnesses who had not been born in Chernovtsy, it is not clear when they had moved there.[72] Except for one Russian, a former member of the communist underground in the Tul'chin rayon, all of the witnesses were Jews and former Tul'chin ghetto inmates.[73] The defendants were all born in the city or the vicinity of Chernovtsy, or they had lived in the city for decades before the war.[74] Thus, the Soviet investigation primarily pitted Chernovtsy Jews against one another, with only one person from Tul'chin involved.

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[64] See the internal report by the Tul'chin rayon NKGB: Intelligence file "GHETTO", F1O1D16, p. 160, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU). I am grateful to Mikhal Tyaglyy for bringing this document to my attention. The first witness testimony in the case was recorded in early March. Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 141.
[65] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 104.
[66] Ibid., p. 184–187.
[67] Ibid., p. 168. Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 40.
[68] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 109, 112, 115, 130, 133, 139.
[69] Ibid., p. 104–105.
[70] Ibid., p. 106.
[71] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 28–31.
[72] Ibid., p. 32. Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 106.
[73] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 32.
[74] Ibid., p. 12. Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 12, 31–32, 46, 66, 89.

These witnesses and defendants were by far not the only Holocaust survivors who took the path from Transnistria to Chernovtsy. In late April and early May 1944, several thousand survivors from Transnistria departed for Chernovtsy, most of them on foot.[75] When they finally arrived, the local Soviet authorities prohibited them to enter the city, fearing the incursion of suspect individuals.[76] When refused entry, thousands of Jews initially settled in the oblast'.[77] However, by July, some 6.000 had managed to enter the city and the authorities lifted the ban.[78] As of July, the Jewish population of Chernovtsy had thus grown to 23.213, slightly more than half of the city's residents.[79] Both the real population total and the real percentage of Jews may have even been higher, with up to 70% Jewish residents.[80] A significant proportion of Jews did not officially register in the city because they feared that Soviet authorities would mobilize them for industrial labor and send them to regions like the Donbass.[81] Whatever the exact figures, one thing is clear: the city was packed with survivors from the camps and ghettos of Transnistria.

Under these circumstances, witnesses and defendants were living in close proximity in Chernovtsy and were likely to run into each other. On the following map, the streets where witnesses of the investigation into the Tul'chin ghetto Jewish council resided are highlighted in yellow, those where defendants lived in red.[82] Several witnesses could thus at least tell the investigators that a defendant or other potential suspect lived in town – as could the defendants when asked about their former fellow ghetto functionaries.[83] Sometimes witnesses could even point out a defendant's correct address and/or place of employment.[84] Therefore, witnesses and defendants had at least seen each other on the streets. Similarly, some of those who testified could point out other potential witnesses currently residing in Chernovtsy.[85] As a result, the fact that Soviet authorities investigated events that had taken place more than 200 kilometers away was no major obstacle for them. It was easy for the officials to gather the necessary initial information to begin their investigation and then collect further witness testimonies.

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[75] ALTSKAN: The Closing Chapter, p. 10.
[76] Ibid.
[77] FRUNCHAK, Svitlana: The Making of Soviet Chernivtsi. National "Reunification," World War II, and the Fate of Jewish Czernowitz in Postwar Ukraine 2014 ((Order No. 3666597). Available from ProQuest Dissertations & Theses Global: The Humanities and Social Sciences Collection. (1634546374).), p. 324.
[78] ALTSKAN: The Closing Chapter, p. 12.
[79] Ibid.
[80] Frunchak discusses the statistical problems in detail. The figure of 70% Jews in Chernovtsy is based on report by a representative of the Jewish Anti-Fascist Committee, who was sent to the city to investigate the dire living conditions of the Jews there. See: FRUNCHAK: Making of Soviet Chernivtsi, p. 323–327.
[81] Ibid., p. 326–327.
[82] Note that the casefiles did not provide the address of one witness and some others resided on the same streets.
[83] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 12. Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 31-32, 106, 112-114, 139.
[84] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 104-105, 112-114.
[85] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 32–34. Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 56, 106, 109-111.

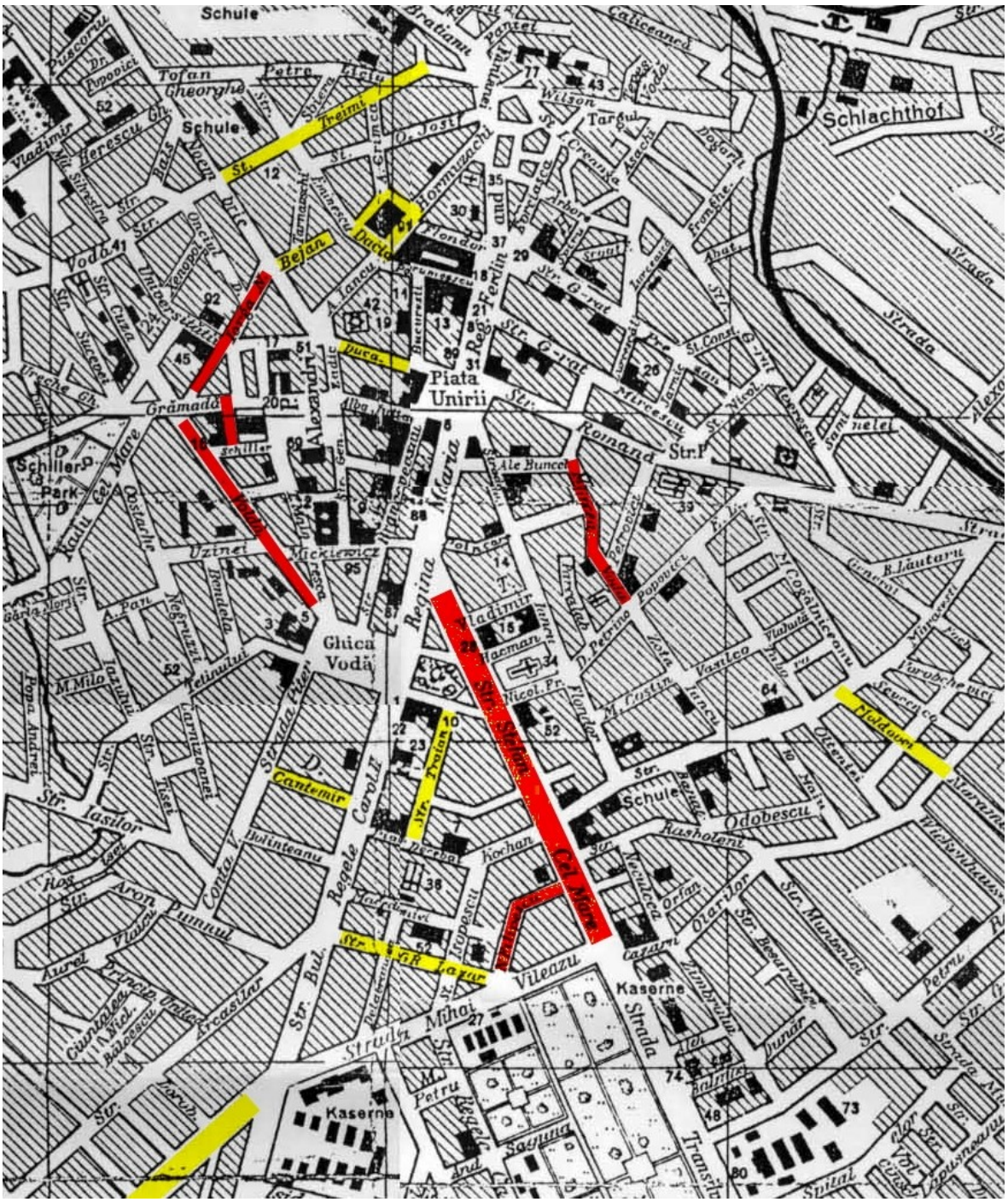


*Figure 1: Streets where defendants (marked red) and witnesses (marked yellow) resided in the city center of Chernovtsy.*

Chernovtsy was not only home to many survivors, it also briefly became a unique focal point for Jewish emigration to Romania in 1945/1946, attracting even survivors who had not lived in the city before they had been deported to Transnistria (see below). That fact allowed the local Soviet authorities to open a whole series of investigations into former Jewish functionaries of various

Transnistrian ghettos. Of the 51 defendants on analytical level C), 18 were eventually investigated and tried in Chernovtsy. They included former functionaries of the Chechel'nik, Iaruga, Mogilev-Podol'skii, Obodovka, and Tul'chin ghettos. At least some of the survivors from these places were willing to testify to the Soviet security organs in Chernovtsy about the former Jewish ghetto functionaries. So was witness Mozes Bretshnaider, whose testimony investigators recorded on July 14, 1944, setting off the following investigation into the Tul'chin ghetto Jewish administration.[86]

Ghetto survivors who relocated to their former hometowns took their grievances with them, as well as their need for punishment. Sometimes, such a need could even take extra-judicial form. Like many other survivors of the Shargorod ghetto, Rita Rosenfeld resettled to Câmpulung in the Suceava region of Romania, i.e. Southern Bucovina. There, former ghetto inmates met former ghetto functionaries, and some wanted to settle old scores, as Rosenfeld recalled:

> "Thus, for some money or some jewelry, they [some Jewish functionaries of the Shargorod ghetto] let one gone and sent a poor person, who did not have anything, to the Bug. […] And such people, when we came back from Transnistria, there were Jewish families whose relatives had died at the Bug, and they wanted to literally lynch them [i.e. the Jewish functionaries who had surrendered their relatives to the Germans]. They too came back to Câmpulung and then they left Câmpulung because they did not have a life there anymore. And I thought it right that the people wanted to take revenge, because they lost family members, just because they did not have money or jewelry, which others had."[87]

Thus, the many investigations the NKGB in Chernovtsy began were not the only aftermath the ghettos had even in faraway places.

Between October 21 and October 23, 1945, the Chernovtsy NKGB arrested the six accused in the Tul'chin case.[88] Soon thereafter, the authorities had established an adequate picture of who had been on the Jewish council or its supporting administration and in what function. The authorities claimed that Vitner had been the Jewish council's secretary while Mozner and Brender had been regular members, which the defendants confirmed.[89] The officers saw Veshler as someone from the second row, a ghetto administrator and manager of the Jewish council's storehouse; he too confirmed this.[90] Similarly, the arrest order for Shtainbok alleged that he had "actively participated in the work of the self-governing committee of the Jewish ghetto created by the Romanian occupation authorities".[91] The release order only noted that he had been the "cashier" of the peat camp, but not a member of the Jewish council. The council had only employed him for two months

[86] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 104–105.
[87] ROSENFELD, Rita, Interview 12114. Interviewed by Cornelia Maimon-Levi. Visual History Archive, USC Shoah Foundation 15.03.1996, https://vha.usc.edu/viewingPage?testimonyID=12962&returnIndex=0, last accessed October 07, 2021, segments 59–61.
[88] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 5. Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 7, 27, 42, 67, 86.
[89] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 14, 15-16, 34, 51-52, 54, 176–179.
[90] Ibid., p. 71-72, 160-161, 176–179.
[91] Ibid., p. 82.

in early 1944 to correct some bookkeeping errors, the investigators concluded.[92] The arrest order for Shraiber maintained that he had been a member of the Jewish council, but the investigators eventually conceded that he had merely administered the ghetto's workshops.[93]

Besides the men they arrested, Soviet investigators identified four more alleged members of the Jewish council who currently resided in Chernovtsy. Among them was Dr. Shulim Fikhman, a lawyer, and former head of the council.[94] His name crops up in almost every testimony in the casefiles of the Chernovtsy investigation. The names of Dr. Pinkhos Maer and Dr. Genrikh Deligdish were brought up as well.[95] The last potential defendant the authorities learned about was a man several witnesses referred to as "Dr. Iakob", supposedly a Jewish council member or at least a supporting "activist", allegedly somehow involved in administering the public kitchen which the Jewish council maintained in the ghetto.[96]

Since the NKGB apparently did nothing to Fikhman, Maer, Deligdish and Iakob, they are most relevant for understanding what the NKGB did to the other former ghetto functionaries. The investigators knew these men's names, knew that they resided in Chernovtsy and had to assume that they had served on the Jewish council – yet there are no interrogation protocols, arrest warrants, or any other documentary traces of these men in the casefiles. They are mentioned in testimonies of witnesses and defendants, but there is no indication that the investigators did anything with this information. Thus, the prosecution of the Tul'chin ghetto's Jewish council in Chernovtsy was surprisingly selective, and that demands an explanation. The circumstances of Shraiber's and Shtainbok's release, as well as the other men's convictions, help to explain that selectiveness.

## Shraiber's and Shtainbok's release – The communist underground repaying its dues, the defendants paying bribes

Shraiber could easily have been convicted. As head of the production department, Shraiber had helped establish the small-scale economy of the ghetto.[97] And among other things, several witnesses

[92] Ibid., p. 168.
[93] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 3, 40.
[94] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 20-22, 31-32, 104-105, 130-132.
[95] Ibid., p. 20-22, 51-52, 93-95, 106, 112-114, 115.
[96] Ibid., p. 46, 104-105, 106, 112-114, 120-123, 133-135, 139. A contemporary Romanian document allows to verify some of these claims. Overall, witnesses and defendants painted an adequate picture and the investigators assessed the information correctly. Fikhman, Vitner, Mozner, Deligdish and Maer really had held these positions. Brender's name only comes up in Romanian documentation as someone who was part of the labor bureau, but its composition was almost identical to that of the Jewish council. Veshler's, Shraiber's, Shtainbok's, and Iakob's names cannot be found in the two Romanian documents. Tabel nominal de membrii Biroului pentru organizarea muncii evreilor jud. Tulcin, 13/2264/1122, RG-31.004M, Odessa Oblast Archives Records, p. 12–13, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC. Tabel nominal de membrii Oficiului judeţean al Evreilor, Tulcin, 13/2264/1122, RG-31.004M, Odessa Oblast Archives Records, p. 12, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC.
[97] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 20–22.

accused him of recruiting ghetto inmates for forced labor.[98] However, Shraiber's case was terminated at the pretrial stage and he was released. Three factors played a role here. First, Shraiber had supported the communist underground in Tul'chin. Second, there was a small grass-roots campaign supporting him during the investigation, and his supporters knew how to deal with Soviet authorities. Third, and most prosaically: corruption by Soviet officials and their extortion schemes marred the investigations. The last factor is also crucial in understanding why the criminal prosecution of the Tul'chin ghetto's former functionaries was so selective. Soviet investigators could have laid hand on four other leading figures of the ghetto's Jewish administration – but they did not. While there is no documentary evidence for this claim, the circumstantial information available regarding Shraiber's release and his four colleagues' convictions raises serious concerns regarding the underlying procedures. And the simplest explanation for the peculiarities of the Chernovtsy investigations lies in corruption and extortion.

To be sure, the termination of Shraiber's case was causally overdetermined. The order for his release explained the decision to free him with his support for the communist underground in Tul'chin, albeit with a strange emphasis. The document's author, senior captain of state security Kolesnik, highlighted that Shraiber had been "personally connected" to the communist underground and supported its members materially.[99] Moreover, he had supplied "about 30 pieces of blank [Romanian, *WS*] certificates with stamp and seal" for the underground, the release order continued.[100] By focusing on these aspects, Kolesnik made some odd choices. The oddity becomes obvious when one compares Kolesnik's text to what Shraiber himself claimed to have done and what was corroborated by witness testimony. That Kolesnik dwelled on the stamped blank certificates was a bit like a sports commentator highlighting that a runner who had just broken the world record had managed to properly tie his shoes.

Yet Shraiber really had excelled at subverting the Romanian occupation regime and its antisemitic persecutions. He had provided false papers for communist underground members, including a certain Prostakov, a former local teacher and former head of Tul'chin's Komsomol department for agitation and propaganda.[101] Moreover, Shraiber warned the underground when the Romanians were going to conduct raids and arrests.[102] When these safety measures failed and underground members did come under surveillance or were arrested, Shraiber helped them by giving false

[98] Ibid., p. 118-119, 127-129, 136-138, 141-142.
[99] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 40. About Shraiber's connections to the underground see also the oral history interview of his son, Gerhard Schreiber: SCHREIBER, Gerhard, Interview 4431. Interviewed by Pamela Grant-Goldblatt. Visual History Archive, USC Shoah Foundation 01.08.1995, https://vha.usc.edu/viewingPage?testimonyID=4621&returnIndex=0#, last accessed October 07, 2021, segment 118.
[100] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 40.
[101] Ibid., p. 28-31, 32-34, 35.
[102] Ibid., p. 32–34.

testimony on their behalf or bribing Romanian officials.[103] Besides two others, this again concerned Prostakov. When he was arrested, Prostakov's mother turned to Shraiber for help, who gave her "20 rubles in gold".[104] She then used the money to bribe the local Romanian authorities, so that her son would not be transferred to Romania, as were some of his comrades arrested at the same time.[105] Thus, Prostakov remained in Tul'chin until the Red Army arrived.[106]

Shraiber also managed to save some Jewish girls. All of them were Komsomol members and therefore had good reason to fear Romanian repressions. They turned to Shraiber for help very soon after his arrival in January 1943.[107] He supplied several of these girls with false documents and made sure they were registered in the ghetto under false names.[108] Among them was witness Rakhman, who testified on his behalf in Chernovtsy.[109] Moreover, four of the ten signatories of a collective letter written in support of Shraiber by ghetto survivors in Tul'chin were Komsomol girls he had registered illegally.[110] Both the letter and the witness testimony suggest that there were even more girls Shraiber saved.

Here, the blank certificates come into play, and so does defendant Shtainbok. Shraiber could sometimes leave the ghetto "on official business".[111] When Shtainbok worked as the "cashier" of the peat camp, Shraiber turned to him and asked him for "several blank certificate-forms with stamp and signature" because he wanted to "register girls in the ghetto, since without these forms it was impossible to register in the ghetto and obtain documents".[112] Shtainbok complied with the request, enabling Shraiber to save the Komsomol girls.

Once the girls were officially registered, Shraiber did not stop helping them. Most strikingly, he somehow helped Rakhman to get her father out of the Pechora death camp, thus likely saving his life, and registered him too under a false name in the ghetto.[113] Shraiber did the same thing for the mother and two siblings of Sabina Khait, another Komsomol member he had taken under his wing.[114] He also materially provided for at least two of the girls who had no means of supporting themselves.[115]

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[103] Ibid., p. 38–39.
[104] Ibid., p. 22–23.
[105] Ibid., p. 32–34.
[106] Ibid., p. 22–23.
[107] Ibid.
[108] Ibid., p. 22-23, 32-34, 35.
[109] Ibid., p. 28–31.
[110] Ibid., p. 38–39.
[111] SCHREIBER: Tale of Survival, p. 25.
[112] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 24–27.
[113] Ibid., p. 28–31.
[114] Ibid., p. 38–39.
[115] Ibid., p. 22-23, 28–31.

Shraiber's efforts to protect these girls are even more significant because of the danger he put himself in and because of the danger from which he protected the girls. That Shraiber put himself in harm's way can be seen from Order No. 6, with which Colonel Lazăr had established the rules for entering, leaving, and residing in the ghetto. Paragraph five of the order explicitly stipulated that anyone who issued false identification documents to individuals who were not legally registered in their community would be "considered as participants at acts of communism and spies" and accordingly "treated with the same standards of the laws on spies."[116] One can thus surmise that Shraiber's and Shtainbok's actions put them in mortal danger. Moreover, both men were in the ghetto with their own families, including children, which added another layer of risk – but in a remarkable display of solidarity with total strangers, they chose to take that risk anyway.[117]

Their help was not only significant because they took a great risk, but also because of the risk from which they likely saved the girls. Apart from the looming threat of being deported to the Pechora death camp or facing other repressions, the girls were also in danger of falling victim to organized sexual violence. Tul'chin ghetto survivor Golda Vasserman describes the system that the perpetrators had put in place:

> "Fifteen kilometers from the ghetto Italian and Hungarian reserve units were stationed. At the request of the commanders of these units, the Romanian gendarmerie commander of Tul'chin selected healthy young girls and sent them, according to the official version, to the kitchens and bakeries of the Italian and Hungarian units. From there the girls usually returned raped and infected with all kinds of venereal diseases. Most of the girls committed suicide while still in the barracks or upon their return home, some were shot while resisting the rapists or trying to escape."[118]

According to Vasserman, the Romanian gendarme commander handed girls over to the Italian/Hungarian soldiers at intervals of "almost every fifteen to twenty days".[119] Vasserman asserted that the scenes unfolding during these selections in the ghetto "defy description" though she hinted at the "desperate cries of the girls and their parents".[120] There is no direct evidence to support this claim, but one can well imagine that the Romanian gendarmes might have welcomed the opportunity to fill that quota not with girls registered in the ghetto, but with those who stayed there without registration. If these unregistered girls had to leave anyway, why not kill two birds

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[116] Colonel Ion Lazăr: Ordonanța No. 6, 17.11.1941, Reel 7, fond 2242, opis 2, delo 76, RG-31.004M, Odessa Oblast Archives Records, n. p., United States Holocaust Memorial Museum Archives (USHMM), Washington, DC. I am grateful to Emanuel Grec for translating this document for me.
[117] SCHREIBER: Tale of Survival, p. 25–26.
[118] VASSERMAN, Golda: Begstvo dvadtsati piati evreiskikh devushek iz Tul'chinskogo getto. Vospominaniia partizanki Goldy Vasserman, in: Neizvestnaia "Chernaia kniga". Materialy k "Chernoi knige", edited by Vasilij GROSSMAN / Il'ia ERENBURG / Il'ia Aleksandrovich AL'TMAN, Moskva 2015, p. 83–84, here p. 83. It should be noted that the timing of these events is not completely clear in Vasserman's account and there remains some doubt whether Shraiber was already in the ghetto when they transpired. However, Vasserman dates the organized rapes later than "autumn 1942" and after the arrival of the Romanian Jews. Therefore, it is most likely that Shraiber was already in Tul'chin.
[119] Ibid.
[120] Ibid.

with one stone and send them to the nearby Italian and Hungarian detachments? And dragging away some girl who had been hiding alone in the ghetto or wandered in from the Pechora camp probably also caused less fuzz – there were no parents to beweep her fate. Moreover, since the girls whom Shtainbok and Shraiber provided with false documents were Komsomol members, it was even more likely that the Romanians would target them for all sorts of horrible schemes. Therefore, Shtainbok and Shraiber put themselves, and by extension their own families, in grave danger to protect some of the most vulnerable individuals in the ghetto.

Shraiber's and Sthainbok's conduct was no matter of course. In her oral history interview, survivor Roza Shtaif talks about an unnamed Jewish functionary who helped the Romanians to track down young women in the ghetto: "He knew which girl was pretty, although she had smeared her face black and all, and he knew, and he took her, led her by the hand and let's wash up and show who you are."[121] Women in the ghetto apparently often masked their physical appearance to evade being targeted by rapists. The topic also comes up in the memoirs of survivor Tsilia Krasner. She recalls that her mother was "a very interesting woman, beautiful, young" but during raids she "put on a black headscarf and smeared her face with smut and turned into a kind of old terrible hag" ("prevrashchalas' v takuiu staruiu strashnuiu starukhu, *WS*)".[122] However, even when the women did their best to look undesirable, that might fool the Romanians, but not the functionary that Shtaif mentioned, who would hand them over to their future tormentors despite the masquerade. Shtaif recalls that the functionary in question later got ill and "croaked like a dog" ("sdokh kak sobaka", *WS*), because of which "everyone began to rejoice". [123]

Adding to the significance of Shraiber's conduct was the fact that he paid a price for it: The Romanian authorities arrested him at least twice because they suspected that he helped the communist underground and because some ghetto inmates were spreading communist propaganda.[124] According to Shraiber, he spent a total of twenty days in custody.[125] The circumstances of his release are unknown and were not discussed in the casefile, but considering what Shraiber himself had done for the underground members, it seems most likely that someone bribed him out of prison. Considering everything Shraiber had done, it was well merited when ten ghetto survivors asserted in a collective letter that "[c]omrade Shraiber did all he could to save as many lives of Soviet citizens as possible".[126]

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[121] SHTAIF: Interview 45656, segments 69–70.
[122] KRASNER, Tsilia: "Deti, ne smotrite! Deti, ne smotrite!", in: My khoteli zhit'. Svidetel′stva i dokumenty, edited by Boris Michajlovič ZABARKO (vol. 2), Kiev 2013, p. 440–449, here p. 443.
[123] SHTAIF: Interview 45656, segments 69–70.
[124] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 24-27, 35.
[125] Ibid., p. 22–23.
[126] Ibid., p. 38–39.

The letter highlights another important aspect: For Shraiber's release, it was not only relevant that someone spoke out in his support, but also who did that and how they did it. With Rakhman's and Prostakov's testimony Shraiber already enjoyed the support of individuals close to the regime – both had been in the communist underground during the occupation and both belonged to the Komsomol, Prostakov even as someone of rank. The collective letter was important in this respect too. It was explicitly mentioned in the release order alongside the testimonies of the former underground activists.[127] Among the letter's authors were more Komsomol members. Moreover, the signatories were conscious enough of how the Soviet system worked to have the authenticity of their signatures certified by the secretary of Tul'chin city council, who stamped and signed the document.[128] For the NKGB officer drawing up the release order, this turned the collective letter into a "kharakteristika", a letter of reference issued by the Tul'chin city council, and thus into an official document.[129]

Prostakov too knew what he was doing. After learning of Shraiber's arrest upon arriving in Chernovtsy, Prostakov sent a written deposition to the NKGB. His letter detailed Shraiber's assistance to the underground and supplied names of additional witnesses who would corroborate these claims. Prostakov ended the document with "My address: oblast' department of public education", signifying that not only had he been in the underground, but now continued to serve the Soviet state.[130]

In other cases where the authorities released former ghetto functionaries as reimbursement for having supported the partisans or the communist underground, such support networks played a crucial role as well. As discussed above, the authorities terminated the cases of ten individuals on analytical level C) at the pretrial stage and acquitted two others during their trial. In the cases of three out of those twelve defendants the authorities eventually released, Soviet officials explained their decision at least partially with the defendants' support for the partisans or the communist underground. Besides Shraiber, this concerned Maer Taikh of the Shargorod ghetto and Isaak Fabrikant of the Ol'gopol' ghetto (see chapter 8). As we have argued elsewhere, the investigation against Taikh turned into a battleground of two competing networks, one pushing for his conviction, the other for his release.[131] Similar to Shraiber's case, those networks' proximity to the regime, i.e. their members' socio-political status influenced the outcome. The people pushing for

[127] Ibid., p. 40.
[128] Ibid., p. 38–39.
[129] Ibid., p. 40.
[130] Ibid., p. 35.
[131] SCHNEIDER: From the ghetto, p. 94–95. Later studies also argued that support networks and collective letters were important, see: DUMITRU: Gordian Knot, p. 748.

Taikh's release were closer to the regime, and thus they prevailed.[132] And similarly to the people pushing for Shraiber's release, Taikh's supporters showed a solid understanding of how Soviet institutions worked, and how to influence them.[133]

It should be noted that support campaigns could also fail, and it appears that the crucial criterion was whether a defendant had supported the partisans. In the case of Samuil Bosharnitsan of the Rybnitsa ghetto, Soviet authorities picked apart the support his wife organized. Bosharnitsan was convicted in November 1945 to 10 years in a corrective labor camp for serving in the Jewish administration of the Rybnitsa ghetto.[134] His wife then visited several former ghetto inmates and asked them to sign a letter supporting her husband, which 24 people did.[135] The letter highlighted that the Romanians had recruited Bosharnitsan against his will and that he had supported the ghetto population by supplying food, organizing an orphanage, and sheltering ghetto inmates from forced labor duties.[136] The authorities were not convinced. In fact, when the case was reopened, the investigators questioned ten of these witnesses about their signatures. The witnesses answered quite evasively, which suggests that they were under considerable pressure during these interrogations.[137] Most made sure to present the letter as Bosharnitsan's wife's doing, and then claimed not to know anything about the defendant.[138] Three even provided incriminating testimony, although only one witness related an episode he had seen with his own eyes.[139] The readiness with which the witnesses relativized or essentially withdrew their signatures is striking and raises suspicions that the investigators put them under pressure. Because the authorities so thoroughly undermined it, the letter failed to achieve the desired effect. On March 31, 1947, Bosharnitsan was again sentenced to 10 years in a corrective labor camp.[140] It appears that since there was no evidence that Bosharnitsan had assisted the partisans during occupation, the authorities reacted quite differently to the campaign his wife launched to have him freed.

Perhaps the most striking counterexample is the case of Fabrikant, which shows just how important it was whether a defendant had supported the communist underground. On February 10, 1945, a military tribunal sentenced Fabrikant to ten years in the Gulag for his role as a Jewish

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132 SCHNEIDER: From the ghetto, p. 94–95.
133 Ibid.
134 Bosharnitsan, Samuil Samuilovich, USHMM, RG-54.003*06, p. 249.
135 Ibid., p. 82.
136 Ibid.
137 Ibid., p. 112-114, 115-118, 119-121, 122-125, 126-130, 133-135, 136-139, 145-149, 160-164, 185-186. Dumitru discusses similar questions the investigators asked witnesses in another case of a Jewish ghetto functionary whose wife tried to organize a support campaign: DUMITRU: Gordian Knot, p. 751.
138 Bosharnitsan, Samuil Samuilovich, USHMM, RG-54.003*06, p. 112-114, 119-121, 133-135, 136-139, 142-144, 145-149.
139 Ibid., p. 122-125, 126-130, 160-164.
140 Ibid., p. 249.

functionary of the Ol'gopol' ghetto.[141] On September 24, 1945, the Military Collegium of the Supreme Court overturned the verdict and ordered Fabrikant's release.[142] For more than seven months, two of Fabrikant's children relentlessly pushed for their father's release. One of his two sons and one of his two daughters wrote several letters to the authorities, explaining that their brother had been in the communist underground and that their father had supported the clandestine antifascist organization.[143] As proof that their brother really had been in the underground, they enclosed a document issued by the "Bolshevik underground organization", signed by its head, its commissar, and the commander of the local partisans.[144] Moreover, the siblings apparently contacted the former underground members. In turn, these people supplied a collective and several individual letters of support, turning the family effort into a small-scale campaign. The letters attested to the fact that during occupation, convict Fabrikant had hosted gatherings of the communist underground in his home, standing guard to warn the underground of impending Romanian raids.[145] Among the wave of petitions for Fabrikant's release, the authorities also received a collective letter of support, signed by 50 inhabitants of Ol'gopol'.[146] The letter elaborated on everything positive Fabrikant had done to protect the ghetto population. Apparently knowing how suspicious Soviet officials could be, someone in the support campaign must have secured two crucial documents from Soviet institutions: a letter from the Ol'gopol' NKGB and one from the rayon communist party committee, confirming (among other things) that a clandestine communist party organization had existed in Ol'gopol' during occupation.[147]

Such diligence was certainly warranted and including official proof that there really had been an underground was a smart move. One reason was that Fabrikant's supporters were trying to overturn a verdict, rather than preventing one from being passed in the first place (which was the easier task that Shraiber's and Taikh's supporters grappled with). Adding to the problem was the fact that Fabrikant had been found guilty of beating ghetto inmates – which, legally, should have precluded the possibility to acquit him even in light of his support for the underground (see chapter 5).[148] Thus, if his supporters wanted to see Fabrikant set free, they had to provide very convincing arguments.

Fabrikant's case exemplifies how Soviet authorities struggled with former partisan supporters they encountered in their postwar hunt for collaborators. In the respective institutions' reports,

[141] Fabrikant Isaak Toivievich, DAVO, D1374, p. 56.
[142] Ibid., p. 99.
[143] Ibid., p. 61, 62, 66-67.
[144] Ibid., p. 69.
[145] Ibid., p. 68, 71, 72, 73, 74.
[146] Ibid., p. 70.
[147] Ibid., 75-76.
[148] SCHNEIDER: From the ghetto, p. 91.

one finds superiors frequently demanding more attention from their subordinates to the issue of whether someone had worked for the resistance during occupation. That concerned both instances where defendants' claims of supporting the partisans or the underground had been dismissed out of hand, as well as those where the authorities had believed them all too readily. Attention had to be paid, and proof was needed, the supervisors told their subordinates time and again.[149]

However, at least *documentary* proof that one had supported the partisans or the local underground was notoriously difficult to come by.[150] After all, a successful underground or partisan organization had been one that valued operational security above all, which lead to a selection process – if you were bad at working clandestinely, the occupiers got to you.[151] The careless got caught, the careful stood a chance. And issuing papers that could count as proof of someone's membership in a partisan unit or underground group was clearly outside the realm of operational security.[152] An insufficient degree of secrecy had been the downfall of many a Soviet communist underground group, such as the one operating in Minsk. There, the "clandestine" communists recorded their meetings and kept logs of their schedules as if during peacetime, leaving a paper trail that allowed the Germans to crush their whole organization at once as soon as they managed to penetrate it.[153] Conversely, for former members of underground groups who had survived by operating secretly, it was especially hard to prove that they had in fact been in the resistance. Here, too, a support network could fill a gap: One person claiming that an underground group had existed was one thing, but it was clearly more believable if several individuals delivered coherent depositions to that effect. And in Fabrikant's case, these people not only submitted written depositions but also testified on the defendant's behalf. The stream of papers that reached the authorities in support of Fabrikant prompted them to renew the investigation, questioning nine additional witnesses, mostly former underground members, about the role of Fabrikant and his son.[154] Ultimately, that effort was successful and lead to Fabrikant's release.

The significance of a support network is even more obvious when one considers what happened to Iosif Zaslavskii of the Chechel'nik ghetto and Isaak Sherf of the Shargorod ghetto. For both

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[149] Supervisory activities in July-December 1944, TSDAHO, F1O23D2437, p. 26. Work of the Military Tribunal in the 3rd quarter of 1945, TSDAHO, F1O23D2437, p. 67. Work of the Military Tribunal in the 1-2 quarters 1946, TSDAHO, F1O23D3671, p. 100. See also: Head of the NKGB fourth administration of the Ukrainian SSR to Deputy Head of the Military Department of the Central Committee of the Communist Party (Bolsheviks) of Ukraine: Answer to telegram 05-30, 29.01.1945, File 2413, Reel 57, RG-31.026M, Selected records from former Archives of the Communist Party of Ukraine, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC, p. 2.
[150] When a defendant could produce such evidence, some Soviet investigators even reacted with suspicion, knowing full well that the existence of such documents was highly unlikely. See: DUMITRU: Gordian Knot, p. 749.
[151] On operational security, see: FINKEL, Evgeny: The Phoenix Effect of State Repression: Jewish Resistance during the Holocaust, in: The American Political Science Review 02 (2015), p. 339–353, here p. 340–342.
[152] One can therefore only hope that the above-mentioned document issued by the Ol'gopol' underground was written after the Red Army had arrived, and not before. Fabrikant Isaak Toivievich, DAVO, D1374, p. 69.
[153] FINKEL: Phoenix Effect, p. 345.
[154] Fabrikant Isaak Toivievich, DAVO, D1374, p. 77-78, 79-80, 81, 82-83, 84-88, 89, 90, 91-92, 93-94.

men, a partisan testified on their behalf and described how the defendants had supported the underground – but that testimony was either too little or came too late.[155] Thus, there were crucial differences between the cases of Sherf and Zaslavskii on the one hand, and Shraiber, Taikh, and especially Fabrikant on the other. These differences lay in the number of people testifying on their behalf, their persistence, and their aptitude in dealing with Soviet authorities – it was a difference between isolated individuals versus semi-organized networks. The campaign for Fabrikant is surely the most impressive one, but the difference to the ones that were mustered in support of Shraiber and Taikh is one of quantity, rather than quality – the basic mechanisms were the same in all three cases.

On the one hand, Shraiber's release neatly fits this pattern, but there is reason to believe that money also greased the gears of Soviet justice. At least it did according to Shraiber's son Gerhard, who detailed the circumstances in his memoirs and an oral history interview. According to Gerhard Schreiber, after the NKGB had arrested his father in October, his aunt began to look for someone with connections to the security organs to find a way of helping her brother. As Schreiber put it, his aunt wanted to get a line to a "KGB prosecutor", thus most likely an NKGB officer or a representative of the procuracy.[156] Sometime later, she succeeded and was eventually received by a Soviet official:

> "Again, I don't recall the content of their conversations, or whatever, I only know that after her visit, he promised that he'll try to help. It turned out, that in the thirties, he was a 'legal officer' at a Soviet consulate in the US. While there, he developed a fondness for $20 gold coins. The difficult task ahead was first to find a sufficient number of these coins, and secondly, the money to pay for them. […] This testimony [i.e. Prostakov's, *WS*], and a number of US $20 eagles, (I don't remember how many), convinced the prosecutor to intervene."[157]

Thus, Gerhard Schreiber credits both the exonerating testimony as well as a substantial bribe for the release of his father. While the detail of the gold coins seems somewhat strange and may well be an effect of family tradition or just creatively distorted human memory, the core of Schreiber's story is quite believable.[158] There is evidence that Soviet officials in Chernovtsy were incredibly corrupt at the time, not least the ones serving in the security organs and the judiciary. And in the case of Brender, Mozner, Veshler, and Vitner, it appears that bribes were not only *offered*, but *demanded* – with severe consequences for those who could not pay at all, or did not pay enough.

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[155] See also: SCHNEIDER: From the ghetto, p. 92.
[156] SCHREIBER: Tale of Survival, p. 34.
[157] Ibid., p. 34–35.
[158] Previously, historian Vadim Altskan has already asserted that money played a role in the investigation analyzed here, but Altskan had to rely exclusively on Schreiber's memoir. As our discussion below shows, there is a host of circumstantial documentary evidence to support this hypothesis. See: ALTSKAN: The Closing Chapter, p. 18.

## Two men released, four convicted, four left alone and oddities aplenty – the extortion scheme shaping the Chernovtsy investigations

When Markus Veshler returned home from work one day in the second half of August 1944, Brender, Deligdish, Fikhman, and Shtainbok were awaiting him at his flat in Chernovtsy.[159] The matter at hand was urgent: Brender told the others that the NKGB had questioned him about the Jewish council.[160] Moreover, a former inmate of the Tul'chin ghetto, a certain Linder, had approached someone in the group and threatened him.[161] Linder knew that the NKGB was after the former Jewish functionaries of the Tul'chin ghetto, but they should not despair: for a mere 20.000 rubles, he could make the problem go away.[162] That was a hefty sum: in 1944, the average monthly salary for workers and people in the tertiary sector ("rabochie i sluzhashchie", *WS*) was 435 rubles.[163] The ominous Linder later approached Veshler personally, and persistently repeated his demands on several occasions, highlighting just how badly the Jewish council had supposedly neglected the ghetto's population, including Linder himself.[164] Linder claimed not to have been the person who informed the NKGB, which Veshler called a bluff.[165] During their encounters, Veshler also wanted to know from Linder what he was planning to do about the matter since the security organs had already begun an official investigation. Linder replied that he had "'the procuror in [his] pocket"'.[166] Soviet investigators eventually noted in the indictment that already during the meeting in Veshler's flat, the gathered former functionaries had decided to pay 5.000 rubles to Linder.[167] However, the chronology is difficult to accurately piece together from the defendants' testimonies, and the decision might have been taken later by one or several of the individuals convened at Veshler's flat.[168] Nevertheless, it is clear that Brender eventually gave the sum of 5.000 rubles to Veshler, who handed it over to Linder.[169]

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159 Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 20–21. Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 46, 75-76, 143-149.

160 Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 96-97, 46. The authorities first summoned Brender on August 18, still in the status of a witness and without arresting him. It is likely that the meeting in Veshler's flat took place after this date.

161 Ibid., p. 75–76. Veshler did not recall who exactly brought up Linder.

162 Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 20–21. Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 143–149. Dumitru discusses an instance when a defendant's relative approached witnesses and offered them money in exchange for exonerating testimony. Contrary to the situation with Linder, this apparently happened on the initiative of said relative, rather than that of the witness. See: DUMITRU: Gordian Knot, p. 749.

163 LIVSHIN, A. Ia./ORLOV, I. B.: Sovetskaia povsednevnost' i massovoe soznanie. 1939 – 1945 (Seriia "Dokumenty sovetskoi istorii", vol. 8), Moskva 2003, p. 235.

164 Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 75–76.

165 Ibid.

166 Ibid.

167 Ibid., p. 176–179.

168 Ibid., p. 60-62, 75-76.

169 Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 18-19, 20-21. Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 56, 60-62, 75-76, 143-149.

In the end, the authorities framed the situation as a group of criminals paying hush money: the investigators included these events as an accusation in the indictment, noting that the defendants had "decided to bribe witnesses so that they would not inform the investigative organs about their activities".[170] Contrary to the twist the authorities gave to the situation, the defendants described someone trying to extort money from them. Moreover, both Veshler and Brender added some important details. Supposedly, Linder had not only been in the Tul'chin ghetto, but also in Belousovka and Kapustiani. At both these places, Brender claimed, Linder had been a Siguranța agent. As such, he had informed on "persons dissatisfied with the regime in the camp", as well as on supplies the Jewish communities received from CER, which the Romanians then promptly confiscated.[171] Veshler made similar claims and told the investigators that Linder had provided information to the Romanians for "bread and money".[172] Veshler also named two additional witnesses who supposedly could corroborate his accusations against Linder, but the authorities did not question them.[173] According to Brender, such activities were nothing new for Linder: Before the Soviets had annexed Northern Bukovina in 1940, Linder had allegedly done similar things. Brender asserted that at the time Linder "did not work anywhere, but turned various people over to the Siguranţa, but then went to them, took money from them and divided this money with the Siguranţa, he was, as we said back then, a provocateur".[174] Veshler had heard a similar story about Linder from another former ghetto inmate.[175]

As in any similar situation, one could dismiss Brender's and Veshler's claims as a simple attempt to discredit a witness. However, that was not the case: Linder really was still a provocateur, only now he worked for a different master, not for the Siguranța, but for some Soviet official. The investigators did not question or even try to find Linder, because he was part of their local informer network and someone in the NKGB was using him to extort money from arrestees. Moreover, the case of the former Tul'chin ghetto functionaries was eventually shoved off to the OSO, which was an excellent way of limiting a defendant's ability to expose potential extortion in court. Adding to the emerging theme of extortion is the fact that the investigators selectively investigated the available evidence and selectively prosecuted the potential suspects. Moreover, corruption and extortion were widespread in Chernovtsy at the time, and the Soviet officials involved in it often

[170] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 176–179.
[171] Ibid., p. 56.
[172] Ibid., p. 75–76.
[173] Ibid.
[174] Ibid., p. 56. Note that during their interment in camps and ghettos, local Jews apparently also shared similar stories about their experiences with Soviet authorities. Thus, two witnesses testifying about Jewish functionaries from the Rybnitsa ghetto told Soviet investigators how one of those functionaries had complained about NKVD methods in the 1930s. Allegedly the man had said he would prefer staying in the ghetto for ten years to living under Soviet rule again. After all, he claimed, NKVD officers had arrested him in 1937 and beaten him so that he would give them some gold. See: Bosharnitsan, Samuil Samuilovich, USHMM, RG-54.003*06, p. 31-35, 38.
[175] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 75–76.

targeted Jews. They drained those Jews of their property for a variety of "favors", not least for allowing them to emigrate. Let us review these points in more detail.

Most curiously, the obscure Linder was never questioned, nor is there evidence that the authorities even tried to locate him. In other casefiles, when the authorities tried to get hold of a witness, the attempt left its mark on the paper trail. The files then contain a short certificate issued by the respective city council, noting that the individual in question had moved or died, or that no information was available.[176] The files stemming from the Chernovtsy investigation contain no such paper documenting that the authorities tried to locate Linder unsuccessfully. Why then, was he not questioned?

The NKGB did not question Linder because he served as its covert informer, helping someone in the NKGB extort money from defendants and their families. Accordingly, Linder enjoyed protection. As it turns out, Brender and Veshler were correct about Linder: He had really been a Siguranţa provocateur and he really did the same for Soviet authorities. A 1947 Soviet investigation confirmed as much, although the investigators conspicuously neglected to clarify with what exact NKGB officers Linder had been in cahoots.

The Chernovtsy MGB arrested Linder on July 23, 1947, and the OSO convicted him to ten years in a corrective labor camp on April 24, 1948.[177] The investigators saw it as proven that Linder had served as a Siguranţa informer for decades, and the defendant admitted as much.[178] Linder admitted that as a Siguranţa informer he ran precisely the extortion scheme Veshler and Brender had described.[179] Linder continued to work for different state security institutions even after the Romanians were gone. When the Soviets arrived in 1940, the NKGB recruited Linder as an "agent for uncovering foreign intelligence services' assets".[180] During occupation, Linder was deported to Transnistria, where he was held in Ladijin and Tul'chin.[181] After both Linder and the Soviets had returned to Chernovtsy, the NKGB reconnected with Linder in 1944.[182] Unbeknownst to the NKGB, Linder also started to work as an informer for the "UMVD militia of the Chernovtsy oblast'".[183] These positions again allowed him to extort money from arrestees and their relatives even beyond the time of Romanian rule.

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[176] For example, see the certificates in the case of Rubinshtein: Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 97–119.
[177] Linder Samuil Khaimovich, F2838O3D889, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Chernivets′ka oblast′) (HDA SBU ChO), p. 8, 164.
[178] Ibid., p. 8, 158.
[179] Ibid., p. 9.
[180] Ibid., p. 158.
[181] Ibid., p. 22.
[182] Ibid., p. 159.
[183] Ibid.

Throughout Linder's investigation, the responsible officers completely ignored whether some of their colleagues had been involved in these extortion schemes. It is safe to assume that the investigators were covering their colleagues. In their indictment, the investigators framed the extortions as Linder's personal endeavor:

> "Moreover, using his connections with the organs of the MGB and the UMVD, he extorted from citizens whose relatives were arrested by the UMGB and the UMVD, took large sums of money promising them the release of those arrested, presenting himself as a person associated with the MGB and MVD organs, as a result of which he revealed himself as an agent of the UMGB."[184]

The document's authors then went on to describe two examples of Jewish arrestees' wives from whom Linder extorted 10.000 rubles each.[185] Notably, the investigators only related examples where the money did not have any effect – the arrestees were sentenced to up to 10 years in the Gulag anyway.[186] In addition, Linder allegedly "concealed from the MGB organs" all these activities.[187]

Contrary to that assertion, it is highly likely that Linder did not act as a "rogue" extortioner, but that he cooperated with one or several NKGB/MGB officers. Note that the MGB arrested him only in 1947, although the agency knew about his extortion scheme since 1944. After all, Brender and Veshler had told the investigators what Linder was doing. Strangely absent from Linder's 1947/1948 file is any mention of who his NKGB/MGB handlers were, how he learned whom the NKGB/MGB had arrested or was going to arrest etc. When the MGB investigators targeting Linder in 1947 asked about Soviet security officers, then only about those working for the competing agency, the MVD.[188] Only one NKGB/MGB officer is referred to by name: captain Korolev, who recruited Linder in 1944.[189] In the respective interrogation protocol, Linder only claims that he did not tell Korolev about his work for the MVD.[190]

Korolev is a possible candidate for the man pulling Linder's strings and trying to get money from the defendants: He participated in the 1944 investigation into the Tul'chin ghetto Jewish council.[191] Korolev was the highest-ranking officer involved with that investigation and had a high position within the local office, namely "head of the 1st division of the 2nd department of the Chernovtsy oblast' NKGB administration". As such, he must have been aware that defendants Veshler and Brender accused a man of extortion whom he, Korolev, had recruited as an agent only months,

[184] Ibid.
[185] Ibid.
[186] Ibid.
[187] Ibid.
[188] See, for example, the following interrogation protocol: Ibid., p. 44–51.
[189] Ibid., p. 15.
[190] Ibid.
[191] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 3–4. Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 3-4, 23-24, 46, 104-106.

perhaps weeks ago. However, Linder continued his nefarious activities until 1947, when he fell from grace for some reason and the MGB decided to get rid of him. Thus, there is no "smoking gun" in Linder's 1947/1948 file proving that he approached the former Tul'chin ghetto Jewish functionaries and that he did so on orders of someone in the NKGB, but there is strong circumstantial evidence.

Adding to such evidence is another oddity of the 1944 investigation: How did the authorities even learn about the meeting in Veshler's flat and the money that had changed hands, if not from the man who received it? Judging by the casefiles, the first person to mention the gathering at Veshler's flat and the 5.000 rubles was Shraiber. He brought the subject up in an interrogation in December 1944, seemingly out of the blue. The protocol notes the investigator asking whether Veshler had been a member of the Jewish council, which Shraiber denies, only to digress to the subject of the meeting, seemingly unprompted.[192] Did Shraiber's solidarity thus not extend beyond the ghetto, and was he ready to denounce his former fellow functionaries to raise his own chances of being released? That might have been the case, but on the other hand, the protocol might not adequately represent the verbal exchange. But why should the investigators bring up the matter?

We may construe this as a sort of preemptive strike, one that ultimately included sending the case to the OSO. When the defendants would likely bring up the matter of extortion to any outsider, such as a procuror, judge, or a lawyer anyway, it was better to keep some control over the framing, as the investigators did in the indictment. And asking Shraiber to talk about the August meeting and the money that was exchanged meant securing an incriminating witness testimony from someone who was under enormous pressure. For keeping the situation under control, it was also important to limit the direct contact that the defendants would have with anybody from outside the immediate team of investigators. Under no circumstances would an investigator who had tried to extort money from the defendants have wanted them to talk to a lawyer, a procuror, or a judge. And to achieve this goal, it was best to send the case to the OSO in Moscow – then the defendants would not get such a chance. The superiors would only read the casefile, which contained some unnerving hints but framed them as the defendants trying to bribe witnesses. On January 30, 1945, the investigators suggested sending the case to the OSO.[193] The suggestion was accepted and on August 4, 1945, the OSO sentenced Vitner to eight, Brender and Mozner to five, and Veshler to four years in the Gulag.[194] We here see another facet of what prerogative state mechanisms could

[192] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 143–149.
[193] Ibid., p. 176–179.
[194] Ibid., p. 184–187.

lead to: they allowed Soviet officials to cover up their own crimes, including rather prosaic ones like bribery and extortion.[195]

Note that the sentences the men received were still rather short, all at the lower end of the spectrum on analytical level C). Again, this raises questions. Were the short sentences the result of the money the men had paid to the ominous Linder? Had it not been enough money to set them free, but still enough to keep the sentence short? The indictment had suggested a tougher approach: nine years for Vitner, Mozner, and Brender, and five years for Veshler.[196] The OSO had thus corrected the sentences downwards, shoving off almost a third of the incarceration time the indictment had suggested for the four defendants together. So, were the "low" sentences a result of the 5.000 rubles that had changed hands? It seems unlikely. None of the defendants was accused of perpetrating or facilitating violence against ghetto inmates, it was therefore consistent with the sentencing pattern in other cases on analytical level C) that they received lower sentences. In addition, the terms that local Soviet officials suggested in the indictment were comparatively high for the offenses listed in the document, and it was these local officials who had probably received some or all of the 5.000 rubles. Lastly, it was the OSO who pushed the sentences down significantly.

The consequences for the defendants could of course be horrific nonetheless. There is no information on the further fate of Brender, Veshler, and Mozner in the casefile. Gerhard Schreiber claimed that Veshler died in the Gulag.[197] According to Gerhard Schreiber, Vitner "[…] returned after many years to Czernowitz, a broken man and died soon thereafter."[198] Compared to the long terms many other defendants faced, Vitner's eight years were of course rather short and sit ill with Schreiber's assertion that he spent "many years" in the Gulag. However, the casefile shows that the authorities did not release him after he had served his term. In 1952 Vitner was still in Special camp Nr. 1 (near the town of Inta in the Komi Autonomous Soviet Republic), also known as Minlag.[199] Camp officials decided that after finishing his term, Vitner would not be released to a special settlement, but remain in the camp.[200] After that entry, there is no more information on Vitner's further fate in the file. Schreiber's account is thus plausible, and "many years" may have meant something far worse than the eight years the OSO had sentenced Vitner to.

But let us return to the peculiarities of the investigation, namely the fact that the investigators selectively investigated the available evidence. Testimony by witnesses and defendants suggests that

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[195] Ironically, Linder himself would not see a judge in 1948 either, but had his case shoved off to the OSO, which adds to our argument of a potential cover-up.
[196] Ibid., p. 179.
[197] SCHREIBER: Tale of Survival, p. 34.
[198] Ibid.
[199] For more information about the camp, see: Mineral'nyi lager'. Osobyi lager' No 1, Osoblag No 1, Minlag, Mineral'nyi ITL, online: https://gulagmap.ru/camp219, last accessed November 03, 2021.
[200] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 191.

the whole committee was probably involved in Shraiber's schemes to rescue the Komsomol girls and their relatives (described above). According to Shtainbok, the committee supported Rakhman's father, whom Shraiber had illegally registered in the ghetto, with welfare payments.[201] It seems unlikely that Shraiber could have decided this alone. When Shraiber warned the underground of impending arrests, he allegedly learned that information from Fikhman.[202] The head of the Jewish council supposedly also approved Shraiber's plans to register the girls in the ghetto.[203] Would that really have been possible without involving at least the council's secretary, Vitner? In the later investigation conducted in Tul'chin itself, defendant Eidler claimed that it was impossible to register someone in the ghetto without Fikhman's approval.[204] Moreover, according to Shraiber's son, his father, Fikhman, Vitner, Shtainbok, Veshler, and Maer were all old friends.[205] Thus, while Shraiber claimed that he had "not told anybody" about his support for the Komsomol girls, it appears unlikely that he could have accomplished this feat without any help from his friends.[206]

Moreover, Shraiber and the second Jewish council had "inherited" the Komsomol girls from the first Jewish council, which emphasizes that sheltering them was likely a collective effort. When three local Tul'chin Jews went on trial in early 1946 for their role in the ghetto's first Jewish council (see the following case study in chapter 11), the defendants claimed that only one of the girls had wandered in from Pechora, but another fifteen had never been sent there.[207] The first Jewish council had "hidden" these girls and their membership in the Komsomol from the Romanians since the initial census of the ghetto population, registering them under false names with different families and exempting them from forced labor.[208] Defendants Khusid and Zabakritskii, whose trials we analyze in the following case study on the trial in Tul'chin, had been indispensable for the effort. Several witnesses, among them some of the girls' parents, confirmed that version of events.[209] Khusid was also part of the second Jewish council, and it is quite likely that he informed Shraiber and the other new council members from Chernovtsy about the girls in hiding.

Of course, the Soviet investigators targeting Vitner and the others could not know what their colleagues in Tul'chin would find out only months later. But they could have followed the leads their own investigation provided, such as Fikhman's supposed involvement in warning the underground. Why then did Soviet authorities not follow up on the leads pointing in that direction?

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[201] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 24–27.
[202] Ibid., p. 32–34.
[203] Ibid., p. 28–31.
[204] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 249, 262.
[205] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 25.
[206] Ibid., p. 22–23.
[207] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 242–243, 251.
[208] Ibid., p. 242-243, 253.
[209] Ibid., p. 271, 277.

Besides such selective weighing of evidence, another aspect is highly compatible with the existence of an extortion scheme: the selective prosecution of potential suspects.

The way the Soviets prosecuted the former Tul'chin ghetto Jewish council in Chernovtsy seems even more dubious when one considers that for unknown reasons several of its members were not even targeted in the investigation – although there was incriminating witness testimony against them. Selective prosecution despite equally incriminating evidence further feeds the suspicion that Brender, Mozner, Veshler, and Vitner maybe just lacked money or other means of influence to avoid prosecution. After all, some fellow committee members walked free, apparently undisturbed by the Soviet judiciary. The man whose name and alleged actions witnesses brought up least frequently was the mysterious "Dr. Iakob". It is thus not completely unusual that he was strangely absent from the investigation, but he was not the only one.

According to Gerhard Schreiber, Fikhman, the former head of the Jewish council, escaped criminal prosecution by the Soviets. It is at least plausible that Fikhman had to bribe his way out of the USSR. Supposedly, he managed to cross the border into Romania and later emigrate to Israel, where he eventually became "a respected judge".[210] Though making inferences from the absence of evidence is a precarious endeavor, the fact that we could not locate a casefile for Fikhman in the SBU archives makes Schreiber's account plausible.[211] Although the results of the investigation were ultimately split into two casefiles, one for Shraiber, and one for the other defendants, the documentation clearly shows that both files stemmed from one coherent investigation. That investigation would most likely have included Fikhman, had the NKGB arrested him. The existence of a third casefile relating to the same investigation would therefore be something highly expectable if the NKGB had seriously investigated Fikhman. His alleged emigration beckons the question of how he managed to accomplish such a feat. After all, he resided in Chernovtsy at the time, the investigation had begun in June, his name was regularly mentioned by witnesses and defendants alike, and he had been present at the August meeting of the five former ghetto functionaries in Veshler's flat.[212] How could someone the NKGB was already going after just leave the country? With the rigid internal passport system, many Soviet citizens were not even allowed to travel freely *inside* their own country.[213] And that concerned even those whom the security organs did not target. So how did Fikhman manage to leave?

[210] SCHREIBER: Tale of Survival, p. 25, 33.
[211] For an insightful discussion of this problem see: WALLACH, Efraim: Inference from absence: the case of archaeology, in: Palgrave Communications 1 (2019), here p. 3-4, 8, 9 FN13.
[212] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 75-76, 143-149.
[213] BAIBURIN, Al'bert: Sovetskii pasport. Istoriia — struktura — praktiki, Sankt-Peterburg 2017, p. 136–188.

According to Veshler, Fikhman claimed that he had no money with which to buy Linder's silence.[214] Two possible interpretations emerge: Either Fikhman did have some capital and used it to bribe his way out of the Soviet Union, or he managed to leave some other way, be it by crossing the border clandestinely, be it by finding some other means than money to influence Soviet officials. Whatever way Fikhman found, it is very unlikely that he just officially applied to leave. And it appears that his escape was a narrow one. Between July 14 and October 4, the NKGB questioned five witnesses about the Tul'chin ghetto Jewish administration.[215] On October 17, the agency issued arrest warrants for the six accused.[216] Shraiber later claimed that he had talked to Fikhman as late as "October 18-19", when Fikhman told him that he would soon leave Chernovtsy, supposedly for Bessarabia, to care for his sick parents in Bel'tsy.[217] The NKGB arrested the six accused between October 21 and October 23.[218] Thus, whether he only left for Bel'tsy, or already for Romania, Fikhman apparently made it out of Chernovtsy just in time.

Fikhman was not the only former member of the Tul'chin ghetto Jewish council who escaped criminal prosecution by the Soviets. Deligdish apparently did so as well. Shraiber recalled that before his arrest, he had last seen Deligdish on September 15 and that Deligdish had "not planned to depart" from Chernovtsy.[219] Authorities had learned about both Fikhman and Deligdish, including their whereabouts, as early as July 14, from the very first witness they questioned.[220] However, there is no investigative casefile for Deligdish either. He immigrated to Israel in 1949.[221] The exact route he took from Chernovtsy is unknown, but most likely he first left for Romania and emigrated from there later. In our sample on analytical level C) the minimum time of incarceration to which any former ghetto functionary was convicted was four years. Thus, the timing of his emigration makes it highly unlikely that Deligdish could have been convicted in the USSR and then emigrated (even putting aside how difficult it had again become to emigrate in 1949).

Similarly, the Soviets apparently did not go after Maer. Following his return to Chernovtsy, he headed the local psychiatric hospital there.[222] According to his son, Meinhard Mayer, Maer did not

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[214] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 75–76.
[215] Ibid., p. 46, 104, 106, 115, 120.
[216] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 3. Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 3, 23, 38, 63, 82.
[217] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 12.
[218] Ibid., p. 5. Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 7, 27, 42, 67, 86.
[219] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 12.
[220] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 104.
[221] GOLD, Hugo: Geschichte der Juden in der Bukowina, Tel Aviv 1962, p. 215.
[222] COLIN, Amy-Diana/CORBEA-HOISIE, Andrei: Paul Celan's Bukovina-Meridians, in: Paul Celan today. A companion, edited by Michael ESKIN / Karen LEEDER / Marko PAJEVIĆ (Companions to contemporary German culture, volume 10), Berlin 2021, p. 5–38, here p. 30. See also the testimony of his son: MAYER, Meinhard, Interview 17533. Interviewed by Ilene Spear. Visual History Archive, USC Shoah Foundation 06.08.1996, https://vha.usc.edu/viewingPage?testimonyID=18715&returnIndex=0#, last accessed October 07, 2021, segment 22.

face any criminal prosecution while in Chernovtsy.[223] Meinhard Mayer described his family's eventual emigration somewhat cryptically: "We stayed in Czernowitz till June of 1946, when we were 'invited' to leave for Romania."[224] Whatever concrete pressures Mayer hinted at with the word "invited", his father was not put on trial for his role in the Tul'chin ghetto's Jewish council. To be sure, the investigators knew since early in the investigation that Maer had been on the council, that he lived in Chernovtsy, and that he worked at the psychiatric clinic.[225] However, there is no record that they even tried to interrogate him, be it to put him on trial or to learn more from him about the Tul'chin ghetto Jewish council (which, after all, they were investigating). The most likely reason why Soviet authorities left Maer alone was that he was a direly needed professional. In fact, this may have initially hampered his emigration, rather than facilitated it. During the waves of Jewish emigration from Chernovtsy in 1945 and 1946 (see discussion below), several Jews were not granted emigration permits, because they were deemed essential to the functioning of the city.[226] Initially, one group the Soviets persistently tried to keep in town was medical personnel. The security organs even undertook cross-border incursions onto Romanian territory, tracking down emigrants and returning them to Chernovtsy, which on at least one occasion concerned a Jewish lung specialist of the tuberculosis hospital.[227] Apparently, these people were only allowed to leave once a replacement had been found.[228] One may endlessly speculate whether Maer was just temporarily too useful as the head of the psychiatric clinic or whether he had some means of influencing the Soviet security officers who could have displayed an official interest in him. Money and protection from high places come to mind, but ultimately, that question cannot be answered.

Such peculiarities appear even more peculiar considering that Soviet officials were widely involved in corruption and extortion schemes in Chernovtsy at the time. More generally, this concerned many aspects of everyday life after liberation. The Jews who had survived in Chernovtsy itself, as well as those who had returned from Transnistria faced a host of problems with Soviet authorities. The Soviets conscripted Jews into the Red Army or labor battalions, including for mining work in the Donbass.[229] Little attention was paid to the physical state the Jewish conscripts were in after years in camps and ghettos. For those who had returned from Transnistria, registering with the new authorities became a major problem, which by extension affected their chance to find

[223] MAYER: Interview 17533, segment 22.
[224] IDEM: Czernowitz and Yiddish. Random Reminiscences, in: Der Bay – The International Anglo-Yiddish Newsletter 1 (2008).
[225] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 20-22, 51-52, 93-95, 112-114.
[226] FRUNCHAK: Making of Soviet Chernivtsi, p. 350.
[227] Ibid., p. 350–351.
[228] As part of their strategy of indigenization, Soviet authorities constantly tried to find Ukrainian-speaking personnel, see: Ibid., p. 316.
[229] ANCEL: "New Jewish Invasion", p. 240. ALTSKAN: The Closing Chapter, p. 13–14.

legal employment and support themselves.[230] When the Romanians had pushed the Jews across the Dniestr in 1941, they had destroyed their victims' identity papers.[231] Thus, the Jews often lacked the official documents to prove that they had been residents of Chernovtsy earlier. All of these problems could often be solved with money – be it during a raid for recruiting people into labor battalions, an identity check in the streets, or an application for new papers.[232]

Another hotbed for corruption schemes was the emigration of thousands of Jews from Chernovtsy to Romania in 1945/1946. That emigration was sanctioned from Moscow, implemented by the local Soviet authorities in Chernovtsy, and effectively aimed at exchanging as many of the town's Jewish residents for Ukrainians as possible.[233] Initially, the only ones who were allowed to return to Romania were Jews from Southern Bucovina and the Regat – territories the Soviets never had annexed and whose residents had never come to enjoy the fruits of Soviet citizenship.[234] But when more than 17.000 Jews arrived in Romania from April 1945 on, there were already many from Northern Bucovina and other regions among them.[235] However, the Soviets denied the applications of more than 13.500 Jews from Northern Bucovina and Bessarabia.[236] Those who were permitted to leave often did so only on the basis of bribes. In Chernovtsy, the Soviet officials responsible for the emigration procedures used the opportunity to plunder Jewish property, which the émigrés exchanged for a chance to leave.[237] Since they were only allowed to take with them what they could carry, there was a lot to be "traded", i.e. robbed of.[238] Soviet officials were most keen on obtaining the emigre's apartments.[239] In the autumn of 1945, the authorities allowed even those Jews to apply for emigration to Romania who had only received Soviet citizenship when the USSR annexed Bessarabia and Northern Bucovina in 1940.[240] Many of those Jews eventually emigrated between February and April 1946.[241] Still, emigrating meant losing property, even if officially sanctioned: Jews could take some more things, but now the amount of

230 ALTSKAN: The Closing Chapter, p. 13–14.
231 ANCEL: "New Jewish Invasion", p. 247.
232 ALTSKAN: The Closing Chapter, p. 13.
233 Ibid., p. 21 . For a detailed discussion of the repatriation of Romanian Jews, its political background and why the Soviets allowed these Jews to emigrate, see Altskan's and Ancel's articles, see also: GLASS, Hildrun: Minderheit zwischen zwei Diktaturen. Zur Geschichte der Juden in Rumänien 1944–1949 (Südosteuropäische Arbeiten, vol. 112), München 2002, p. 58–66. FRUNCHAK: Making of Soviet Chernivtsi, p. 330–341, 352-353.
234 ANCEL: "New Jewish Invasion", p. 236.
235 Ibid., p. 237.
236 GLASS: Minderheit, p. 64.
237 ALTSKAN: The Closing Chapter, p. 26.
238 GLASS: Minderheit, p. 64.
239 FRUNCHAK: Making of Soviet Chernivtsi, p. 345.
240 GLASS: Minderheit, p. 65.
241 Ibid., p. 66.

money one was allowed to cross the border with was limited, opening another potential avenue for illicit schemes of property transfer.[242]

Lastly, such corruption also marred Soviet security organs' attempts at identifying and prosecuting alleged anti-Soviet elements, which was a core element of the city's re-Sovietization.[243] There is no documentary evidence that this occurred in the investigation of the Tul'chin ghetto's Jewish functionaries. But there is direct proof that a Soviet officer involved in the investigation of another Transnistrian ghetto's Jewish council was later fired for corruption. Among the investigators who collected evidence against five former functionaries of the Mogilev-Podol'skii ghetto was junior lieutenant of state security Malkin.[244] According to his personnel file, Malkin had not only "unobjectively documented testimony on the criminal activities of a suspect", but also taken 800 rubles from another suspect.[245] For these and other offenses Malkin was fired from the NKGB in 1945.[246] Thus, at least one corrupt security officer was directly involved in investigating former Jewish ghetto functionaries in Chernovtsy. Moreover, strange mentions of money and valuables occasionally also appeared in investigative casefiles of other former Jewish ghetto functionaries charged with collaboration. Take, for example, Bruno Zand, a former Jewish functionary of the Shargorod ghetto. Zand stood trial before the Vinnitsa oblast military tribunal of the NKVD troops in December 1944.[247] The protocol of a pretrial interrogation with Zand contains the following exchange:

> "Question: Tell me about how you received bribes for freeing people from forced labor.
>
> Answer: I did not receive bribes.
>
> Question: How much gold and diamonds do you have?
>
> Answer: I do not have gold and diamonds.
>
> Question: Who has gold and diamonds?
>
> Answer: I do not know."[248]

It seems the interrogator drew the connection between a ghetto-related accusation and a potential financial gain.

All of this contextual information gives credibility to the hypothesis that at its core, the Chernovtsy proceedings against the Tul'chin ghetto Jewish council were not about these men's

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[242] Ibid.
[243] ALTSKAN: The Closing Chapter, p. 18–19.
[244] Rakhmut, Samuil Khaimovich, USHMM, RG-31.018M, R-2838, F03, 322, p. 47, 54, 58, 63.
[245] Malkin Lev Davidovich, D3875-os, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU), p. 13.
[246] Ibid.
[247] Zand Bruno Rafailovich, HDA SBU VO, D3033, p. 42.
[248] Ibid., p. 14.

actions in the ghetto, but about their willingness and capability to pay money to corrupt Soviet officials abusing their powers.

## Conclusion

The present case study analyzed a Soviet investigation pertaining to the Tul'chin ghetto and its Jewish functionaries. Soviet authorities initiated that investigation in Chernovtsy in 1944 and it was based on the experiences of the Bucovinian former deportees from that city. After their return to Chernovtsy, surviving ghetto inmates and functionaries lived as neighbors, and information about the former functionaries soon found its way to Soviet security organs. Among the survivor population, there was a segment that had little apprehension to provide these security organs with testimony.

Examining the Chernovtsy investigation and similar cases allowed to supplement our analysis of the decision documents on level C). Here, the present chapter deepened the previous analysis of case termination orders that highlighted how a defendant had supported the communist underground. The present chapter examined the mechanisms that lead to the actual release of such defendants. As the Chernovtsy investigation of the Tul'chin ghetto Jewish council shows, rendering support to the partisans/underground meant serious risks for the functionaries – the danger of Romanian repressions loomed largely. Yet assisting the resistance appears not only as something a functionary might do out of conviction and to harm the Romanian occupiers. It also meant building a life-boat for the time after the ghetto, when one would end up under Soviet rule. Therefore, assisting the underground meant a trade-off: higher risks while under Romanian rule vs. a perspective of potential mid- and long-term immunity from Soviet prosecution for one's role in the ghetto. However, the proceedings in Chernovtsy also demonstrate that such assistance alone was not sufficient for release – not even such enormous efforts as Shraiber and Shtainbok had undertaken to support the underground and protect the ghetto inmates. Like in other similar cases, a defendant's release also depended on who informed Soviet authorities of that person's past support for the resistance, and how they informed these authorities. If a defendant's supporters were at least loosely organized in a network, if they enjoyed a certain socio-political status in Soviet society and if they knew how to talk and write to the authorities – all of this dramatically increased their chance to be heard. Shraiber and Shtainbok were lucky that the people they had supported and protected in the ghetto fulfilled these criteria. The Komsomol girls, communist activists, and simple ghetto inmates whom Shraiber and Shtainbok had sheltered from harm had not forgotten, they were ready to repay the favor, and they knew how to do that.

As a closer look into the Chernovtsy investigation soon showed, that was by far not the only and surely not the main reason why these two men were released, others were never arrested and

charged, and some were sent to the Gulag. The primary underlying cause was extortion: Soviet security officials abused their powers to demand money from potential defendants, and those who would not pay enough faced dire consequences. To get that money, Soviet security officers used a trusted "provocateur", someone they had recruited as an informer and now relied on as an intermediary. It was this man, Linder, who extorted the money from the defendants and it is almost certain that some of the spoils fell to Linder's Soviet handlers. The extortion scheme explains almost all peculiarities of the Chernovtsy investigation.

Admittedly, the evidence to corroborate the hypothesis that the former Tul'chin ghetto functionaries fell victim to an extortion scheme is still circumstantial. However, the peculiarity of the situation is noteworthy and the hypothesis fits the available facts well. And the situation was more than strange: Soviet authorities have sufficient evidence to investigate ten men but investigate only six. Four are convicted, and there are hints of extortion and corruption in the casefile. Someone held them to ransom, and that someone claimed to have connections to the Soviet authorities. Years later, Soviet authorities arrest that very same man, who had really worked as their agent. The highest-ranking officer involved in investigating the Tul'chin ghetto Jewish council had recruited that man. In 1947, the Soviet's own investigation confirmed that this man was really running an extortion scheme, but conveniently omitted to implicate any Soviet officers in the scheme. During the 1944 investigation, the authorities ignore any lead that could prove exonerating for the men they eventually convict, weighing the available evidence very selectively. Two other arrestees are freed, seemingly for supporting the local communist underground, but the son of one of them recalls that money was exchanged as well. All of this unfolds at a time when Soviet officials in the city are regularly plundering Jewish property through all sorts of corrupt schemes. At this point, the elephant in the room has grown to proportions that make it impossible to ignore: Most likely, the decisive factor in these investigations was not what had happened in the ghetto and how its Jewish functionaries had conducted themselves – it was money.

The Chernovtsy trial thus highlights that prerogative state mechanisms were polyvalent. Their uses ranged from eliminating political enemies to the pursuit of more "prosaic" ends, such as extorting money. For researchers, it is dangerously alluring to study a Soviet investigative casefile, gather all political aspects of a defendant's prewar biography or his wartime behavior and then conclude that the Soviets treated that defendant as they did because of political considerations. The Chernovtsy investigation shows that sometimes, politics were marginal to how a case under "special jurisdiction" unfolded.

To be sure, the validity of the accusations that witnesses brought forwards against these men is a completely different point in question. These witnesses' claims may very well have been true and

they deserve scholarly attention. However, the goal of this chapter is another: It offers a first glimpse of how Soviet investigators diverted such testimonies from their intended purpose and misused Holocaust survivors' experiences, in this case, to line their own pockets. As we discuss below, other trials show how the regime later instrumentalized similar testimonies for its own increasingly anti-Semitic prosecution of Jewish religious communities (see chapter 15).

On the other hand, the Chernovtsy investigations into the Tul'chin Jewish council also show that even Romanian Jewish survivors accepted the Soviet judiciary as a legitimate dispenser of justice, at least in a very basic sense, and at least initially. As mentioned above, 18 of the 51 defendants on analytical level C) faced investigation and possibly even a trial, in Chernovtsy. Of these 18, most had belonged either to the Tul'chin ghetto's administration or to that of the Mogilev-Podol'skii ghetto – 11 defendants in total were investigated in connection to those two places. In these two broader investigations 27 witnesses testified, and 18 of them are clearly identifiable in the files as Romanian Jews, mostly from Northern Bucovina. Thus, despite the experience of a brutal Sovietization in 1940 and despite what was going on in town in 1944/1945, at least part of the survivors accepted the Soviet judiciary as an institution that they could turn to when they met former ghetto functionaries in the streets, and as an institution that one could testify to as a witness. The post-liberation encounter between Soviet authorities and Romanian Jewish survivors surely went horribly wrong on many levels and repelled former deportees returning from Transnistria from their new Soviet masters. However, there are also indications that this was far from pervasive – some people trusted the new authorities, at least initially, and for some survivors, it was precisely those authorities who should take care of the former ghetto functionaries.

Of course, one should ask how accurate an understanding these people had of the Soviet judiciary and its workings. It is quite likely that they approached the authorities with expectations that differed from the eventual results. We might be dealing with a "clash of legal cultures" here, a collision of different understandings of what the law was and how it should be administered. In hindsight, it is easy to dismiss expectations for a different kind of behavior on part of the authorities as naïve. But such expectations were not completely far-fetched. In the investigation and trial that took place in Tul'chin itself from January 1945 on, the authorities behaved quite differently. Had the Chernovtsy trials followed the same formula, the potential "clash" would have been less intense. Let us turn to these proceedings.

# Case study 2: Later judicial aftermath of the Tul'chin ghetto – normative state procedures in Tul'chin itself

From Chernovtsy, we turn our attention to Tul'chin itself – our second case study. A separate investigation began there in 1944, not targeting Bucovinian deportees who had been on the Jewish council, but local Soviet Jews. The defendants were three former members of the Tul'chin ghetto Jewish administration: Iakov Bentsionovich Eidler, Abram-Khaim Gershevich Khusid, and Moisei Berkovich Zabakritskii. The following chapter first examines the investigation's and trial's formal characteristics. Here, the chapter also draws comparisons to other trials and explores specific aspects in detail, such as the role of lawyers within the Tul'chin and other trials. The chapter argues that the investigation and trial mostly followed normative-state procedures. The Tul'chin trial was a prime example of how the Soviet judiciary acted at that end of the prerogative-normative-spectrum. Further developing that argument, the chapter examines the trial session itself. That part of the analysis shows how specifics of the Tul'chin ghetto played out in court. One specific feature is the structural opposition between the populations of the Tul'chin ghetto and the Pechora camp that the Romanians had created. Presenting the defense's strategy with its accomplishments and failures, the argues that the defense was highly successful during the trial, a chance it only had because of the underlying normative-state mechanisms. As the following analysis of the verdict shows, it contrasted strongly with the general Manichean tendency in how Soviet authorities dealt with former ghetto functionaries. The verdict acknowledged both good and bad deeds and combined this with a recognition of the functionaries' constrained room for maneuver. However, the court applied these insights only to two out of three defendants. The chapter offers three potential explanations for such a selective recognition of the "grey zone" and concludes that the court turned the third defendant into a projection screen for survivor witnesses' collective animosities towards the defendants. Before delving into the contents of the investigation and trial in detail, let us examine some of their formal characteristics.

## Formal characteristics of the Tul'chin procedures and the role of lawyers

The following section examines the formal characteristics of the investigation and trials in Tul'chin and identifies normative and prerogative state features. It looks at general features of the investigation and trial (such as the distinction between preventive and punitive proceedings). Looking at the pretrial stage, the section asks what the primary types of evidence the investigators collected and how confessions came about. Lastly, the authorities' reactions to defendants' pleas for additional witnesses are examined. Turning to the trial stage, the section then discusses why Soviet authorities held two trials and how the review came about. Focusing on the decisive second trial, the section describes its duration and some general normative state features of the

investigation and trial. The remainder of the section primarily deals with lawyers. It regularly draws comparisons to other cases on analytical level C). That final part of the section analyzes a series of activities lawyers could engage in: whether they cross-examined witnesses, whether they demanded acquittals or only plead for mercy and whether they demanded that the authorities should summon additional witnesses. In concluding the part on lawyers, the section discusses different explanations of why they took an active stance in the trials of Jewish ghetto functionaries from Transnistria. Lastly, the section describes how the military tribunal conducting the second trial handled prerogative state features of the preceding investigation. Before examining these aspects, the three men's paths into and out of the Tul'chin ghetto Jewish administration are briefly presented.

The three defendants had been members of the first Jewish council, with Khusid and Zabakritskii heading it at some point. Eidler and Khusid were also part of the new Jewish administration established after the deportees arrived in December 1942. To be more specific: On the same day in August 1941 that the Germans appointed Rudov and created the first Jewish council, they also recruited Eidler as a council member, directly off the street.[1] Eidler remained in the position as long as the first council existed.[2] Following the German order, Rudov and Eidler approached Khusid and Zabakritskii, who joined the council.[3] When Rudov withdrew from the council in November 1941 and returned to working as a pharmacist, Zabakritskii took over as head of the council.[4] He remained in the position only briefly, since he was deported to Pechora in late December.[5] Zabakritskii claimed that he headed the Jewish council merely from December 10 through 27.[6] After deporting Zabakritskii, the Romanians selected Khusid as the new head of the council.[7] According to Khusid, the Romanian praetor "Andrii" (likely Andrei Partenie) told him he had to fill Zabakritskii's post.[8] When Khusid refused, the praetor threatened to send him to Pechora. Khusid then agreed.[9]

When the second Jewish council was established in 1942, Eidler remained a council member – therefore, he was the only man continuously serving on the council from its inception to its disbandment.[10] Moreover, he was included into the new district labor bureau tasked with organizing

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[1] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 125–127.
[2] Ibid., p. 14, 75–77, 138.
[3] Ibid., p. 14, 64, 75-77, 125-127.
[4] Ibid., p. 251.
[5] Ibid., p. 74, 95, 199, 261.
[6] The timing was disputed by a witness, who claimed that Zabakritskii had arrived in the Pechora camp only three months after the first deportation left Tul'chin. However, two other witnesses supported Zabakakritskii's account with descriptions that at least roughly match. See: Ibid., p. 251, 253, 261, 264, 267.
[7] Ibid., p. 18-19, 238.
[8] For the praetor's name, see: CREANGĂ: Tulcin, p. 807.
[9] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 18–19, 239.
[10] Tabel nominal de membrii Oficiului judeţean al Evreilor, USHMM, 13/2264/1122, RG-31.004M. Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 20, 21-23, 128-131. Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 37.

forced labor specifically.[11] Khusid was part of the labor bureau, too, as can be seen from a Romanian list of its members.[12] Some formulations in the casefile ("District Jewish committee and labor bureau") suggest that the Jewish council and the labor bureau were not even separate entities.[13] However, Khusid claimed that he was not officially a member of either organization, but more of a second-tier aide of the council, which Eidler confirmed.[14] Regardless, besides Eidler, Khusid surely figured as one of the local Jews' representatives within the Jewish administration and participated in its work.[15]

In January 1945, the Tul'chin rayon NKGB, prerogative-state institution, launched an investigation against Eidler, Khusid and Zabakritskii (ds6).[16] However, the investigation and trial had many normative-state aspects. They were punitive, rather than preventive, the targets were individuals and their alleged concrete criminal acts, and the procedures were localized as the alleged crimes (ds1-5).

Moreover, the pretrial investigation was thorough and mostly prioritized witness testimony over confessions as evidence (judging by the number of witnesses questioned and investigative measures undertaken). In January 1945, the investigators created an "intelligence file", the contents of which remain unknown.[17] The authorities soon created an investigative casefile.[18] The investigators officially recorded the first witness testimony on March 4, 1945.[19] They eventually questioned some 37 witnesses during the pretrial investigation. Some witnesses testified multiple times: nine of them twice, two others three times, and another two even had to appear four times.[20] Moreover, the investigators held 20 confrontations, 13 of them involving a defendant and a witness, the rest among the three defendants.[21] The sheer number of witnesses and the thoroughness with which the investigators tried to establish the validity of their testimony highlights that witness testimony

[11] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 125-127, 128-131, 155. Tabel nominal de membrii Biroului, USHMM, 13/2264/1122, RG-31.004M.
[12] Tabel nominal de membrii Biroului, USHMM, 13/2264/1122, RG-31.004M.
[13] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 125–127.
[14] Ibid., p. 20, 21-23.
[15] Note that none of the three men was actually born in Tul'chin, but all hailed from villages and towns in Vinnitsa oblast' within 90 kilometers of Tul'chin (Brastlav, Tomashpol' and Kalinovka). However, all had apparently lived in Tul'chin for some time, and vis-à-vis the Jews deported from Northern Bucovina, the three men clearly belonged to the group of local Soviet Jews. Ibid., p. 20, 21-23, 6-7, 57-58, 119-120.
[16] See the internal report by the Tul'chin rayon NKGB: Intelligence file "GHETTO", HDA SBU, F1O1D16. I am grateful to Mikhail Tyaglyy for bringing this document to my attention.
[17] Ibid.
[18] It is also possible that the "intelligence file" was simply turned into the investigative casefile. However, no documents from the period between January and early March can be found in the latter. It thus seems more likely that we are dealing with two separate files. Unfortunately, we could not find the "intelligence file GHETTO" in the archives of the Ukrainian Security Service (SBU).
[19] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 141.
[20] Ibid., p. 27, 29, 36, 37, 45, 75, 78, 79, 85, 87, 88, 97, 98, 99, 150, 151, 152, 163, 165.
[21] Ibid., p. 46-52, 102-115, 166-171.

was a crucial type of evidence on which the investigators were building their case. Their approach to the investigation was to a large degree evidence driven (ds8, ds9 – normative).

However, the investigation also showed from prerogative-state procedures. The interrogators likely forced the defendants to admit having signed German and Romanian documents obligating them to cooperate (ds8). According to the indictment, Eidler signed "an obligation to unconditionally carry out all orders of the German Ortskommandant" in 1941, and was "recruited as a secret agent of the Romanian gendarmerie for uncovering communists, partisans and Komsomol members" in 1942.[22] And Khusid had allegedly signed a document obligating him to carry out all orders of the occupiers.[23]

During the pretrial investigation, the interrogators pursued the issue of the alleged signatures with an alacrity bordering on obsession.[24] The defendants claimed that the Germans and Romanians respectively arrested both the first and the second Jewish council at least once.[25] That raised the investigators' suspicions, rather than dispelling them. What had the occupiers demanded from the council members for their release? Had they signed any documents?[26]

Such suspicions were common at the time. On the territories formerly occupied by the Romanians, they were likely a systematic feature of Soviet investigations into collaboration charges. Soviet investigators were instructed that the Romanians would regularly arrest their own informers and agents for show, or conduct fake home searches. The Romanians occupiers thus provided their intelligence assets with a cover-story explaining the contacts between them.[27] A 1943 internal NKGB communique indicated that a Romanian espionage officer captured during the battle of Stalingrad had disclosed that tactic.[28] Thus, even before the Red Army entered Transnistria, the security organs were primed to treat it as suspicious if the Romanians had arrested or punished someone.

During Romanian occupation, Jewish ghetto functionaries faced different forms of repression quite regularly. These men probably hoped for a sympathetic reaction when they later told Soviet interrogators about such incidents. It also made sense to present the Romanians as a common

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[22] Ibid., p. 186.
[23] Ibid., p. 185.
[24] See the following pretrial interrogations of the three defendants: Ibid., p. 21-23, 24-25, 26, 52-53, 67-70, 73, 74, 128-131, 138. Such fervor was apparently quite common. According to Russian scholar Irina Makhalova, who is an expert on the Soviet criminal prosecution of collaboration in Crimea, investigators constantly asked similar questions in these proceedings. Author's conversation with Irina Makhalova.
[25] Ibid., p. 14-15, 63, 67-70, 125-127, 128-131.
[26] Ibid., 14-15, 63, 67-70, 125-127, 128-131.
[27] Head of the Second department of the Ukrainian SSR NGKB lieutenant colonel of state securtiy Medvedev, Head of the Second deparment third division major of state security Khaet to Head of the Stalino oblast' UNKGB junior captain of state security comrade Domidov, city of Stalino, 03.12.1943, F11O1D1182, p. 10–11, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU).
[28] Ibid.

enemy. However, the defendants often achieved an opposite effect. Apart from the three defendants in the Tul'chin case, that was also true of Fidler and Moskovich (of the Odessa and Balta ghettos respectively.[29] Rather than dispelling suspicions, the defendants fueled interrogators' spy-mania when they told them about mistreatment by the Romanians.

When it came to Eidler, Khusid and Zabakritskii, the interrogators soon got the answers they were looking for. Apparently, they relied on dubious interrogation methods to achieve this. There are no obvious indicators of torture in Eidler's interrogation protocols. However, there is a general shift. Initially, Eidler even denied having served as a ghetto functionary.[30] Over the subsequent interrogations, Eidler made ever more substantial confessions.[31] On August 23, 1945, Eidler conceded that he signed a document for Fikhman, the head of the second Jewish council, according to which the committee members had to report to the police any non-registered outsiders hiding in the ghetto, as well as "communists, Komsomol members and partisans".[32] Still, Eidler remained adamant that "[t]he Ortskommandant, the gendarmerie or the police did not make the committee members sign a written obligation about secret cooperation."[33] Two days later, Eidler's interrogation protocol merged these two phrases, stating that he "gave a signature about secret cooperation with the Romanian gendarmerie to the head of the Jewish committee Fikhman", again highlighting the duty to identify illegals and communists in the ghetto.[34] Thus, Eidler moved from denying everything to resisting obviously dangerous phrases such as "secret cooperation with the gendarmerie", but ultimately accepted even those formulations.

Several factors raise concerns about such an escalation. In court, Eidler ultimately denied having signed any papers obligating him to serve the occupiers, making the earlier confessions seem dubious.[35] Moreover, the interrogators' obsession with signatures and enemy secret agent networks fits well with a general spy-mania that characterized Soviet security organs since the 1930s (for another example how this played out in collaboration trials of Jewish ghetto functionaries, see chapter 12). The interrogators also gave the allegation a conspiratorial overtone, speaking not only of "secret cooperation", but also of "connections to the counter-intelligence-organs of the Romanians".[36]

[29] Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 17-20, 42-44. Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 16-27, 62-63.
[30] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 124.
[31] Ibid., p. 125-127, 128-131, 138.
[32] Ibid., p. 128–131.
[33] Ibid.
[34] Ibid., p. 138.
[35] Ibid., p. 244.
[36] Ibid., p. 24–25.

In addition, while the veracity of other accusations can be assessed by looking at witness testimony, the alleged signatures were something only the defendants themselves could know about. Therefore, all proof came exclusively from the testimony of those who were in principle most likely to face torture and had the strongest incentives to falsely accuse their fellow defendants in order to deflect accusations. Moreover, there are indicators that another defendant was tortured, at least when it came to prove the ominous signatures.

Khusid's interrogation protocols contain an obvious warning sign: On August 27, 1945, the investigators asked him about signing documents in two interrogations. During the first, held between ten a.m. and two p.m., he denied the accusation.[37] During a second interrogation between 8:15 p.m. and 10:30 p.m., Khusid confessed he signed an obligation to fulfill all orders of the occupiers.[38] In the six hours between the interrogations, Khusid apparently made some persuasive experiences that refreshed his memory. In court Khusid later claimed that he "only signed that [he] received certificate of membership in the Jewish community" [i.e. Jewish council, *WS*], thus taking the edge off the accusation completely.[39]

On the other hand, Zabakritskii categorically denied signing anything throughout a whole series of pretrial interrogations.[40] It could be that investigators applied pressure only selectively, or that Zabakritskii was more resilient. However, if the investigators tortured the defendants more than occasionally, that would have been remarkable – Zabakritskii spent 176 days in investigative custody, almost an eternity trying to withstand systematic torture.[41] Note that Eidler changed his testimony during the first nine days after his arrest.[42] It remains unclear whether Zabakritskii was exceptionally resistant or whether the investigators did not put pressure him. What is clear is that there was a prerogative-state countertendency to the normative state approach to evidence and confessions (ds8, ds9).

Moreover, the investigators constricted the defendants' room for maneuver during the pretrial investigation. In the one instance where the investigators recorded that an accused asked the investigators to question additional witnesses, the investigators ignored the request. When they tried to establish how defendant Eidler had been recruited into the Jewish council, he named two eyewitnesses.[43] The investigators had already questioned one of them twice.[44] They later summoned

[37] Ibid., p. 21–23.
[38] Ibid., p. 24–25.
[39] Ibid., p. 241.
[40] Ibid., p. 67-70, 73, 74.
[41] Ibid., p. 58, 233.
[42] Ibid., p. 120, 125-138.
[43] Ibid., p. 125–127.
[44] Ibid., p. 45, 91.

that witness again, for a confrontation with Zabakritskii.[45] But they did not question the witness about Eidler's recruitment. There is no document proving that the investigators even tried to locate the other potential witness. Moreover, Eidler had named several additional members of the first Jewish council.[46] Again, the casefile contains no evidence that the investigators actively looked for these four men. It may well be that they were deported to Pechora and perished there, but that remains pure speculation. Therefore, the investigators did not follow up on leads provided by the defendants which might have yielded exonerating testimony – a prerogative-state feature (ds11).

Nevertheless, at the trial stage, the proceedings exhibit normative-state features almost exclusively. The three defendants went on trial twice, since they successfully appealed an initial conviction (ds22). The first trial took place on November 14 and 15, 1945 in Bratslav.[47] The Vinnitsa oblast' military tribunal of the NKVD troops found Eidler and Khusid guilty under article 54-1 "a" and Zabakritskii under article 54-3.[48] The court sentenced the men to 15 years of katorga, and 10 years and 8 years in corrective labor camps respectively.[49] The defendants were represented by a lawyer at the trial (ds19).[50] Further supported by their legal counsel, defendants Eidler and Zabakritskii then filed cassation appeals.[51] On December 28, 1945, the Kiev district military tribunal of the NKVD troops reviewed the appeals, with a procuror arguing for the prosecution and a lawyer representing the defendants.[52] Thus, the highest military tribunal in Ukraine reviewed the decision of their subordinate court in the Vinnitsa oblast'. The procuror demanded the verdict should remain unchanged, but the court's decision followed the defense. Of the 25 witnesses who could have been heard, only 11 had appeared at the first trial.[53] Therefore, the subordinate tribunal had not been able to properly verify the charges, the Kiev court contended, and consequently ordered a retrial.[54] The decision emphasized the necessity to adhere to the code of criminal procedure and guarantee that criminal law was only applied based on sufficient evidence (ds9, ds14 – normative). The supervising agency emphasized quality, not only quantity (ds21 – normative).

In the following analysis, we focus on the retrial that the defendants were granted. Following the trend set by the first trial and the appeal procedure, this trial had many normative state features. In

[45] Ibid., p. 102.
[46] Ibid., p. 125–127.
[47] Ibid., p. 197–219.
[48] Ibid., p. 220–224.
[49] Ibid.
[50] Ibid., p. 197–219.
[51] Ibid., p. 225–228.
[52] Ibid., p. 229.
[53] Ibid.
[54] Ibid.

a sense, it represents the end of the normative-state spectrum among the cases on analytical level C).

The second trial was held between January 15 and 17, again in Bratslav.[55] The proceedings took comparatively long: the tribunal was in session for over thirty hours in three days.[56] Therefore, the trial it is an outlier on analytical level C) (ds17 – normative).[57] The casefiles of 31 accused specify the time their trials took: 5 hours and 35 minutes in the median. The Tul'chin trial was at one end of the spectrum, with that of Bruno Zand of the Shargorod ghetto at the other end – it lasted only 80 minutes.[58]

The two form counterpoints not only in their duration, but in many other aspects. Combined, these aspects push Zand's trial as close to a purely administrative procedure as imaginable. The protocol of Zand's trial session fits on two sheets of paper. Since no witnesses were summoned and neither a procuror nor a lawyer were present, Zand's testimony is the only thing of substance on these sheets. It consists of a mere 128 words.[59] The protocol of the second Tul'chin trial takes up 58 sheets of paper. Thus, the difference in duration was also reflected in the detail of the documentation.

As the first one, the second Tul'chin trial showed normative-state features that were common on analytical level C): It was a judicial procedure (ds12 – normative), albeit one held by a military tribunal and thus a prerogative state institution (ds13). With its verdict from January 17, the court provided some limited documentation for its decision (ds18 – normative).[60] The trial was non-public, but that prerogative state aspect was counterbalanced by a minimal local audience of witnesses and lawyers (ds15). The defendants were present (ds16 – normative), and they also actively cross-examined witnesses throughout the trial session (ds20 – normative).[61] This was not uncommon: of the 22 defendants who faced the witnesses in court, 14 actively engaged with the witnesses.[62] The three defendants on trial for their role in the Tul'chin ghetto could also rely on

[55] Ibid., p. 233–291.
[56] Ibid. Note that the exact time a break was called on January 15, 1946, was not noted in the protocol. We estimated the hour based on the time the court called a break the following night. See p. 266, 289.
[57] To reach a verdict, the court had already spent a similar amount of time, almost 24 hours in total, on the same case two months prior, in November 1945. That verdict was then overturned following an appeal, which lead to the second, even longer trial. Ibid., p. 197–219.
[58] Zand Bruno Rafailovich, HDA SBU VO, D3033, p. 40–41.
[59] Ibid.
[60] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 292–294.
[61] Ibid., p. 258, 261, 262, 264, 266, 268, 269, 270, 271, 272, 273, 275, 276, 278, 279, 280, 282, 283, 284, 285, 288.
[62] Akhtemberg, Moisei Iakovlevich, USHMM, RG-54.003*01, p. 55–63. Fabrikant Isaak Toivievich, DAVO, D1374, p. 51–55. Grinberg, Moisey Peysakhovich, USHMM, RG-54.003*16, p. 130–139. Leiderman Motel' Berkovich, HDA SBU VO, D28231, p. 158–175. Raikher Boris-Berngard Alekseevich, HDA SBU VO, D3709, p. 65–78. Sherf Isaak Lazarevich, HDA SBU VO, D20752, p. 123–136. Treistman, Levi Moiseevich, USHMM, RG-54.003*53, p. 124–131. Vaitsman Iulii Oseevich, HDA SBU, D5399-o, p. 136–150.

two lawyers. Let us examine the legal counsel's activities in more detail, comparing the Tul'chin trial to others on level C).

Legal counsel would be neglectable if it played only a token role. So how active lawyers were lawyers in collaboration trials of Jewish ghetto functionaries?[63] Several aspects deserve attention: Did lawyers agree to let the hearing go forward without summoning additional witnesses? Did they cross-examine witnesses? Did they question their clients, providing them the opportunity to highlight potentially exonerating facts? Did they only plead for mercy, or did they demand a requalification of the crime, or even an acquittal? The first three aspects are self-explanatory, the fourth demands some clarification.

As Juliette Cadiot has argued, the lawyer's job was quite a difficult one in the USSR at the time, since

> "[d]emanding an acquittal, criticizing the preliminary investigation, or taking an overly direct stance against the prosecution by invoking noncompliance with criminal procedures all carried a risk for lawyers, particularly when it came to the hundreds of cases fabricated during the great waves of repression."[64]

According to Cadiot, these problems continued to plague the profession into the early fifties, when lawyers still mostly "restrict[ed] their defense to a request for a lighter sentence, without questioning the preliminary investigation or the classification of the crime."[65] Thus, it is highly interesting to see whether lawyers behaved similarly during the 1940s collaboration trials held in military tribunals.

Twelve of the defendants on analytical level C) were represented by lawyers in court. Most of them were quite active. Plisetskii and Shukalov, the lawyers representing Eidler, Khusid and Zabakristkii, questioned their clients at court and thoroughly cross-examined the witnesses (discussed in detail below). The lawyers of seven other defendants did the same.[66] Only the representatives of the two remaining defendants did not question anyone at court.[67]

Moreover, Plisetskii and Shukalov demaned acquittals for all three defendants.[68] This was not unusual. Twelve defendants on level C) had legal counsel and the lawyers of eight asked asked for

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[63] As discussed above, the research literature is inconclusive in its assessment of what role legal counsel could play during Soviet collaboration trials in the 1940s (on the role of lawyers, see chapters 5, 8, 9).
[64] CADIOT, Juliette: Accessory and Witness. The Profession of the Lawyer under Stalin (1945-1953), in: Annales (English ed.) 01 (2016), p. 153–182, here p. 158.
[65] Ibid., p. 169.
[66] Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 171–175. Leiderman Motel' Berkovich, HDA SBU VO, D28231, p. 158–175. Treistman, Levi Moiseevich, USHMM, RG-54.003*53, p. 124–131. Vaitsman Iulii Oseevich, HDA SBU, D5399-o, p. 136–150.
[67] Bosharnitsan, Samuil Samuilovich, USHMM, RG-54.003*06, p. 67–70. Dresher Iosif Solomonovich, HDA SBU ChO, D5126-o, p. 41–42.
[68] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 290.

acquittals.[69] It is unknown whether these lawyers faced any consequences, such as being disbarred, but they did not engage in self-censorship.[70] Another lawyer asked the tribunal to requalify his client's actions and to sentence him under the less serious article 54-3.[71] The lawyers of three other defendants agreed with the qualification of the crime and essentially pled for mercy.[72] Thus, most lawyers went beyond what Cadiot established as acceptable. The lawyers in the Tul'chin trial did everything possible, maybe even jeopardizing their careers.

Despite many normative-state aspects, the defense's room for maneuver had limits in the Tul'chin trial: Lawyers Plisetskii and Shukalov demanded that all witnesses from the pretrial investigation needed to be present, but did so to no avail (ds20). The lawyers first did so when the tribunal opened the court session on January 15, 1946. The court decided to "leave the question open and resolve it in the course of the trial".[73] The lawyers repeated their demand the following night, but the court denied the request "in view of the clarity of the case".[74] However, the court granted a request to have two absent witnesses' pretrial testimony read out and accepted it as evidence.[75] Nevertheless, the court effectively denied the defense a chance to cross-examine these witnesses. That was a significant loss: as our discussion in the next section shows, especially the lawyers were quite good at poking holes into witnesses' testimonies and at drawing out exonerating statements that had not been recorded in pretrial protocols.

The lawyers of the other nine defendants on level C) with access to legal counsel neither asked to summon additional witnesses nor protested against hearing the case although not all witnesses had appeared.[76] Considering not only the final successful trial session, but also the steps leading up to it, a more nuanced picture emerges. Other lawyers demanded that witnesses be present at the trial and military tribunals yielded to these demands. Even when a lawyer accepted hearing a case in absence of some witnesses, that might have been consistent with a solid defense strategy. If only the witnesses who were useful for the defense appeared in court, the lawyers had no reason to protest.

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[69] See the protocols of the respective trial sessions: Dresher Iosif Solomonovich, HDA SBU ChO, D5126-o, p. 41–42. Leiderman Motel' Berkovich, HDA SBU VO, D28231, p. 158–175. Treistman, Levi Moiseevich, USHMM, RG-54.003*53, p. 124–131. Vaitsman Iulii Oseevich, HDA SBU, D5399-o, p. 136–150.
[70] CADIOT: Accessory and Witness, p. 158, 169, 173.
[71] Leiderman Motel' Berkovich, HDA SBU VO, D28231, p. 158–175.
[72] Vaitsman Iulii Oseevich, HDA SBU, D5399-o, p. 136–150. Dresher Iosif Solomonovich, HDA SBU ChO, D5126-o, p. 41–42. Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 171–175.
[73] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 235–236.
[74] Ibid., p. 289.
[75] Ibid., p. 288–289.
[76] Bosharnitsan, Samuil Samuilovich, USHMM, RG-54.003*06, p. 67–70. Dresher Iosif Solomonovich, HDA SBU ChO, D5126-o, p. 41–42. Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 171–175. Leiderman Motel' Berkovich, HDA SBU VO, D28231, p. 158–175. Treistman, Levi Moiseevich, USHMM, RG-54.003*53, p. 124–131. Vaitsman Iulii Oseevich, HDA SBU, D5399-o, p. 136–150.

Note that lawyers took an active stance in military tribunals throughout the whole period under study here (1944–1949). The legal counsel of defendants Malamud and Vaitsman questioned defendants as well as witnesses and did not shy away from demanding an acquittal for Malamud.[77] Thus, such behavior was not limited to the later years of the period under study here. In sum, these details help to counterbalance the results of the earlier analysis of sentencing patterns and decision documents, which found lawyers' influence limited for reducing sentences.

Diana Dumitru recently explained a more active stance taken by lawyers defending Jewish ghetto functionaries with the fact that some of these lawyers were themselves Jews. Dumitru also described this as a regional specificity. As the bar in Moldova was predominantly Jewish, ghetto functionaries tried in the MSSR often had Jewish lawyers who made for a more compassionate and active legal counsel.[78] This argument has two flaws.

First, most lawyers defending Jewish ghetto functionaries in the casefiles on level C) were not Jewish. The 12 defendants who had lawyers were represented by an equal number of lawyers.[79] Only five of them had surnames that are likely Jewish (Dain, Fraiman, Kushnir, Nisenzon, Plisetskii).[80] Moreover, lawyers with non-Jewish surnames were equally active in defending their clients – Jewishness was no necessary condition for lawyers properly doing their job.[81]

The second problem with Dumitru's argument concerns her claim that this is a specifically Moldovan phenomenon. Dumitru provides figures for the MSSR bar association in 1946, when 59% of its lawyers were Jews.[82] That is almost exactly the proportion of Jews in the Odessa oblast' bar association in the first half of 1945.[83] Taking these figures as a crude yardstick, Jews were actually underrepresented among the lawyers defending Jewish ghetto functionaries compared to their share of both bar associations. However, since these are low two-digit numbers, caution is advised – extrapolation is little better than guesswork. Nevertheless, the Tul'chin trial and the procedures against Leiderman and Shamis of the Zhmerinka ghetto show that Jewish lawyers also

[77] Vaitsman Iulii Oseevich, HDA SBU, D5399-o, p. 136–150.
[78] DUMITRU: Gordian Knot, p. 746–747.
[79] If we include individuals like Fraiman, who represented Eidler, Khusid and Zabakritskii and attended the review hearing of the Kiev district military tribunal of the NKVD troops, but never met the defendants. Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 229.
[80] Ibid., 229, 233-291. Leiderman Motel' Berkovich, HDA SBU VO, D28231, p. 158–175. Treistman, Levi Moiseevich, USHMM, RG-54.003*53, p. 124–131. The Dain defending Leiderman and Shamis was either the same man Dumitru refers to, which would have meant that this lawyer operated both in the Vinnitsa oblast' and in the MSSR. Or, more likely, we are dealing with two different individuals here. See: DUMITRU: Gordian Knot, p. 747.
[81] Vaitsman Iulii Oseevich, HDA SBU, D5399-o, p. 136–150.
[82] DUMITRU: Gordian Knot, p. 747.
[83] Work of judicial organs, Odessa region, first half of 1945, DAOO, FR-6269O1D4, p. 43. Note that this report can briefly shine a spotlight on how Jewish the bar association in the Odessa oblast' was in 1945, but that the situation might have changed rapidly after that. As Cadiot notes, Soviet Ukrainian authorities made a significant push for a more Ukrainian, and less Jewish collective of lawyers even before the anti-Semitic persecutions of the late 1940s. See: CADIOT: Accessory and Witness, p. 173.

defended former ghetto functionaries in Vinnitsa oblast'.[84] Neither a high proportion of Jewish lawyers in the bar association, nor their appearance as legal counsel for former ghetto functionaries are specific to the MSSR.

Moreover, the case of Eidler, Khusid and Zabakritskii shows that sometimes a team of lawyers was handling the same case. At some point, all lawyers defending the three belonged to the 4th legal consultation bureau in Kiev.[85] Lawyers in the USSR were organized in bar associations at the republic level, and in legal consultation bureaus at the local level.[86] Four lawyers of the 4th consultation bureau in Kiev appear in the casefile.[87] The two Jews among them did the same things as the two non-Jews. Who appeared in court or at a hearing was likely more an issue of scheduling, than one of Jewishness. This leads to another problem with Dumitru's argument.

In a sense, the arguments floats in an institutional vacuum, where lawyers appear as altruists facing the Soviet judiciary to heroically defend their fellow Jews. There is an alternative explanation for varying degrees of lawyers' involvement in different trials: money. Lawyers in the USSR were officially paid through the bar associations, which collected the fees from clients and distributed the money to the lawyers relative to their caseload.[88] If a procuror took part in a trial, it was mandatory that the defendant had a lawyer, even if that defendant could not pay for his legal counsel.[89] Therefore, a significant proportion lawyers' work was without payment. It quickly became "common knowledge that unpaid lawyers played only a token role in court."[90] Defendants who sought out legal counsel themselves often paid unofficial fees directly to their lawyers. The attorneys used that money to raise their comparatively low income, to cover travel expanses to attend trials or to pay bribes to court officials.[91] Thus, the lawyers in the cases under study here worked in a profession with a precarious financial situation, who did a lot of unpaid. Everyone knew that providing them with financial incentives was crucial.[92]

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[84] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 233–291. Leiderman Motel' Berkovich, HDA SBU VO, D28231, p. 158–175.
[85] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 305.
[86] CADIOT: Accessory and Witness, p. 164.
[87] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 197, 229, 233.
[88] CADIOT: Accessory and Witness, p. 153.
[89] Ibid., p. 163.
[90] Ibid.
[91] Ibid., p. 160, 163, 174-177.
[92] In the cases under study here, we see both court-appointed lawyers, as can be discerned by the preparatory sessions of the tribunals, as well as lawyers who only appeared on court day and were most likely hired by friends and families of defendants. Unfortunately, in some cases the protocols of the preparatory sessions were not contained in the casefiles or these files were incompletely digitized by archivists. Bosharnitsan, Samuil Samuilovich, USHMM, RG-54.003*06, p. 49, 51, 206, 214. Dresher Iosif Solomonovich, HDA SBU ChO, D5126-o, p. 39–41. Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 168, 171. Leiderman Motel' Berkovich, HDA SBU VO, D28231, p. 150, 158. Vaitsman Iulii Oseevich, HDA SBU, D5399-o, p. 119, 136.

That likely applied even more to lawyers from the capital city, be it Moscow, be it Kiev. For one, lawyers not recruited from within a given oblast' had to cover greater travel expenses. And those based in capital cities were often the best in their profession, which likely raised their fees. Inter-regional hires were common, especially for lawyers based in Moscow.[93] Thus, at least in the case of Eidler, Khusid and Zabakritskii, it is likely that the defendants' families paid money above the usual rates to ensure the lawyers properly did their job.

Concluding the discussion of the second Tul'chin trial's more formal aspects, another interesting normative-state feature deserves attention. The tribunal corrected prerogative state practices the investigators had used in the pretrial investigation. As discussed above, the investigators obsessively tried to prove that the defendants were secret agents of the occupiers and that they signed respective documents. During the second trial, the military tribunal decided these accusations were baseless. The court rejected them explicitly in the verdict. It merely contended that Eidler had verbally confirmed the gendarmerie's order to "monitor the appearance in the ghetto of suspicious persons and individuals who escaped from the Pechora camp", omitting any mention of signatures or secret agents.[94] Similarly, the court dismissed the claim that Khusid had signed any documents, since "the accusation was based on the testimony of convict Eidler, who changed his testimony during the trial".[95] The court's version was a sharp turn from the pretrial investigation and the indictment. On the other hand, the tribunal did not follow the evidence in the casefile to the logical conclusion, namely that the investigators might have employed "physical measures of influence" – the normative state corrections thus had clear limits.

Nevertheless, the verdict was unique because the court explicitly recognized the specific circumstances in which the Jewish ghetto functionaries had acted.[96] The court accepted that Khusid and Zabakritskii had done bad things but acknowledged that they had been powerless vis-à-vis the Romanians. Analyzing the court session of January 15 to 17, 1946, allows to establish how the court arrived at that unusual conclusion.

The preceding section examined the formal characteristics of the investigation in Tul'chin and the subsequent trials. At the pretrial stage, the investigation showed some more general normative state features common to Soviet collaboration trials. The authorities also questioned a substantive amount of witnesses, suggesting a normative state approach to evidence. On the other hand, there were prerogative-state counter-tendencies. Most importantly, the interrogators likely tortured

[93] CADIOT: Accessory and Witness, p. 176.
[94] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 292.
[95] Ibid., p. 293.
[96] The verdict was not only unique to the Soviet trials related to Transnistria, but also to those concerning other regions. See: BLUM et al.: Survivors. POLIAN: Sumevshie utselet'.

defendants so they would confess to a specific accusation. Investigators also restricted defendants' room for maneuver in bringing new evidence to the case. At the trial stage, the defendants' legal counsel managed to have a first verdict overturned and achieved a retrial. Adding to the normative state tendencies was the unusually long duration of that trial, which offered much room to examine the available evidence. More general features also point in that direction (judicial rather than administrative procedure, documented decision-making, etc.). That the three defendants were represented by lawyers is another normative state feature. Like other lawyers in similar trials, the defense in the Tul'chin trial cross-examined witnesses, motioned to have additional witnesses summoned, and demanded that the court should acquit their clients. Such an active stance demands an explanation. Contrary to some recent claims in the research literature, it was neither decisive that lawyers were Jewish, nor that the trials took place in Moldova – non-Jewish lawyers in Ukraine often did the same for former Jewish ghetto functionaries. That the eventual trial of the three functionaries from the Tul'chin ghetto was so heavily determined by normative state features also depended on the behavior of the court. Examining the pretrial evidence, the court rejected its primary prerogative state feature, namely the dubious confessions about signing German and Romanian documents.

## The second Tul'chin trial: The defense succeeds

The following section examines the trial session and what it revealed about the three defendants' activities in the ghetto (and in the Pechora camp). This part of the chapter contrasts witness testimonies in court with defendants' responses. It answers a series of questions: What did witnesses accuse the defendants of? Did the witnesses see the defendants as a collective, or did they direct their accusations at individuals? Besides accusations, did witnesses also provide exonerating information about the defendants? And does the witnesses' testimony show that they perceived the ghetto as a specific situation that necessitated new moral standards of behavior, or did they approach the defendants' behavior with pre-ghetto principles? How did the defendants counter witnesses' accusations? Which strategies did the lawyers employ? Did the court focus only on accusations, or did the judges ask questions that might reveal exonerating information? While focusing on the second trial session, the section also refers to the indictment, the verdict of the first trial, as well as to its protocol, and testimony from the pretrial investigation. Where possible, these documents are triangulated with other materials. The section begins with discussing Zabakritskii, followed by Khusid and Eidler. Since so many witnesses testified, it is necessary to select a subset of testimonies to examine.

When it comes to Zabakritskii, the following discussion includes all witnesses who testified in the second trial. The rest of the section focuses on the key witnesses in the trial. Who can count as

a key witness was determined the following way: Regarding defendant Eidler, an accusation repeated in the indictment and in both verdicts came from one specific witness. Therefore, that person was a key witness. Others were identified as key witnesses by the frequency with which investigators and adjudicators referred to them. Indicators for frequency included: how often someone had testified during the pretrial investigation, whether the investigators organized a confrontation between that witness and a defendant at the pretrial stage, whether and how often a witness's name appeared in the indictment and the first verdict, and lastly, whether and how often the indictment cited the page numbers of a witness's pretrial testimony without naming that witness. Based on these criteria, five individuals count as key witnesses (out of 19 testifying at the second trial): Aron Braverman, Khaim Lapidus, Aleksandra Shein, Iakov Tiraspol'skii and Betia Vainsaf.

The reader should keep in mind that trial session protocols only recorded the answers defendants and witnesses gave, but not the questions that the court, defendants or lawyers asked. The standard formulation is "Upon question by lawyer X (/ defendant Y / the court), witness Z said: […]." Those questions need to be "reverse engineered", which entails an element of uncertainty and speculation, albeit a limited one – it is mostly obvious what issue a question had been aimed at.

One complex of accusations against Zabakritskii concerned property crimes. Both the indictment and the first verdict alleged that Zabakritskii confiscated property from Tul'chin Jews for the Romanian occupiers.[97] During the pretrial investigation, several witnesses testified that before and after the deportations, Zabakritskii went from house to house, confiscating Jews' property (including silverware, bed sheets, clothes, and furniture of those deported earlier).[98] Many witnesses described that a Romanian gendarme accompanied Zabakritskii.[99] Three witnesses accused Zabakritskii of threatening the owners, mostly with deportation to Pechora.[100] One claimed that Zabakritskii used force.[101] All witnesses agreed that the things went to the Romanian occupiers.

These accusations are credible since oral history and memoirs confirm them. According to those materials, Jewish ghetto functionaries collected "contributions" in the form of money, clothes etc. for the Romanians. They did so on several occasions. Confiscations began before the ghetto was created and ended with the removal of furniture from the houses of the Jews recently deported to

[97] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 186, 224.
[98] Ibid., p. 75-77, 79-80, 82, 83-84, 87, 88, 89, 90, 91.
[99] Ibid., p. 79-80, 82, 83-84, 87, 88, 91.
[100] Ibid., p. 79-80, 82, 88.
[101] Ibid., p. 79–80.

Pechora.[102] Some of these materials explicitly mention Zabakritskii as well, corroborating the trial documentation.[103]

Apart from the claim that Zabakritskii had been physically violent, several witnesses leveled the same accusations against him in court.[104] Cross-examined both by the defense and the court, witnesses provided relevant details. The judges asked witness Shein about the purpose of the "contributions". She explained that there were "rumors that if we would give the Romanians valuables, they will not deport anyone".[105] Another witness confirmed that Zabakritskii had expressed that hope, shining a new light on the alleged threats of deportation.[106] According to several witnesses' pretrial testimony, Zabakritskii had explained the "contributions" to ghetto inmates in this way.[107]

Zabakritskii himself attacked a different aspect of Shein's testimony by turning to witness Tiraspol'skii, who claimed that "Zabakritskii cannot have robbed Lerner, because he was helping Lerner all the time."[108] Shein remained adamant that she had seen Zabakritskii take a samovar from Lerner's flat.[109] Nevertheless, Zabakritskii had managed to turn this into a two-to-one situation: it was his word and Tiraspol'skii's against Shein's.

Zabakritskii's lawyer, Shukalov, approached the issue from yet another angle, as can be seen from witness Krasner's answer to the lawyer's question:

> "I saw myself how Zabakritskii went from house to house of the Jews together with the Romanians and pointed out where there were valuables. Who was leading whom – the Romanians Zabakritskii or Zabakritskii the Romanians, I do not know."[110]

Apparently, the point Shukalov was trying to make was that Zabakritskii had not acted upon his own volition. That became a centerpiece of the lawyers' defense strategy.

The defendant himself had made the same point in his opening statement. He recalled several instances when Romanian officials fined him, publicly humiliated him, for example by making him

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[102] GRIPS, Leonid/KHELMER, Iakov (ed.): Kolokola pamiati. Nasha pamiat' – vam, potomki! Vospominaniia byvshikh uznikov getto i kontslagerei, prozhivaiushikh v gorode Ahdod (Izrail'), Ashdod 2005, p. 282. SIMKHOVICH, Grigorii, Interview 25160. Interviewed by Iulii Shterenberg. Visual History Archive, USC Shoah Foundation 20.12.1996, https://vha.usc.edu/viewingPage?testimonyID=27429&returnIndex=0#, last accessed October 07, 2021, segments 43–44. BERENSHTEIN, Vladimir, Interview 40519. Interviewed by Dimitri Groisman. Visual History Archive, USC Shoah Foundation 27.01.1998, https://vhao.usc.edu/viewingPage?testimonyID=43369&returnIndex=0#, last accessed October 07, 2021, segment 59.

[103] KHMELINSKII, Mikhail, Interview 23813. Interviewed by Leonid Smilovitsky. Visual History Archive, USC Shoah Foundation 28.11.1996, https://vha.usc.edu/viewingPage?testimonyID=24475&returnIndex=0#, last accessed October 07, 2021, segment 22. SIMKHOVICH: Interview 25160, segments 43–44.

[104] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 256, 258, 259–260, 264, 267, 274, 282, 284.

[105] Ibid., p. 258.

[106] Ibid., p. 282–283.

[107] Ibid., p. 82, 88, 89, 91, 102, 104, 111.

[108] Ibid., p. 264.

[109] Ibid.

[110] Ibid., p. 281.

roll around in a dirty puddle, or beat him for not following orders.[111] Zabakritskii's account of one beating stands out: When the Jewish council failed to deliver 60 bedsheets in November 1941, "policemen came to the community [i.e. the Jewish council's building, *WS*] and beat up everyone who was there."[112] Zabakritskii informed the ghetto's residents about the ongoing beatings and they finally handed over their bedsheets. Zabakritskii gave those to the Romanians, averting further violence.[113] But the Romanian policemen had already beaten two "elderly people" ("dva starika", *WS*) to death.[114]

In his self-description, Zabakritskii appears as someone constantly facing repression from the Romanians, whom they personally held accountable for fulfilling their orders, and who thus often had to take the first blow of their wrath. The ghetto population appears content with sheltering behind the Jewish council and letting its members face the fallout of the population's unwillingness to yield to Romanian orders – an attitude kept up until the very moment that the Romanians strike back with repressions. Both the defendant, as well as his lawyers consistently argued the point of Zabakritskii's highly constrained room for maneuver throughout the trial session.

Counterintuitively, one might ask whether Zabakritskii and his colleagues were not violent enough towards the ghetto's inmates. The idea is abhorrent and simple: When Jews beat Jews, they could do so in a measured and targeted way, avoiding the excessive and indiscriminate violence that the Romanians often unleashed as punishment. Had the Jewish ghetto functionaries forcibly taken the bedsheets from the population, the two elderly men might have survived. By the same token the Jewish councils of many ghettos took over forced labor mobilization from the perpetrators.[115] It was better to do something bad to your own people than to risk having the perpetrators do something far worse. The idea is perverse, but that was position into which the perpetrators put Jewish ghetto functionaries.

Were Tul'chin ghetto inmates aware of this dynamic and did they accept it? Let us tentatively try to draw an analogy to Nazi concentration camps. Andreas Kranebitter recently argued that in the "situation of permanent violence" of German concentration camps, the threshold for and meaning of violence among the inmates was completely different than outside the camps.[116] Some inmates developed an implicit consensus what kind of inter-prisoner violence was an acceptable feature of camp life, and what was to be considered unacceptable excess.[117] It was "normal" for a Kapo to hit

[111] Ibid., p. 250–253.
[112] Ibid., p. 250.
[113] Ibid., p. 250, 251.
[114] Ibid., p. 251.
[115] TRUNK: Judenrat, p. 72.
[116] KRANEBITTER: Permanente Gewaltsituation, p. 102–105.
[117] Ibid., p. 101–102.

someone in the face for slow work or infringement of camp rules, if that person would not lose any teeth.[118] Any violence beyond what was induced by the camp situation was considered excessive. In Kranebitter's words: "[…] a 'good Kapo' was one who beat 'justly'."[119] "Light" Kapo violence could even have a protective effect: when an SS-guard approached, it was better to get a few light punches from a Kapo for show, than to risk that the SS-guard would try to stimulate one's work output; "light violence" thereby tuned into a preferable substitute for real violence.[120]

The many accusations of property confiscation cited above show that no such consensus existed in the ghetto's population. For those trial witnesses, it was as wrong in the ghetto as during peacetime that someone came to your house and demanded your bedsheets, threatening you with deportation for noncompliance. It was not important that this person implemented orders of an over-powerful occupier, who threatened him with violent reprisals. Survivors were ready to acknowledge anything positive a Jewish functionary had done, like protecting someone from deportation or arrest, supplying food etc. But they were less inclined to think that the functionary position itself demanded new parameters for appraising the behavior of those who filled it.

In the Tul'chin trial, the defense regularly highlighted defendant's constricted room for maneuver and their support of ghetto inmates. Regarding another episode that involved Zabakritskii, attorney Shukalov made sure that everyone understood what exactly an accusation entailed, and what not. Witness Khalfin told the court that Zabakritskii demanded 115 rubles from him, because the Jewish council managed to free Khalfin from prison after the Romanians had arrested him.[121] Judging by Khalfin's answers, Shukalov's questions were meant to clarify two points: First, that Khalfin's arrest had nothing to do with Zabakritskii. And second, that Zabakritskii believed that Khalfin's father had promised Rudov a compensation for bribing the Romanians to get Khalfin released.[122] As Khalfin explained, his father turned to the Jewish council on his own initiative, pleading for help. Taking both points into account, the episode could be interpreted as one of rescue, rather than extortion.

Another important aspect of the confiscations discussed at trial was that some of the things went to the ghetto hospital that the Jewish council organized.[123] Following a question from his lawyer, Zabakritskii tried to take credit for organizing the hospital, claiming it was organized while he headed the Jewish council.[124] The hospital's head physician, Doktorovich, clarified that it was

[118] Ibid., p. 105.
[119] Ibid., p. 106.
[120] Ibid., p. 103–105.
[121] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 284.
[122] Ibid.
[123] Ibid., p. 288–289.
[124] Ibid., p. 253.

Rudov who asked her to organize the hospital. Still, Khusid and Zabakritskii helped her to do so.[125] Thus, Doktorovich reiterated her exonerating pretrial testimony, which explained that some of the confiscated property had been put to use in the interest of the ghetto inmates.[126] Already during the first trial, Zabakritskii had emphasized that the Jewish council used the furniture of those deported to Pechora for the hospital.[127]

The hospital was also relevant for another key accusation, namely that Zabakritskii had mobilized people for forced labor. Zabakritskii and his lawyers managed to complicate the picture regarding this accusation. That accusation can count as a key point of the prosecution because the investigators included it in the indictment.[128] Following a question from lawyer Plisetskii, witness Moldavskaia recalled something that had not been recorded in her pretrial testimony:

> "When my child fell ill with typhoid fever, Zabakritskii helped me to place the child in the hospital. All that time they did not send me to work, although my child was sick for two months."[129]

Similarly, Zabakritskii got witness Lapidus to concede that while Zabakritskii had really sent people to forced labor, "[…] but if I, for example, did not want to work, I did not go and Zabakrtiskii did not tell anyone about that […]"; another information not contained in the witness's pretrial depositions.[130] That hardly looked like Zabakritskii was fanatically devoted to the tasks set by the Romanians, or like used violence to fulfill them. Following another question of the defendant, witness Vaisman said that when the Romanians sent him to perform hard labor at an airfield, Zabakritskii helped him return to the ghetto.[131] Thus, Zabakritskii could show that he had supported people even beyond the ghetto.

Similarly, Zabakritskii got witnesses to tell the court that he tried to keep inmates inside the ghetto. According to witness Lapidus, Zabakritskii approached him about a Romanian offer to leave the ghetto for work, warned Lapidus and 11 others not to accept the offer and told them to hide in the ghetto.[132] Apparently Zabakritskii suspected that the proposed destination was unsafe. In another instance, Zabakritskii hid people in the ghetto who were not registered there. Witness Bakman told the court how Zabakritskii enabled him and his two children to remain in the ghetto

[125] Ibid., p. 278.
[126] Ibid., p. 98.
[127] Ibid., p. 200.
[128] Ibid., p. 186.
[129] Ibid., p. 280, 161.
[130] Ibid., p. 269, 32, 46–47, 152.
[131] Ibid., p. 271.
[132] Ibid., p. 269.

illegally.[133] As discussed above, such actions carried mortal danger, had the Romanians detected them.

Again, triangulation allows to see more than the court could during the trial. If similar episodes appearing in different types of materials indicate a pattern, then Zabakritskii's efforts to protect ghetto inmates were no isolated events. In her oral history interview, survivor Bella Margulis recalled how Zabakritskii took her into his home when her father fell ill with typhus and was brought to the ghetto hospital. Apparently, this was shortly before the deportations to Pechora. According to Margulis, another man brought his child to Zabakritskii that night and offered him money for sheltering the child. Zabakritskii refused, telling the man about Margulis and saying: "I have to save this girl."[134] Therefore, Zabakritskii chose a de-facto orphan over a child who still had a parent to rely on, and even disregarded a financial incentive. Putting aside how one evaluates the results of Zabakritskii's conduct as a ghetto functionary – he obviously navigated the dilemmas inherent in his position relying on a distinct moral compass. Ultimately, Zabakritskii could not save Bella Margulis from being deported to Pechora, which comes to little surprise considering that he was sent there himself.[135]

Pechora played an important role in the trial for all three defendants. The last substantial complex of accusations against Zabakritskii concerned his actions in the camp. Two witnesses claimed that after he arrived in Pechora, Zabakritskii became the camp's Jewish elder.[136] As elder, he allegedly collected gold and valuables from camp inmates, and then fled from the camp, whereby he "tricked" ("obmanul", *WS*) the other inmates.[137] He allegedly misused people's valuables to facilitate his own escape, bribing his way out of the camp. In Pechora, where the Romanians murdered Jews primarily through starvation and inmates exchanged everything they owned for food, this was a particularly perfidious betrayal.[138] The two witnesses had already testified the same during the pretrial investigation.[139] Another witness, who did not appear in court, had made similar allegations.[140]

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133 Ibid., p. 272.
134 MARGULIS, Bella, Interview 22243. Interviewed by Svetlana Kuravskaia. Visual History Archive, USC Shoah Foundation 23.11.1996, https://vha.usc.edu/viewingPage?testimonyID=24238&returnIndex=0#, last accessed October 07, 2021, segments 41–45.
135 Ibid., segment 46.
136 Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 256, 283.
137 Ibid., 256, 283.
138 SHNAIDER, Vol'fgang: Tabir smerti Pechera ta ioho evreis'ki okhorontsi. Deiaki zauvahi do istorichnoho kontekstu dokumentiv, in: Nasyl'stvo nad tsyvil'nym naselenniam. Vinnyts'ka oblast'. Dokumenty orhaniv derzhbezpeky. 1941–1944, edited by Valerii VASYL'IEV et al. (vol. 3), Kyiv 2020, p. 22–27, here p. 22.
139 Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 87, 91.
140 Ibid., p. 81.

In court, the defense refuted that Zabakritskii had held a position in Pechora. Zabakritskii himself denied this.[141] When his lawyers asked Rakhman, the witness repeated the claim.[142] The defense then questioned witnesses Rozovskii and Tiraspol'skii, who both answered that Zabakritskii never was the elder in Pechora.[143] That information had not been part their pretrial testimony, again underlining the significance of a proper trial.[144] Witness Shein also claimed that Zabakritskii had been the camp elder. But the court doubted whether her testimony regarding Zabakritskii in Pechora was credible. Questioned by a judge, Shein had to admit her accusation that Zabakritskii collected valuables was hearsay.[145] It was mostly the lawyers who wielded this weapon to undermine witnesses' credibility, but with Shein the court showed that it could do the same – if it wanted to.[146] Shein conceded that she had not seen the property change hands herself.[147] By extension that made Shein an unreliable witness of Zabakritskii's alleged service as camp elder.[148]

With the allegation of serving as camp elder out of the way, there was still the issue of collecting valuables, escaping and thus betraying the other inmates. Zabakritskii and his counsel did not question the core of the accusation but attacked the prosecution's framing of the issue. Zabakritskii himself maintained he "[…] fled from the camp because they abused me and made me call out those who had a lot of valuables."[149] Again, the lawyers turned to Tiraspol'skii and Rozovskii. According to Tiraspol'skii, Zabakritskii fled Pechora because the Romanians "robbed" and "persecuted" him, which went so far that "the policemen wanted to kill him".[150] This was not part of Tiraspol'skii's pretrial testimony. Rozovskii's pretrial testimony contained similar claims and reiterated thenm in court, partially following questions from the lawyers.[151] Supposedly, the Romanians subjected Zabakritskii to brutal public beatings in Pechora because he failed to collect enough valuables for them.[152] Rozovskii was sure the Romanians would have murdered Zabakritskii, had he not escaped.[153]

Thus, the defense again succeeded shifting the way an accusation was framed, rather than it at the core. Once more, Zabakritskii appeared as someone who was completely dependent on the

141 Ibid., p. 253.
142 Ibid., p. 283.
143 Ibid., p. 264, 266, 283.
144 Ibid., p. 97, 157-159, 160, 169-170, 171.
145 Ibid., p. 256.
146 For instances of the lawyers getting witnesses to admit that their testimony was based on hearsay, see: Ibid., p. 257-258, 274, 275.
147 Ibid., p. 256.
148 It is unlikely that he ever held the position. Besides the other witnesses denying it in court, Zabakritskii is also not mentioned in historiography as a functionary of Pechora. CREANGĂ: Pecioara, p. 742.
149 Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 253.
150 Ibid., p. 264.
151 Ibid., p. 97, 264–265, 283.
152 Ibid., p. 97, 264–265.
153 Ibid., p. 265, 283.

Romanians and faced at least equally harsh repressions as the other Jews. Moreover, the defense successfully highlighted the price he paid for his reluctance to follow Romanian orders.

Witness Doktorovich added details concerning social support. She claimed that Khusid and Zabakritskii had "sent to the camp [Pechora, *WS*] a cart of bread" before Zabakritskii was deported.[154] During the pretrial investigation, witness Rozovskii had supplied a similar but more intimate episode, which probably explains his willingness to defend Zabakritskii in court. Rozovskii told the investigators that his child died in Pechora in early 1942, and that usually "corpses were lying scattered around the camp for months".[155] To spare Rozovskii's child this fate, Zabakritskii somehow convinced the gendarmerie to allow a "a separate funeral".[156] Rozovskii did not reiterate the episode in court. Thus, not everything exonerating came up again in the trial session. The defense needed to draw such information out actively.

In sum, Zabakritskii and his lawyers had achieved to show three things: First, that some accusations were simply wrong. Second, that the way the prosecution framed other accusations was incomplete because the defendant had acted under immense pressure and faced significant repressions. Third, that Zabakritksii had an impressive record of helping ghetto and camp inmates in Tul'chin and Pechora, sometimes even saving lives, and that he had often acted in their interest even if it meant taking risks for himself. Supported by the lawyers, defendant Khusid followed a similar defense strategy.

Three of the five key witnesses accused Khusid of policing the ghetto boundaries, pushing out anyone who wandered in from Pechora in search for food. Allegedly, Khusid used threats and denunciations to the police to expel the illegal "pechortsy" from the ghetto, and sometimes even arrested such people himself. This kind of accusation directly resulted from a structural conflict between the Tul'chin ghetto and the Pechora camp that the Romanians had created.

That structural conflict had several sources. First, the "contributions" collected by the Romanians before the deportations conveyed the impression that only the rich were allowed to stay. Thus, witness Shein claimed during the trial that "only those who lived in wealth and had gold remained in the ghetto".[157] Similarly, Tiraspol'skii said in his pretrial testimony that there were "only speculators" in the ghetto and that the Romanians sent all the real artisans to Pechora.[158] Thus, when the Romanians conducted the selections for deportation, they bred resentments among the Jews of Tul'chin.

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[154] Ibid., p. 278–279.
[155] Ibid., p. 97.
[156] Ibid.
[157] Ibid., p. 256.
[158] Ibid., p. 157–159.

Moreover, since starvation was the primary killing method the Romanians used in Pechora, they drove camp inmates to the ghetto searching for food. Memoirs, oral history and the Soviet trial documentation show that this happened regularly even though the camp was guarded and inmates risked being shot. But at least until CER aid began arriving in early 1943, staying in Pechora meant starvation. Several survivors who later arrived in Pechora describe the Tul'chin Jews they met there as "walking skeletons".[159] They also stress that the earlier arrivals faced the harshest conditions of all Pechora inmates.[160]

That Pechora inmates would try to avoid starving to death by coming to Tul'chin in search for food and shelter meant grave danger for the Jews in the ghetto. Helping and sheltering Pechora inmates were strictly forbidden. According to one witness pretrial testimony, defendant Khusid even feared that the Romanians would deport everyone in the ghetto to Pechora if they found out.[161] Such pressure added to the structural conflict between camp and ghetto.

Moreover, when the Tul'chin Jews left in the ghetto organized support for those deported to Pechora in 1942, the Romanians reacted with repression. Witness Bakman testified at the trial that the Romanians arrested him, Khusid and Eidler in 1942. The Romanians beat up Bakman "because [he] carted the bread collected for the camp to Pechora".[162] Bakman specified that he could not learn the reason for Khusid's and Eidler's arrest, but there is no indication of any other cause than the cart of bread sent to Pechora.[163] Khusid asked Bakman about this to make the witness corroborate his own opening statement. In that statement, Khusid told the court about the cart of bread and how he, Eidler, Bakman and another man were arrested "for connections with the Pechora camp".[164] Not only was "the Ukrainian police" involved, but also the "Romanian military prosecutor's office", Khusid claimed. Bakman's testimony added some credibility to Khusid's account. Thus, the Jews in the ghetto had not abandoned those in Pechora but attempted to support them even before help arrived from CER.

Thus, the problem was not with the ghetto Jews or Jewish council. But that the Jews in Pechora could not necessarily see that. The Romanians did not allow aid deliveries to Pechora before February 1943.[165] Only the second Tul'chin ghetto Jewish council was allowed to forward money and goods it received from CER in Bucharest to Pechora.[166] Before that, the Romanians denied

[159] BRONSHTEIN: "Mertvaia Petlia", 66, 227.
[160] Ibid., p. 66, 146, 249.
[161] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 29.
[162] Ibid., p. 272.
[163] Ibid.
[164] Ibid., p. 241–242.
[165] CREANGĂ: Pecioara, p. 743. VYNOKUROVA: Evrei v adu, p. 56.
[166] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 22-23, 201, 247.

the ghetto Jews to support the camp's inmates, who felt abandoned by them. Thereby, Romanian authorities further fomented the conflict between ghetto and camp.[167]

That conflict was an integral part of Eidler's, Khusid's and Zabakritskii's investigation and trial. Several witnesses alleged that Khusid denied Pechora inmates coming to the ghetto any support and instead chased them off with threats, denunciations and arrests. The investigators found these accusations important enough to include in the indictment. [168] However, Khusid and his lawyers were partially successful in deflecting these accusations.

Already during the pretrial investigation, witness Betya Vainsaf told the investigators about her regular trips from Pechora to Tul'chin in search for food:

> "In 1942–1943, I often went to the 'ghetto' and observed Kusid going from house to house in the 'ghetto' with a whistle in his teeth and to the Jews in the 'ghetto' he repeatedly said something like this: 'I warn you. If I find Pechora people with you, I will send you to Pechora. If the Pechora Jews come to you, let me know. I will deal with them so that they will not come again.' Often when I saw Khusid in the 'ghetto', I would hide because I was afraid of his betrayal. Many Jews from the Pechora camp died of starvation in the concentration camp, thanks to the impossibility of receiving help from the Jews held in the 'ghetto' because of Khusid. Thus, my four daughters and husband died of starvation in that camp. Many others died, whose names I do not remember."[169]

However, Khusid's lawyers could soon discredit the accusation as hearsay. Already during two pretrial confrontations with the defendant, Vainsaf no longer phrased the accusation as an observation but as something she had heard from ghetto residents, including "the locksmith Motel' Shkhizer".[170] At court, Khusid's lawyer wanted to know who else had made such claims.[171] Among the other witnesses present at the trial, Vainsaf could only point out Nusik Shcherb.[172] However, when Khusid's lawyer asked Shcherb, he denied ever having said anything to that effect.[173] According to Shcherb, he warned people coming in from Pechora "[…] to beware of the policemen, but not of Khusid."[174]

Witness Aron Braverman's accusations also revolved around coming to Tul'chin from Pechora in search for food, but seemed more concrete than Vainsaf's. Braverman claimed that he had been arrested on Khusid's orders. The episode Braverman told the court is worth quoting at length, too:

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[167] Interestingly, that conflict lasted even beyond liberation and resentments were conserved for decades. Even in 2006, a scholar studying the aftermath of the Pechora camp described how "[…] Pechora survivors complain bitterly about the equal compensation (through Claims Conference pension funds) of their differing wartime suffering allotted by the German government." Why was everyone getting the same amount of money when some had suffered so much more? See: GOLBERT: "Neighbors", p. 245.
[168] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 185.
[169] Ibid., p. 36.
[170] Ibid., p. 46–48.
[171] Ibid., p. 274.
[172] Ibid.
[173] Ibid.
[174] Ibid., p. 275.

> "In the winter of 1943 I was in the Pechora camp. I went to the ghetto illegally. When he noticed me, Khusid turned to Fikhman, the elder of the community, and said: 'What are the Pechora people ("Pechortsy", *WS*) doing here?' I had come to beg for a piece of bread. After this statement I was arrested, brought to the police station, where they beat me severely, after which I lay in a cold cell, hungry for four days. After they let me go, I spent the nights in cellars, since Khusid forbade the Pechora people to stay in the ghetto overnight."[175]

With a series of questions, lawyer Plisetskii made the witness add important details to his account. Braverman clarified that Fikhman told Khusid not to worry about his appearance in the ghetto and to let him go undisturbed.[176] However, Braverman admitted that it was "Fikhman and Shraiber" who arrested him "two weeks later", that is after the encounter with Khusid, who was not present during the arrest.[177] Consequently, Braverman conceded that he "only assume[d]" the arrest happened on Khusid's behest.[178]

Plisetskii then attacked Braverman's pretrial deposition.[179] In that testimony, Braverman claimed that the policeman who detained him said that Khusid ordered the arrest.[180] But during the trial, Braverman told the court that he "asked the policeman nothing at all and did not speak to him in general".[181] That was not necessary, Braverman said, since he knew that Fikhman was behind the arrest.[182] When Khusid asked Braverman about these inconsistencies, Braverman replied: "Fikhman arrested me, but I think that Khusid is guilty of this."[183]

What the court saw here was someone persistent, but not particularly convincing. Khusid continued to undermine Braverman's credibility by mobilizing other witnesses. Asked by the defendant, witness Krasner claimed that he fled from Pechora to Tul'chin together with Braverman where they were "arrested by the Romanian elder, but Khusid had no connection to this."[184] Thus, the defense refuted Braverman's claim that Khusid arrested him.

Unlike Braverman's claims, Khusid failed to deflect other witnesses' accusations. With witness Shein, it was his word against hers. Shein claimed that Khusid set a policeman, Nazarkin, on her

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[175] Ibid., p. 259.
[176] Ibid., p. 260.
[177] Ibid.
[178] Ibid., p. 261.
[179] Plisetskii's questions prove that the lawyers had been able to familiarize themselves with the whole casefile. The lawyers (or rather their colleagues) could not have heard Braverman's testimony during the first trial, since he did not testify then. That the legal counsel got to see the file was no matter of course even in the regular Soviet judiciary system at the time, and in cases that were adjudicated by the OSO, the lawyers could not obtain the file at all. See: Ibid., p. 197. CADIOT: Accessory and Witness, 168, 176.
[180] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 29.
[181] Ibid., p. 261.
[182] Ibid.
[183] Ibid., p. 262.
[184] Ibid., p. 282.

twice when she came to the ghetto from Pechora.[185] First, Khusid spotted her when he was leaving his house with Nazarkin.[186] According to Shein, Khusid yelled: "'Nazarkin, Jewish women from the camp have come here, take them!'"[187] Shein outran Nazarkin, probably because she had arrived with three others and Nazarkin could them all.[188] In her pretrial testimony, Shein said that the others "vanished without a trace", implying serious consequences of Khusid's alleged betrayal. [189] Weeks after the first incident, she came back alone. Khusid allegedly pointed her out to Nazarkin again.[190] He arrested her, led her to the police station where he "beat her on the head with his keys".[191] Khusid denied these accusations and his lawyers tried to find holes in Shein's testimony, but she stuck to her story.[192] With no other witnesses available, it was Khusid's word against Shein's.

To be sure, the rumors that Khusid had warned people about sheltering Pechora inmates in the ghetto were not spun from thin air. But Khusid had acted differently thought himself under Romanian observation, as when he felt unseen. During the pretrial investigation, Khusid admitted that "in accordance with a gendarmerie order" he "warned all persons residing in the ghetto that there should be no extra people in their houses".[193] But these warnings were apparently for show and when unobserved, Khusid subverted the order where he could. Numerous witnesses said that Khusid facilitated the presence of "extra people" in the ghetto to an extent that was bordering on recklessness.[194]

In supporting the ghetto population, Khusid's record is no less impressive than Zabakritskii's. As mentioned, it included sheltering the Komsomol girls in the ghetto (see above). Khusid's differing behaviors in public and when unobserved are also not to be confused with an excessive need for control. Khusid did not try to allow only those in "illegals" in the ghetto whom he had "put" there himself and trusted. On the contrary, witness testimonies indicate that he regularly sheltered "rogues" in the ghetto who had made it there without his knowing.[195]

Besides much support witnesses rendered him in court, Khusid also faced more accusations and as those of Shein, he was unable to refute them completely. However, the defense managed to change the framing, for example of Khaim Lapidus' testimony. According to Lapidus, Khusid

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[185] Ibid., p. 254–255. It is not completely clear in the casefile whether Nazarkin was a Jewish ghetto policeman or a member of the local Ukrainian police force created by the Romanians. The last name is Ukrainian rather than typically Jewish, but this can only be a rough indicator.
[186] Ibid., p. 256–257.
[187] Ibid., p. 254.
[188] Ibid., p. 254–255.
[189] Ibid., p. 27.
[190] Ibid., p. 254–255.
[191] Ibid.
[192] Ibid., p. 242, 256–257.
[193] Ibid., p. 48.
[194] Ibid., p. 41, 42, 43, 44, 270, 271, 273, 278, 279–280, 282, 283.
[195] Ibid., p. 280.

appeared in his flat in 1942, demanding he should clear one of its three rooms.[196] Khusid allegedly did not explain why. After an hour, Khusid returned. Since Lapidus had not cleared the room, Khusid demanded they went to the police, Lapidus told the court.[197] He then described what ensued at the police station:

> "[…] he [Khusid, *WS*] told the chief that I do not obey him, that I am a communist and that I refuse his order to clear the flat. The policeman told me to take off my hat and repeatedly beat me in the face with a rubber truncheon."[198]

Before contrasting Lapidus' account with Khusid's, the claim that Khusid called Lapidus a communist in front of the Romanian police officer is noteworthy. Lapidus was likely applying a pre-emptive defense, or tried to let Khusid taste his own medicine. During a pretrial confrontation, Khusid had said that Lapidus had labeled him a communist before the Romanian officer.[199] Lapidus promptly denied the allegation.[200]

Interestingly, Khusid did not repeat the claim in court. Perhaps he shied away from trying to tarnish Lapidus as a witness with a trick that could have serious consequences. The example once more shows how much caution is advised with such claims. They were a tempting instrument for attempting to discredit someone in before Soviet authorities. Most likely, there was no factual basis for either man's accusation. Had Lapidus called Khusid a communist, then Khusid would likely have told the court about this. Had Khusid called Lapidus a communist, then Lapidus would likely have told the investigators already at the pretrial stage. The chances that Khusid actually used "communist" as an insult are slightly higher, since witness Dekhterman also recalled an episode where Khusid used that as an insult.[201] However, the same caution is advised here as with the other statements – maybe Dekhterman wanted to turn the investigators against Khusid.

The authorities did not pick up the political angle in the men's testimonies. Yet the core of the accusation, that Khusid had informed on Lapidus "for refusal to move out of his flat" and then "personally escorted him to the gendarmerie", where Lapidus was "subjected to beatings" became part of the indictment and the first verdict.[202] Moreover, both documents suggested that Lapidus had been removed from the flat completely – which was not the case, as Lapidus had explained during the pretrial investigation.[203] He relinquished the room, but continued to live in the house.

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196 Ibid., p. 268.
197 Ibid.
198 Ibid.
199 Ibid., p. 46–47.
200 Ibid.
201 Ibid., p. 276.
202 Ibid., p. 185, 223.
203 Ibid., p. 46.

Khusid and his lawyer, Plisetskii, cross examined Lapidus to counter his accusation. The defense tried to prove that Lapidus did not own the room anyway. Lapidus conceded that the room in question was uninhabited at the time, since another resident had recently moved out.[204] But he maintained that the whole flat had always been his before that resident had moved in.[205] Khusid tried to prove his version of events: that the head of the Romanian gendarmerie ordered him to find room for a hairdresser in the ghetto, that he learned of the free room and that the room did not belong to Lapidus.[206] When Khusid asked witness Dekhterman, the former resident, he claimed it belonged to him and not Lapidus, thereby corroborating Khusid's point.[207]

Moreover, Plisetskii asked Lapidus whether the Romanian police officer beat him because of the flat, or for another reason. Lapidus remained adamant that the beatings were a punishment for not clearing the room.[208] The reasoning behind the question was simple. In his testimony before the court, Khusid emphasized that Lapidus did not take off his hat before the police officer.[209] After hearing from Khusid that Lapidus had not vacated the room, the police officer initially knocked Lapidus hat off and only then beat him in the face, Khusid claimed.[210] Khusid thus implied that Lapidus at least partially provoked the beatings by displaying a lack of respect, and Plisetskii picked up this angle when he cross-examined Lapidus.[211]

The defense also argued that Khusid had acted unwillingly. Plisetskii let Lapidus clarify that Khusid did not appear alone at the flat the second time. He was accompanied by "the Romanian Jew Leon Art", who later translated the conversation with the Romanian officer.[212] Although Khusid tried to make Art seem innocuous by referring to him as "a tailor", the pretrial investigation had established that Art helped to mobilize ghetto inmates for forced labor, though not an official council member.[213]

Lastly, Khusid brought into position another witness, Mednikova, whose testimony changed the framing of the accusation, emphasizing Khusid's constrained room for maneuver. In the ghetto, Khusid and Mednikova had lived in the same flat. In court she testified that "[a] policeman came for Khusid and summoned him to the police after he had been in Lapidus flat".[214] Mednikova thereby corroborated Khusid's account that a Ukrainian policeman had summoned him to the

[204] Ibid., p. 268.
[205] Ibid.
[206] Ibid., p. 240.
[207] Ibid., p. 276.
[208] Ibid., p. 268.
[209] Ibid., p. 240.
[210] Ibid.
[211] Ibid.
[212] Ibid., p. 268.
[213] Ibid., p. 240, 20, 21, 128.
[214] Ibid., p. 278.

gendarmerie, where he found Lapidus already on the premises.[215] In this version of events, Khusid did not use the Romanians to unleash violence on unwilling ghetto inmates but was as surprised by the beatings as the victim himself. Khusid had still been involved and in a way "confiscated" a room in Lapidus' flat against his will. But the arrest and the beatings were the Romanians' doing, and Khusid was peripheral to it.

In sum, Khusid and his lawyers defended him against different accusations quite successfully. They deflected some completely, be it by showing that witnesses were repeating hearsay or that their accounts were contradictory. Sometimes, it was the witnesses' words against the defendant's, and that was hard to change. But as with Zabakritskii, the defense elicited many exonerating statements from witnesses. Thereby, Khusid showed that he had supported and protected ghetto inmates. Moreover, when Khusid could not deflect an accusation completely, the defense at least challenged its framing, highlighting how limited the defendant's room for maneuver vis-à-vis the Romanians had been. When it came to defendant Eidler, the defense pursued similar goals.

One accusation against Eidler was that he extorted money for the right to transfer to and stay in the ghetto. Witness Tiraspol'skii's account illustrates these accusations and highlights some underlying mechanisms. According to Tiraspol'skii, Eidler recruited him and 18 other artisans confined in the Pechora camp for work in the ghetto.[216] They were initially housed in a ruin and performed hard unskilled labor ("chernye raboty", *WS*) instead of working in their professions.[217] The group soon faced bad news. Fikhman appeared and told they would be sent to the nearby peat camp the following morning.[218] The artisans then asked Eidler to let them stay.[219] When they came to his flat the next morning, they found Eidler and Shraiber there.[220] Shraiber demanded "20 rubles in gold" from Tiraspol'skii for letting him remain in the ghetto.[221] Since Tiraspol'skii did not have the money, an agreement was reached: The Jewish administration provided him with a shoemaker's workshop, so he could work in his profession, earn "marks" (RKKS) and pay off his debt.[222] After a time, Tiraspol'skii could only cover 15 of the 20 rubles and Eidler took "a new hat and trousers

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[215] Ibid., p. 240.
[216] Tiraspol'skii claimed that Eidler came to Pechora some time in 1942. Eidler himself said that his respective visit to the Pechora camp was in January 1943. Eidler's claim is more likely, because witnesses recalled how he arrived with foodstuffs at different occasions, which the Romanians only allowed from 1943 onwards. It is thus unlikely that the 1942 supply transfer organized by the first Jewish council, for which it faced repressions from the Romanian authorities, was meant. See: Ibid., p. 247, 255, 262, 284.
[217] Ibid., p. 262.
[218] Ibid.
[219] Ibid.
[220] Ibid., p. 263.
[221] Ibid.
[222] Ibid., p. 157-159, 263.

as a deposit".[223] Later, Eidler returned and threatened Tiraspol'skii, who asked Eidler to give him back the hat, sold it and paid his debts with that money.[224]

Before examining the defense's version, it is imperative to dwell on some facts the episode reveals about the ghetto, its Jewish council, Pechora and the structural conflict between camp and ghetto. As Tiraspol'skii's testimony shows, the second Jewish council set up workshops, which allowed it to transfer artisans from Pechora and employ them in these workshops. Shraiber was involved as the "head of the ghetto workshops", as he testified to the Chernovsty NKGB in 1944.[225] According to the memoirs of Shraiber's son, CER funds were used to set up several workshops in "an empty schoolhouse".[226] Moreover, artisans like Tiraspol'skii earned enough money in the workshops to pay the Jewish council the fees it demanded for bringing them in from Pechora. Tiraspol'skii even spent some of his earnings on clothes, which he probably needed bitterly after Pechora. Finally, Tiraspol'skii's testimony shows how Shraiber and other Jewish council members managed finance various rescue efforts. These often involved bribing Romanian officials and the money to grease those gears came from ghetto inmates. What looked like fundraising to the council members was more akin to extortion for people like Tiraspol'skii.

Tiraspol'skii's testimony also proves that claims of preferential treatment for the rich need to be treated with caution. Such claims are common in historical materials describing Transnistrian ghettos. Thus, witness Shein's asserted in court that "from the camp to the ghetto transferred only those who had gold".[227] But Tiraspol'skii did not have 20 rubles in gold, he only had his skills, and he had to work for the money in the ghetto workshop. The claim that only the rich could buy their way from camp to ghetto also contradicts Shein's earlier claim that the rich all stayed in the ghetto in the first place, and only the poor were deported to the camp.[228] For some witnesses, the idea of preferential treatment along lines of stratification apparently became a catch-all that helped to process feelings of helplessness, betrayal and abandonment.[229] To be sure: corruption was wide-spread in Transnistria and a gold necklace could decide over life and death. But wide-spread does not mean all-pervasive. Utmost care is necessary when analyzing accusations of corruption that

[223] Ibid., p. 263.
[224] Ibid.
[225] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 14.
[226] SCHREIBER: Tale of Survival, p. 25.
[227] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 258.
[228] Ibid., p. 256.
[229] Regarding claims as that of Shein, one might ask about psychological gains they offered survivors. Assuming that the Romanians could always be bribed meant maintaining a worldview in which Jews retained at least a modicum of influence on their fate and in which they were dealing with a rational and predictable enemy – accepting the opposite would have probably been even more disorienting and incapacitating.

concern concrete Jewish ghetto functionaries. Extrapolating from the general observation of widespread corruption to someone's actual behavior remains difficult.

Not everyone who managed to transfer from Pechora to Tul'chin was an artisan and such transfers could also occur without money changing hands. Following a question from his lawyer, Eidler recounted how he helped witness Khalfin to transfer. As advised by Eidler, Khalfin falsely claimed to be a carpenter and was registered as such.[230] Money was not decisive here either. When Eidler asked Khalfin in court, he clarified that the defendant did not demand money for his support.[231]

Engaging with Tiraspol'skii's accusation about extortion, the defense successfully shifted some of the blame from Eidler to Shraiber. Lawyer Plisetskii first let Eidler recall his version of the events. Eidler maintained that Shraiber had both demanded and received the money.[232] Moreover, Eidler denied having taken Tiraspol'skii's clothes. Allegeldy Tiraspol'skii gave them "to storekeeper Rakhman".[233] Eidler told the court that he ordered Rakhman to return the clothes as soon as he heard this.[234] Asked by lawyer Plisetskii, Tiraspol'skii conceded that he gave the money to Shraiber, but said nothing about the clothes.[235] Nevertheless, Eidler managed to make Shraiber appear as the main culprit.

Prompted by a judge's question, Eidler claimed the money went to social welfare, but Khusid denied that. According to Eidler, the money was used to support the ghetto's public kitchen.[236] The court asked Khusid, who said that ghetto inmates paid the money so that they would not be expelled from the ghetto, and that the public kitchen was financed by "deducting 60% of our earnings every month".[237] Thus, the court knew how to bring one defendant into position against another, just as the defense turned the accusers of one defendant into the defenders of another.

Eidler also tried to show that he helped people to transfer to the ghetto and stay there, rather than extorting money from them by threatening to expell them. In his opening statement, Eidler recounted three such instances, describing how he acted as an intermediary to the head of the Jewish council. When a certain Leikhtman fled from Pechora to Tul'chin and asked Eidler for help, he convinced Fikhman to register Leikhtman.[238] Eidler said he did the same for Elizaveta

[230] Ibid., p. 249.
[231] Ibid., p. 284.
[232] Ibid., p. 263.
[233] Ibid.
[234] Ibid.
[235] Ibid.
[236] Ibid.
[237] Ibid., p. 263–264.
[238] Ibid., p. 249.

Moldavskaia and her children.[239] Moldavskaia confirmed this during the trial.[240] Moreover, Eidler took them into his home until they were officially registered, whereby "he risked a lot", as Moldavskaia pointed out.[241] Eidler also helped to shelter the Komsomol girls. Witness Rakhman confirmed that his daughter remained in the ghetto because "Eidler registered her under his name and with him."[242] In the Chernovtsy investigation, Mar'iana Rakhman, the girl in question, told the investigators the same.[243] Unfortunately, her testimony remained inaccessible to the judges trying Eidler because the investigators in Chernovtsy and Tul'chin did not cooperate. Lastly, Eidler also functioned as a liaison man to Fikhman for witness Khalfin (discussed above).[244] Eidler thus proved that it depended on Fikhman whether someone could stay in the ghetto. He argued the same when witnesses accused him of expelling two young boys from the ghetto.

The investigators deemed the fate of these boys most relevant. These are the only episodes they included in the indictment from all accusations concerning extortion and expulsion from the ghetto.[245] One of the two boys was Fima Rechister, witness Braverman's nephew. Braverman was transferred from Pechora to the ghetto in 1943 as a tin-smith.[246] After the transfer, his nephew appeared in the ghetto.[247] Braverman asked Eidler to let Fima remain, but regardless how much Braverman "cried and begged", Eidler "ordered to send the boy to the camp."[248] In his opening statement, Eidler claimed that the boy was among many "children who fled from the Pechora camp" and came to Tul'chin "every Sunday".[249] According to Eidler, Pechora children appeared in the ghetto so frequently that it was impossible *not* to send some of them back.[250] Challenging Braverman's testimony, Eidler first tried to have the witness admit that he himself could only transfer to the ghetto thanks to Eidler, but Braverman credited Fikhman's alone.[251]

Eidler's primary defense picked up his dependence on Fikhman, and witness testimony corroborates his version of events. Eidler told the court that he "did not register Rechister because [he] did not have the right to do so."[252] As with "Moldavskaia and Leikhtman and Khalfin", it was Fikhman who registered the new arrivals, since Eidler "did not have the right to do this".[253] Witness

[239] Ibid.
[240] Ibid., p. 280.
[241] Ibid.
[242] Ibid., p. 282.
[243] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 28–30.
[244] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 249.
[245] Ibid., p. 186–187.
[246] Ibid., p. 260.
[247] Ibid.
[248] Ibid.
[249] Ibid., p. 247.
[250] Ibid.
[251] Ibid., p. 261–262.
[252] Ibid., p. 262.
[253] Ibid.

Moldavskaia confirmed that Eidler needed to talk to Fikhman to have her registered.[254] The testimony Chernovtsy investigation corroborates this fact in hindsight. Witness Mar'iana Rakhman, whom Eidler had sheltered under his name testified that Shraiber had to "speak to Fikhman" before he and Eidler could register her and let her stay with Eidler.[255]

A similar accusation concerned another boy, Iosif Brenner. Witness Tiraspol'skii testified that he met Brenner in Pechora.[256] Later, Tiraspol'skii was transferred to the ghetto as a specialist, and the boy to the peat camp. The camp was nearby and Brenner often "visited [Tiraspol'skii] at the workshop", where Tiraspol'skii "fed him".[257] Eidler allegedly noticed this, and included Brenner into a transport of children headed the Balta ghetto orphanage.[258] Neither Brenner's, nor Tiraspol'skii's pleas changed Eidler's decision.[259] As a result, Brenner "went to Balta and was burned by the Germans together with the children in the synagogue", Tiraspol'skii told the court.[260]

The defense did not ask how Tiraspol'skii knew this, otherwise the court would have learnt that the claim was hearsay. In his pretrial testimony, Tiraspol'skii had said that he learnt the information from "certain people, who had fled from Balta and were sent there together with Brenner".[261] Consequently, the investigators phrased the allegation differently in the indictment, stating that "[t]he fate of Brenner could not be established."[262] The court passing the first verdict was less cautious. It asserted that "[…] Brenner was burned together with the Jewish children from the orphanage, who were transferred together with him from the Tul'chin ghetto."[263] Here, the defense missed an opportunity to challenge a highly damaging witness testimony.

The accusation not only implied that Eidler could have known that Brenner would die in Balta. It also criminalized participation in Jewish rescue efforts organized by CER. Neither point was discussed during Eidler's trial but consulting the materials of the earlier Chernovtsy investigation could have shed more light on the matter. Judging by these materials, Eidler must have hoped for a bright future for Brenner. In Chernovtsy, defendant Vitner testified that he "sent 90 uncared-for children to the central orphanage in the city of Balta."[264] Witness Reznik explained the transfer with an "order from Bucharest to evacuate the children to Romania, and from there to Palestine".[265]

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[254] Ibid., p. 280.
[255] Shraiber Pedutsii Borisovich, HDA SBU ChO, D1595, p. 28–30.
[256] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 267.
[257] Ibid.
[258] Ibid.
[259] Ibid.
[260] Ibid.
[261] Ibid., p. 157–159.
[262] Ibid., p. 187.
[263] Ibid., p. 292.
[264] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 14.
[265] Ibid., p. 120–123.

Reznik alluded to a CER evacuation campaign for orphans from Transnistria. Many were gathered in Balta, but some could not transfer further from there (see chapter 12).[266] When the children departed from Tul'chin, Eidler could not know that the rapidly advancing front would make further travel from Balta impossible and that the retreating Germans would murder the orphans (see chapter 12). Regardless, Soviet investigators in Chernovtsy and Tul'chin construed any involvement in the rescue effort as a crime.

In Eidler's case, the reason was at least the terrible fate Brenner had allegedly suffered. In Chernovtsy, there were probably anti-Zionist undertones. In the indictment, the investigators framed the episode as Vitner and the other defendants having "organized the gathering and sending into the rear of the Romanian army of 90 children, the fate of whom is unknown."[267] Why did the investigators ignore hints such as Reznik's, that the children were not only destined for "the rear of the Romanian army", but for a safe haven in the middle east? A likely answer is that with decades of anti-Zionist political repressions on their track record, Soviet authorities were not fond of the destination. Similar undertones are not visible in Tul'chin investigation and trial. The accusation regarding Brenner leaves ultimate destination of his transfer unexplained.

Faced with the accusation, Eidler again pointed out that such decisions were outside his competenceis as a Jewish council member, and the defense made Tiraspol'skii admit as much. Eidler told the court that it was Fikhman's decision, and Fikhman decided Brenner should leave.[268] The defendant claimed that he tried to convince Fikhman let Brenner stay, but to no avail.[269] When lawyer Plisetskii asked Tiraspol'skii, he answered that "Eidler could not do anything without Fikhman" and that when he pleaded with Eidler, the defendant "did not answer anything and went to Fikhman."[270]

Thus, Eidler and his lawyers had proven three things. First, that he was at most Shraiber's assistant in collecting fees from new arrivals, second, that the decision who could stay was not his to take, and third, that he attempted to convince the decision-makers to let people stay, often successfully acting as intermediary. However, the defense was unsuccessful in countering a further accusation, which proved to be the most severe one Eidler faced.

Several witnesses implicated Eidler in a mass shooting of Pechora inmates.[271] Allegedly, Eidler mislead camp inmates, telling them to register for work outside the camp and promising better

[266] HAUSLEITNER: Rettungsaktionen, p. 124. BURMISTR: Berschad, 282.
[267] Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 177.
[268] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 267.
[269] Ibid.
[270] Ibid.
[271] Without mentioning Eidler by name, the episode is also reported in survivors' accounts, including the connection to the trial, which individual survivors were aware of. See: GRIPS/KHELMER: Kolokola pamiati, p. 285–286.

living conditions at the destination. Instead, those who registered were taken from the camp and shot by the Germans.[272] The authorities deemed these accusations significant and included them in the indictment:

> "In the course of 1943 Eidler three times visited the Pechora concentration camp on orders of the Romanian gendarmerie and with the goal of provocation, as a result of which several dozen Soviet citizens were shot by the occupiers."[273]

The most important witness arguing this point in court was Shein, who had survived the "action". She testified that Eidler came to Pechora in 1943, gathered the inmates around him and "began to agitate [them] for going to the peat field", promising that the ghetto would be expanded.[274] The camp inmates should register for work.[275] During a subsequent visit, Eidler told the camp inmates that someone would come for them soon.[276] According to Shein, 235 people were taken from the camp a few days later.[277] "Germans in cars" met them a few kilometers outside the ghetto.[278] Having survived an earlier a mass shooting by the Germans, Shein immediately "hid in a vegetable garden".[279] Her mother, three sisters and sister-in-law could not escape and were shot with the rest.[280]

Two other trial witnesses, Vainsaf and Bakman, mostly confirmed this account. Among the three witnesses, dates and victim numbers varied.[281] Vainsaf and Bakman were not taken to be shot, but lost relatives that day, which makes Shein the most important witness. Looking at the historiographic literature, it seems the most likely "action" in question occurred on May 10, 1943, when the Germans took 600 inmates from Pechora and shot them.[282] This fits the month and year Shein reported.

Eidler told the court a different version. He talked about it in his opening statement and his lawyers guided him with questions.[283] Eidler admitted that he visited Pechora three times.[284] The first time, he brought money sent from Bucharest, the second time clothes and the third time "salt

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[272] See the following three witnesses' pretrial testimony: Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 146-148, 149, 151.
[273] Ibid., p. 186.
[274] Ibid., p. 255, 257.
[275] Ibid., p. 257.
[276] Ibid., p. 255.
[277] Ibid.
[278] Ibid.
[279] Ibid. Shein's account of this earlier shooting is quite astoundig. Apparently, the Germans had already made her undress and she managed to escape directly from the firing pit. Shein claimed that she returned to Pechora completely naked.
[280] Ibid.
[281] Ibid., p. 275, 287.
[282] CREANGĂ: Pecioara, p. 743.
[283] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 248–249.
[284] Ibid., p. 248.

and sugar".[285] Supposedly, Shein turned to him during his first visit, told him that someone had offered the camp inmates to transfer to the peat camp and asked him what to do.[286] Eidler claimed he only said that "the conditions there are very difficult".[287]

Both Eidler's lawyers and the judges cross-examined the three witnesses. Shein clarified that someone from the camp registered people for work, and not Eidler, although Shein remained adamant that Eidler had advocated to do so.[288] Witness Bakman confirmed both points in his testimony.[289] Thus, the defense managed to show that it was not Eidler who had compiled the lists, but the witnesses still claimed that he had agitated people to do something that ultimately cost them their lives.

However, the defense could mobilize one witness to counter these allegations. Following a question from Eidler, witness Khalfin told the court that the defendant had not "agitated" anyone in Pechora to register for work.[290] Thus, at least one witness contradicted the core of the allegation. However, the accusers remained in the majority. And cross-examining witnesses occasionally also brought just more severe allegations to light.

When Eidler's lawyer Plisetskii questioned witness Vainsaf, she added a significantly more damning edge to her accusations. Her testimony reveals just how deep the conflict between camp and ghetto went, and how much the camp inmates distrusted the ghetto Jews. Notably, Vainsaf clarified that the Jews had really departed in the direction of Tul'chin, but that the Germans had intercepted them on the road.[291] She then told the court about another detail and laid out her interpretation of it:

> "I think that the people from the ghetto bribed the Germans ("vykupilis' ot nemtsev", *WS*), of course I did not see this myself, but I assume that Eidler knew about the results, that the Jews will be shot, otherwise they would not have sent carts from the ghetto."[292]

For Vainsaf, the fact that the ghetto sent carts and the Germans shot the people who were put on those carts meant that the ghetto must have known what would happen. She did not believe that the Germans and Romanians might have mislead the ghetto's Jewish functionaries as well.

The phrase "provocation" and the idea that the Tul'chin ghetto Jewish council was behind the shootings can possibly be traced back to the Pechora camp's Jewish Elder. During the pretrial

[285] Ibid. CER sent salt to Transnistria because ghetto and camp populations could exchange it for food with local Ukrainian peasants. See: HAUSLEITNER: Rettungsaktionen, p. 123.
[286] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 248.
[287] Ibid., p. 249.
[288] Ibid., p. 257.
[289] Ibid., p. 287.
[290] Ibid., p. 284.
[291] Ibid., p. 275.
[292] Ibid.

investigation, witness Flomina recalled that when the Pechora inmates learned of the mass shooting, they became "agitated" and "turned to their elder Tsimmerman about this".[293] Tsimmerman supposedly told the Pechora inmates:

> "'This is not my fault. There is a clear provocation by the Tul'chin ghetto. The Tul'chin community [Jewish council, *WS*], replaced their own Jews, whom the Germans wanted to shoot, with our Jews. To achieve this, they gave the prefect a bribe.'"[294]

The court read out the respective pretrial testimony during the trial, and asked witness Flomina whether she confirmed it, which she did.[295] Thus, the alleged "provocation" and the idea that the Tul'chin ghetto Jewish council let the Germans murder Pechora inmates to protect the ghetto was voiced at the trial, in front of everyone present. Neither court, nor lawyers, nor defendants asked Flomina any questions.[296]

In sum, Eidler's defense succeeded to achieve many of the same things his two codefendants had. Eidler and his lawyers could show the court that he supported and protected ghetto inmates. He also clarified how constricted his competencies had been. But the defense also had several significant lapses, and the most severe accusation went almost unchallenged. To be sure, there would have been much to ask: How should Eidler have known about the shootings? If the Germans wanted to shoot Jews from the Tul'chin ghetto, how could the Jewish council have learned this in advance? If Eidler knew about the plans, did he learn about them before or after his visits to Pechora? Could he have warned the camp inmates? Asking these questions could have shown what the allegations of a planned provocation were at their core – a mere speculation, probably made by a helpless Jewish camp functionary faced with an angry mob that demanded an explanation of why their relatives were shot.

Nevertheless, the defense was remarkably successful at the trial. The defendants and their lawyers could completely deflect several severe accusations. To achieve this, the defense utilized that 21 witnesses were present. It turned accusers of one defendant into supporters of another. At the end of the trial, only six of the witnesses had reported exclusively negative things (about one, two or all three defendants). Three others had told the court only about positive aspects in the conduct of one, two or all three defendants. The majority of witnesses could thus be brought into position by the defense, and often only disclosed exonerating facts during cross-examination. The defense thereby also succeeded to show how much all three defendants had supported the ghetto, and to a degree the Pechora camp population and how many people had survived thanks to protection from

[293] Ibid., p. 151.
[294] Ibid.
[295] Ibid., p. 286.
[296] Ibid.

the defendants. As discussed above, much of the exonerating testimony was not contained in pretrial protocols and it was thanks to lawyers and defendants that it came to light. Having a trial or not having one mattered even under Soviet "special jurisdiction". Where the defense could not disprove witness accusations, it often succeeded to change the framing. Here, the goal was always the same, namely, to show how constricted the defendants' room for maneuver had been in certain aspects and that "misbehaving" often led to repressions from the Romanians. Thus, when the hearing of evidence was completed and the military tribunal finally "returned from the deliberation room" after a three-hour discussion, the defendants probably had high hopes for a positive outcome.[297]

## The verdict: Recognizing the gray zone, but incoherently

The second trial's immediate outcome was a verdict recognizing the "gray zone" but applying that insight only selectively. The following section first describes the verdict. It then asks why the judges recognized two defendants' limited room for maneuver as ghetto functionaries but did not apply that insight to the third. Three hypotheses are offered: First, the court saw Eidler as an "anti-communist" individual and applied a political friend-foe distinction. Second, the court just went with the majority of witnesses and convicted the defendant who had the most accusers. Third, it was not the quantity of witnesses but the quality of the accusations leveled against the defendants in court that explains the verdict. The section then examines the appeals Eidler's lawyer filed against the verdict. Lastly, the section recaps the potential of the Soviet normative state for witnesses and defendants in collaboration trials of Jewish ghetto functionaries.

The verdict in the second Tul'chin trial is unique. On January 17, 1946, the Vinnitsa oblast' military tribunal of the NKVD troops acquitted Khusid and Zabakritskii, but sentenced Eidler to 15 years of katorga.[298] The explanation accompanying the verdict offers the only explicit recognition of the "gray zone" in all Soviet documents examined for the present study. The verdict lists offenses the three defendants had committed, but also acknowledges the support one of them had rendered to the ghetto population.[299] That alone was rare, but it is the following passage that makes the document exceptional:

> "However, given the situation of the Jewish population on occupied territory during the period of occupation, the total lack of any administrative rights whatsoever, both for the elder, as well as for the members of the community [i.e. the Jewish council and its head, *WS*], the Military Tribunal did not find criminal acts as provided by article 54-1 'a' or article 54-3 of the Ukrainian SSR Criminal Code in the actions of Khusid and Zabakritskii."[300]

[297] Ibid., p. 291.
[298] Ibid., p. 294.
[299] Ibid., p. 292–293.
[300] Ibid., p. 294.

The court thus acknowledged that conditions for the Jews, and the representatives of their pseudo-self-administrations, had been different. In fact, the occupiers treated the Jews so differently from the rest of the population that a judge should not even subsume otherwise criminal actions under the respective laws. Two defendants had lacked the agency ("any administrative rights whatsoever"), to be held accountable for such actions. Therefore, the court accepted a central tenet of the defense's strategy. It is all the more striking that the court then applied this insight only selectively, acquitting Khusid and Zabakritskii, but convicting Eidler.

In its verdict, the tribunal provided a contradictory explanation for the decision. It identified Eidler as a member of the Jewish council, but ignored *his* lack of "any administrative rights".[301] It also disregarded his support and rescue efforts and dismissed how successfully the defense had relativized incriminating witness testimony. In contrast, the court accepted both when it came to Khusid. The court saw it as proven that he served on the Jewish council, temporarily even as its head.[302] While heading the council, Khusid "every day sent the Soviet citizens held in the ghetto to heavy forced labor for the benefit of the occupiers", the court contended.[303] But the court dismissed witness Lapidus' accusation that Khusid had arrested him.[304] The court also saw no evidence for "the accusation of betrayal of persons coming to the ghetto from camps".[305] That accusation must be false, the judges reasoned, because Khusid sheltered so many people in the ghetto, as "a whole number of witnesses" had testified.[306] Thus, the court did not entertain the idea that both could be true, namely that the defendant maybe "betrayed" some and sheltered others. But the tribunal did that for Khused, recognizing that some of his behaviors were reprehensible and others worthy of praise, which is unusually un-Manichean. In contrast, the court did not mention any of the similar efforts that witnesses had reported both for Eidler and Zabakritskii. The court only noted Zabakritskii's role as member and head of the Jewish council, that he mobilized ghetto inmates for forced labor and that he "seized property for the occupation authorities".[307] The verdict contains neither a discussion of the accusations against Zabakritskii, nor of his support for the population.

The verdict ignores everything discussed at court that could have mitigated Eidler's guilt. The tribunal claimed it was Eidler who "sent the boy [Rechister] back to the camp" in Pechora.[308] Allegedly, Eidler also sent Brenner to Balta, where he "was burned together with the children from

[301] Ibid., p. 292.
[302] Ibid., p. 293.
[303] Ibid.
[304] Ibid.
[305] Ibid.
[306] Ibid.
[307] Ibid., p. 294.
[308] Ibid., p. 292.

the orphanage, who had been removed from the Tul'chin ghetto together with him".[309] No word here about Fikhman, the competencies within the Jewish council or the witnesses who testified that Eidler did his best to keep people in the ghetto. No questions about whether Eidler could have known what fate awaited Brenner, or about the evidence that Brenner was burned.

The court also maintained that "together with the committee member Shraiber", Eidler "engaged in extortion of gold and valuables from Soviet citizens, a part of which they gave to the gendarmes, and a part took for themselves."[310] Here, the court turned the acknowledgement of a specific Jewish suffering against the defendant. The crime was especially severe since Eidler "exploited his position as a member of the district committee and the total lack of rights and defenselessness of the Jewish population in the ghetto and the Pechora camp".[311] The court also presented exclusively as Eidler's doing the payments he collected for Shraiber from those transferred from Pechora.[312] The judges cited Tiraspol'skii's testimony, but framed it as proof that Eidler wanted only the rich to transfer, since they could pay.[313] That was a very particular interpretation of what the witnesses had said. Moreover, the accusations also contradicted the court's admission that the Jewish council members had acted under specific circumstances – which the tribunal did not apply to Eidler.

In turn, the verdict accused Eidler of things that should have applied to the other two defendants by extension. The judges maintained that Eidler was "instructed by the head of the Romanian gendarmerie, Fetikov, to monitor the appearance of suspicious persons in the ghetto and those who had escaped from the Pechora camp" and that he gave his "verbal consent" to do so.[314] Moreover, the verdict noted that "all the members of the committee" had done the same.[315] The court was fully aware that "all members" included Khusid. However, the tribunal did not invoke that accusation when it explained Khusid's acquittal. Therefore, the verdict is astonishingly incoherent.

The inconsistencies are even more striking since the tribunal gave Eidler a comparatively harsh sentence – 15 years of katorga.[316] Moreover, the court based its sentence on Ukaz 43, thus qualifying Eidler's behavior as "collaboration proper", committed by a "traitor", rather than "collaboration light" by an "accomplice".[317] Even more ominously, the court mentioned Eidler's "age and the Red

[309] Ibid.
[310] Ibid., p. 293.
[311] Ibid.
[312] Ibid.
[313] Ibid.
[314] Ibid., p. 292.
[315] Ibid.
[316] Ibid., p. 294.
[317] Ibid.

Army service of his sons" as reasons for "not applying the full sanction" provided by law, that is, the death sentence.[318]

The tribunal's reasons for convicting Eidler remain opaque. Three possible explanations come to mind, but two of them are inconsistent with the treatment of Khudis and Zabakritskii and the third one remains speculative. These explanations are: first, a political friend-foe distinction (the court viewed Eidler as "anti-communist"), second, an attempt to achieve legitimacy by numbers, (the court just went with the majority of the witnesses), and third, the quality of the specific accusations Eidler faced which predestined him to become a scapegoat for the structural conflict between the Tul'chin ghetto and the Pechora camp.

The idea that the court saw Eidler as anti-communist and therefore convicted him has some merit, but only reproduces the inconsistencies inherent in the verdict. During the pretrial investigation, Eidler testified that he "was arrested in 1933 by the OGPU organs on suspicion of anti-Soviet agitation" and remained "under investigation for thirty-three days" until he was "released for lack of evidence".[319] Witnesses also claimed in court that Eidler had said things the authorities could easily count as "anti-Soviet agitation".[320] Maybe the OGPU's successors dealing with Eidler in 1945/1946 thus categorized Eidler as a political enemy? However, such an explanation is problematic in comparison to Khusid. Witnesses had accused him of anti-Soviet sentiments and statements too. Therefore, had the court based its verdict on a friend-enemy-distinction, it should have convicted Khusid also.

Another possible explanation is legitimacy by numbers. Did the court simply sway in the direction that the majority of witnesses pointed to? After all, concerns for legitimacy could have influenced not only for choosing normative-state procedures, but also influenced the decisions that the tribunal made. Considerations of propagandistic significance and the trial's value as a device of regime legitimization may have played a role in the adjudicators' decision making. If so, their thought process was more sophisticated than just trying to calculate the popular mood based on how many people wanted what. Admittedly, the numbers were in Zabakritskii's favor, with ten witnesses defending him in court and seven attacking him. But for Khusid and Eidler, the numbers do not justify the release of one and conviction of the other (Khusid: ten accusing, eight defending; Eidler: seven accusing, eight defending).[321] Had the court just tried to follow the majority, it would

[318] Ibid.
[319] Ibid., p. 124.
[320] Witness Razovskii said that when he complained to Eidler about how the defendant treated him, Eidler replied: "'We are not under Soviet power and this is not the workshop 'communist labor' [artel' komtrud, *WS*].'" See: Ibid., p. 265.
[321] Note that we double-counted witnesses who gave testimony in both directions about the same defendant. Witnesses often disclosed positive aspects during the cross-examination by the defendants and their lawyers. Nevertheless, the

have freed Eidler than Khusid. The question of who to convict and who to acquit was thus not based on the quantity of witnesses.

If concerns with legitimization played a role at all, it was more likely the quality of the accusations than the quantity of the accusers. For achieving legitimacy, it may have been more important to convict the defendant who faced the worse accusations. And witnesses connected Eidler with the burning of helpless orphans and mass shootings. However, the verdict mentioned the dead boys, but omitted the shootings. The judges saw it as proven that Eidler had brought supplies to Pechora and that he had suggested to camp inmates that they register for work.[322] But the verdict mentioned neither the shootings, nor the idea that the Tul'chin Jewish council sacrificed Pechora inmates to save the ghetto's Jews. The verdict only maintained that some of those taken into the ghetto had to return to Pechora.[323] That was not the same as claiming that Eidler had willingly and knowingly lured hundreds into their death.

However, even if the court did not confer the status of legal truths to these allegations, they may have motivated its decision to convict Eidler. By doing so, the judges may have tried to appease the many hostile sentiments towards the defendants which witnesses had voiced during the trial. After hearing that testimony, the tribunal was aware of the structural conflict between camp and ghetto population, and the accusations against Eidler epitomized that conflict. A third hypothesis is thus that Eidler was a scapegoat. By accepting exonerating testimony and acknowledging the Jewish functionaries' lack of agency, the court left little outlet for witnesses' hostile sentiments. The court dealt with those by projecting them on Eidler. Faced with a collective of witnesses giving contradicting testimony, the judges distributed the two contradicting tendencies on individual defendants. Khusid and Zabakritskii benefitted from the exonerating strand, Eidler had to face the full blow of the accusatory one. However, there is no way for testing this hypothesis empirically. Nevertheless, unlike with the previous two hypotheses, there is at least nothing obviously contradicting it in the materials.

Whatever the reasons behind the harsh sentence for Eidler, it did not last. His lawyer, Plisetskii, appealed the verdict immediately and later provided a detailed refutation in a second letter.[324] Plisetskii achieved a requalification of the crime and a reduction of the sentence to five years in a

numbers do not correspond to the sentencing even if we count those witnesses as "ambiguous" (Khusid: seven accusing him, five defending him, three ambiguous; Eidler: six accusing him, seven defending him, one ambiguous).
[322] Ibid., p. 292–293.
[323] Ibid., p. 293.
[324] Ibid., p. 303–306.

regular corrective labor camp.[325] In the appeal, Plisetskii first laid out his basic understanding of the case before he attacked the verdict accusation by accusation:

> "The main peculiarity of this case is the absolutely indisputable fact that a Jewish elderly man with 47 years of experience as a worker-painter, who did not succeed in evacuating and remained on the territory occupied by the Romanian fascists, was deprived not only of any administrative, but also of elementary human rights, and not only was in no way a representative of the occupying authorities, but was a real hostage of them, who faced imminent death for the slightest insubordination. Only from this point of view should the present case be examined."[326]

Plisetskii then enumerated questionable aspects of each accusation (some of which were laid out in detail above). He alleged that Eidler had joined the Jewish council against his will.[327] While the defendant had verbally consented to seek out communists and escapees from Pechora, he never fulfilled that order.[328] On the contrary, he subverted it by sheltering illegals in the ghetto.[329] Plisetskii underscored that openly refusing an order would have endangered Eidler's life, and that verbal consent could thus not determine his client's guilt.[330] Concerning Brenner and Rechister, Plisetskii emphasized that deciding their fate was outside Eidler's competencies and that he "could not have been informed about what awaited Brenner on the way to Balta".[331] Regarding the "provocation" in Pechora, Plisetskii cited the witness who claimed that Eidler did not suggest registering for work to Pechora inmates.[332] Lastly, Plisetskii attacked the court's claim that Eidler had kept some of the money taken from new arrivals for himself since there was no evidence for the claim.[333]

Plisetskii ended the appeal with his own version of the friend-foe distinction, marking Eidler as a "Soviet person".[334] As someone with "five communist sons, three of whom fell in battles for the homeland against the fascist barbarians", it was "completely clear on whose side" Eidler had been, Plisetskii asserted.[335] Plisetskii's message was simple: Eidler was one of *us*, not one of *them*.

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[325] Ibid., p. 307.
[326] Ibid., p. 303.
[327] Ibid.
[328] Ibid.
[329] Ibid.
[330] Ibid.
[331] Ibid., p. 304–305.
[332] Ibid., p. 304.
[333] Ibid., p. 304–305. Based on oral history interviews, Ukrainian historian Faina Vinokurova uncritically reproduces the similar claim that the Jewish council misappropriated the money it collected from the population to bribe the Romanians. Vinokurova repeats the accusation, which her interview partners also directed against Zabakritskii. She then continues to cite the later Soviet criminal prosecution as evidence: "In all likelihood, that fact occurred – after the war they [*Eidler and Zabakritskii*, WS] were convicted." In fact, the investigation produced no proof for this particular accusation, and Zabakritskii was ultimately acquitted. A more cautious approach to the oral history testimony would have been advised here. VYNOKUROVA: Evrei v adu, p. 69.
[334] Eidler Iakov Bentsionovich, HDA SBU OO, D3834, p. 305.
[335] Ibid.

Therefore, the lawyer asked to correct the "judicial error" of the second verdict and to acquit Eidler.[336]

Fifteen days after Plisetskii filed the appeal, the Vinnitsa oblast' military tribunal of the NKVD troops examined the case a final time. It reviewed the verdict without a retrial. The court issued an order that repeated many of the accusations, but accepted that Eidler had "not committed these acts on his own initiative".[337] Therefore, the tribunal requalified the crime to the "softer" article 54-3 and reduced the sentence to five years in a regular corrective labor camp, i.e. the Gulag.[338] In June of the same year, the "Inspector of the Military Collegium of the USSR Supreme Court", following another appeal by Plisetskii.[339] However, the inspector rejected this final appeal and Eidler's five-year-sentence remained in force.[340]

Taking a step back, the Tul'chin trial shows the potential of the Soviet normative state in three respects. First, it afforded defendants a relatively fair treatment. Second, it enabled survivors to have a brief collective reckoning with their experiences. Third, it allowed an explicit recognition of the "gray zone" Jewish functionaries had acted in. In contrast, the Tul'chin trial thus highlights that the Soviet institutions handling cases of Transnistrian Jewish ghetto functionaries mostly failed to achieve all three of these things.

As discussed at length above, the Tul'chin trial was an outstanding example of normative-state practices within institutions that otherwise often acted according to prerogative-state scripts. Therefore, even within the Soviet "special jurisdiction" that dealt with political crimes as treason, there were institutional foundations that allowed for a much fairer treatment of defendants (even if those normative-state practices were still far off from the protections a rule-of-law legal system would have offered). Of the many aspects we discussed above, take the question whether a defendant could have a lawyer. Our overview of sentences had shown that lawyers seldom mattered, but the Tul'chin trial highlights how much they mattered when the justice institutions afforded them a chance to. Another important aspect to consider is publicity, even the constricted type we termed "minimal local": On analytical level C) of the present study, there were 37 individuals the Soviets put on trial. Some 40% of them were tried in semi-administrative/semi-trial and administrative sentencing procedures. The Tul'chin trial highlights just how much of a loss this was for the defendants. It cut them off from the major arena in which the accused could defend themselves by engaging with the witnesses.

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[336] Ibid.
[337] Ibid., p. 307.
[338] Ibid.
[339] Ibid., p. 315.
[340] Ibid.

In turn, this also robbed the witnesses of the chance to have at least a brief moment of collective reckoning with their recent past, such as the Tul'chin trial was. In the courtroom, camp and ghetto survivors met, among them the three former functionaries in the dock, and they could discuss at length their experiences, their grievances, mutual accusations, misunderstandings, feelings of betrayal, but also share remarkable examples of solidarity. Central conflicts such as that between ghetto and camp came up during the trial. Whatever picture a concrete witness had in mind of the three defendants, it is unlikely that this picture did not change at least a little during the trial – for better, or for worse.

Confronted with witnesses' and defendants' accounts of their life during the Holocaust, the military tribunal arrived at an explicit recognition of the "gray zone". Therefore, even Soviet justice institutions could achieve this – if they wanted. Again, the Tul'chin trial stands in contrast to the general tendency we discussed in our analysis of decision documents. Soviet authorities dealt with former Jewish ghetto functionaries according to a Manichaean scheme. The authorities sorted these people into good and bad, not allowing for anything in between. Note that in this and other cases, that recognition would not necessarily have led to acquittals. Other outcomes are thinkable. The courts could have recognized the "lack of administrative rights" on part of the defendants, and still have convicted them to harsh sentences. A verdict would then have contained approximately the following message: No matter the pressures, the incriminated acts were unbecoming of a Soviet citizen, and the defendants should have died as heroic resisters. Or the courts could have navigated the gray zone by acknowledging it as mitigating circumstances and reducing the sentences. Recognizing the specific situation that the Jews and their ghetto functionaries had faced during occupation would have been compatible with such decisions by the courts. In contrast, the Tul'chin trial thus highlights the Manichean approach the authorities took in other trials.

## Conclusion

When the Red Army liberated the Pechora camp on March 17, 1944, only around 350 Jews were still alive in the camp.[341] There would be no collective reckoning with the recent past for these people, and neither would there be one for those who had just been liberated in the nearby Tul'chin ghetto. In Pechora, the survivors stayed for a couple of days more, since they feared that their luck might change, that the front had only moved temporarily, and the occupiers might come back.[342] Only when they realized that this was the decisive advance by the Red Army, they left. Before that, there was a brief moment in which a temporary collective that had been forged by suffering the

[341] CREANGĂ: Pecioara, p. 743.
[342] SHPORT, Tsilia, Interview 30059. Interviewed by Elena Tsarovskaya. Visual History Archive, USC Shoah Foundation, 06.04.1997, https://vha.usc.edu/viewingPage?testimonyID=31498&returnIndex=0#, last accessed January 21, 2021, segment 82.

most brutal persecutions could have turned into something stable. But in that moment, the emaciated survivors were incapable of making something more permanent out of the motely crew of inmates the Romanians had deported here from different places. As survivor Tsilia Shport recalls:

> "We hugged. We cried. And went home. Went our ways. You know, there was a moment when the Jews of Bratslav, the Jews of Tul'chin, and some of the Moldovan Jews were still there. We should have at least exchanged contact information. ["Nado bylo khotia drug druga zapisat'.", *WS*] No one thought about it, everyone was satisfied, happy that he stayed alive. But it's true that we kept in touch with those from Tul'chin who survived, because we were from there."[343]

The Jews of Tul'chin would deal with their recent experiences collectively, and the "Moldovan" Jews would do so – but each group for themselves, with little to no overlap. One forum of such separate collective reckonings were the two Soviet investigations that dealt with the Tul'chin ghetto. No "Moldovan" Jews testified in Tul'chin, and only one Tul'chin Jew spoke to the investigators in Chernovtsy. In the latter trial, some more Tul'chin Jews at least made themselves heard through a collective letter they wrote in support of defendant Shraiber. But by and large, liberation neatly split both groups along prewar lines, and each would engage with their experiences and with the Soviet judiciary on their own. The Chernovtsy investigation offered little room for survivors to meet and engage with one another, but the Tul'chin investigation and trial did.

Contrasting the Chernovtsy proceedings with those in Tul'chin itself, it becomes obvious just how much variation there was in the way the security and judiciary organs behaved. To realize the magnitude of that variation, one just has to imagine the fate of the defendants in Tul'chin, had they been faced with Soviet officials acting like those in Chernovtsy – and vice versa. Imagine what a trial in Chernovtsy would have looked like, had the Soviets there acted by the same principles as their colleagues in Tul'chin. The proceedings in Tul'chin prove that even trials under "special jurisdiction" could follow normative state principles to a remarkable degree. These principles did by no means turn the trial into something compatible with the rule of law, but for defendants and witnesses, the result was probably as good as Soviet "special jurisdiction" could get.

Because of these normative state principles, the defendants enjoyed an unusually broad room for maneuver. They were represented by lawyers and their role in the trial sets a qualitative contrast to the previous result about lawyers' limited influence (in the qualitative content analysis of decision documents). Together with their legal counsel, the defendants employed a highly successful defense strategy. They achieved a retrial by appealing a first verdict, and could engage with the witnesses accusing them in a second trial for over thirty hours. During this time, the defense deflected some

[343] Ibid., segments 83–84.

accusations, challenged the framing of others, highlighted the total subjection of the defendants during their time in the ghetto, made the accusers of one defendant give exonerating testimony about others and produced a variety of testimony showing how much the defendants had done to shelter and protect the ghetto population. Witnesses' behavior in the stand proves that their attitudes towards individual functionaries varied greatly. Many witnesses did not condemn the functionaries as a collective, but accused or defended individuals. The adversarial process during the trial allowed for a discussion of the most painful aspects of the Holocaust as the Jewish community of Tul'chin had faced it, such as the conflict between the ghetto and the Pechora camp. In Tul'chin, Soviet institutions provided a framework, however crooked, for survivors to engage with one another and with their recent experiences.

Confronted with these experiences, the Vinnitsa oblast' military tribunal did something unique: It explicitly recognized the "gray zone" in which the defendants had acted as Jewish ghetto functionaries. Departing from the usual Manichean approach, the court acknowledged things the defendants had done to the detriment of the ghetto population as well as things that had benefitted those in the ghetto. The court also recognized that the defendants had no "administrative rights", no agency vis-à-vis the Romanians, i.e. that they could not *not* follow Romanian orders.

However, the Manichean tendency crept in from another angle: The court applied its insights only to two of the three defendants, convicting the third to a hefty sentence. The verdict is puzzlingly contradictive and a simple political friend-foe distinction cannot explain it. Had the court tried to sentence those it had reason to suspect of anti-Soviet sentiments, it would have convicted Khusid too, and not only Eider. Neither was the court just swaying with the majority of witnesses in an attempt to gain legitimacy with the population. Had the court gone by the numbers, it would have convicted Khusid and acquitted Eidler. But the quality of the accusations against Eidler stands out, as they connect him to gruesome murders committed by the occupiers. It appears that the court dealt with the witnesses' collectively contradictory sentiments by projecting the negative aspects onto Eidler, and recognizing the positive ones when it came to Khusid and Zabakritskii. However, with another appeal Eidler's defense managed to have his sentence at least reduced to five years.

As discussed above, it is easy to understand why the Soviets used prerogative state mechanisms in the Chernovtsy investigation. It is much harder to explain why they used normative state mechanisms in Tul'chin. The reasons remain opaque. As discussed, the normative-state mechanisms allowed the judiciary to deal with a highly contradictory situation, in which almost no two witnesses wanted the same for the same defendant. But did such considerations inform the

choice of whether to allow the defendants to have lawyers, whether to have a trial or send the case to the OSO, whether to grant the right to appeal a sentence or to withhold that right?

Again, it is alluring to understand Soviet officials' concrete approach to the case from its specifics. But ultimately, the variation might also be random. Maybe it stemmed not from the case, but from the tides of internal struggles between those inside the apparatus pushing for normative and those pushing for prerogative mechanisms. It is, however, interesting that Eidler was never acquitted and only had his sentence reduced. One thing is clear: even in the one case where the Soviet judiciary recognized the "gray zone", it did so only reluctantly. The authorities shunned away from not punishing anyone, and maybe they also tried to fulfill survivors' need for punishment at least somehow, be it by sending someone to the Gulag "only" for five years.

# Case study 3: Balta 1944 – Frontline deals and spy mania

The following two case studies examine proceedings against two leading figures of the Balta ghetto's Jewish administration. In the first case study, we provide a brief overview of the Balta ghetto's history and examine the immediate aftermath of the Soviet's return. We argue that the authorities struck a "frontline deal" with many ghetto functionaries and mobilized them into the Red Army. The authorities thereby constricted the effect any pressures for criminal prosecution from below, i.e., survivor witnesses, could have. However, the frontline deal was limited, and the authorities did not offer it to Pavel Mikhailovich Moskovich. Examining Moskovich's case next, we detail the accusations against him, discuss his defense and pinpoint the political implications of the case. We argue that Moskovich's past as a communist lawyer in interwar Romania influenced the way the Romanians treated him in Transnistria. For the Soviet investigators, this elevated him into a position of political significance warranting an especially alacritous prosecution, but not granting him immunity on political grounds – Moskovich was too important to ignore, but not important enough to treat him as privileged.

From Moskovich, we turn to a second case study, and another defendant, Rubinshtein, who was tried only in 1947. We argue that the responsible Soviet investigators weighed some of the available evidence quite selectively, namely the casefile stemming from the earlier investigation against Moskovich. Triangulating Rubinshtein's and Moskovich's casefiles with other types of data, we argue for caution in reconstructing social conflicts between local Soviet Jews and deportees from Romania based solely on Soviet materials. Lastly, we show how the frontline deal could be nullified years later and how earlier service as a ghetto functionary became sword of Damocles that might fall on one even years later and far away, as it did on Rubinshtein in Bucharest in 1947.

## The Balta ghetto – an overview

On May 8, 1941, German forces occupied Balta, the administrative center of the district with the same name.[1] Balta was a town with a sizeable Jewish population: in 1939, a quarter of the residents had been Jews (4.711 of the town's 18.119 inhabitants).[2] When the Germans arrived, around 2.000 Jews remained in the town, mostly local people, but also some who had retreated from the advancing Axis forces from Bessarabia and other areas.[3] On August 8, some 200 Jews were taken from Balta and shot nearby.[4] For the Jews in Balta, German occupation was short, but horrible.

[1] CREANGĂ/KRUGLOV: Balta, p. 597.
[2] Ibid.
[3] Ibid.
[4] KRUGLOV et al.: Kholokost v Ukraine, p. 342.

In September 1941, the Romanian civil administration took over Balta from the Germans and Colonel Vasile Nica became the new Romanian governor of the Balta district.[5] Besides the paramilitary Romanian gendarmerie, there was also a regular Romanian police force detached to Balta.[6] Already on September 3, Nica ordered the Jews of the town and the region to move into ghettos.[7] In Balta, a ghetto was formed in four streets in a quarter of town around Kuznechnaia street and almost completely surrounded with barbed wire.[8] Despite the designation of the area as the Jewish ghetto, some non-Jewish "Russians, Ukrainians and others" remained living on the territory of the ghetto, but without the same restrictions as the Jews.[9] Nica's order contained further provisions that determined the life of the Jews for the next two and a half years:

> "Entry to and exit from the ghetto between 11 am and 4 pm were allowed for those with a permit issued by the ghetto commandant – a gendarmerie officer. All Jews of both sexes between the ages of 14 and 60 were required to present themselves daily at 7 am at the ghetto centre in order to be allocated work by the ghetto commandant. For monitoring the movements and activities of the Jews, all ghetto residents were to be issued with identity cards, signed by the ghetto head and countersigned by the commandant, and a number, which they would sew on their clothing next to the Star of David. Without this number no Jew could go out into the town. All the Jews were to be entered into a register for census purposes, and those that failed to register were to be denied bread, even on payment. All other Jews, be it from elsewhere in the town, the county or others who arrived in the district, were to be sent to the ghetto. Any act of insubordination, revolt or 'terrorism' on the part of a Jew would lead to his punishment by death and that of 20 other Jews."[10]

In his order, Nica also appointed "the leader of the town's kikes" (sic), Shloimu Abramovici Pribluda, as "elder of the camp (ghetto)" and tasked him to set up a Jewish council.[11] It is not clear how long Pribluda held that position, but Asir Isaevich Iampol'skii succeeded him sometime between Nica's order and early December 1941.[12] Iampol'skii died of typhus on December 3, 1941. His son-in-law, Pinkhos Itskovich Rubinshtein, then filled the vacant position. Rubinshtein had already been on the Jewish council since its inception and remained in office until the Red Army

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[5] CREANGĂ/KRUGLOV: Balta, p. 597.

[6] ANCEL, Jean: The history of the Holocaust in Romania (The comprehensive history of the Holocaust), Lincoln, NE 2011, p. 323.

[7] CREANGĂ/KRUGLOV: Balta, p. 597. DELETANT: Hitler's Forgotten Ally, p. 184.

[8] Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 18–21, 34-37, 67-68.

[9] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 55. Note that the area the Romanians forced the Jews into does therefore not fit the definition of a ghetto employed in the second volume of the United States Holocaust Memorial Museum's encyclopedia of camps and ghettos. The researchers compiling the volume used as "the most important indicator" the question of "whether the German authorities ordered the Jews to move into a designated area, where only Jews were permitted to live." See: DEAN, Martin: Editor's introduction, in: Ghettos in German occupied Eastern Europe, edited by Geoffrey P. MEGARGEE / Martin DEAN / Mel HECKER (The United States Holocaust Memorial Museum Encyclopedia of camps and ghettos, 1933-1945, vol. 2), Bloomington 2012, p. xliii–xlvii, here p. xliii.

[10] We quote the summary of the order's contents provided by Dennis Deletant. DELETANT: Hitler's Forgotten Ally, p. 184.

[11] Yad Vashem published the order online: Prikaz o sozdanii getto v Balte, 3.9.1941, online: https://www.yadvashem.org/ru/docs/balty-ghetto-03-09-1941.html, last accessed August 13, 2021.

[12] Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 18–21.

liberated the ghetto.[13] Nica's initial order already outlined some of the responsibilities of the Jewish ghetto functionaries:

> "A bakery, pharmacy and a hospital staffed solely by Jews were to be established independently by the Jews, and flour for the bakery to be provided by the town of Balta against payment. A market was to be set up in the ghetto where the inhabitants could buy and sell produce between 9 am and 12 am. The head of the ghetto was authorized to set up a Jewish police force to protect the lives and belongings of the residents."[14]

Deportees, mainly from Bessarabia, soon began to arrive in the ghetto.[15] October 1941, there were 2.824 Jews in the ghetto, about 1.000 of whom were from Bessarabia. Also, around October/November 1941, some 1.500 Jews were deported from Balta to Bershad, another ghetto in the Balta district. Some 500 soon returned.[16] Others were less lucky: In November and December 1941, Romanian authorities sent an unknown number of Jews from Balta to areas under German control, which equaled a death sentence.[17] Also in December 1941, several hundred Jews were sent from the ghetto to perform forced labor at the nearby Perelety airbase. When the Jews returned in August 1942, some 70 had died there.[18] As of April 19, 1942, "[t]here were 514 men, 1,234 women, and 898 children in the ghetto. Of the adults, 698 were unable to work, and of the children, 700 were orphans (300 having lost both parents)."[19] While some ghetto inhabitants died after being deported, others succumbed to a combination of malnutrition, forced labor and disease.

Already in September 1941, a typhus epidemic began to plague the ghetto. Given the cramped, unsanitary conditions and the lack of food and medicine, the population was easy prey for the disease.[20] The Jewish council organized further social support. Two orphanages were set up in the ghetto, with each of them housing around 100 children and youths.[21] A public kitchen provided

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[13] See the testimony of witness Stoliar, who served in the Jewish council as well: Ibid., p. 75–77.
[14] DELETANT: Hitler's Forgotten Ally, p. 184. Iampol'skii gathered Jewish doctors from among the ghetto inmates, who then organized the hospital. See the testimony of witness Tsvik, who was one of those doctors: Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 67–68.
[15] The Balta region was one of the main destinations of Jews deported from Bessarabia to Transnistria, see: ARAD: Holocaust in the Soviet Union, p. 299. HOPPE/GLASS: Einleitung, p. 69.
[16] KRUGLOV et al.: Kholokost v Ukraine, p. 87.
[17] Balta, in: The Yad Vashem encyclopedia of the ghettos during the Holocaust, edited by Guy MIRON, Jerusalem 2009, p. 15–16, here p. 15–16.
[18] CREANGĂ/KRUGLOV: Balta, p. 598.
[19] SHAPIRO, Paul A.: Food Supply, Starvation, and Food As a Weapon in the Camps and Ghettos of Romanian-Occupied Bessarabia and Transnistria, 1941-44, in: East/West: Journal of Ukrainian Studies 1 (2021), p. 43–80, here p. 64.
[20] Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 34–37. On February 8, 1942, Colonel Nica reacted by ordering his subordinates to ensure that no Jewish children leave the ghetto without a permit, which they regularly did to beg for food. Nica's concern was that Jews should not spread typhus - if they themselves succumbed to it was apparently irrelevant. ANCEL: Holocaust in Romania, p. 400.
[21] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 132–134. CREANGĂ/KRUGLOV: Balta, p. 598. SHACHAN, Avigdor: Burning ice. The ghettos of Transnistria (East European monographs, vol. 447), Boulder, CO 1996, p. 261–262.

meals for ghetto inmates.[22] However, conditions in the ghetto remained dire. Shapiro quotes a report by a Romanian official from April 19, 1942, according to which

> "[…] conditions were 'bad,' 'filthy,' and the Jews who had performed forced labour for different authorities had not been paid 'for months,' despite the government guideline that required payment of 'two Marks [RKKS] per day for a skilled labourer and one Mark per day for unskilled.' Some users of forced labour had 'paid' labourers just 600 grams of cornmeal for a day of work, 'which is unfair since a kilo of corn meal costs just 24 lei (40 pfennigs).' The central kitchen where 300 people eat, the report continued, 'is dirty, poorly equipped, and poorly supplied. It serves a single meal per day, has difficulty obtaining food, and pays a high price for the food it is able to get…'".[23]

The situation was somewhat alleviated in later 1942. Since the summer of that year, the Jewish representatives in the Regat had managed to gain permission for sending help to the Jews in Transnistria.[24] The Jewish council used some of the support to establish a public bath and a disinfection facility.[25] The public kitchen began to serve the orphanages around October 1942.[26] The orphanages also began to take in children from other places in the district. Some 70 arrived from the Bershad ghetto in November 1942.[27]

In January 1943, a delegation from the Relief Committee of the Central Bureau of Romanian Jews visited different towns in Transnistria.[28] For the first time since the Romanians had established Transnistria, the Jews of the Regat could get a firsthand picture of their fellow Jews' situation in the governorate.[29] The delegation arrived in Balta on January 10.[30] According to the delegation, 2.723 Jews were living in the Balta ghetto.[31] More than two thirds of them were local Jews, the remainder mainly from Bessarabia.[32] Following the visit, more aid began to arrive in the ghetto from the Jews in Romania. The public kitchen could serve more meals and the orphanages received increased supplies.[33] However, later reports from 1943 still describe living conditions in the ghetto that were simply abhorrent.[34]

Romanian authorities further deported Jews into and out of the ghetto. In March or April 1943, hundreds of Jews were sent to Nikolaev, where the Germans used them as forced laborers to build

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[22] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 116–119.
[23] SHAPIRO: Food Supply, p. 64.
[24] ANCEL: Holocaust in Romania, p. 407–408.
[25] YVEG: Balta, p. 16.
[26] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 116–119.
[27] BURMISTR: Berschad, 281. KRUGLOV et al.: Kholokost v Ukraine, p. 88.
[28] CREANGĂ/KRUGLOV: Balta, p. 598.
[29] ANCEL: Holocaust in Romania, p. 408.
[30] IOANID: Holocaust in Romania, p. 220.
[31] CREANGĂ/KRUGLOV: Balta, p. 598.
[32] IOANID: Holocaust in Romania, p. 220.
[33] YVEG: Balta, p. 16.
[34] SHAPIRO: Food Supply, p. 64.

a bridge over the Bug river.[35] In May 1943, some 250 Jews were brought from Bucharest to Balta (the last contingent the Romanians deported from the Regat to Transnistria).[36] Most of the Jews deported from Balta to Nikolaev returned to the ghetto late in 1943, but some of the deportees died there.[37] Note that it was unusual that any of those deported to an area under German control survived at all – for Jews in Transnistria, being deported to an area under German control most often meant a journey with no return. Balta was a somewhat typical ghetto in that regard. As most ghettos, it was located in one of the Northern regions of Transnistria.[38] Ghetto density also increased with proximity to the Bug, because the Romanians had initially planned to deport all Jews even further to the East.[39] And the further east a ghetto was located in Transnistria, the larger the danger of German interventions and deportations to German territory loomed over ghetto inmates.[40] The various deportations and the income of new arrivals held the ghetto's population relatively stable. In late January 1944, a Romanian foreign ministry official reported that 2.700 Jews were confined in the Balta ghetto, making it the third largest after Mogilev-Podol'skii and Bershad at the time.[41]

Shortly before the Balta ghetto was liberated, some of the orphans could leave Balta for Romania. Since 1943, representatives of the CER in Bucharest had lobbied the British and American governments to allow the Jewish orphans in Transnistria to emigrate to Palestine.[42] In mid-March 1944, Romanian dictator Ion Antonescu decided that the Jewish deportees in Transnistria should be allowed to return to Romania.[43] In the spring of 1944, the two orphanages in the ghetto thus became a gathering point for orphans from the district.[44] Representatives of the CER and the Red Cross entered Transnistria and organized the return of more than ten thousand deportees, among them over 1.800 children.[45] However, not all children could escape the ghetto this way. Many were

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35 See the testimonies of two of those deportees: Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, 193–194, 199-200. Ioanid puts the total number of Jews deported from Balta to Nikolaev at 1.387. IOANID: Holocaust in Romania, p. 216.
36 IOANID: Holocaust in Romania, p. 115.
37 CREANGĂ/KRUGLOV: Balta, p. 598.
38 ANCEL/CREANGĂ: Romania, p. 577.
39 BURMISTR: Transnistrien, p. 397.
40 ANCEL/CREANGĂ: Romania, p. 577.
41 See the German translation of the report: HOPPE/GLASS: Sowjetunion, p. 828.
42 IOANID: Holocaust in Romania, p. 250. Red Cross representatives such as Charles Kolb also supported these efforts, See: HEIM, Susanne/HERBERT, Ulrich/HOLLMANN, Michael (ed.): Slowakei, Rumänien und Bulgarien (Die Verfolgung und Ermordung der europäischen Juden durch das nationalsozialistische Deutschland 1933–1945, vol. 13), Berlin 2018, p. 511–512.
43 IOANID: Holocaust in Romania, p. 257.
44 SHACHAN: Burning ice, p. 262. Freda Rosenblat was among these children, see: ROSENBLAT, Freda: How I envied the dogs!, in: Shattered! 50 years of silence ; history and voices of the tragedy in Romania and Transnistria, edited by Felicia Steigman CARMELLY, Scarborough 1997, p. 363–376, here p. 371.
45 IOANID: Holocaust in Romania, p. 257. CREANGĂ/KRUGLOV: Balta, p. 598. BURMISTR: Berschad, 281. Many of whom left for Palestine from Romania in July 1944, see the report published in: HEIM et al.: Slowakei, Rumänien, Bulgarien, p. 545–546.

Soviet citizens and not eligible for traveling to Romania.[46] Others were simply not on the list for the first transport, or arrived in the ghetto too late.[47]

For some of the orphans, the consequences were most severe. Before the Red Army conquered Balta, retreating German troops came through the town and terrorized the Jews.[48] The Germans stayed for about six weeks, a time during which the Germans and the Red Army shelled each other with artillery – with the ghetto somewhere in the middle.[49] Fearing the Germans, ghetto inmates went into hiding, but many could not escape German troops (SS formations according to survivor testimony), who went from door to door in the ghetto and murdered those they found.[50] German troops also raped Jewish women and shot many of them.[51] Survivor Ilse Sandberg recalls how SS troops collected Jewish men, locked them into barn and then set the building ablaze.[52] The Germans shot 270 Jews and burned 60; among those who fell victim to bullets and fire were some 50 of the orphans.[53] For the ghetto inmates, the nightmare of German atrocities ended only on March 29, 1944, when the Red Army finally took Balta and liberated the ghetto.[54]

## Atoning at the frontlines – Soviet authorities' 1944 retribution efforts and their deal with Jewish ghetto functionaries

When the Soviets arrived, they immediately began to collect evidence of the crimes committed during Axis occupation. Furthermore, Soviet authorities initiated arrests and trials of Romanian perpetrators, their local collaborators and of Jewish ghetto functionaries. To varying degrees, ghetto survivors actively supported the authorities' efforts, sometimes even taking the law into their own hands. Soviet authorities made sure publicly to appear as dealing out lawful retribution. They tried and hanged several Romanian perpetrators and their local collaborators. However, the authorities did not put most of the Jewish functionaries on trial in 1944, but conscripted them into the Red Army and sent them to the frontlines.

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[46] One of the Soviet Jewish orphans later testified against defendant Moskovich. The protocol also notes that another resident of the orphanage was present during the interrogation. Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 36.

[47] According to survivor Freda Rosenblat, a member of the CER delegation even found his son in the ghetto, whom he had presumed dead. However, since the boy was not on the list, he had to stay in Balta. ROSENBLAT: How I envied, p. 372.

[48] CREANGĂ/KRUGLOV: Balta, p. 598.

[49] ROSENBLAT: How I envied, p. 372.

[50] KOSHIN, Il'ia: Pomnit' i rasskazat'. Vospominaniia byvshego uznika Baltskogo getto (vol. 1), 2 vols., Odessa 2009, p. 151. MARKOVSKAIA, Anna: "Eto byli ushasnye mesiatsy i gody…", in: My khoteli zhit'. Svidetel′stva i dokumenty, edited by Boris Michajlovič ZABARKO (vol. 2), Kiev 2013, p. 70–71, here p. 71.

[51] SANDBERG, Ilse, Interview 12842. Interviewed by Silke Berg. Visual History Archive. USC Shoah Foundation. Transkript Freie Universität Berlin 27.03.1996, http://www.vha.fu-berlin.de/, last accessed August 12, 2021.

[52] Ibid. See also: KOSHIN: Pomnit' i rasskazat vol. 1, p. 154. ROSENBLAT: How I envied, p. 373. Sandberg speaks of a barn, Koshin of a house, and Rosenblat of a wagon – it is not clear whether these were separate events, but there is no doubt the Germans used this method of killing in Balta in 1944.

[53] CREANGĂ/KRUGLOV: Balta, p. 598. The number of murdered orphans is given in: BURMISTR: Berschad, 281.

[54] CREANGĂ/KRUGLOV: Balta, p. 598.

Soviet investigative efforts began as soon as the town was in the Red Army's hands. Survivor Freda Rosenblat recalls how "the Soviets took pictures and made movies of the atrocities", i.e. of the bodies of murdered Jews that were still lying in the streets.[55] Since the corpses had not yet been buried, this must have occurred in the first days after the Red Army arrived.

The swiftly initiated investigations soon bore bloody fruit. Ghetto survivors recall several public trials and hangings in Balta.[56] Among others, the Soviets arrested the man the ghetto's inhabitants had probably hated the most: a Romanian police officer who survivors mostly call "Kolia Parapan" (likely Nicolae Paraipan). That man had commanded the Balta police force (i.e. not the Jewish ghetto police, but the Romanian police force and thus probably also any local Ukrainian police officers).[57] Survivors describe his extreme brutality towards the Jews in the ghetto, which had awarded him the nickname "butcher".[58] Balta ghetto survivor Susanna Langman recalls that Parapan and his men beat her aunt to death.[59] Parapan had many opportunities to torture the Jews in Balta not only because of his position as head of police, but also because he lived on the territory of the ghetto.[60]

Soon after the Soviets returned, Parapan found that it had not been wise to make his name and face known to so many Jews in the ghetto in such a brutal fashion. Ghetto survivors actively supported Soviet retribution efforts, which lead to Parapan's demise. Various survivor testimonies indicate that ghetto survivors tipped off Soviet authorities, who then arrested Parapan, put him on trial publicly and sentenced him to death by hanging – which the authorities again staged in public.[61]

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[55] ROSENBLAT: How I envied, p. 373. These photographs are not contained in the materials of the ChGK available in the USHMM collections. However, the materials do contain photographs of mass graves in the Balta region taken as early as April 4, 1944 – a mere six days since the Red Army had taken the town of Balta. The survivor testimony is thus at least highly plausible. Reports on victims of Romanian-German atrocities on the territory of Odessa Oblast in the period 1941-1944., File 69, Reel 5, RG- 22.002M, Extraordinary State Commission to Investigate German-Fascist Crimes Committed on Soviet Territory from the USSR, 1941-1945, United States Holocaust Memorial Museum Archives (USHMM), Washington, DC.

[56] Besides the hanging of Parapan described below, there was at least one other such public execution. See: LANGMAN, Susanna: [Untitled], in: LIK - Literarisch-künstlerische Internetzeitschrift - Jüdische Gemeinde Stadt Potsdam e. V., online: http://lik-potsdam.de/index.php?id=temp-18, last accessed August 06, 2021. KOSHIN, Il'ia: Pomnit' i rasskazat'. Vospominaniia byvshego uznika Baltskogo getto (vol. 2), 2 vols., Odessa 2009, p. 158.

[57] KOSHIN: Pomnit' i rasskazat vol. 2, p. 143. Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 42, 191-192.

[58] KOSHIN: Pomnit' i rasskazat vol. 1, p. 143. According to survivor Susanna Langman, ghetto survivors "for a long time after the war still scared disobedient children with Parapan". LANGMAN: [Untitled]. Tsilia Beizer recalls that "[…] when he went on one side of the street, we escaped to the other – because he was like a wild animal. He only beat and beat and killed […]." BEIZER, Tsilia, Interview 24158. Interviewed by Natalia Levkovich. Visual History Archive, USC Shoah Foundation 21.11.1996, https://vha.usc.edu/viewingPage?testimonyID=25217&returnIndex=0#, last accessed July 27, 2020, segments 78–79. PODOL'NYI, Isaak Abramovich: Liudiam XXI veka. Tem, komu suzhdeno zhit', Vologda 2007 (Pamiati zhertv, sgorevshikh v ogne voiny i Kholokosta. Pamiati tekh, ch'i imena my pomnim. Pamiati tekh, kto ostalsia bezymiannym.), p. 62, 116.

[59] LANGMAN: [Untitled].

[60] KOSHIN: Pomnit' i rasskazat vol. 2, p. 143.

[61] On Parapan's arrest, see: KOSHIN, Il'ia, Interview 30433. Interviewed by David Rozenfeld. Visual History Archive, USC Shoah Foundation 15.04.1997, https://vha.usc.edu/viewingPage?testimonyID=32612&returnIndex=0#, last accessed July 28, 2020, segment 151. A public trial at the "house of culture" in Balta is mentioned by Tsilia Beizer: BEIZER: Interview 24158, segments 78–79.

According to survivor Boris Fleishman, the 1943 film "Two soldiers" was shown after the trial, which speaks to its propagandistic significance for the Soviets.[62] Parapan's body was left hanging on display for several days. During his tenure as police chief, he had apparently drawn enough resentment on himself so that passersby threw stones at his corpse.[63] Because we could not locate a casefile for Parapan in the archives, many facets of his case remain opaque.

Yet even without Parapan's investigative casefile, we can infer some more details. It is most likely that he was tried by a military field court. Because Soviet authorities carried out his death sentence by hanging, the most plausible sentencing body is a military field court. Although on May 24, 1944 military tribunals were granted right to try people under article 1 of Ukaz 43, these courts were only allowed to sentence defendants to death by shooting, not hanging – the court was thus likely no ordinary military tribunal.[64] Moreover, there was another man the Soviets hanged in Balta. This was a local policeman from Kodyma, and in his case a survivor explicitly mentions a military field court.[65] The man had participated in the murder of Jews in Kodyma. In Balta, two women who had survived the shootings in Kodyma recognized the man, pulled him off his horse and handed him over to Soviet authorities.[66] For "shooting of Jews and POWs", a court sentenced the man to death and he was hanged in front of a crowd.[67] Survivor Il'ia Koshin remembers that this court was the "military field court of the third Ukrainian front".[68] Thus, it is highly plausible that such a court operated in Balta. Commonly featured in survivor testimony, Parapan's hanging shows that Soviet efforts to publicly appear as dealing out lawful retribution were quite successful – at least successful enough to have left a lasting mark on ghetto survivors' memories.

These events clearly show that the Soviet retribution efforts partially relied on a significant push "from below", including by ghetto survivors. Many were inclined to seek retribution. Some ghetto survivors even sought it independently, taking the law into their own hands. These survivors' wrath did not spare individual Jewish ghetto functionaries. Manuel' Akerman, who was eighteen years old when the Red Army conquered Balta, held a grudge against a member of the Balta ghetto Jewish

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[62] FLEISHMAN, Boris, Interview 41606. Interviewed by Natalia Levkovich. Visual History Archive, USC Shoah Foundation 10.03.1998, https://vha.usc.edu/viewingPage?testimonyID=43661&returnIndex=0#, last accessed July 27, 2020, segment 66.
[63] LIVSHITS, Mar'iam, Interview 49748. Interviewed by Moisei Oikerman. Visual History Archive, USC Shoah Foundation 05.07.1998, https://vha.usc.edu/viewingPage?testimonyID=52561&returnIndex=0#, last accessed July 27, 2020, segments 69–71.
[64] HILGER et al.: „Ukaz 43", p. 188.
[65] KOSHIN: Pomnit' i rasskazat vol. 1, p. 159.
[66] From Koshin's memoir, who witnessed the man's hanging, it is not clear whether the policeman had participated in the August 1941 shootings, or the later massacre in January 1942. KRUGLOV et al.: Kholokost v Ukraine, p. 340, 368.
[67] KOSHIN: Pomnit' i rasskazat vol. 1, p. 159.
[68] Ibid. See also: PODOL'NYI: Liudiam XXI veka, p. 108.

police, a certain Feller.[69] The policeman had beaten him during the time in the ghetto.[70] Once the Soviets had returned, Akerman wanted to settle the score. Together with a friend, Akerman found Feller in the ghetto and beat him up. They were interrupted by a Soviet officer, who told them "We don't do that..., there's a tribunal, a court, we'll sort it out – no vigilante justice!" and then took Feller away.[71] Because Akerman departed from Balta to look for surviving relatives, he did not learn what became of Feller.[72]

Though not certain, it is likely that Feller was not put on trial as the Soviet officer had promised. Rather it seems that Soviet officials "sorted it out" by sending Feller the frontlines. Another survivor describes Feller as a "Romanian Jew".[73] The Russian database "Memory of the People" lists a man broadly fitting this description. Listed is a certain Tuliu Moiseevich Feller, who was born in Luzhany, Bucovina, served in the Red Army and died in an Axis bombing raid June 27, 1944.[74] This Tuliu Feller was mobilized into the Red Army some time in 1944 in Mogilev-Podol'skii, where his wife lived. It is not certain that this was the same Feller, but the year of conscription, the place from where he was mobilized and the city where his wife lived at least all point to a man who had been in a Transnistrian ghetto. It may well be that Feller managed to join his wife in Mogilev-Podol'skii after the incident with Akerman and that Soviet authorities mobilized him there. However, this assertion remains conjectural.

Regardless of what became of Feller, it is certain that Soviet authorities arrested other former Jewish functionaries, but send them to the front instead of to a court. In an oral history interview, Balta ghetto survivor Gerch Zayats recalls that one Jewish ghetto policeman was arrested and received a 20-year sentence, but that Soviet authorities "pardoned" others and sent them to the frontlines.[75] Il'ia Koshin's memoirs corroborate this version of events. He recalls that the older

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[69] As Khaia Bol'shaia's testimony shows, Akerman was not the only ghetto inmated who disliked Feller tremendously. See: KOZLENKO, Pavel Efimovich: Dolgaia doroga leta …, Odessa 2011, p. 219.

[70] AKERMAN, Manuel', Interview 30157. Interviewed by Alexander Kaganovich. Visual History Archive, USC Shoah Foundation 15.06.1997, https://vha.usc.edu/viewingPage?testimonyID=33006&returnIndex=0#, last accessed July 27, 2020, segment 95.

[71] Ibid., segment 99.

[72] Ibid.

[73] See the excerpts of Khaia Bol'shaia's testimony published in: KOZLENKO: Dolgaia doroga leta.

[74] Memory of the People: Feller Tuliu Moiseevich, online: https://pamyat-naroda.ru/heroes/memorial-chelovek_donesenie54174988/, last accessed August 17, 2021. According to the project's website, "[t]he 'Memory of the People' project has for the first time digitised and put on the Internet 425 thousand archival documents of the fronts, armies and other formations of the Red Army", allowing to search for individuals who served in it. The database includes 12.5 million awards Red Army soldiers received for service in the Second World War and 18 million lines of text from the respective award documents. See: https://pamyat-naroda.ru/about/ Thus, the database entails the records of the earlier database "Exploits of the People", which had almost the same functions. For more details about this earlier database, see: MAKHALOVA, Irina: Heroes or Perpetrators? How Soviet Collaborators Received Red Army Medals, in: The Journal of Slavic Military Studies 2 (2019), p. 280–288, here p. 285.

[75] ZAYATS, Gerch, Interview 5962. Interviewed by Natalie Golub. Visual History Archive, USC Shoah Foundation 06.11.1995, https://vha.usc.edu/viewingPage?testimonyID=7457&returnIndex=0#, last accessed July 27, 2020, segments 17–19.

brother of an acquaintance served as a Jewish policeman.[76] Together with others from the Jewish ghetto police, this man was arrested, but then sent to the front. He "[…] went almost all the way to Berlin [and] returned to Balta as a real hero – with a battle Order of the Red Banner".[77] Such a deal was not only offered to ghetto policemen, but to other ghetto functionaries as well.

Thus, Soviet authorities took into custody the former head of the Jewish council, Rubinshtein. In early April 1944, Il'ia Koshin was mobilized into the Balta "extermination battalion", a para-military unit performing police duties.[78] At the Balta militia station, Koshin was tasked with guarding the cells of prisoners under investigation. Among the prisoners held there, he recognized Rubinshtein.[79] Koshin claims that he was shocked to find Rubinsthein there and found his arrest utterly unjustified. Koshin briefly talked to Rubinshtein, but was unable to help the former head of the Jewish council.[80] In Rubinshtein's casefile, there is no arrest warrant for this time (only for a later arrest in 1947, which we discuss in detail below). However, the casefile contains three witness depositions recorded between April 15 and 17, 1944.[81] Clearly, Soviet authorities had already begun to collect evidence for a criminal trial.

However, Rubinshtein did not stand trial, but was mobilized into the Red Army. Rubinshtein is not listed in the "Memory of the People" database. Nevertheless, the protocol of a search conducted on August 13, 1947, mentions the confiscation of a medal "For the Victory over Germany in the Great Patriotic War 1941–1945", that Rubinsthein had received, and the respective certificate – sufficient evidence for his service in the Red Army.[82] Rubinshtein himself mentioned his military service several times during his 1947 interrogations.[83] Moreover, survivor Boris Zaidman saw Rubinshtein in a Red Army uniform shortly after the Soviets arrived.[84] Il'ia Koshin's account also corroborates that Soviet authorities recruited Rubinsthein into the Red Army right

[76] KOSHIN: Pomnit' i rasskazat vol. 2, p. 146.
[77] Ibid., p. 147 Since Koshin does not relate this man's name in his memoir, we could not search for that ghetto policeman in other sources.
[78] KOSHIN: Pomnit' i rasskazat vol. 1, p. 170. Extermination battalions were originally established by decree of the Politburo on June 24, 1941. Their focus was to fight Axis paratroopers and agents on non-occupied territories. From 1943 on, the units were also formed in newly liberated territories, often out of former Soviet partisan formations. Here, they took over various security duties and helped reestablish Soviet power. According to the 1941 decree, these units were comprised of "100-200 people from the proven Party, Komsomol and Soviet activists, capable of handling a weapon" who were commanded by an NKVD or militia officer. See document nr. 176 in: KHAUSTOV, Vladimir Nikolaevich/NAUMOV, Viktor Petrovich/PLOTNIKOVA, N. S.: Lubianka. Stalin i NKVD - NKGB - GUKR "Smersh", 1939 - mart 1946. Arkhiv Stalina. Dokumenty vysshikh organov gocudarstvennoi vlasti (Rossiia XX vek. Dokumenty), Moskva 2006. See also: EPIFANOV: Organizatsionnye i pravovye osnovy, p. 131.
[79] KOSHIN: Pomnit' i rasskazat vol. 1, p. 171. See also Koshin's oral history interview: KOSHIN: Interview 30433, segment 136.
[80] KOSHIN: Pomnit' i rasskazat vol. 1, p. 171.
[81] Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 45–50.
[82] Ibid., p. 5.
[83] Ibid., p. 26-30, 42-44, 135.
[84] ZAIDMAN, Boris, Interview 31952. Interviewed by Sergei Shpagin. Visual History Archive, USC Shoah Foundation 27.05.1997, https://vha.usc.edu/viewingPage?testimonyID=33957&returnIndex=0#, last accessed July 28, 2020, segment 46.

out of custody.[85] According to Koshin, many ghetto inmates appealed to the authorities to release Rubinshtein.[86] Balta ghetto survivor Shlima Lavrent'eva reports a similar episode in her oral history testimony, but she does not recall the name of the man released and her testimony is somewhat ambiguous.[87] With no documentary evidence of Rubinsthein's arrest and release in 1944 in his casefile, it remains unclear whether there was such a grassroots support campaign for him, or whether individual ghetto survivors just made sense of his release that way.

Given the fact that the Soviets recruited several other ghetto functionaries into the Red Army, it appears dubious that such a support campaign was a necessary condition for similar deals between the authorities and ghetto functionaries accused of collaboration. Take, for example, the former ghetto policeman Abram Grigorevich Shpigel'.[88] According to Shpigel's interrogation in 1947, he "served in the Red Army from 1944 to January 1945", without being wounded or earning a medal.[89] Regarding other individuals, the "Memory of the People" database allows to support the hypothesis that Jewish functionaries of the Balta ghetto were recruited into the Red Army instead of facing criminal charges. Consider witness Iosif Kishinevskii. He testified that he had served as a ghetto functionary but did not specify in which position.[90] The investigators did not follow up on this question.[91] Although not recorded in the minutes of his testimony, Kishinevskii served in the Red Army in World War II. The "Memory of the People" database lists a man with his name, year of birth and place of birth as part of a Red Army formation that operated in the Balta area in 1944.[92] As Rubinsthein, the man served in the 53rd Army.[93] Again, we see the combination of frontline service and no criminal prosecution.

Less certain is what became of ghetto policeman Izia Grechanik.[94] We assume that he too, was mobilized into the Red Army, but that remains somewhat conjectural. "Memory of the People"

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[85] KOSHIN: Pomnit' i rasskazat vol. 1, p. 173.
[86] Ibid.
[87] She speaks of a "Romanian" and struggles to identify the position the man held ("mayor"; "like the boss of Balta"). She also says that this person "helped the Jews", which could be interpreted as him not having been Jewish. On the other hand, she claims that the man warned the ghetto inmates of pending arrests "through the community", indicating a link to the Jewish council. LAVRENT'EVA, Shlima, Interview 38923. Interviewed by Efim Nilva. Visual History Archive, USC Shoah Foundation 06.10.1997, https://vha.usc.edu/viewingPage?testimonyID=41879&returnIndex=0#, last accessed July 28, 2020, segments 37–38.
[88] See his witness testimony in the case of Rubinshtein: Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 49-50, 86-88.
[89] Ibid., p. 49–50.
[90] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 193–194. The precise wording is "worked in the Jewish ghetto community", with "community" usually signifying an administrative structure in the casefiles analyzed in the present study. If the witness had merely worked in the ghetto, we could expect exactly that wording. Nevertheless, Kishinevskii's service as a ghetto functionary is not consistently proven with this formulation.
[91] Ibid.
[92] According to the database, Iosif Kishinevskii served in the 230 Army Reserve Rifle Regiment, a part of the 53rd Army, which operated on the second Ukrainian front. Memory of the People: Kishinevskii Iosif Davidovich, online: https://pamyat-naroda.ru/heroes/memorial-chelovek_vpp2003196855/, last accessed August 17, 2021.
[93] See Rubinsthein's testimony: Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 135.
[94] PODOL'NYI, Isaak Abramovich: Opalennye voinoi. Istoriia odnoi bol'shoi sem'i, Vologda 2005, p. 77.

lists an Il'ia Il'ich Grechanik who was born in Balta in 1924 and mobilized into the Red Army sometime in 1944.[95] This Il'ia Grechanik became a decorated war hero: for his service, he received a medal for the victory over Germany, one for the victory over Japan and one for courage ("Za otvagu").[96] Since survivors recall that the ghetto policeman Grechanik was a Komsomol member before the war, Il'ia Grechanik's year of birth broadly fits Izia Grechanik.[97] The same applies for the place of birth, Balta.[98] The difference between the first names "Izia" and "Il'ia" does not mean that the man listed in "Memory of the People" is not the same that survivors remember. Soviet officials frequently Russianized the Jewish first name "Izia" to "Il'ia" or "Igor"' (and "Izia" itself was possibly not the full given name, but a diminutive form of "Izrael"').[99] Thus, we tentatively count Grechanik among those functionaries initially mobilized into the Red Army.

If Soviet authorities really offered ghetto functionaries to let them repay their dues to the Soviet Motherland at the frontlines that also offers a possible explanation why Isak Iosifovich Gershkovich was not prosecuted. Despite serving in the Jewish ghetto administration's committee on aid distribution, Gershkovich was not touched by the Soviets – in contrast to people who had held comparable positions in other ghettos.[100] A possible reason is that Gershkovich had already served in the Red Army in 1941–1942, which the investigators noted in his interrogation protocol.[101] According to the "Memory of the People" database, Gershkovich was severely wounded in a German airstrike in 1942, after which his right leg had to be amputated.[102] It is not clear how he ended up in the ghetto after he sustained the wounds in combat. Soviet officials began recognizing Gershkovich's sacrifice for the war effort immediately after the Red Army liberated him from the ghetto. It took a mere 33 days until on May 1, 1944, Gershkovich received the medal "For the Defense of the Caucasus". A year later, in May 1945, the medal "For the Victory over Germany in the Great Patriotic War, 1941–1945" followed, and in 1951 the "Order of Glory Third

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95 Memory of the People: Grechanik Il'ia Il'ich, online: https://pamyat-naroda.ru/heroes/podvig-chelovek_kartoteka1502658377/, last accessed August 20, 2021.
96 Ibid.
97 MARKOVSKII, Mikhail, Interview 6369. Interviewed by Natalie Golub. Visual History Archive, USC Shoah Foundation 14.11.1995, https://vha.usc.edu/viewingPage?testimonyID=7579&returnIndex=0#, last accessed July 27, 2020, segment 25.
98 FLIKSHTEIN, Dora, Interview 31387. Interviewed by Maia Feldman. Visual History Archive, USC Shoah Foundation 12.05.1997, https://vha.usc.edu/viewingPage?testimonyID=32666&returnIndex=0#, last accessed July 27, 2020, segment 76.
99 Compare the arrest warrant for Fidler, where he is called "Igor"' and the oral history interview of survivor Berina, who calls him "Izia": Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 2. BERINA, Zhanna, Interview 8608. Interviewed by Polina Breyter. Visual History Archive, USC Shoah Foundation 12.11.1995, https://vha.usc.edu/viewingPage?testimonyID=7812&returnIndex=0#, last accessed May 24, 2021, segment 57.
100 Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 37–39. For an example of someone arrested on similar grounds, see the arrest warrant against Shulim Brender: Vitner Gerbert Maksovich, HDA SBU ChO, D2395-o, p. 38.
101 Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 37.
102 Memory of the People: Gershkovich Isaak Iosifovich, online: https://pamyat-naroda.ru/heroes/person-hero79935787/, last accessed August 17, 2021.

Class". [103] The succession of medals makes it unlikely that Gershkovich was arrested for anything he had done in the ghetto – at least not between 1944 and 1951.[104] Apparently, his right leg was a sufficient preliminary payment to offset possible later reservations the representatives of the "Socialist Motherland" might have had.[105]

In the spring of 1944, the war effort could take precedent over criminal prosecution and local officials apparently had a significant room for maneuver when it came to decide who to prosecute and who to recruit. For Soviet officials on the ground, the situation was sufficiently confusing that Ukrainian SSR People's Commissar of Internal Affairs Riasnoi issued a clarification to his subordinates in the localities. In early February 1944, Riasnoi circulated the following order:

"In response to a number of inquiries from the regions concerning the arrests of former policemen of the Germans, who from the first days of liberation voluntarily joined or were drafted into the Red Army, and now because of injuries received at the fronts some of these persons have returned home or are being treated in hospitals – I CLARIFY: 1. The wounded men who have returned from the above categories must not be sent to the camps. 2. With regard to those who have engaged in treasonous or collaborationist activities, if there are sufficient materials for arrest, then arrest them."[106]

Given the fact that Soviet officials collected incriminating witness testimonies against Rubinshtein and nevertheless sent him to the front, it is clear that the apparently widespread practice of recruiting alleged collaborators into the Red Army was not affected by the order. Moreover, Rubinshtein was not arrested until 1947 – when he was working for the Allied Control Commission in Romania as a translator, i.e. for the Soviet government.[107] Judging by other casefiles, the testimonies collected against Rubinshtein surely constituted, in Riasnoi's terms, "sufficient materials for arrest". Thus, Soviet officials apparently did not take the second part of the order all too serious – they had considerable room for maneuver.

In early 1944, Soviet authorities were clearly open to compromises and offered a "frontline deal" to a considerable segment of those they could theoretically have prosecuted as collaborators. And while survivors played a vital role in the Soviet retribution effort against such individuals as Parapan, the cases of Feller and Rubinshtein suggest that survivors' influence was sometimes quite

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[103] Ibid.

[104] The fact that the "Memory of the People" database lists medals an individual received does not mean that this individual was not later put on trial and stripped of the medal. However, the fact that Gershkovich received medals between 1944 and 1951 makes it unlikely that he was put on trial during this period, since no new medals would have been awarded to someone convicted of treason or similar offenses. See: MAKHALOVA: Heroes or Perpetrators, p. 287.

[105] However, it appears frontline service was not a necessary condition for Soviet authorities not to initiate criminal proceedings. Witness Abram Markovskii served as the Jewish council's bookkeeper. Based on casefiles related to other ghettos, for some Soviet officials this was sufficient basis for an arrest. Nonetheless, Markovskii was not arrested and he did not perform military service. In his interrogation protocol, Markovskii is described as "taken off the military register". See: Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 79–81.

[106] KOSHIN: Interview 30433, segment 151.

[107] Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 4.

limited. Pressures "from below" were important, but whether Soviet authorities took them up was conditional on other factors – such as the necessity to fill the ranks of the Red Army. Such "conditional justice" clearly represents a prerogative state feature of how Soviet authorities dealt with the events in the ghetto. Other aims preceded applying the law.

However, there were limits to this practice. One former Jewish functionary the authorities did not draft into the Red Army was Pavel Mikhailovich Moskovich. Soviet investigators first questioned him on April 7, 1944, just over a week after the Red Army had arrived.[108] Two months later, the authorities arrested Moskovich.[109] He was a bit older than Rubinshtein, but at a mere 42 years, he was not per se free from the draft – the official maximum age for serving in the army was 50.[110] Why then, did the NKVD send Rubinshtein and others to the front, but arrested Moskovich? To determine why the Soviets chose to put him on trial, let us examine Moskovich's casefile in more detail.

## Moskovich's role in Balta – Contrasting witness testimonies and the defendant's response

Before Moskovich eventually faced a military tribunal on April 21, 1945, NKVD and NKGB officers conducted an investigation spanning more than twelve months, questioning some 20 witnesses about his actions during the Romanian occupation.[111] Hence, while the adjudicating and investigating authorities belonged to the prerogative state (ds6, ds13), their investigative procedures were largely evidence driven, and witness testimony was of prime importance for the investigation and trial (ds8, ds9). With just one exception, none of the witnesses had ever met Moskovich before he arrived in the Balta ghetto in 1943.[112] Judging by their testimony, the witnesses would mostly have preferred not to become acquainted with the defendant. The list of accusations witnesses brought forward against Moskovich was long. Let us review these accusations and Moskovich's defense in some detail.

While there was some confusion among witnesses what concrete office Moskovich had held, most correctly identified him as the head of the Balta district bureau of Jewish labor. Some mistook him for a Jewish council member.[113] Others understood that Moskovich had headed a second institution besides the Jewish council, but saw its prerogatives limited to the ghetto.[114] However, most witnesses knew that Moskovich had been the head of the Balta district bureau of Jewish labor.

[108] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 16–27.
[109] Ibid., p. 2-4, 7.
[110] Ibid., p. 5. Elektronnaia biblioteka istoricheskikh dokumentov: O vseobshchei voinskoi obiazannosti (Zakon ot 1 sentiabria 1939 g.), online: http://docs.historyrussia.org/ru/nodes/131100, last accessed August 17, 2021.
[111] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916.
[112] See the testimony of witness Gershkovich, who knew Moskovich from Bucharest before the war: Ibid., p. 37–38.
[113] Ibid., p. 26, 33, 132-134
[114] Ibid., p. 33, 67-70, 73-75.

They understood that this structure was independent from the Jewish council and that its prerogatives extended throughout the Balta district.[115] According to witnesses, the bureau's competencies had included the Bershad, Ol'gopol', Chechel'nik and Peschanaia ghettos, from where Jewish functionaries visited Moskovich.[116] Besides receiving visitors, Moskovich also travelled to these ghettos in the disctrict, witnesses contended.[117]

Witnesses ascribed even more privileges to Moskovich than free exit and entry to the ghetto and the right to travel around Transnistria .[118] Some mentioned the right to visit Romanian officials.[119] All described Moskovich as well connected to the Romanian authorities (police, gendarmerie, and prefect's office).[120] Supposedly, Moskovich was also "well provided for materially, and one might even say that he lived wealthily ["zazhitochno", *WS*]."[121]

Whatever concrete office and privileges witnesses ascribed to Moskovich, they all agreed that once he arrived in Balta in 1943, he quickly became the de-facto boss of the Balta ghetto, perhaps even the whole district. Thus, he effectively displaced the Jewish council as the highest authority of Jewish pseudo self-administration. As witness Sherbelis put it "[i]n the winter of 1942-43 a certain Moskovich arrived, who began to control all of the ghetto, including the community [i.e. the Jewish council, *WS*]."[122] The other witnesses universally agreed with this view.[123] Moreover, some even alleged that Moskovich had "all the power in the district" concentrated in his hands, controlling the other ghettos within it, too.[124]

Moskovich confirmed that he had been the chief of Balta district bureau of Jewish labor.[125] As such, he had been subordinate to the labor department of Balta district prefect's office.[126] To fulfill his tasks, the Romanians had afforded him a staff of "up to four Jewish assistants".[127] He had held this position from January 5, 1943 to March 13, 1944.[128] Moskovich admitted that he had been in

115 Ibid., p. 37-39, 40-41, 43-44, 83-85, 124-126.
116 Ibid., p. 67-70, 201-202.
117 Supposedly he also travelled to Tiraspol'. See: Ibid., p. 96–98.
118 Explicitly on free entry and exit see: Ibid., p. 43-44, 195-196.
119 "[…] Moskovich used to visit Colonel Popovici at the Inspectorate, as well as the prefect colonel Nika, and the head of the Romanian Gendarmerie Colonel Gavat, when no one was allowed entry to these gentlemen, and Moskovich was Jewish by nationality when Jews were not allowed leave the ghetto." Ibid., p. 35–37.
120 Ibid., p. 26, 33-34, 35-37, 40-41, 42, 43-44, 67-70, 73-75, 76-78, 79-81, 82-84, 129-131.
121 Ibid., p. 89-92, see also: p. 96-98.
122 Ibid., p. 116–119.
123 Ibid., p. 43-44, 73-75, 76-78, 79-81, 82-84, 85-88, 89-92 110-112, 120-123, 124-126, 129-131.
124 Ibid., p. 43–44.
125 Ibid., p. 16-27, 30-31, 56, 106-107.
126 Ibid., p. 30-31, 60.
127 Ibid., p. 30–31.
128 Ibid., p. 18, 30-31.

regular contact with gendarmerie and police officials, but that the mutual visits were "solely on official business".[129]

He stressed that he had been a deportee and a ghetto inmate too.[130] Despite his office, Moskovich claimed, he "did not enjoy any benefits or privileges" and that he "was under the same conditions as all the other Jews of the Ghetto".[131] On closer inspection, the latter claim did not hold up completely. Moskovich admitted that as head of the bureau of Jewish labor, he received a salary of "200 marks" (likely RKKS).[132] Therefore, even if we assume that a skilled worker was paid as stipulated by Romanian regulations, he probably earned only a quarter of that. This helps to understand why some witnesses saw Moskovich as a privileged rich person.

Besides his material situation, Moskovich also enjoyed a greater freedom of movement than other ghetto inmates. Colonel Nica had issued him a permit to visit the different rayons in the district, where he went "three times per month" during his time in office.[133] Moskovich went to such places as "Obodovka, Peschainia, Bershad' and others", but contended that he did so exclusively "regarding affairs of the ghettos in the Balta district".[134] Pressed by the interrogators he admitted that nobody else had such a permit.[135]

As his job title suggests, Moskovich's initial primary field of action was Jewish forced labor. A first set of accusations primarily concerns this topic. Witnesses alleged that Moskovich first conducted a census of the Balta ghetto noting ghetto inmates' profession and their ability to work.[136] Under his aegis, similar registers were created for the other ghettos in the district, witnesses claimed.[137] Based on the census, Moskovich drew up day-to-day lists of ghetto inmates for forced labor.[138] As one witness put it:

> "The direct implementer of the representatives of the Romanian authorities regarding the assignment of the Jewish population for work was Moskovich, and Moskovich complied with all the requirements of any institution or military unit regarding the assignment of the Jewish population for work."[139]

Witnesses also stressed that an administrative staff and the ghetto police supported Moskovich in implementing Romanian demands for Jewish forced labor. His three administrative assistants

[129] Ibid., p. 32.
[130] Ibid., p. 28-29, 60.
[131] Ibid., p. 60.
[132] Ibid., p. 60, 96-98.
[133] Ibid., p. 96–98.
[134] Ibid.
[135] Ibid.
[136] Ibid., p. 67-70, 79-81.
[137] Ibid., p. 37-39, 40-41.
[138] Ibid., p. 26, 36, 76-78, 79-81, 85-88, 127-128, 129-131.
[139] Ibid., p. 67–70.

were Stoliar, Okhman and Koreinshtein.[140] For the physical side of forced labor recruitment, Moskovich could also rely on "brigadiers", i.e. the Jewish ghetto police, who gathered those on the lists.[141] According to witnesses, this was mostly necessary if ghetto inmates did not show up to the Jewish administration in the morning for labor duty (as was mandatory).[142]

Witnesses enumerated different kinds of labor the ghetto's Jews had to perform. Skilled laborers were used in workshops set up by Moskovich's labor bureau, and unskilled laborers were used throughout the city. Among others, the labor department set up a tailor's, a shoemaker's and a hatter's workshop.[143] Ghetto inmates unqualified for labor in the workshops were recruited for various kinds of jobs. These included cleaning the streets, construction work at civil and military objects and different kinds of service tasks in enterprises and institutions.[144] Skilled forced laborers in workshops initially received no payment and only later a piece rate, yet one significantly lower than the Ukrainian or Russian workers of similar workshops.[145] According to another witness, the payment in the workshops eventually became "two marks" (most likely the infamous RKKS) per day.[146] Worse off were the unskilled laborers, who only received bread as payment.[147]

Asked about forced labor in the ghetto, Moskovich confirmed that his first task had been "[t]o compile statistics of the able-bodied Jewish population in the Balta district between the ages of 12 and 60, considering these people mobilized to work for the state".[148] To fulfill this order he relied on the Jewish councils of all the ghettos in the district.[149] In Balta, too, Moskovich claimed that the Jewish council and others were also involved:

> "[…] a commission was formed of representatives: doctors Tsvik, Gol'berg and Krishtal, the mayor of the ghetto [i.e. the head of the Jewish council, Rubinshtein, *WS*], and representatives of the city of Balta praetor's office and the police. The commission examined all the population of ghetto, beginning with 12-year-old women and small children."[150]

According to Moskovich, the Romanians demanded these statistics as a "census of the whole Jewish population located in the ghettos of the Balta district", and to identify among them "all of

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[140] Ibid., p. 37–39.
[141] Ibid., p. 137–138, see also the testimony of the former brigadier Paskhover on p. 85–88.
[142] Some ghetto inmates were even unsure whether it had been Moskovich himself who issued the order for the Jews to perform forced labor, and not the Romanian colonel Nica: "I personally saw the order written in Moskovich's hand, which hung on the door of his office. This order read: 'All Jewish men and women imprisoned in 'ghetto' from the age of 14 to 55 are obliged to report daily at 6 a.m. to the police of the Labor Bureau, where they will be assigned to work.' By whom this order was issued, I do not know." Ibid., p. 67–70.
[143] Ibid., p. 40–41.
[144] Ibid., p. 37-39, 40-41, 43-44, 79-81.
[145] Ibid., p. 79–81.
[146] Ibid., p. 33.
[147] Ibid., p. 79–81.
[148] Ibid., p. 19.
[149] Ibid., p. 30–31.
[150] Ibid., p. 137–138.

the Jews able to perform physical labor".[151] Moreover, the lists allowed ascertaining the "total number of Jews working in physical jobs and the total number of those who were free, who could be sent for work to another district if necessary".[152]

On order of a "representative of the governor of Transnistria", Moskovich also organized workshops inside the ghetto and helped to restore an "iron foundry", a "knitwear workshop" and a "brick factory" in the city.[153] Moskovich contended that "only few workshops were organized because of a lack of technical equipment", but admitted that the ones that became operational were under the control of his bureau.[154] While the Romanian authorities demanded that such production sites were set up and collected all the output, they did not finance them – the Jews did. Moskovich testified that the workshops were "subsidized from Bucharest [i.e. the Jewish Central (CER), *WS*], and [their] budget also included contributions from Jews from the ghetto".[155]

While the census and the restoration of production sites fell only into the beginning of his time on office, Moskovich described organizing forced labor as his main and most permanent task. Moskovich put it most bluntly to his interrogator: "I was responsible that the Jews went to work".[156] For laborers in Balta, Moskovich received orders to provide forced laborers either from the mayor or the "labor department of the Balta district prefect's office".[157] Moskovich claimed that he then "sent people to forced labor through the ghetto community", indicating a shared responsibility between his labor bureau and the Jewish council (which mirrors the description by Stoliar quoted above).[158] According to Moskovich, he not only designated people for forced labor, but also "pushed for their pay for the work ("ia dobival'sia oplaty im za trudy", *WS*)."[159]

While Moskovich claimed to have championed forced laborers' interests, witnesses painted him as merciless. Not even the sick, the elderly or the youths were excluded from forced labor.[160] Witness Ida Krishtal', a "hospital worker" recalled that

> "[…] people often came over [to the hospital, *WS*] to receive certificates that they cannot work because of the state of their health, but Moskovich did not believe these certificates and sent them to work."[161]

Another witness put it quite bluntly:

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[151] Ibid., p. 32.
[152] Ibid.
[153] Ibid., p. 30–31, 18.
[154] Ibid., p. 56.
[155] Ibid., p. 137–138.
[156] Ibid., p. 56.
[157] Ibid., p. 30-31, 106-107.
[158] Ibid., p. 106–107.
[159] Ibid., p. 30–31.
[160] Ibid., p. 124–126.
[161] Ibid., p. 82–84.

> "Moskovich never inquired about elderly or disabled – if they were alive, it meant that everyone had to work. They took children of fifteen years for work, to dig ditches, carry stones and brick, to clean lavatories and for other physical work."[162]

Moskovich denied having recruited the elderly to forced labor even beyond the already high age of 60. Confronted with witness Khananis, Moskovich claimed that Khananis was "employed at the ghetto 'primaria' [Jewish council, *WS*]" already when Moskovich arrived, and that this arrangement was thus not his fault.[163] Moreover, he claimed that based on the census conducted by the responsible commission in 1943, "crippled, sick and old people were not sent to work."[164]

Some witnesses also testified about underage ghetto inhabitants performing forced labor. As the head of one of the ghetto's orphanages explained:

> "Through the policemen I received orders from Moskovich to provide children to do various unskilled physical jobs ["chernye raboty", *WS*]. I even went to Moskovich personally, begged him that they did not touch the children and did not take them to work, since they are hungry and naked, but Moskovich answered me 'it is necessary', that this is an order. Although it was autumn weather, they took the hungry naked children to work and all my requests to Moskovich did not help."[165]

Doing construction work for a piece of bread a day is a highly undesirable combination, and more so if one is too young, too old, or physically handicapped.[166] It thus comes to no surprise that ghetto inmates tried to evade forced labor. Equally unsurprising is that according to witnesses, Moskovich sought to prevent these attempts. Besides the Jewish ghetto police or "brigadiers", Moskovich supposedly also informed the Romanian authorities about those who refused to work or did not show up.[167] Romanian police officers or soldiers then arrested these people, often beating them, and forced them to go to work.[168] According to Ida Krishtal', those affected regulary sought medical treatment at the ghetto hospital. If people refused to work, Krishtal' contended, Moskovich

> "[…] held [them] accountable through the police. He wrote a statement in which he noted that the Jews did not want to go to work, as a result of which they were arrested and beaten there, such facts were registered in the hospital as battery ["poboi", *WS*]."[169]

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[162] Ibid., p. 127–128.
[163] Ibid., p. 135–136.
[164] Ibid., p. 137–138.
[165] Ibid., p. 132–134.
[166] Moreover, the Romanian soldiers accompanying Jewish forced laborers from the building of the Jewish administration to forced labor sites regularly beat those Jews – even if they did not try to evade forced labor. See: Ibid., p. 187–188.
[167] Ibid., p. 67-70, 73-75, 79-81, 82-84, 85-88.
[168] Ibid., p. 73-75, 79-81, 82-84, 85-88, 120-123.
[169] Ibid., p. 18–21.

Some of these accusations need to be approached with the utmost caution, since the protocols reveal that witnesses assumed, rather than knew, that Moskovich was behind the Romanians' actions. Consider the testimony of Esfir' Lutershtein:

> "[…] I remember well an instance during winter, when they sent my son to the river to cut bulrush. The ice broke and he fell into the water. Since he was completely wet, he ran home. I took the wet rags off of him and began to dry them, when shortly after soldiers came over to the house and beat him up because he ran away from work. I could provide a whole series of examples for Moskovich's inhuman attitude towards the Jews incarcerated in the ghetto, but after an ordeal like this, I have now forgotten everything.
>
> Question: Do you know who sent the soldiers so that they beat up your son?
>
> Answer: I do not know that, but I think that someone from the community [the Jewish council, *WS*] sent the Romanian soldiers to my home."[170]

Neither did witness Lutershtein know who sent the soldiers, nor was she aware of the primary administrative division within the Jewish administration – that between the Jewish council and the Balta district labor bureau. When questioned about Moskovich, she first blamed her son's suffering on him, only to then concede that it could also have been someone else "from the community". However, there are also several very credible accounts of Moskovich's involvement in violence against ghetto inmates.

So far, we have dealt with accusations that the Romanians beat people on their own volition after Moskovich had informed on those people. Even more serious were the accusations that Moskovich directly ordered Romanian soldiers and policemen to beat ghetto inmates for evading forced labor. Such accusations are recurring throughout the casefile.[171] In addition, they often stem from eyewitnesses – the victims of such beatings themselves. Thus, witness Itsik Khananis told the investigators about such an event (at the time of which had been 68 years old and sick):

> "When all Jews reported to the community [the Jewish ghetto administration, *WS*] in the morning, I went there too. They asked who was sick and I said that I would not be able to work since I suffer from a rupture. A Romanian soldier was present in Moskovich's office, and Moskovich ordered him to 'let him know that it is necessary to work'. The soldier took of his belt and hit me several times with the buckle, after which Moskovich told the soldier to put me on a cart and take me to the train station for work. There they beat me too, since Moskovich told them to give it to me there, which the soldiers did."[172]

According to some witnesses, Moskovich did not only supervise forced labor recruitment from his office – he also sought out evaders personally. Some of these Jews later testified that Moskovich ordered Romanian officers to beat them on such occasions. Consider the following testimony:

> "In 1943 Moskovich came to my flat with two gendarmes, to send me to work, but I artificially put my left arm in a plaster cast and told him that my arm was broken, and I could not work.

[170] Ibid., p. 120–123.
[171] Ibid., p. 23-26, 76-78, 85-88, 129-131.
[172] Ibid., p. 76–78.

> After listening to me, Moskovich told the gendarmes to remove the plaster cast, and when they removed it, they convinced themselves that it was not true – my arm was healthy, and I was simulating. Moskovich ordered the gendarmes to deal me 25 strikes ["25 shoblanov", *WS*] and I was beat unconsciously by them in the presence of Moskovich. When I came to, Moskovich and the gendarmes were gone from the flat, they had gone away."[173]

The witness testimony is indicative of a constant face-to-face struggle between Moskovich and those who tried not to be drafted to work. It is also revealing when it comes to the lengths to which some ghetto inmates went to avoid forced labor.

Besides those faking sickness and handicaps, people whose ability to work was actually limited faced the same outcomes. Witness Reznik testified that although his "right arm does not work at all, Moskovich said it is necessary to work".[174] The result of Reznik's following protests was a beating:

> "I refused and Moskovich then and there told the Romanian soldiers and they beat me. All of this happened in the building of the community and on the street. But I tell you straight that they beat me in Moskovich's presence and on his orders."[175]

Moskovich initially denied any involvement in the arrests of those evading forced labor, then admitted that he had informed the Romanian police about such people in "a few cases" and eventually contended that he had done this "only on one occasion".[176] Ultimately, he had only informed on "some 10-12 Jews" who were unwilling to work, Moskovich maintained.[177] Once more, he said that the Jewish council had been involved as well:

> "The community members wrote to me as the head of the labor department that some Jews refused to work, after which I wrote about that to the police. In my letter to the police chief, I wrote that these people do not want to work and asked him to force them to work."[178]

Moskovich explained his actions as an attempt to guarantee that the burden of forced labor was equally distributed among the Jews in the ghetto: "No I do not consider this to be treason, I just wanted them to teach the people that they have to work like everyone else."[179] Arguing from this standpoint, Moskovich also denied any preferential treatment for Romanian Jews from his side: "All the Jews who were in the Ghetto did the same work […]."[180]

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[173] Ibid., p. 193–194.
[174] Ibid., p. 127–128.
[175] Ibid. In a later testimony, recorded after Moskovich had already been sentenced, Reznik told investigators that he was "an invalid of the first group" and that he became disabled "in the war of 1918". Reznik also told investigators that Moskovich ordered Romanian soldiers to beat him on multiple occasions. Once, it was the dreaded Parapan who beat him with a whip on Moskovich's orders. See p. 191–192.
[176] Ibid., p. 57, 96-98, 106-107.
[177] Ibid., p. 137–138.
[178] Ibid., p. 64–65.
[179] Ibid.
[180] Ibid., p. 64–65, see also p. 55.

The accused also claimed that he had only been aware that the Romanians sometimes warned dodgers and escorted to the labor sites, and sometimes arrested them for 24 hours.[181] He claimed that the Romanians did not beat these people.[182] When confronted with witnesses who testified to the contrary, Moskovich said that he "[…] only here and now during the confrontation learned from the witnesses that they were beaten up ."[183] He accepted that their suffering was partially his "fault" and called informing the police "a mistake".[184] Yet regarding another accusation he faced, Moskovich never diverted even an inch from his initial position – he sternly denied that he had ever ordered the Romanian police to beat anyone.[185]

Jews confined in the Balta ghetto were not only forced to work in Balta, but also sent to other places. Witnesses also said Moskovich compiled lists of ghetto inmates designated for deportation from the ghetto, as ordered by the Romanians.[186] Close destinations were the Obkhodnaia train station, where Jews had to build railway tracks, and the village of Perelety, where they had to help construct an airbase.[187] Some 100 people were sent to Obkhodnaia late in 1943.[188] The number of individuals deported and the timing of the deportations to Perelety is less clear in Moskovich's casefile.[189]

Witnesses provided much more information about the deportations to Nikolaev which Moskovich had allegedly helped organize in 1943.[190] Those designated for deportation had to report to the building of the ghetto's Jewish administration.[191] Since Nikolaev was under German control, ghetto inmates were aware that going there probably meant that they were being "condemned to certain death", as witness Groizen put it.[192] Thus, many did not want to go and when, according to witness Tokman, "[…] many youths went into hiding from this work, Moskovich gave the order to go by night and find those who were hiding".[193] Their fears were not unwarranted – many did not return from Nikolaev to Balta.[194] One eyewitness who was sent to Nikolaev with 200 others made the dangerous decision to run away, "seeing that the Jews were dying in large numbers of

[181] Ibid., p. 57.
[182] Ibid., p. 106–107.
[183] Ibid., p. 137–138.
[184] Ibid., p. 89-92, 96-98.
[185] Ibid., p. 137–138.
[186] Ibid., p. 40-41, 201-202.
[187] The distance to Perelety as given in: CREANGĂ/KRUGLOV: Balta, p. 598. We measured the distance to Obkhodnaia using Google maps.
[188] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 37-39, 40-41.
[189] Ibid., p. 40-41, 43-44, 187-188.
[190] Ibid., p. 26, 36, 40-41, 43-44, 124-126, 129-131, 132-134, 193-194, 195-196.
[191] Ibid., p. 189-190, 193-194.
[192] Ibid., p. 201–202.
[193] Ibid., p. 124–126.
[194] Ibid., p. 36, 189-190.

hunger there".[195] Nikolaev, however, was not the only place were death loomed over the deportees. Even at the nearby Perelety airbase, the Germans shot some Jews, including the brother of witness Ganis.[196] Moskovich's involvement in organizing these deportations, which were ultimately deadly for many of those he designated, caused great indignation among the witnesses.

Moskovich initially disputed that he had played any role in deporting ghetto inmates to other places.[197] He later conceded that he had facilitated the deportations to Nikolaev, designating who had to go.[198] Moreover, when asked about his regular trips to other ghettos in the Balta district, Moskovich described a wide range of responsibilities, again highlighting positive aspects:

> "I inquired about the lives of the Jews who were held there in the ghettos. I helped them financially, with medical supplies and food. I monitored the proper distribution of clothing and food to those in need. I asked how the Jewish population worked, how much they were paid for their work and whether the police and the gendarmerie were not harassing them."[199]

Moskovich also confirmed the accusation that he was involved in issuing permits to enter the city but said that this was directly linked to his duties as head of the Jewish labor bureau: "Yes, I used to go to the police to sign permits for people in the ghetto who had to go to work in the city. For other matters I was not there."[200] Moreover, he contended that he had to sign permits for Jews who wanted to relocate from one place in the Balta district to another.[201]

Recruiting people for forced labor in and beyond Balta and ensuring work discipline were Moskovich's core tasks as the head of the Balta district labor bureau. Nevertheless, his prerogatives allegedly soon exceeded the ones nominally associated with his position. One witness claimed that Moskovich issued the permits for ghetto inmates to enter the city.[202] Many other witnesses brought forward accusations that concerned the distribution of material aid in and beyond the ghetto.

Across the board, witnesses testifying against Moskovich ascribed him a pivotal role in the distribution of aid and supplies in the ghetto.[203] This included allocating supplies to the orphanages, as Evgenia Tokman, doctor of orphanage Nr. 1, specified.[204] Moskovich's competences in aid distribution also extended to the other ghettos throughout the Balta district.[205] As one witness put it: "Without Moskovich nobody could hand out any of the food, clothes etc. […] All things sent

[195] Ibid., p. 193–194.
[196] Ibid., p. 187–188.
[197] Ibid., p. 60.
[198] Ibid., p. 93-95, 139-140.
[199] Ibid., p. 96–98.
[200] Ibid., p. 59.
[201] Ibid., p. 32.
[202] Ibid., p. 67–70.
[203] Ibid., p. 36, 76-78, 191-192.
[204] Ibid., p. 124–126.
[205] Ibid., p. 40-41, 42, 43-44.

from Bucharest were addressed to Moskovich, who distributed them subsequently."[206] CER sent supplies from Bucharest, including "money, clothing, food, medicine, dishes etc." and these supplies began to arrive in Balta from March 1943 on.[207] Almost universally, witnesses were highly critical of the way this aid was distributed, and blamed Moskovich for the failures in allocating the aid.

First, witnesses expressed indignation that far from only reaching the Jews in need as the intended addressees, the supplies often ended up in the hands of Romanian officials. According to witnesses, police, gendarmerie, and other Romanian officials regularly "requested" clothes and other articles from the supplies, and Moskovich granted those requests.[208] Interestingly, only one witness testimony contained even the faintest hint about whether Moskovich had the chance to deny such requests in the first place. Thus, witness Stoliar testified:

> "According to Moskovich's records, about 15% of the items destined for the Jews of the Balta ghetto went to gendarmerie and police officers, their concubines, and other free ranks ("volnye chiny", *WS*). Even though the Jewish council members told Moskovich that things should go only for their intended purpose, to poor and needy Jews, Moskovich said there was nothing he could do."[209]

If other witnesses pondered this question, their thought process did not find its way into their interrogation protocols. What makes the question even more valid is the fact that several witnesses identified the dreaded "butcher" Parapan as one of those who took goods intended for the Jews – probably someone it was not easy to say no to.[210] Moreover, the question whether such "presents" placated the Romanians and spared the ghetto inmates additional harassment is not discussed in the protocols. In such matters, witnesses generally ascribed a high degree of agency and independence to Moskovich. Only witness Iampol'skii was more cautious: "I cannot say that Moskovich was squandering Jewish valuables on his own initiative."[211]

While the Romanians could take what they wanted, Moskovich supposedly denied ghetto inmates' requests for aid on a regular basis.[212] Adding to the severity of these accusations was the fact that among those denied aid were the children and youths in the two orphanages.[213] Witnesses from among the orphanage staff blamed the often-difficult conditions there on Moskovich's alleged neglectful attitude.[214] The situation was similar for the Jews who returned from Nikolaev in

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[206] Ibid., p. 43–44.
[207] Ibid., p. 37–39.
[208] Ibid., p. 37-39, 40-41, 43-44, 110-112, 116-119, 120-123, 124-126, 191-192.
[209] Ibid., p. 110–112.
[210] Ibid., p. 110-112, 120-123.
[211] Ibid., p. 67–70.
[212] Ibid., p. 26, 33, 79-81, 82-84, 116-119, 127-128.
[213] Ibid., p. 113-115, 116-119, 120-123.
[214] According to one witness, the orphans were sick, hungry and had neither bed sheets nor underwear. Ibid., p. 124–126. Witness Bliuma Bubis, who was a volunteer at one of the orphanages, described the situation in quite different

a desolate state.[215] Witnesses claimed that Moskovich's neglect resulted in deaths both among those returning from Nikolaev, as well as in the orphanages.[216]

The orphanages were a focus point for the push "from below" to punish Moskovich, their staff and patrons forming a small survivor network. Five employees of the orphanages testified in Moskovich's case.[217] Besides the staff members, one of the orphans, Vilia Efimovich Ziper, also testified against Moskovich.[218] Interestingly, Ziper did not appear to his pretrial interrogation alone. According to the protocol "the head of the orphanage, Ira Nesterovna Chebanenko" accompanied him, as did another orphan, Grisha Kiliminik.[219] In a letter witness Smirnova (Moskovich's former landlady) wrote to the investigators, she claimed Grisha Kiliminik and other orphans had told her that "if Moskovich were to appear before them now, they would settle scores with him as he deserved."[220] That Ziper did not appear at the NKVD alone makes sense, since he was born in 1930and not yet of legal age. However, it also shows that the orphanage staff was active in seeking retribution even beyond testifying themselves. A significant drive towards punishment and retribution is also apparent in a letter the orphans and staff of one of the ghetto orphanages sent to a former patron. Mikhail Aibshits had been mobilized into the Red Army straight from the orphanage and received said letter when he was at the front. The letter contained the call "Do not forget to take revenge on the fascists."[221] It appears orphans and staff were trying to do their best to achieve this goal locally, too, and that in the absence of the Romanian perpetrators, Moskovich became a prime target for their efforts.

Almost universally, witnesses agreed that the death and suffering resulting from Moskovich's neglect of the ghetto population was unnecessary, and that Moskovich could have helped those in need.[222] Witnesses pointed out that supplies had been amassed in the Jewish administration's storage in significant quantities, but were not handed out to the Jews in Balta.[223] When the Red Army advanced, retreating Axis troops raided the storehouse (variously identified either as the

terms: "Materially the children were provided for not badly. There was service personnel from among the Jews, there was even medical aid, they were fed three times a day, and, as I know, in my presence the children were twice given clothes and other things." See pp. 72-73.

[215] Ibid., p. 73–75.

[216] Ibid., p. 73-75, 124-126, 116-119.

[217] Ibid., p. 71-72, 113-115, 120-123, 124-126, 132-134.

[218] Ibid., p. 36.

[219] Ibid.

[220] Ibid., p. 44.

[221] Obshchestvo Evreiskoi Kul'tury im. E. Shteinberga/Assotsiatsiia Uznikov Fashistskikh Getto i Kontslagerei/Gosudarstvennyi Arkhiv Chernovitskoi Oblasti: Liudi ostaiutsia liud'mi. Svidetel'stva uznikov fashistskikh lagerei-getto (vol. 4), Chernovtsy 1995, p. 12.

[222] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 33, 36, 40-41, 43-44, 82-84, 85-88, 116-119, 120-123, 127-128.

[223] Ibid., p. 33, 43-44, 132-134.

Romanians, as the Germans, or as both).[224] Their haul was apparently considerable and consisted at least of "several cars full of food" – food the ghetto inmates would have liked to eat.[225]

At least some of the witnesses were aware that the supplies in the ghetto's storage were probably designated for other ghettos in the Balta district.[226] But as a rule, witnesses showed little interest in whether the supposed hoarding was just an effect of problems with distribution, rather than a result of willful neglect. The questions if, when and how the supplies had been meant to be distributed among the other ghettos in the district remains opaque in the witness testimonies. So does the question of how the approach of the frontline affected such plans. For most witnesses, the issue was simple: food and clothes were lying there, so why were people in the ghetto hungry and half-naked?

When it came to the management and distribution of aid, Moskovich confessed that he had been involved. However, he shifted the responsibility towards the Jewish council, albeit without discrediting the council's work in this field. He described his part in this as "supervis[ing] how the ghetto's primaria (i.e. the Jewish council, *WS*) distributed food, clothing, tools, which arrived from the official Jewish central in Romania, as support of the Jews in the ghetto."[227] Moskovich claimed that he managed the storages where the aid arriving from Bucharest was kept.[228] Initially, the deliveries had also been addressed directly to the Jewish council, before the aid was eventually sent to him, Moskovich said:

> "From January 1943 to October 1943, all aid for the Jews in the ghetto went exclusively through the ghetto primaria, which received and distributed everything. From October 1943 until the moment the ghetto ceased to exist, all aid received for the Jews, except for food, went to the labor department of the Balta district. I had nothing to do with the distribution of foodstuffs, but I know that foodstuffs were distributed to members of the primaria […]".[229]

Moskovich told the interrogators that individual Jewish council members had accused each other of misappropriating food ("100 grams or 200 grams") but cautiously added that he had "not checked these facts".[230] The accused also told interrogators that besides the general aid intended for the ghetto population, CER had sent further supplies specifically for the orphans.[231] Moskovich claimed that the Jewish council was responsible for distributing all of these supplies, but he did not try to discredit their efforts – the children had really received these things, he said.[232]

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[224] Ibid., p. 33, 37-39, 40-41, 116-119, 129-131, 132-134.
[225] Ibid., p. 116–119.
[226] Ibid., p. 37-39, 40-41, 42, 43-44.
[227] Ibid., p. 30–31, see also p. 64–65.
[228] Ibid., p. 56, 59.
[229] Ibid., p. 108–109, see also p. 28–29, 137–138
[230] Ibid., p. 108–109.
[231] Ibid.
[232] Ibid., p. 27, 137-138.

Regarding the fate of the returnees from Nikolaev, Moskovich claimed that these people received as much help as possible:

> "Concerning the moment when they came back from Nikolaev, […] and they really arrived naked and sick, with open wounds, in a terrible state, […]. When the people began coming in from Nikolaev there were already drugs in the pharmacies as well as in the hospital, that was in February 1944, and medical aid was provided as much as necessary for recovery. These people received food from the storages, such as noodles, and from the primaria's [Jewish council's, *WS*] storage potatoes, fat and other necessary foods were provided. There were cases of death on the road, in the city of Balta and in the hospital."[233]

By pointing out that people died "on the road, in the city of Balta and in the hospital" Moskovich underlined that some of them were in such a bad shape so that all help came too late – and that their deaths could therefore hardly be his fault.

Moskovich thus denied the accusations that he was responsible for sickness, malnutrition and lack of clothing in the Balta ghetto. But he admitted that it had been his responsibility to distribute the aid further in the district, and even beyond. Again, his account of the situation when the Jews returned from Nikolaev is instructive:

> "When the people came back in winter, there were in fact clothes in the storages, but these clothes belonged to Golta [the Golta ghetto, *WS*], Iampol' and Tul'chin, and I could not hand them out to those who had arrived."[234]

Thus, Moskovich was responsible not only for distributing aid within the Balta district, but even beyond, to other districts such as Golta. Moskovich also pointed out the very dilemma witnesses had not considered in their testimonies – the Jews in the Balta ghetto bitterly needed all the supplies in the storages but taking them would have been at the expense at Jews in other ghettos.

As in the witness testimonies, the raiding of the community's supplies also cropped up frequently during Moskovich's interrogations. Soviet officials' displayed such great interest in the ghetto's supplies not only because these supplies were lost for the ghetto inmates, but also because they were lost for the Soviet state. According to Moskovich, when he left Balta with the retreating Romanians and the other Jews, he "handed 150.000 lei and 8.000 marks to a local Jew, the cashier of the Jewish community Gurfinkel Solomon, who had stayed at his previous place of residence, about which I have a signed confirmation from him."[235] Besides the money, Moskovich claimed to have "handed over the keys to the clothing storage to the primar of the Jewish community [head of the Jewish council, *WS*] Rubinshtein Pinkos [sic]. The storage was raided by the Germans."[236] Witness Stoliar confirmed this version of events but added an important detail regarding the

[233] Ibid., p. 139–140.
[234] Ibid.
[235] Ibid., p. 26.
[236] Ibid.

money, which was "[…] subsequently handed over to the organs of Soviet power."[237] It is doubtful whether these organs then used the funds to support the Jews who they had liberated from the ghetto. Accusations of misappropriation and misallocation such as those against Moskovich thus sometimes also directly concerned the interests of the Soviet state. In the case of the Shargorod ghetto, Soviet officials even incarcerated the former head of the Jewish council to force him to surrender the Jewish community's supplies.[238] The authorities' interest in the lost supplies should therefore not be mistaken for a purely humanitarian one.

Soviet Jews among the witnesses also accused Moskovich of chauvinism. Allegedly, he had treated the local Jews worse than the deportees from Romania. Such accusations mainly concerned the distribution of aid among the ghetto inmates.[239] Notably, of the 20 witnesses testifying against Moskovich during the pretrial investigation, 16 were born on Soviet territory, and only three were born on Romanian territories. Of the Soviet Jews, 13 were directly from Balta. Accusations of preferential treatment for Romanian Jews are absent from the testimonies of those belonging to that group.[240] Everybody who accused Moskovich of such behavior was born on Soviet territory.[241]

Moreover, one witness claimed that Moksovich had also designated ghetto inmates for deportation along those lines.[242] However, that particular witness described the preferential treatment of Romanian Jews as a secondary effect of stratification conflicts. Allegedly, "the Jews from Bessarabia had many valuables and gold", which enabled them to bribe their way out of being deported – unlike the local Soviet Jews.[243] Caution is advised here. Accusations of extortion are almost completely absent from the other testimonies and thus appear ill substantiated. Thus, whatever else Moskovich might have done, he most likely did not extort bribes for preferential treatment.

Adding to the perception that Moksovich was serving only the Romanian, rather than all the ghetto's Jews, was the fact that he left Balta with the evacuating Romanian troops.[244] Witnesses blamed the fact that the Axis raided the supplies on this "desertion" – had Moskovich not abandoned ship, the implication was, the goods could have reached the Jews after all. Thus, witness Stoliar claimed that

> "Moskovich had a central storage where all the things for all of Transnistria were stored. Around two or three weeks before the Red Army's advance into Balta, the Romanian

[237] Ibid., p. 110–112.
[238] SCHNEIDER: From the ghetto, p. 90.
[239] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 82-84, 124-126, 127-128, 129-131.
[240] Ibid., p. 37-39, 67-69, 113-115.
[241] Ibid., p. 82-84, 124-126, 127-128, 129-131.
[242] Ibid., p. 129–131.
[243] Ibid.
[244] Ibid., p. 33-35, 35-36, 40-41, 43-44, 73-75, 110-112.

> authorities evacuated and Moskovich with them. Two days after Moskovich's departure the storage that he had left behind was raided and torn apart by Romanian-German soldiers, who demanded the key from Rubinshtein, with whom Moskovich had left it."[245]

Moskovich offered a convincing explanation why he had left Balta with the retreating Romanian gendarmerie, and why he had returned. According to Moskovich, he did not want "to be accused of fleeing from 'Transnistria' upon return to Romania", and therefore reached an agreement with the "gendarmerie chief major Fogashanu".[246] Moskovich also pointed to the mortal danger that the retreating German troops posed for any Jews remaining in Balta. When the gendarmerie finally left, Moskovich accompanied them, as did some 80 other Jewish deportees on foot and on carts. However, the road ended for those Jews once they reached the Slobodka village (in the Kodyma rayon, some 20 kilometers east of Balta and not to be mistaken for the suburb of Odessa). There, the gendarmerie ordered them to return; otherwise, the gendarmes would shoot them on the spot.[247] Colonel Nica himself gave that order.[248] Moskovich claimed that he alone was offered to further evacuate with the gendarmerie, but that he declined since he did not want to "throw these Jews to the mercy of fate".[249] His suspicions were on point: On the way back to Balta, the Jews were attacked, robbed and some even shot by people Moskovich referred to as "'volunteers'", who used the power vacuum left by the retreating Romanians for their own violent ends.[250] Moskovich's account of his departure from Balta was coherent and plausible but it was still his word against Stoliar's.

However, testimonies such as Stoliar's are highly problematic for researchers trying to make sense of what had transpired in the Balta ghetto. After all, witnesses as Stoliar had themselves held various positions in the ghetto's Jewish administration or had worked in administrative jobs for the Romanian authorities. In the investigation and trial of Moksovich, there are several such witnesses. Markovskii had been the Jewish council's bookkeeper, Gershkovich served in the council's committee on aid distribution, Paskhover had been a brigadier, and Stoliar the head of the council's production department, as well as one of Moskovich's administrative assistants.[251] Talisman's position was not specified, but his intimate knowledge of conflicts between the Jewish council and Moskovich suggests that he served in the council.[252] Iampol'skii testified that "during May-June 1943 [he] worked at the production warehouse of the profectorate, and during the last time I worked as a scribe for the secretary of the Batla district court", which was also likely to raise a

[245] Ibid., p. 40–41.
[246] Ibid., p. 26.
[247] Ibid.
[248] Ibid., p. 66.
[249] Ibid., p. 26.
[250] Ibid. It is unclear who exactly these people were.
[251] Ibid., p. 79-81, 37-39, 85-88, 40-41.
[252] Ibid., p. 43–44.

Soviet investigator's eyebrow.[253] Moreover, witness Iampol'skii was the son of Asir Iampol'skii, the second head of the Jewish council, which added another layer of interest and potential bias, namely deflecting any blame from his deceased father and shifting it to Moskovich.[254]

We face an almost classic dilemma here: On the one hand, these witnesses' own involvement in the administration of the ghetto afforded them a privileged access to detailed information, which "regular" ghetto inmates lacked. Such access makes their testimony a valuable source of information for aspects such as forced labor recruitment, deportations, and aid distribution. On the other hand, these witnesses can hardly be called disinterested – they themselves faced the pressure of potential criminal prosecution and had good reason to shift the blame on Moskovich.

And this they did.[255] Especially Stoliar's testimonies stand out here. Consider the following excerpts from his depositions:

> "I want to introduce some clarity concerning this question. A community [Jewish council, *WS*] was created in the ghetto, which Rubinshtein headed. Furthermore, there was the labor department, the chief of which was Moskovich. All demands for labor force from the local occupation authorities were addressed to Moskovich and via the community the necessary amount of people was allocated to the authority of Moskovich. This was the limit of the community's functions. I have to add that thanks to the authority that Moskovich enjoyed among the occupiers, as a matter of fact he ruled the whole ghetto, and Rubinshtein was seen as the leader merely on paper, because Moskovich took everything in his hands."[256]

Stoliar also claimed that the members of the Jewish council had pleaded with Moskovich to provide funds for the orphanages, but that Moskovich had denied such requests.[257] Similarly, according to Stoliar, the Jewish council had demanded from Moskovich that Romanian officials receive no supplies intended for the Jews – to no avail.[258] Such claims sound very much like an attempt to clear oneself of any wrongdoing.

Moreover, Stoliar also offered an angle of interpretation that could easily be aligned with Soviet ideological categories, describing Moskovich a non-Soviet person and a detached foreign ruler, who chose to associate with foreign intelligentsia, rather than with the common folk:

> "When we knew that he was being summoned somewhere, then he used to tell us afterwards about it, but I cannot vouch for the veracity of his answer. Besides, he could also have been at the gendarmerie when we did not know about it, and I cannot tell you about that. Moskovich is in general a very withdrawn person ["Moskovich ochen' zamknut", *WS*], he did not associate with people who were in the ghetto, he had a specific circle of acquaintances, people who came from Bessarabia – intelligentsia. I have to add to my answer that as a person, Moskovich was

[253] Ibid., p. 67–70.
[254] Ibid. I am grateful to Helen Rubinstein for clarifying this fact, which is not one hundred percent clear in the casefiles.
[255] See the testimonies of Markovskii and Talisman: Ibid., p. 79-81, 43-44.
[256] Ibid., p. 73–75.
[257] Ibid., p. 73-75, 110-112.
[258] Ibid., p. 110–112.

> far from being one of us, a Soviet person, and therefore, the members of the community [the Jewish council, *WS*], including myself, did not trust Moskovich."[259]

The final words of this statement allude to a common Soviet formula of distancing oneself from an individual the speaker wants to describe as unreliable for the regime ("does not inspire political trust").[260]

As far as we could establish, Soviet authorities never prosecuted Stoliar for his service in the Jewish council. We could not locate a casefile under his name in the archives. Moreover, Stoliar later testified against Rubinsthein and the later protocol does not note him as either under arrest or ever having been tried (as late as November 10, 1947).[261] Conspicuously absent from this later protocol is also any mention of his role in the ghetto administration. Stoliar testified against Moskovich four times between December 1944 and January 1945.[262] There is no record under his name in the "Memory of the People" database. It is thus unlikely that Stoliar served in the Red Army to "atone" for his actions during occupation (since he was born in 1896, he was most likely simply too old to be recruited). In turn, this must have increased the pressure on him to behave in a way the investigators deemed acceptable – including the contents of his testimonies.

Instrumental considerations may also have influenced Stoliar and the other witnesses who when they described Moskovich as the all-powerful ruler of the ghetto. However, other witnesses, too, perceived Moskovich as distant and arrogant. Witness Groizen characterized Moskovich as "a hard man, very stubborn, he did not accept any backtalk".[263] Dora Moshes, who had headed one of the orphanages, bitterly complained that "[…] Moskovich considered me a small person and often did not consider it necessary to speak to me."[264] She added that in her opinion,

> "[…] Moskovich has nothing human in him. He was a very withdrawn man who thought he was above everyone in the ghetto and, as a matter of fact, he was in charge of everything, and everyone was in his charge."[265]

Moskovich's somewhat elevated and detached position is also apparent in the fact that none of the witnesses ever knew him outside of it. In other cases, witnesses related how defendants transferred into and out of functionary positions, leaving and rejoining the ranks of "common" ghetto inmates – nothing of the sort was reported for Moskovich. The stability of his role probably facilitated witnesses' perception of him as a cruel and foreign master. In Dan Mikhman's terms,

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[259] Ibid., p. 73–75.
[260] On the repetitive use of the phrase in Soviet documents dealing with the Axis occupation, see: JONES: "Every Family", p. 756.
[261] Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 75–77.
[262] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 40-41, 73-75, 93-95, 110-112.
[263] Ibid., p. 201–202.
[264] Ibid., p. 113–115.
[265] Ibid., p. 116–119.

Moskovich's position was thus the ultimate case of headship, rather than leadership (see introduction).

Faced with the host of accusations against him, Moskovich tried his best to argue his case, but the authorities curtailed his agency to do so. To ramp up his defense, Moskovich asked the investigators to summon Rubinshtein as a witness and to request from CER in Bucharest all mail he had exchanged with that organization during his tenure in the labor bureau. The Odessa oblast' NKGB declined both requests.[266] Rubinshtein, the investigators claimed, "could not add anything of substance" to the investigation – an absurd statement, given the fact that the same security organs would arrest and try Rubinshtein for his role in the ghetto in 1947 (and already had taken him into custody briefly in 1944).[267] The investigators rejected the idea of contacting CER because "the organs of state security do not maintain correspondence with bourgeois countries".[268] Thus limiting the accused's agency to defend himself, the authorities engaged in a prerogative state practice (ds11). However, there were much more important prerogative state features to the case.

## An unusual sentence for an unusual defendant – The role of prewar networks in Moskovich's case

On April 21, 1945, the Odessa oblast military tribunal heard Moskovich's case before a minimal local audience; several witnesses were present, but the defendant had to make do without legal counsel – a prerogative state feature of the trial (ds19). During the court session both the defendant and the witnesses re-iterated their versions from the pretrial investigation. However, the court did not consider anything Moskovich had said in his defense valid. The verdict stated that during his tenure as head of the "labor department of the ghettos in the Balta district", Moskovich had been "closely connected to the gendarmerie and police of the city of Balta" and enjoyed the privilege of free movement both in the city of Balta as well as in the district.[269] Also according to the verdict, Moskovich had compiled lists of ghetto inmates designated for forced labor.[270] While these things were consensus between defendant and witnesses, the court clearly sided with the latter in other aspects. Moskovich had confessed to informing the police about people evading forced labor on one occasion, but the court saw it proven that he had done so regularly.[271] Moreover, the court believed the witnesses that Romanian police and gendarmerie officers in fact had beaten them in such instances.[272] The court also accepted the testimonies of three witnesses who claimed that police and gendarmerie officers beat them on Moskovich's direct orders, and the court noted

[266] Ibid., p. 144.
[267] Ibid.
[268] Ibid.
[269] Ibid., p. 164.
[270] Ibid.
[271] Ibid., p. 156, 164.
[272] Ibid., p. 164.

specifically that witness Khananis had been "an elderly invalid of 70 years" at the time of the beatings.[273] The military tribunal also sided with the representatives of the orphanage who testified against Moskovich. Thus, the verdict claimed that "while in charge of the orphanage" Moskovich had "deliberately withheld food and clothing from the children, causing them to become malnourished and sick."[274] Referring to Moskovich's attempted return to Romania, the verdict called him a "collaborator" ["stavlennik", *WS*], suggesting he had tried to escape from the Red Army with his alleged masters.[275]

For these acts, the court sentenced Moskovich to 20 years of katorga – an unusually harsh punishment for the incriminated acts. Our overview of the decision documents in the cases of all 51 arrested Jewish council members and ghetto policemen had shown that severe sentences (above 10 years) most often correlated with the accusation of having been a *perpetrator* of violence – of having done the beating, rather than just ordering it. The correlation is even stronger if one considers only the very top of the sentence spectrum. Together with the verdicts of three other men, Moskovich's sentence forms that top. Two of those others also received 20 years of katorga, the fourth man was sentenced to death. In all three cases besides Moskovich's, the respective courts found the men guilty of beating people (of course among other quite severe allegations).[276] But nobody accused Moskovich of that. Why then, did the court find Moskovich deserving such a draconian sentence?

In the following, we argue that Moskovich's sentence indicates how Soviet security and judicial authorities' actions sometimes expressed a deep-seated distrust towards highly placed individuals and people with "big" political connections. Once contacts between a defendant and other people passed a certain threshold of political significance, they triggered Soviet officials' spy-mania and conspiracy thinking.[277] Moskovich's pre-war political biography and his connection to the governor of Transnistria himself, Gheorghe Alexianu, went far beyond this threshold. We suggest that such spy-mania is the reason why defendant Moskovich received the unusually high sentence of 20 years katorga. Accordingly, the sentence was not solely based on the law, but heavily influenced by a further implicit political categorization – a prerogative state feature (ds14). Moreover, Moskovich's case was then not so different from the fate of those functionaries with whom the Soviet had struck

[273] Ibid.
[274] Ibid.
[275] Ibid., p. 164–165.
[276] Belikovetskii Matvei Isaakovich, HDA SBU VO, D2740, p. 162. Ritter Rubin Samuilovich, D5497-o, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Chernivets′ka oblast′) (HDA SBU ChO), p. 108. Gershman Adol'f, HDA SBU, D67437, p. 189.
[277] On the structural preconditions of that thinking in Soviet governance, see: RITTERSPORN, Gabor T.: The omnipresent conspiracy: on Soviet imagery of politics and social relations in the 1930s, in: The Stalinist dictatorship, edited by Chris WARD (Arnold readers in history), London 1998, p. 260–277, here p. 264–268.

the prerogative state "frontline deal": Moskovich's prosecution, too, was conditional on extra-legal factors. Thus, Moskovich's prewar biography became a problem for him.

However, Moskovich's earlier life and his personal networks also had highly beneficial effects on his fate during the Holocaust. Moskovich's (and his wife's) personal networks allowed him to escape the Vapniarka camp, transfer to Balta and head the regional Jewish labor department there. Later, his pre-war ties to the Romanian communist underground almost saved him from the Gulag. Unfortunately for Moskovich, that help came too late to prevent his death in the Soviet camp system.

What set Moskovich apart from other defendants was his longstanding involvement with the Romanian Communist Party (RCP). According to the defendant, Romanian authorities arrested him in the first place for that involvement. Moskovich was arrested on May 28, 1941, and thus even before Romania invaded the Soviet Union on Germany's side.[278] As their main reason for taking him into custody the authorities stated that he had "defend[ed] communist trials over the course of 13 years".[279]

During his first interrogation with Soviet investigators, Moskovich laid out in detail his path into the RCP and the interwar communist underground in Romania. In 1928, after finishing law school and his military service, Moskovich came into contact with Lucreţiu Pătrăşcanu, one of the founding members of RCP and one of its most influential figures until 1948.[280] From 1928, Moskovich began to work for RCP, providing them with information from his judicial practice and defending communist activists.[281]

Such legal counsel was bitterly needed by RCP. After all, the party was illegal since 1924 and Romanian authorities persecuted the communist movement "with great brutality".[282] In late December 1931, Moskovich got accepted into the party.[283] Moskovich was clearly not lacking in conviction, since, as one scholar put it, "[…] joining the RCP during the interwar period was an

[278] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 16.
[279] Ibid.
[280] Ibid., p. 19–20. The biographical appendix in Levy's book on Ana Pauker provides the main stages of Pătrăşcanu's career: "appointed secretary of state, and minister without portfolio in August 1944; member of the Romanian delegation at the armistice negotiations in Moscow in September 1944; appointed Minister of Justice in November 1944; member of the Central Committee of the RCP 1945–48; member of the Politburo 1946–47". LEVY, Robert: Ana Pauker. The rise and fall of a Jewish Communist, Berkeley, CA 2001, p. 248–249.
[281] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 19–20.
[282] HAUSLEITNER, Mariana/HAZAN, Souzana/HUTZELMANN, Barbara: Einleitung, in: Slowakei, Rumänien und Bulgarien, edited by Susanne HEIM / Ulrich HERBERT / Michael HOLLMANN (Die Verfolgung und Ermordung der europäischen Juden durch das nationalsozialistische Deutschland 1933–1945, vol. 13), Berlin 2018, p. 13–96, here p. 48–49. See also: LEVY: Ana Pauker, p. 38–39.
[283] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 30.

existential choice that was bound to result in persecution and endless deprivations and hardships."[284]

Moskovich's main contribution to the cause was his work as legal counsel. The historiographic literature on the interwar communist movement in Romania corroborates Moskovich's statement that he could give "tens of examples" for cases he had defended.[285] Although Moskovich did not name him, among his clients had been Vasile Luca, who was part of the RCP "ruling quartet" after the war.[286] Another defendant who would eventually rise to national and international prominence was a certain Nicolae Ceausescu, who needs no further introduction.[287] However, Moskovich omitted his name, too.

Moskovich was going for another big name in his repertoire. A former defendant he did bring up repeatedly was Ana Pauker, another RCP activist of the first hour, who would later become the dominating figure of the postwar RCP and the world's first woman foreign minister in 1947.[288] Moskovich had been on the defense team for Pauker and the other defendants in the famous 1936 Craiova trial.[289] Moskovich claimed that he and Pătrăşcanu had defended Pauker on orders of the International Red Aid (MOPR), further cementing the point he was trying to convey to the investigators: that he was one of them, a fellow communist and fighter for the revolution.[290] After all, the Craiova trial had been one of the most important political events of interwar Romania.[291] Moreover, the Soviet propaganda campaign in Pauker's support had made her widely known in the USSR.[292]

Yet betting on Pauker was not only smart because her name was the one most likely to ring a bell even with the most provincial of Soviet investigators. Moskovich could also be confident that she was still alive. In the 1936 trial, the Romanian court had sentenced her to 10 years in prison, but she had been transferred to the Soviet Union as part of a prisoner exchange about six weeks before

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[284] TISMĂNEANU, Vladimir: Stalinism for all seasons. A political history of Romanian communism (Societies and culture in East-Central Europe, vol. 11), Berkeley, CA 2003, p. 16.
[285] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 24–25. See: DIAC, Cristina: O cotitură a destinului. Procesul lui Nicolae Ceauşescu din 1936, in: Comuniştii înainte de comunism. Procese şi condamnări ale ilegaliştilor din România, edited by Adrian CIOROIANU, Bucureşti C 2014, here p. 281–282. SEBASTIAN, Mihail: Journal, 1935-1944, Chicago 2000, p. 120.
[286] PLEŞA, Liviu: Vasile Luca în anii ilegalităţii, in: Comuniştii înainte de comunism. Procese şi condamnări ale ilegaliştilor din România, edited by Adrian CIOROIANU, Bucureşti C 2014, p. 23–76, here p. 63–68. On Luca as part of the ruling quartet, see: TISMĂNEANU: Stalinism for all seasons, p. 118.
[287] DIAC: O cotitură a destinului, p. 281.
[288] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 24–25.
[289] On Moskovich's role in the trial, see: LĂCĂTUŞU, Dumitru: Procesul Anei Pauker de la Bucureşti şi Craiova (27 februarie 1936 şi 5 iunie – 7 iulie 1936), in: Comuniştii înainte de comunism. Procese şi condamnări ale ilegaliştilor din România, edited by Adrian CIOROIANU, Bucureşti C 2014, p. 169–256, here p. 223, 229, 244, 252. Moskovich was one of 24 lawyers defending the accused. See: LEVY: Ana Pauker, p. 49.
[290] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 24–25.
[291] LEVY: Ana Pauker, p. 49–52.
[292] Ibid., p. 68.

the start of operation Barbarossa.[293] Moskovich was aware of this and pointed out to the investigators that Pauker was currently in Moscow.[294]

Regarding many of the other high-ranking communists, Moskovich could not be sure whether they were alive. He knew that as himself, Romanian authorities had arrested many of them. In addition, he had seen many of his comrades for the last time late in October 1942, in the Vapniarka camp, where the Romanians had transferred him to from Bucharest.[295] Knowing the conditions in that camp at the time of his departure from there, it was much safer not to waste the investigators' time by having them look for people who were probably dead by now – Pauker just had to appear as the safer and quicker option for gaining a high-ranking intervention on his behalf.

Another prominent figure Moskovich mentioned besides Pauker triggered at least equal interest from his interrogators: Gheorghe Alexianu, the governor of Transnistria. Moskovich's way to Alexianu lead him through the Vapniarka camp. In August 1942, the Romanians turned the Vapniarka camp in Northern Transnistria into a special camp for political prisoners.[296] Until it was dissolved in October 1943, the primary group of inmates were Romanian Jewish communists – people like Moskovich – and those the authorities considered to fall into this group.[297] Moskovich arrived in Vapniarka as part of the last major prisoner transport to the camp on September 16, 1942.[298]

According to Moskovich, he stayed in Vapniarka until October 28, 1942, "after which an order arrived from Transnistria gendarmerie inspector Iliescu, according to which I had to appear in the main gendarmerie inspection in Odessa".[299] He alone was summoned to Iliescu. His timely departure from Vapniarka probably spared him the worst the Romanians had in stock for the prisoners there. The Romanians fed the inmates animal fodder peas ("Lathyrus sativus") – which

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293 Ibid., p. 52–53.
294 Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 25.
295 Ibid., p. 17. For two examples of such would be high-ranking communists in Vapniarka, see: SIMON, Nathan: „… auf allen Vieren werdet ihr hinauskriechen!". Ein Zeugenbericht aus dem KZ Wapniarka (Veröffentlichungen aus dem Institut Kirche und Judentum, vol. 23), Berlin 1994, p. 66.
296 CREANGĂ, Ovidiu: Vapniarca, in: Camps and ghettos under European regimes aligned with Nazi Germany, edited by Joseph R. WHITE / Mel HECKER / Geoffrey P. MEGARGEE (The United States Holocaust Memorial Museum Encyclopedia of camps and ghettos, 1933–1945, vol. 3), Bloomington 2018, p. 811–813, here p. 811. SHAPIRO, Paul A.: Vapniarka: The Archive of the International Tracing Service and the Holocaust in the East, in: Holocaust and Genocide Studies 1 (2013), p. 114–137, here p. 120.
297 DEGERATU, Laura: The Camp in Vapniarka. Detention, Survival, Memory, in: Holocaust. Studii şi cercetări 8 (2015), p. 29–42, here p. 36. More precisely, the Romanians detained in the camp "[…] Jews who had been incarcerated in Romania for alleged Communist activity, Jews who were suspected of sympathizing with Communism, and Jews who had expressed interest in moving from Romania to Bessarabia and Northern Bukovina during the year-long Soviet occupation of those territories from June 1940 to June 1941". SHAPIRO: Vapniarka, p. 120. Well informed as usual, Moskovich listed these groups to his interrogators: Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 17.
298 Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 17. On the arrival on September 16 of a group by train see: DEGERATU: Camp in Vapniarka, p. 31.
299 Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 17.

are poisonous to humans.[300] Half of the 1.200 prisoners "became sick with ulcers and chronic diarrhea, of whom 110 developed lathyrism – a neurological disease caused by eating the peas – in their feet."[301] Lathyrism had long-term detrimental health effects, sometimes requiring stays in hospitals and surgeries decades after camp inmates had contracted the disease.[302]

Moskovich dodged this proverbial bullet, only to have the most powerful man in Transnistria threaten to put a literal one into him – and into thousands of other Jews. Upon arrival in Odessa, colonel Iliescu lead Moskovich directly to Alexianu. Moskovich's account of the ensuing conversation is worth quoting at length:

> "When colonel Iliescu and I entered the office of […] Transnistria governor Alexianu, the latter told me during a short conversation: Moskovich, I know you and I assign you to Balta as the head of the Balta district Jewish labor bureau, to organize the workforce to rebuild the local industry. Simultaneously he told me that upon arrival I was to tell my Jewish brethren ("svoim brat'iam evreiam", *WS*) that if they want to improve their living conditions, they should obey my orders, that I have requests from the Germans, that on the other side of the Bug River, they need workers. In that case [the protocol is probably incomplete here and "case" refers to potential Jewish insubordination, *WS*] I will send you there and you know how the Germans deal with the Jews."[303]

In a later interrogation, Moskovich couched the decisive message more directly:

> "No, I did not receive any instructions from the governor, but he warned me that all Jews should work and obey the orders and decrees of the Romanian authorities. Otherwise, on request of the German authorities, the Jews will be sent to the Germans for work, and there they will be shot."[304]

Thus, the alternative of labor or death for all Jews in the district was explicitly put to Moskovich, and the highest authority in Transnistria, Alexianu himself, put the responsibility for the *collective* "choice" the Jews had to make on the *individual* shoulders of Moskovich.

Besides referring to many people with big names, Moskovich also provided his interrogators with detailed intelligence information. Upon request, he outlined the organizational structure, tasks, and operational methods of the Romanian Siguranţa, and he did so in considerable detail. Moskovich could relate such information not only for Romania proper, but also for Balta and Transnistria. Based upon his observations during visits to the gendarmerie and police, he could identify the Siguranţa bureau in Balta, place it in the overall Romanian chain of command in Transnistria and name several agents of the Romanian secret service whom he had seen, as well as a long list of police and gendarmerie officers.[305] When his interrogators wondered how he knew so much about

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[300] DEGERATU: Camp in Vapniarka, p. 33.
[301] CREANGĂ: Vapniarca, p. 811.
[302] SHAPIRO: Vapniarka, p. 124.
[303] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 18.
[304] Ibid., p. 61.
[305] Current historiography confirms most of Moskovich's descriptions. The defendant even identified a second Romanian intelligence office in Balta, which he presumed to be a special branch of Siguranţa. More likely, that office

the Romanian secret police, he explained to them that the Siguranţa had been his main enemy when he defended communists in political trials for over a decade, and that knowing as much about the organization as possible was vital for his success and survival.[306]

Sometime after Moskovich's first interrogation had brought all this information to light, the local Soviet investigators must have decided that the man sitting before them was above their paygrade. Prerogative state mechanisms kicked in, nearly leading the authorities to stop Moskovich's criminal prosecution. The information about the odd arrestee traveled up the NKVD's organizational vertical until Ukrainian SSR People's Commissar of Internal Affairs, Riasnoi, sent a telegram to the central Moscow NKGB, telling them he would hand the peculiar arrestee over to them.[307] The order for Moskovich's transfer was issued on June 22, 1944.[308] His stay in Moscow, however, was rather short: the central NKGB sent him back on August 2, laconically noting that "[…] Moskovich does not present any operational interest for the first department of the USSR NKGB".[309] As they exchanged letters and transferred the prisoner back and forth, NKVD and NKGB involved some quite high-ranking officials into the case. Besides Riasnoi, there was also Pavel Mikhailovich Fitin, the head of the NKGB's intelligence department (the one not finding Moskovich operationally interesting).[310] Fitin sanctioned the order to send Moskovich back to Ukraine.[311]

Since such high-ranking officials were involved, the question arises of whether they just did not bother to contact Ana Pauker about Moskovich, or whether Ana Pauker did not care to intervene on his behalf. Pauker relocated from Moscow to Bucharest only on September 16, 1944.[312] But in the spring of 1944, she was already busy preparing her return to Romania, and went to "the liberated towns of Bălţi and Botoşani on the Romanian front, spending two months in the latter", before another short stay in Moscow and her eventual return to Romania for good.[313] It is thus difficult to decide whether she was physically near Moskovich when he was in Moscow. Yet institutionally, she was not far at all. The question is whether she even learnt of his arrest – and there is no documentary evidence to decide this question in Moskovich's casefile. Whatever the reasons, the intervention by Pauker that Moskovich desired so much never happened. Again, we see just how limited Moskovich's agency during the pretrial investigation was – in prerogative state

belonged to SSI, (Serviciul Special de Informaţii, "Special Service of Information") the Romanian army intelligence. See: SOLONARI, Vladimir: A satellite empire. Romanian rule in Southwestern Ukraine 1941–1944, Ithaca 2019, p. 85–86.

306 The majority of the first interrogation protocol deals with these questions: Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 16–27.

307 Ibid., p. 45–47.

308 Ibid., p. 45.

309 Ibid., p. 50.

310 PETROV, Nikita: Kto rukovodil organami gosbezopasnosti 1941–1954. Spravochnik, Moskva 2010, p. 35.

311 Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 50.

312 LEVY: Ana Pauker, p. 69.

313 Ibid.

fashion, the investigators did not put a great deal of effort in checking Moskovich's version of things (ds11).

Without the life raft on which Moskovich had apparently based all his hopes, his claims of a glorious past in the interwar Romanian communist underground remained contentious. Absurdly enough, once he was returned to Odessa and later Balta, the interrogators kept asking him about his party membership card. His interrogators were apparently deaf to Moskovich's straightforward argument that as a clandestine operation, the interwar Romanian Communist Party had introduced new members only in verbal, not in written form.[314]

Moskovich's claims that he was an underground communist activist and the meeting with Alexianu obviously posed great interest to Soviet investigators who came back to these questions during several interrogations.[315] It seems he had triggered their spy-mania. A first indictment explicitly charged him with espionage for the Romanian government.[316] In a pretrial interrogation, the investigator rebuttled Moskovich for his alleged lies:

> "Why do you conceal from the investigation your connections with enemy intelligence agencies, why do you not testify truthfully, despite the fact that a number of witnesses are exposing you? In addition, your arrival to the territory of the USSR and your subsequent settling down confirms that you had a special assignment from the intelligence agencies of the enemy."[317]

Time and again, his interrogators demanded an explanation for why Alexianu had chosen him as the head of the labor bureau and had specifically requested his transfer from Vapniarka to Balta. Moskovich denied ever having been personally acquainted with Alexianu back in Bucharest and claimed that he was merely aware of Alexianu as "a prominent lawyer" and of his legal scholarship.[318] The connection to Alexianu was supposedly an indirect one: Moskovich claimed that he was acquainted with Irina Burnaia since 1934, who later became Alexianu's mistress.[319] Moskovich also maintained that he had been allowed to write to his wife from prison in Bucharest, and assumed that it was his wife who contacted Burnaia and had her lobby Alexianu for Moskovich's transfer from Vapniarka.[320]

If that version of events is correct, Moskovich's prewar networks had a most significant influence on how the Romanians treated him during the Holocaust. His path from the initial arrest in Bucharest to the eventual transfer to Balta would never have happened were it not for his

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[314] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 25, 30.
[315] Ibid., p. 28-29, 55, 61, 62-63.
[316] Ibid., p. 59. See also p. 56.
[317] Ibid., p. 62–63.
[318] Ibid., p. 55.
[319] Ibid., p. 61. The relationship between Alexianu and Burnaia is an established fact: ANCEL: Holocaust in Romania, p. 349. DELETANT: Hitler's Forgotten Ally, p. 327.
[320] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 17, 28-29.

connections to various individuals ranging from Pauker to Burnaia. And when Moskovich found himself in the hands of the Soviet security organs, his personal networks almost determined his further fate again – with an emphasis on "almost".

On December 13, 1944, the Odessa oblast' NKGB finally undertook an attempt to obtain documentary evidence about Moskovich's communist past (a single normative state aspect of how much agency the authorities afforded Moskovich in the pretrial phase, ds11) . The officers asked the NKGB in Moscow to verify Moskocivh's claims about his party membership, his work in the communist underground and his role as defense counsel in the Pauker trial.[321] No answer to this request is contained in the casefile. Without Ana Pauker's desired intervention, Moskovich's pre-war activities could not get him off the hook, and he was not spared the following investigation and the harsh sentence. His next destination was the Gulag, another place of confinement for Moskovich in a series that began in 1941.

However, through some channel, Moskovich's comrades eventually learned about his imprisonment in the Gulag and pressed for his release. On October 22, and November 28, 1945, the Romanian Foreign Ministry addressed verbal notes to its Soviet counterpart.[322] The first note was accompanied by a letter from a "Group of Romanian Democratic Lawyers", based in "Bucharest, Palace of Justice", which this group addressed to the procuror of the USSR.[323] The authors vouched for Moskovich's character, as well as for his political convictions and activities. [324] Moreover, they politely claimed that the Soviet court must have passed its verdict based on incomplete information and offered to provide exonerating witness testimony as to Moskovich's role in the ghetto.[325] A retrial, the "democratic lawyers" contended, was justified and necessary. [326] Before the letter reached the realm of foreign-ministries and embassies, it had gone through the hands of the Romanian minister of justice – Moskovich's old comrade and fellow communist lawyer Lucreţiu Pătrăşcanu.[327] Finally, someone had heard, and finally, someone had acted.

Ultimately, the effort came too late to save Moskovich's life, mainly due to the slow workings of the Soviet judicial and penal institutions. In mid-January 1946, the USSR Foreign Ministry finally forwarded the materials from Romania to the USSR procuracy.[328] Based on a protest by that organ, the Military Collegium of USSR Supreme Court nullified the verdict and decided to re-open the

[321] Ibid., p. 105.
[322] Ibid., p. 175.
[323] Ibid., p. 176.
[324] Ibid.
[325] Ibid.
[326] Ibid.
[327] Ibid., p. 174.
[328] Ibid., p. 172.

case on September 17, 1946.[329] In November, the Odessa oblast MGB launched a new investigation and began to depose additional witnesses.[330] On December 6, 1946, two and a half years after the Soviets had arrested Moskovich and more than a year after his Romanian comrades had intervened on his behalf, the MGB issued an order to have Moskovich transferred from the Gulag back to investigative custody in Odessa.[331] Moskovich was sent from Siblag (the Gulag camp he had been detained in) on January 15, 1947 and arrived in the Odessa MGB prison on March 17, 1947.[332] Directly upon arrival, Moskovich was admitted to the prison's hospital "in critical condition".[333] A week later, he died in the prison hospital. The MGB officials writing about his death did not specify the nature of his "illness".[334] Nevertheless, it is safe to count him among the millions who succumbed to the conditions of confinement in the Gulag.

## Conclusion

The present case study provided a host of evidence of a "frontline deal" Soviet authorities struck with former ghetto functionaries, mobilizing them into the Red Army instead of putting them on trial. Despite significant pressures "from below", i.e. ghetto survivors pushing for retribution, the military goals of the war effort superseded anything else. In the immediate aftermath of the Soviet's return, justice was conditional. From some witnesses' point of view, the frontline deal probably amounted to a withheld judicial reckoning. Only if they perceived frontline service as a punishment would the deal have satisfied their needs for retribution. From many former functionaries' perspective, the frontline deal meant a chance to temporarily normalize their relationship with the Soviet state – but only by taking the enormous risks that frontline service meant.

Nevertheless, there were individuals whom the authorities did not offer such a deal. One of them was Pavel Mikhailovich Moskovich. His political past and connections severely influenced his fate both during and after the Holocaust. That he was a prominent communist lawyer in interwar Romania determined that the Romanians arrested him even before the war began and sent him to Vapniarka. His wife's connections likely also determined that Alexianu summoned Moskovich from Vapniarka and sent him to Balta. The twisted road Moskovich had been forced to walk to end up in the Balta ghetto probably also influenced how some witnesses saw him – not even as one of them, but as a foreinger closer to the Romanian occupiers than to the ghetto inmates.

These very same political connections later put Moskovich in a sort of limbo when he had to face Soviet authorities, who initially could not make head or tail of him. For them, he was too

[329] Ibid., p. 170.
[330] Ibid., p. 179.
[331] Ibid., p. 214.
[332] Ibid., p. 223.
[333] Ibid., p. 222.
[334] Ibid., p. 225.

important to ignore, but not important enough to release. Moskovich should have had a real chance that the Soviet investigators would identify him as "one of us", an important "one of us" even and release him. Yet on the contrary, he triggered the investigators' deep-seated spy-mania. A meeting with Alexianu? That was extremely suspicious. Despite Moskovich's hopes, the investigators first failed to see the "operational" significance of the man they had arrested. That Moskovich was even sent to Moscow to have the higher-ups check whether they had any use for him is a strong prerogative state feature. Moskovich's short involuntary trip to the Soviet capital suggests that the case could have been terminated without any fuzz and circumventing any legal obstacles. Yet despite Moskovich's claims about his role in the interwar Romanian communist movement and despite his broad knowledge of the Romanian security organs, nobody found any use for him. Moreover, the authorities failed to obtain the necessary information from his highly-placed comrades to identify him as someone important for the communist cause in Romania. This went on for long enough that Moskovich was convicted and eventually succumbed to the harsh conditions in the Gulag right when his comrades from Romania had finally gotten through to their Soviet counterparts and his case was finally reopened. Therefore, if Soviet spy-mania interfered, not even a communist background like that of Moskovich could save a defendant.

Thus, Moskovich's case supplements the analysis of decision documents by showing another path that could lead to one of the higher sentences. Unlike the other defendants who were sentenced to long terms of katorga or regular "corrective labor", witnesses did not accuse Moskovich of beating anyone himself. However, the diversion from the pattern was most likely not random. It was his political connections that elevated Moskovich from other defendants and these connections offer a solid hypothesis for why Soviet adjudicators judged the defendant so harshly.

Despite the prerogative state feature that investigation and trial were conditional on security concerns, the proceedings themselves followed normative state principles at least to a degree. The fact that the Soviets held the trial with a minimal local audience opened a space for witnesses to voice their experiences with the defendant and in the ghetto more generally.

# Case study 4: Balta 1947 – Terminating the frontline deal and the impact of social conflicts in the ghetto on later trials

On August 13, 1947, almost three and a half years after the Red Army had liberated the Balta ghetto, Soviet authorities arrested the former head of the Jewish council, Pinkhos Itskovich Rubinshtein.[1] As conspicuous as the time was the place where the authorities made the arrest: Bucharest, Romania.[2] The documents found on Rubinshtein, as well as those confiscated during searches in his office and his home allow piecing together his route from Balta to Bucharest.

As mentioned above, the authorities had briefly arrested Rubinshtein in 1944 and even questioned three witnesses about him, but then mobilized him into the Red Army.[3] His unit's operations brought him to Bucharest, where the Soviets found new tasks for him. On October 17, 1944, the Soviet military command of the Bucharest garrison issued a letter of recommendation for Rubinshtein, addressed to the Allied Control Commission for Romania (in the following: ACC) in Bucharest.[4] The letter apparently had the desired effect. During their search of Rubinshtein's property, the officers found his military service book, according to which Rubinshtein served as a translator in the rank of a sergeant. The ACC had issued the service book on March 1, 1945.[5] According to another document, Rubinshtein was demobilized from the Soviet armed forces in Bucharest on May 6, 1946.[6] As can be seen from the arrest protocol, Rubinshtein still worked as translator for the ACC until his arrest in 1947.[7] The defendant himself confirmed this during an interrogation.[8] Thus, his time in the armed forces opened new opportunities for him, namely continued employment in service of the Soviet government. It is highly interesting that someone who had been arrested three and a half years earlier on suspicions that he was a "traitor of the Motherland" now worked in one of its most important foreign branches. After all, in "quasi-Sovietized" Romania, the ACC was completely in Soviet hands. Moreover, the ACC was the real center of political decision at the time, not the official government.[9]

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[1] Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 4.
[2] Ibid., p. 5.
[3] See the earliest witness testimonies: Ibid., p. 45–48.
[4] Ibid., p. 9.
[5] Ibid.
[6] The respective order is listed among his confiscated possessions. As the other documents listed there, this order is not contained in the casefile; the reasons are unknown. Ibid.
[7] Ibid., p. 6.
[8] Ibid., p. 44.
[9] "In the former Axis states the Soviet-led Allied Control Commissions (ACC)— the inter-Allied organizations in charge of the implementation of the armistice agreements—were conveyor belts of Moscow's local policies with no effective resistance on the part of the Western members; in these countries the ACCs' Soviet chairmen, rather than the governments, controlled home policies." BÉKÉS, Csaba et al.: Introduction, in: Soviet occupation of Romania, Hungary, and Austria 1944/45–1948/49, edited by Csaba BÉKÉS / Dieter BACHER / Silke STERN, Budapest 2015, p. 1–28, here p. 11–12.

Between August 14 and 29, still in Bucharest, ACC officers questioned Rubinshtein four times.[10] Before Rubinshtein's arrest and first interrogations, the Balta MGB had already deposed four witnesses on August 1 and 2.[11] Only on September 26 did the ACC issue an order to send Rubinshtein to Balta and transfer his case to the Odessa oblast' MGB.[12] Survivor Mikhail Khaiter witnessed Rubinshtein's arrival in Balta and saw an officer take him to the MGB building.[13] The bulk of the investigation then took place in Balta between October 23 and November 10.[14] In addition to the three testimonies from 1944, a total of fifteen more witnesses were questioned in 1947 (two of them in Bucharest, including Rubinshtein's wife Nadezhda). On December 30, 1947, the military tribunal of the Odessa oblast' MVD troops tried Rubinshtein in a closed session and sentenced him to 10 years in the Gulag.[15] We will argue the following three main points regarding Rubinshtein's investigation and trial:

A first remarkable aspect of the investigation is that the version it established (and that the court sanctioned with its verdict) was often at odds with the version the investigation and trial of Moskovich had produced. The 1947 version overlapped with the things Moskovich had said in his defense years earlier, which the court had ignored back then. Soviet investigators and adjudicators did not resolve the emerging contradictions. Thus, while they made a somewhat credible effort to establish what had happened in each case, that effort was limited. As they had not cared to locate and summon Rubinshtein to testify in Moskovich's case, they did not care to resolve the contradictions between the information in Moskovich's casefile and the testimonies they collected against Rubinshtein. This is even more noteworthy since, as we argue, the investigators must have consulted Moskovich's investigative casefile. While the investigation was mostly evidence-driven and witness testimony was of key importance, the investigators swayed from normative state to prerogative state in how little they brought Moskovich's file in Rubinshtein's case (ds8, ds9).

As in Moskovich's casefile, in Rubinshtein's, too, the divide between local Soviet and deported Romanian Jews appears as the central fault line for social conflicts in the ghetto. Supposedly, the deportees had used their positions in the ghetto administration to the advantage of their own group and the disadvantage of the other. Triangulation with oral history accounts and similar sources allows questioning such claims of preferential treatment for Romanian Jews in the Balta ghetto. A much more generous treatment of defendant Rubinshtein by several surviving local Jews in their

[10] Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 18-23, 26-33.
[11] Ibid., p. 49–58.
[12] Ibid., p. 92.
[13] KHAITER, Mikhail, Interview 35392. Interviewed by Artur Fredekind. Visual History Archive, USC Shoah Foundation 19.08.1997, https://vha.usc.edu/viewingPage?testimonyID=36167&returnIndex=0#, last accessed July 27, 2020, segments 62–63.
[14] Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 34, 75.
[15] Ibid., p. 129, 142-143.

memoirs and interviews once again highlights the accusatory bias inherent in the investigation and trial documentation. That bias is exacerbated by a certain potential for self-selection on part of the witnesses – testifying was a choice, and those with an ambivalent stance towards the defendants potentially chose not to make it. We conclude that claims of preferential treatment and discrimination along the fault line of regional groups should be verified by triangulation with other sources, namely those of CER and the Jewish councils themselves.

Moreover, for individuals like Rubinshtein, the danger of criminal prosecution kept looming even long after the authorities had forced the "frontline deal" upon them. Just as Soviet security officials could look the other way in 1944, they could refocus their attention years later. "Atoning" at the frontline for one's actions during occupation remained a precarious trade-off that was potentially subject of later revisions. Just because you fought for the Motherland did not mean that its agents would not come for you eventually. While it is difficult to prove with certainty, Rubinshtein's case suggests that the reasons for the renewed attention the authorities afforded to him were political: He was suspected of wanting to emigrate to the US, a cardinal sin for any Soviet citizen. Herein lies a core prerogative state feature of the investigation and trial. Thus, for former functionaries, their time in the ghetto became a sword of Damocles, and the authorities were all to ready to cut the thread at the first sign of political disloyalty. Having served on a Jewish council thereby turned into just another entry in the grand register of possible "kompromat" – stuff the regime could use against one. And not even one's contribution to the victory in the Great Patriotic War would keep the regime from using that "kompromat" when it deemed doing so necessary. Let us review the accusations against Rubinshtein, his defense and the way the authorities handled both in more detail.

## Witnesses' accusations, Rubinshtein's defense and Soviet authorities' investigation strategy

The fact that Rubinshtein had been the head of the ghetto's Jewish council was not a contentious point, but the mode of his appointment was. During the pretrial investigation, as well as in court, both witnesses and defendant agreed on the position Rubinshtein had held – head of the Jewish council.[16] They also agreed that Rubinshtein was on the council since its creation, that the leading council position became vacant when his father-in-law Iampol'skii died and that Rubinshtein succeeded him.[17] There was less consensus on how he wound up in the position. Witnesses assumed that he was simply appointed by the Romanian authorities.[18]

[16] Ibid., p. 18-21, 47, 48, 51-52, 53-55, 56-58, 59-60, 63-64, 65-66, 67-68, 130, 132, 133, 134.
[17] Ibid., p. 18-21, 34-37,42-45, 45-46, 51-52, 132, 133.
[18] Ibid., p. 53-55, 71-72, 73-74.

Soviet officials in charge of the case deemed the question relevant. The military tribunal asked the witnesses present at the trial whether the population had elected Rubinshtein specifically or the Jewish council in general. The witnesses denied that the population had had any say in the matter.[19] The court thus attacked the defendant's legitimacy in his former role of a ghetto functionary, stressing the point that Rubinshtein had been part of a ghetto headship rather than a leadership and that he owed his position to a logic of delegation, rather than representation (see introduction).

Rubinshtein's account was quite different. During the pretrial investigation, he asserted that the population had in fact elected the Jewish council.[20] In court, Rubinshtein contended that the council was created "based on the experience of the Jewish pogroms of 1905–1907", suggesting a bottom-up rather than a top-down mechanism as well.[21] And regarding his own path into the position of council head, he claimed that the other council members had elected him, thereby emphasizing an element of legitimate procedure.[22] In his pretrial testimony, former Jewish council member Stoliar confirmed that the council had elected Rubinshtein.[23] However, Stoliar did not mention any elections and simply spoke of Iampol'skii's (and through him the council's) appointment by the occupiers.[24] That version is consistent with the documentary evidence such as colonel Nica's order for the establishment of the ghetto discussed above.

Interestingly, the witnesses associated a variety of tasks with the position and ascribed a great deal of influence on ghetto affairs to Rubinshtein. Note that the witnesses testifying in Moskovich's case had painted Moskovich as the highest Jewish authority in the ghetto, and not Rubinshtein. As discussed above, Moskovich had supposedly expanded his sphere of influence by pushing the Jewish council to the background. The contrast between these two versions was a stark one and it is striking how little attention the interrogators in Rubinshtein's case paid to Moskovich and the labor bureau – the interrogators rarely even asked the defendant or the witnesses about them.[25]

Contrary to the idea of an all-powerful Moskovich, the investigators were not inclined to view Rubinshtein as someone without influence and even suggested he had acted out of questionable political motives. During the pretrial investigation, Rubinshtein's interrogators insinuated a political

[19] Ibid., p. 131, 133.
[20] Ibid., p. 34–37. "At the time when the entire Jewish population was in the ghetto, in September 1941 a typhus epidemic broke out in the ghetto due to the intolerable living conditions, where no medical care was given to the population. As a result, large numbers of corpses were strewn about the streets. This situation forced the prefect of the Balta district, Nika, to enable the population of the ghetto to elect a Jewish ghetto committee whose task was to render all possible assistance to the Jewish population of the ghetto."
[21] Ibid., p. 134.
[22] Ibid., p. 18–21.
[23] Ibid., p. 75–77.
[24] Ibid.
[25] Ibid., p. 38, 42.

angle to his role as the head of the Jewish council. The accused deflected this attack, and the exchange is remarkable:

> "Question: Explain how, had you not enjoyed the occupiers' political confidence, could you then have been in that position [of "primar", i.e. head of the Jewish council, *WS*] for more than two years?
>
> Answer: Logically, yes, if I had not enjoyed the occupiers' political confidence, I could not have been the ghetto's primar, but for me, life and logic diverged ["zhizn razoshlas' s logikoi", *WS*] for two years and three months, and until the occupiers were driven out of Balta, they kept me in the position of primar."[26]

That "life and logic diverged", that the time in the ghetto was a world turned upside down, where other rules applied, if any, was a point Rubinshtein never again made so explicitly – or at least it was never again recorded in a protocol. Yet the other things he said in his defense to the various accusations convey the absurdity of his situation at least implicitly. While the authorities eventually stopped trying to fashion Rubinshtein into some kind of Romanian agent, their attacks on his legitimacy as head of the Jewish council remained. Rubinshtein did his best to counter these attacks.

As we discuss below, witnesses accused Rubinshtein of favoring the deportees from Romania in the ghetto and discriminating against the local Soviet Jews. Thus, the composition of the Jewish council and the representation of the local Jews in the council are linked to the Jewish administration's potential legitimacy among the ghetto inmates. When Rubinshtein listed the council members during a pretrial interrogation, he named nine council members. Two of them were Jews from Balta, two others were Soviet Jews from other regions. Rubinshtein identified another council member as a Bessarabian and did not comment on the regional background of the remaining four.[27] Even if we assume that these four men were all from Bessarabia or Bucovina, Soviet Jews would still have made up almost half of the council.[28] As our discussion of the "frontline deal" had shown, the situation was similar for the ghetto police, where many Jews born in Balta served. Pushing this implicit claim to legitimacy further, Rubinshtein pointed out that even the chief of the police force had been a Jew from Balta, which Stoliar's testimony confirms.[29] Thus, while many witnesses described Rubinshtein (and by extension the ghetto administration) as an alien force, the defendant himself tried to prove the opposite – that the Jewish council had bridged the divisions within the ghetto population.

The question of elections versus appointment cropped up again when the investigation concerned the ghetto police. Again, the military tribunal was the driving force behind the

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[26] Ibid., p. 26–30.
[27] Ibid., p. 34–37.
[28] That the council was mixed was already discussed in the literature based on survivor testimony: SHACHAN: Burning ice, p. 261.
[29] Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 34–37, 75-77.

discussion, asking several witnesses if the police was elected or just appointed by Rubinshtein. The witnesses agreed that Rubinshtein had created the police, and that the population was not involved.[30] While the defendant admitted that the Jewish council had created the police force, he also claimed that each section of the ghetto had chosen their own policeman.[31] The Romanian prefect Nica had then sanctioned the creation of the police after the fact, Rubinshtein said.[32] Stoliar confirmed that the Jewish council had decided to set up the ghetto police and had appointed a police chief, but the question of how the other policemen were recruited was not discussed during his testimony.[33] Thus, concerning the ghetto police, the same pattern emerges: the court tried to prove that Rubinshtein's authority was delegated solely by the Romanians, and Rubinshtein claimed that he was a representative of the population.

Both the witnesses and the defendant described a close nexus between the ghetto police and mobilizing the ghetto population for forced labor, albeit with different implications. According to several witnesses, everyone in the ghetto had to obey Rubinshtein's orders, mainly because he used the ghetto police to implement them.[34] Stoliar contended as much, but described the Jewish council as the collective source of orders the police enforced.[35] Rubinshtein confessed that it had been "the duty of the committee [Jewish council, *WS*] to observe and maintain the regime established in the ghetto by the Romanian occupation authorities", but added that the Jewish council had "explained to the population that we have to fulfill these orders in our own interest", that is to evade Romanian retaliation.[36] Besides upholding general order, witnesses primarily associated the police with forced labor recruitment.[37] At times, the police even beat those who refused.[38] Attempting to counterbalance these claims, Rubinshtein listed a variety of social services the police force had rendered, including "collecting voluntary food donations for the orphanages and the hospital", burying deceased ghetto inmates and ensuring equal food distribution.[39] However, he too described its main function as mobilizing people for forced labor.[40] The defendant told the court that initially, the Romanian police had "chased people from the ghetto indiscriminately every day" and that the Romanians often beat ghetto inmates during such raids.[41] When the Jewish council created the

[30] Ibid., p. 130, 131, 132, 134.
[31] Ibid., p. 34–37.
[32] Ibid., p. 135.
[33] Ibid., p. 75–77.
[34] Ibid., p. 47, 48, 71–72, 132, 133, 134.
[35] Ibid., p. 75–77.
[36] Ibid., p. 134.
[37] Ibid., p. 130, 131, 132, 133, 134.
[38] Ibid., p. 130, 132.
[39] Ibid., p. 34–37.
[40] Both Rubinshtein and Stoliar claimed that the police force was unarmed and did not even have a special place of confinement where it could have put someone under arrest. Thus, we once again see the semantic proximity of the terms "police" and "brigadiers". Ibid., p. 34-37, 75-77.
[41] Ibid., p. 135.

ghetto police, it mainly aimed to ensure a proper rotation of who had to perform forced labor.[42] Thus, the council's goals were to end the Romanian police's brutal incursions and to achieve an equal distribution of the burden among the ghetto population.[43] Note that Moskovich had also argued that he tried to ensure equality in the performance of forced labor. Moreover, Rubinshtein added, if individual ghetto policemen had "not fulfilled their responsibilities and occasionally used violence on the population", then the council fired them.[44]

Different evaluations aside, Rubinshtein and the witnesses testifying against him thus agreed that he had helped to organize forced labor in Balta. In 1944/1945, Soviet authorities accepted that Moskovich alone was responsible for organizing forced labor. Supposedly, Moskovich had used his labor bureau staff and the ghetto police to do so. On the contrary, Rubinshtein and the witnesses in his case accepted that the Jewish council had been involved, and that the labor bureau was not solely responsible – as Moskovich had claimed in his defense, which the authorities back then had ignored. Now, in 1947, Soviet authorities were all too ready to accept the version their colleagues had dismissed earlier, and seemingly cared little about the difference in the two legally sanctioned versions of events.

Besides the accusations that Rubinshtein had ordered the ghetto police to enforce labor discipline, at times brutally, witnesses also accused him of involving the Romanian gendarmerie, and even of beating up ghetto inmates himself. Witness Chernecher said that when he "dodged work", Rubinshtein came to his flat with two Romanian gendarmes and ordered them to beat him. Not only did they beat him "half to death", so that he "lay sick for six weeks and could not get up on [his] legs", but the gendarmes also beat up his wife.[45] Chernecher reiterated the accusation in court.[46] Perhaps even more damning were the testimonies of Boris Tsatskin and his father Shulim.[47] Both claimed that Rubinshtein had brutally beaten Boris Tsatskin when he was sick and did not go to work. When Shulim Tsatskin intervened, his son ran away.[48] Testifying in court, Shulim Tsatskin repeated the accusation.[49] Rubinshtein consequently denied any involvement in violence, be it ordering anyone to beat ghetto inmates or beating them himself.[50] Moreover, the defendant tried to cast doubt on the character of witness Chernecher, describing him as "a person who engaged in petty thefts and his sister in prostitution".[51] Driving his attack on the witness's credibility further,

[42] Ibid., p. 34-37, 135.
[43] The same dynamic is well known from the ghettos in Poland and the Baltic countries, see: TRUNK: Judenrat, p. 72.
[44] Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 135.
[45] Ibid., p. 53–55.
[46] Ibid., p. 130.
[47] Ibid., p. 63-64, 56-58.
[48] Ibid., p. 56-58, 63-64.
[49] Ibid., p. 131.
[50] Ibid., p. 26-30, 38-39, 40-41, 89-90, 132.
[51] Ibid., p. 31–33.

Rubinshtein claimed that Chernecher had wanted to join the ghetto police. According to Rubinshtein, he denied the request "because of the bad reference the committee [Jewish council, *WS*] provided" about Chernecher's character.[52] Depsite Rubinshtein's claims to the contrary and the doubt he tried to cast on the witness's credibility, the court saw it as proven that he had both ordered beatings as well as dealt them out himself to enforce labor discipline.[53]

In its verdict, the court contended that Rubinshtein had "actively carried out the instructions of the occupiers, created a ghetto police force through which he systematically coerced Soviet citizens imprisoned in the ghetto to work for the occupiers".[54] To reach this conclusion the court ignored Rubinshtein's defense about how limited his room for maneuver had been to do anything else but to carry out these instructions. According to the defendant, colonel Nica's

> "[…] orders and commands were laws for me, which necessarily had to be obeyed without objection. Insubordination to prefect Nica's orders and commands was always accompanied by abuse, beatings, arrests and shootings."[55]

For Rubinshtein, the possibility was apparently all too real. Witness Tobachnikov testified that he saw how Romanian gendarmes beat up Rubinshtein in 1943 when he failed to provide necessary number of ghetto inmates for forced labor.[56]

Besides supplying the Romanian authorities with forced laborers, Rubinshtein's orders had apparently also included designating ghetto inmates for deportations. At least some witnesses acknowledged that he had not acted on his own initiative when they levelled the respective accusations against him.[57] The extent and frequency with which Rubinshtein had fulfilled this task were a matter of contention. Mainly, witnesses accused Rubinshtein of helping to organize deportations to Perelety, Nikolaev, Balanovka.[58] The accusations were especially damning when witnesses claimed that women, children and elderly had been among those deported.[59] Moreover, two witnesses alleged that Rubinshtein had designated only local Soviet Jews for deportations and spared those from Romanian territories.[60] Witnesses mentioned varying numbers of deportees (ranging from dozens to hundreds), times of departure and percentages of survivors, but regarding all destinations, witnesses agreed that at least some of the deportees were murdered or died of sickness and starvation.[61]

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[52] Ibid., p. 65–66.
[53] Ibid., p. 142.
[54] Ibid.
[55] Ibid., p. 22–23.
[56] Ibid., p. 65–66.
[57] Ibid., p. 49-50, 51-52, 75-77.
[58] Ibid., p. 45-46, 48, 49-50, 51-52, 53-55, 56-58, 63-64, 73-74, 131, 132, 134.
[59] Ibid., p. 51-52, 56-58.
[60] Ibid., p. 45-46, 48.
[61] Ibid., p. 45-46, 48, 49-50, 53-55, 56-58, 63-64, 73-74, 130, 131, 132, 134.

Rubinshtein successfully deflected the accusation that he had played a part in the deportations to Perelety. After all, they had occurred when Iampol'skii was still head of the Jewish council.[62] Witnesses admitted as much in court.[63] When it came to the deportations to Nikolaev, Rubinshtein also denied that he was involved. Yes, the deportations had happened during his tenure as head of the Jewish council, but Moskovich was responsible, Rubinshtein explained.[64] According to Rubinshtein, Moskovich acted on orders of the Romanian authorities. They had granted him the right to take people without any contribution by the Jewish council, which he did.[65] Years prior, Moskovich himself had admitted that the Romanians had tasked him with designating people for deportations to Nikolaev and that he had fulfilled this task (see above). Moreover, Rubinshtein said that a mere 25 people were sent to Nikolaev, and not hundreds, as the witnesses asserted. Of these, 23 returned, according to Rubinsthein.[66] These numbers are inconsistent with those established in historiography, which are much closer to the numbers witnesses reported – hundreds were deported to Nikolaev.

Besides trying to dispute the extent of the deportations, Rubinshtein added another caveat regarding his room for maneuver. The defendant said that "the committee could not stop these expulsions, since it did not have any rights or competences to do so".[67] Lastly, Rubinshtein denied witnesses' claims that he had facilitated the deportation of some 800 people to Balanovka near Bershad.[68] The Romanian gendarmes did that without any contribution on his part, the defendant maintained in court.[69] On the contrary, the Jewish council members had "made efforts to delay the expulsions, which we sometimes succeeded in doing through bribery".[70] During the pretrial investigation, former council member Stoliar confirmed that the Jewish council had sometimes successfully stopped deportations by bribing Romanian officials.[71] Stoliar thus explained the need to collect money and valuables from the ghetto population.

Whatever the rationale behind them, witnesses also accused Rubinshtein of expropriations. One witness alleged that Rubinshtein informed the Romanians who in the ghetto owned valuables, who then searched the home and took them.[72] Witness Kushnir claimed that Rubinshtein took furniture and valuables from the Jews in the ghetto and handed the items to the Romanians.[73] When he

[62] Ibid., p. 38-39, 42-45.
[63] Ibid., p. 131.
[64] Ibid., p. 26–30.
[65] Ibid., p. 38–39.
[66] Ibid., p. 26-30, 38-39.
[67] Ibid., p. 42–45.
[68] Ibid., p. 49-50, 53-55, 56-58, 130.
[69] Ibid., p. 134.
[70] Ibid., p. 135, 86-88.
[71] Ibid., p. 75–77.
[72] Ibid., p. 69–70.
[73] Ibid., p. 71–72.

repeated the accusation during the trial session, Kushnir admitted that this assertion was based on hearsay and that his own "things and furniture were taken away still under Iampol'skii".[74] Similarly, witness Mil'shtein claimed that Rubinshtein had extorted bribes from ghetto inmates to spare them from being deported.[75] During the trial, he concretized this accusation as "I know a case when my comrade Pipskii gave someone 1500 rubles and a watch and then he was not deported."[76] That was hearsay and Rubinshtein was not even mentioned by name. Adding to the emerging pattern of weak evidence against Rubinshtein in this regard, witness Chernecher testified in court that he had seen someone take away Ol'ga Plit's watch, threatening to have her deported if she resisted. However, the someone Chernecher saw doing this was Stoliar (who did not appear before the court although he had been summoned as a witness).[77] The court's readiness to hear the case without a key witness as Stoliar is astounding. Thus, while the investigation and trial were mostly evidence-driven and built on witness testimony, there were also prerogative state elements in the mix (ds8, ds9).

More substantial was witness Kushnir's testimony, which also related to the broad topic of ghetto inmate's property. According to Kushnir, Rubinshtein summoned him to the Jewish ghetto administration "in December 1941, when he had just assumed the post of ghetto primar".[78] When Kushnir appeared in Rubinshtein's office, the new head of the Jewish council asked him to allow a Jewish family into his room. Since he considered his room too small to share, Kushnir declined, after which "Rubinshtein came over" and "beat [Kushnir] in the face with his fists". Kushnir eventually agreed to have the family move in with him.[79] Kushnir repeated the accusation during the trial.[80] The defendant confirmed Kushnir's account, but denied the beating: "I only pushed him out roughly, but did not beat him."[81] Since there were no additional witnesses, it was Rubinshtein's word against Kushnir's, but the court chose to believe the witness.[82] If there was any discussion of whether it was simple necessity that forced the Jewish administration to crowd too many people into one room, that discussion was not recorded in any protocol.

Speaking broadly on the issue of alleged property crimes, Rubinshtein denied any wrongdoing.[83] However, he confirmed that the Jewish council had collected money from the ghetto population.[84]

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[74] Ibid., p. 133.
[75] Ibid., p. 45–46.
[76] Ibid., p. 132.
[77] Ibid., p. 131.
[78] Ibid., p. 73–74.
[79] Ibid.
[80] Ibid., p. 133.
[81] Ibid.
[82] Ibid., p. 142.
[83] Ibid., p. 26-30, 40-41.
[84] Ibid., p. 135.

Rubinsthein explained this with the need to finance social welfare institutions such as the public kitchen, the hospital, and the orphanages.[85] Unlike Stoliar, Rubinshtein did not draw a direct connection between the Romanians' incessant hunger for bribes and the taxation of the ghetto inmates. Nevertheless, Rubinshtein had confirmed that bribes were paid, and before CER aid began to arrive from Bucharest, the sums the Romanians lined their pockets with must have come from somewhere.

Accusations of expropriations were potentially more damning to Rubinshtein since he himself had enjoyed a certain protection from having his property seized by the Romanians. The search of his flat unearthed "A certificate issued by the commandant of the ghetto guards and approved by gendarmerie major Stankulesku that not a single item of Rubinstein's belongings was to be seized by order of the higher occupation authorities."[86] If the ghetto's highest Jewish official (at least until Moskovich's arrival) needed such a document, one can easily imagine that the other ghetto inmates' property was fair game for Romanian officials.

This was not the only regard in which Rubinshtein's assertion that he "enjoyed no privileges among the Jewish population" was dubious.[87] Besides the document shielding his property from seizure, he admitted that a similar document had guaranteed him that he was to be deported from the ghetto last.[88] On the other hand, the investigators and the court tried to prove that Rubinshtein enjoyed the privilege of free movement in and out of the ghetto. The defendant admitted this during a pretrial interrogation.[89] That admission was likely the result of pressure or a falsified protocol. Before the military tribunal, Rubinshtein again asserted that he had to apply for permits to leave the ghetto, just as every ordinary ghetto inmate did.[90] Indeed, the investigators found 16 permits for the ghetto primar to enter the city of Balta on official business when they searched his home in 1947.[91] The interrogators who later tried to pin the privilege of free movement on Rubinshtein ignored the material evidence to the contrary that their colleagues had collected – a prerogative state feature of the proceedings (ds8).

The last major complex of accusations witnesses brought forward against the defendant concerned the distribution of aid. According to witnesses, this had been Rubinshtein's purview, but he had neglected his duties. Several witnesses claimed that food and clothing were distributed

[85] Ibid.
[86] Ibid., p. 10.
[87] Ibid., p. 135.
[88] Ibid.
[89] Ibid., p. 26–30.
[90] Ibid., p. 135.
[91] Ibid., p. 10.

among the ghetto inmates on Rubinshtein's orders.[92] Only one witness acknowledged that Moskovich played a role in matters of aid distribution as well.[93] Rubinshtein himself acknowledged that the Jewish council had received financial support from CER in Bucharest, for which the council had compiled "a special monthly financial report, signed by all members of the committee and by the ghetto auditing commission."[94] Under his aegis, Rubinshtein asserted, the money was mainly spent on food for the orphanages "where there were more than three hundred orphans", the hospital and the public kitchen.[95]

Besides these funds, and the support they enabled, the council also received material aid ("clothing and food") through Moskovich, Rubinshtein contended. Here, the versions both defendants laid out largely overlapped. As with the money, Rubinshtein claimed that the distribution of this aid had hardly been solely his responsibility. A commission of 15 ghetto inmates handed the material aid out to ghetto inmates. Three times such a commission was formed from alternating members, and only once had Rubinshtein participated, he proclaimed.[96] According to Rubinshtein, he provided aid for the ghetto population to the best of his abilities.[97]

The witnesses testifying against Rubinshtein had a different view on the matter. Supposedly, the defendant had not provided the ghetto's population with food, clothing, and medicine.[98] Neither had he distributed material aid throughout the district, as he should have done, one witness continued.[99] That witness probably just mistook Rubinshtein for Moskovich. At least the witness was ill informed about the distribution of prerogatives between the two functionaries. Moskovich had admitted that anything beyond the Balta ghetto was solely his prerogative. Among accusations of neglect centered on Balta, the most damning were probably those that came from the ghetto's medical personnel. Witness Rozalia Tsvik, one of the ghetto doctors working in the hospital that Iampol'skii had organized in 1941, deplored that

> "[…] Rubinstein did not provide any practical help to the ghetto service personnel, all medical care for the Jewish population in the ghetto was provided solely on the initiative of the doctors confined in the ghetto themselves."[100]

The head of the ghetto pharmacy, Abram Dukhovnyi, complained that the pharmacy did not receive any assistance from the defendant either and all medicines came directly "from the

[92] Ibid., p. 45-46, 48, 47. The last mentioned testimony is instructive in this regard, since it comes from the administrator of the ghetto's grocery store.
[93] Ibid., p. 47.
[94] Ibid., p. 40–41.
[95] Ibid.
[96] Ibid.
[97] Ibid., p. 31–33.
[98] Ibid., p. 45-46, 71-72.
[99] Ibid., p. 45–46.
[100] Ibid., p. 67–68.

Romanian occupation authorities".[101] In general, other witnesses maintained, Rubinshtein did not provide any aid to people who asked him for it.[102]

During a confrontation with witness Shpigel', Rubinshtein successfully countered at least a part of these accusations. Both Shpigel' and another witness had accused the defendant of denying aid to the Jews returning from Nikolaev.[103] During the confrontation with Shpigel', Rubinshtein used his right to ask the witness questions and got Shpigel' to admit that the returnees had indeed received "clothes and bread" from the Jewish council.[104] Therefore, Rubinshtein had at least some limited agency in the pretrial phase, which constitutes a normative state feature (ds11).

Some witnesses saw this neglectful attitude exacerbated by the fact that material aid had been available in the ghetto storages, but Rubinshtein chose not to distribute it.[105] As a consequence, the available goods fell into the hands of the retreating Axis.[106] The attentive reader will recognize the episode discussed here. Years prior, Soviet authorities had blamed the loss of these goods on Moskovich. In 1947, Soviet authorities' handling of the matter was ambivalent. On the one hand, the investigators left the emerging contradiction unresolved. On the other, the court did not mention the episode in its verdict, suggesting that it played little to no role in the tribunal's decision.

## The role of social conflicts in the ghetto during Rubinshtein's investigation and trial

What made it into the verdict were the accusations that Rubinshtein neglected ghetto inmates' needs for support, albeit with an interesting twist: "Rubinshtein exhibited an anti-Soviet attitude, he repeatedly responded to requests for help from Soviet citizens imprisoned in the ghetto with rudeness and anti-Soviet rhetoric […]."[107] Multiple witnesses accused Rubinshtein of denying aid to the local Soviet Jews in particular.[108] In contrast, Rubinshtein allegedly did help the deportees from the Romanian territories – which meant that he could have equally divided the aid among everyone, but chose to discriminate against the local Jews.[109] Supposedly, the defendant also added insult to injury when local Soviet Jews turned to him seeking support. As witness Mil'shtein told the investigators: "Rubinstein replied: 'Go to Stalin, let him give you help, and I have someone to help, I have Bessarabians whom I must help.'"[110] The phrase "go to Stalin" crops up in multiple

[101] Ibid., p. 61–62.
[102] Ibid., p. 51-52, 53-55, 56-58, 130, 132.
[103] Ibid., p. 48, 86-88.
[104] Ibid., p. 86–88. Following Rubinshtein's question, the witness also admitted that he had received a pair of trousers from the Jewish council, but added that he "received nothing else, although [he] needed many things".
[105] Ibid., p. 45-46, 47, 48.
[106] Ibid., p. 47, 48.
[107] Ibid., p. 142.
[108] Ibid., p. 51-52, 53-55, 56-58, 59-60, 131, 133.
[109] Ibid., p. 59-60, 132, 133, 134.
[110] Ibid., p. 51-52, 132.

depositions collected during the pretrial investigation and witnesses repeated it in court.[111] Using the great leader's name in vain clearly constituted anti-Soviet statements in the investigators' minds. The anti-Soviet aspect was exacerbated by witness Chernecher's claim that Rubinshtein had portraits of Lenin and Stalin hanging in his toilet "to mock them", as the witness testified in court.[112] Rubinshtein denied that there had been portraits of Soviet leaders in his toilet.[113] He also said that his "attitude towards the Ukrainian, Bessarabian and Bucovinian Jews in the Balta ghetto was the same."[114] Supposedly, he helped anyone who turned to him for assistance, did not send anyone to Stalin, and thus did not engage in "anti-Soviet propaganda among the population".[115]

The accusation that Rubinshtein neglected the local Soviet Jews' dire needs and "sent people to Stalin" is puzzling, because two years prior, witnesses had accused Moskovich of doing the very same things and using the exact same words.[116] Besides "sending people to Stalin", Moskovich had allegedly used insults such as "Bolshevik".[117] Thus, Moskovich, too, allegedly hated the local Jews and privileged the deportees. How are we to make sense of this peculiar situation? The testimonies lend themselves to several competing analyses.

First, and most simple, both men really discriminated against the local Jews and really said those things. However, the total uniformity of the phrase seems peculiar – how likely was it that these two men would really use the exact same phrase repeatedly? After all, they had apparently headed conflicting institutions. To some extent, we can understand Moskovich's and Rubinshtein's mutual attempts at shifting blame on each other as an aftereffect of the Romanians' successful divide-and-rule tactics. Creating competing institutions, shifting competences between them etc. were effective ways to create confusion and mistrust among the ghetto inmates, hampering inter-Jewish solidarity in the ghetto, and distracting the ghetto population from the real culprits of their suffering. During the investigation against Moskovich, former Jewish council member Stoliar stressed that there was mutual distrust between, on the on hand, the "Soviet people" of the Jewish council and the local Soviet Jewish ghetto inmates, and, on the other hand, Moskovich with his non-Soviet foreign Jews:

> "I cannot avoid the fact that Moskovich treated the Jewish Romanian subjects better than the Soviet citizens who were in the ghetto. For example, in the city of Balta, Moskovich left his Jewish Romanian citizens as storekeepers, and Moskovich had as his trusted physician a certain Gorshkovich, a Jewish Romanian citizen, without whom no medicine was handed out, even

[111] Ibid., p. 49-50, 51-52, 53-55, 56-58, 59-60, 131, 133.
[112] Ibid., p. 131, 53-55.
[113] Ibid., p. 83–85.
[114] Ibid., p. 26–30.
[115] Ibid.
[116] Moskovich Pavel Mikhailovich, HDA SBU OO, D5916, p. 189-190, 191-192, 193-194, 197, 199-200.
[117] Ibid., p. 24-27, 124-126.

> though before him in the ghetto there had been a Jewish doctor, a Soviet citizen, who everyone trusted."[118]

Despite such claims, it is incredibly difficult (if not impossible) to grasp from an investigative casefile how much cohesion and conflict had really existed between the Jewish ghetto functionaries. The blame game both defendants played may very well have been a simple response to the criminal prosecution they faced (see chapter 2). The same applied for witness Stoliar. He too had good reason to make Moskovich appear all-powerful and to present his own role as limited. Before this backdrop, how likely was it that Moskovich and Rubinshtein shared the exact same attitude towards the local Jews and expressed it in the exact same phrase? The answer remains opaque.

A second potential analysis suggests itself: Did only one of them send people begging for help to Stalin? Did witnesses then project this memory to the other defendant? If that was the case, then who provided the original image, and who was it projected on? One can expect that the witnesses who felt that ghetto administrators had discriminated against them discussed that among themselves. Maybe, such discussions formed sort of a collective screen memory – a phrase in which the feelings of being discriminated against became encapsulated. If only one of both defendants used the phrase, then how are we to determine who did it? Again, answering the question seems hardly possible.

Third and lastly, one might push the second interpretation even further and ask whether anyone had used the phrase at all, or whether it was just the result of collective memory production. If the local Soviet Jews had really felt discriminated against (rightfully so or not), and if they really discussed this at length in the ghetto and after liberation, then maybe the screen memory of "go to Stalin" emerged without anyone ever having said the phrase? Are we dealing with a sort of mnemonic symbol, a collective shorthand used to express feelings of betrayal, humiliation and withheld solidarity? As the reader will surmise, Rubinshtein's and Moskovich's casefiles do not allow to answer the question. Triangulation is of limited help here. One survivor, El'vira Bondar'-Zeigman, recalls that Rubinshtein used the phrase and denied aid to her mother.[119] Another former Balta ghetto inmate, Iosif Gel'fer recalled that the Jewish council members "scolded Stalin and Soviet power".[120] However, since Moskovich is almost never mentioned in oral history interviews and memoirs, it is difficult to assess whether he used the phrase.

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[118] Ibid., p. 73–75.
[119] Her testimony is printed in: KOSHIN: Pomnit' i rasskazat vol. 2, p. 248.
[120] GEL'FER, Iosif, Interview 34646. Interviewed by Efim Nilva. Visual History Archive, USC Shoah Foundation 29.07.1997, https://vha.usc.edu/viewingPage?testimonyID=36666&returnIndex=0#, last accessed July 27, 2020, segment 41.

Local Soviet Jews certainly perceived Rubinshtein as a foreigner and witnesses highlight that he spoke Romanian.[121] Moreover, he supposedly did not speak anything else, at least according to one witness: "[…] as primar he did not speak Yiddish ["na evreiskom iazyke", literally "in the Jewish language", *WS*] among the people of Jewish nationality, but mostly spoke Romanian."[122] Stoliar, who had been on the Jewish council, highlighted that both Iampol'skii and Rubinshtein had headed the council precisely because they spoke Romanian and could communicate with the occupying authorities.[123] Did the local Soviet Jews project their suffering on those "foreigners", although the Jewish functionaries had treated everyone equally? The frequency of the accusations to the contrary makes this explanation at least questionable. On the other hand, that something is often repeated does not necessarily make it true.

However, triangulation with oral history interviews and memoirs also shows that one cannot assume every local Soviet Jew to have shared such views. Rubinshtein is a telling example of how much variation there is in ghetto survivors' assessment of individual ghetto functionaries. Several oral history interviews and memoirs offer a strong counterpoint to the grim picture painted of Rubinshtein in his investigative casefile. Balta ghetto survivor Khaia Bol'shaia, who was born in Zhitomir, Ukraine, described the relationship between the deportees and the Soviet Jews in the ghetto as one of solidarity: "The Romanian Jews helped us very much."[124] Also consider the following assessments articulated by survivors born in Balta, talking about Rubinshtein specifically: Beniuma Roitman expressed sympathetic views of Rubinshtein and lauded how he had fulfilled his role in the Jewish council.[125] Gennadii Rozenberg asserted that Rubinshtein protected the ghetto population from harm.[126] According to Iosif Bondar', both Iampol'skii and Rubinshtein even catered to the population's spiritual needs and supported a synagogue in the ghetto.[127] Il'ia Koshin expressed his positive assessment probably most strongly from all the survivors:

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121 Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 49–50.
122 Ibid., p. 71–72.
123 Ibid., p. 75–77.
124 BOL'SHAIA, Khaia, Interview 29919. Interviewed by Kira Burova. Visual History Archive, USC Shoah Foundation 01.04.1997, https://vha.usc.edu/viewingPage?testimonyID=31258&returnIndex=0#, last accessed July 27, 2020, segment 133.
125 ROITMAN, Beniuma, Interview 36396. Interviewed by Lev Bakal. Visual History Archive, USC Shoah Foundation 17.09.1997, https://vha.usc.edu/viewingPage?testimonyID=37447&returnIndex=0#, last accessed July 27, 2020, segments 15–16.
126 ROZENBERG, Gennadii, Interview 39548. Interviewed by Ella Orlikova. Visual History Archive, USC Shoah Foundation 18.12.1997, https://vha.usc.edu/viewingPage?testimonyID=42470&returnIndex=0, last accessed July 27, 2020, segment 86.
127 BONDAR', Iosif, Interview 23678. Interviewed by Ruvinn Shvartsman. Visual History Archive, USC Shoah Foundation 21.11.1996, https://vha.usc.edu/viewingPage?testimonyID=25216&returnIndex=0#, last accessed July 27, 2020, segments 126–130.

> "I believe that Rubinshtein, Iampol'skii, Cherkasskii, Markovskii A., Markovskii T., Talisman, Stoliar and other members of the Jewish community of the Balta ghetto, who did much to save many prisoners, should be immortalized."[128]

These Balta locals certainly did not perceive Rubinshtein as a stranger corrupted by his cooperation with the equally strange Romanian invaders. It might have helped that Rubinshtein was Iampol'skii's son-in-law, and the Iampol'skii family had their roots in Balta.[129] The family had only been living in Kishinev for a short time when the Germans invaded the USSR in 1941.[130] Rubinshtein and the Iampol'skii's unsuccessfully tried to evacuate deeper into the USSR, headed for Kharkov, found themselves in German encirclement, but eventually managed to make their way to Balta.[131] For the Iampol'skii's, this was a homecoming, albeit an unwanted one under horrible circumstances. Therefore, at least by extension of his relatives, Rubinshtein was not such a stranger after all.

In sum, views of Rubinshtein did not strictly correlate with ghetto survivors' regional origins. Neither can survivors' attitudes towards the Soviet Union predict their views about the defendant. During their interviews in the 1990s both Bondar' and Roitman posed with Soviet medals, suggesting at least a not completely hostile attitude to the USSR. On the other hand, one should not assume that Soviet investigative casefiles are the only place where negative assessments of Rubinshtein's role in the ghetto can be found. Thus, Balta ghetto survivor El'vira Bondar'-Zeigman thought that "[s]uch a bastard should not be rehabilitated, no matter how much his relatives want it."[132]

Nevertheless, the positive assessments in oral history and memoirs once more highlight the accusatory bias often inherent to Soviet investigative casefiles. That bias was not exclusively a result of the investigative practices, but also of survivors' conscious choices. Judging by oral history testimonies, survivors could decide, and some did, not to participate in Soviet criminal prosecutions of former functionaries. According to Genia Shnaider, a ghetto policeman beat her during occupation for evading forced labor. The policeman's mother was acquainted to Shnaider's mother, and shortly before the Soviets arrived pleaded with her not to testify against her son. Shnaider's mother agreed, saying "[…] I am not a traitor, let god take care of him".[133] Perhaps more surprisingly, ghetto survivors also had a similar room for maneuver when they came face to face

[128] KOSHIN: Pomnit' i rasskazat vol. 1, p. 176–177.
[129] Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 18–21.
[130] Author's conversation with Helen Betya Rubinstein, the granddaughter of defendant Rubinshtein, on October 18, 2021.
[131] Ibid.
[132] KOSHIN: Pomnit' i rasskazat vol. 2, p. 248.
[133] SHNAIDER, Genia, Interview 35228. Interviewed by Evgenia Litinskaya. Visual History Archive, USC Shoah Foundation 13.08.1997, https://vha.usc.edu/viewingPage?testimonyID=35299&returnIndex=0#, last accessed July 28, 2020, segments 45–48.

with representatives of the Soviet state. Lev Oknianskii recalls how a Jewish ghetto policeman named Fishel' beat him during the occupation. However, when a Jewish Soviet lieutenant later asked Oknianksii's mother to testify against the man, she declined to answer his questions, telling him to let the matter rest.[134]

To be clear, such evidence for the Balta ghetto is anecdotal, but at least oral history provides similar episodes for other ghettos. Thus, after their liberation from the Mogilev-Podol'skii ghetto, the wife of a former Jewish ghetto functionary approached Semen Vainshtein's father. According to Vainshtein, that functionary had put Vainshtein's father on a deportation list as a substitute for the functionary's own son. The functionary's wife pleaded with Vainshtein's father not to turn to Soviet authorities and not to push for a trial – which he did not.[135] Anecdotal examples of survivors' reluctance to engage with representatives of the Soviet judiciary can also be found from other ghettos than Balta. Semen Burle, a former inmate of the Rybnitsa ghetto, recalled how a Soviet prosecutor approached his mother, asking her to testify against a local Ukrainian collaborator. Burle's mother initially declined to give a deposition, apparently afraid of having anything to do with the Soviet security and judiciary institutions. Only when the prosecutor listed all the crimes committed against the local Jews in detail did Burle's mother decide to testify.[136] Keeping in mind the Soviet record of political repressions before World War II, we can safely assume that such reluctance was not uncommon. While these are examples of people withholding incriminating testimony, one must wonder whether the same mechanisms applied to witnesses holding ambivalent views of the defendants. And ambivalent views would at least have meant that besides all the incriminating information, some more exonerating aspects could have entered the casefiles as well.

The point is not to argue that in Transnistria, Jewish council members from among the Romanian deportees did not discriminate against the local Soviet Jews. On the contrary, there is a distinct likelihood that some of them did since the local Soviet Jews among the witnesses on analytical level D) quite frequently voiced such allegations. As stated above, we conducted a qualitative content analysis of the 310 pretrial witness testimonies on that analytical level, which allows to correlate the contents of these testimonies with variables such as witnesses regional origins. We simplified these regional origins to the distinction of Romanian vs. Soviet Jews. Of the pretrial testimonies, 13 were

[134] OKNIANSKII, Lev, Interview 43899. Interviewed by Artur Fredekind. Visual History Archive, USC Shoah Foundation 24.04.1998, https://vha.usc.edu/viewingPage?testimonyID=46425&returnIndex=0#, last accessed July 27, 2020, segments 78–79.
[135] VAINSHTEIN, Semen, Interview 42487. Interviewed by Lidia Teper. Visual History Archive, USC Shoah Foundation 22.01.1998, https://vha.usc.edu/viewingPage?testimonyID=45461&returnIndex=0#, last accessed May 29, 2020, segments 21–23.
[136] BURLE: Interview 5922, segments 78–81.

given by non-Jewish witnesses. Another nine testimonies stem from Jewish witnesses, but the investigators did not record the place of birth or the witnesses were born neither in Romania or the USSR. We excluded these testimonies from the analysis. The remaining sample consisted of 210 pretrial witness testimonies provided by Soviet Jews and 78 such testimonies provided by Romanian Jews. Regarding the social conflicts in the ghetto and preferential treatment, interesting differences in the testimonies of both groups emerge. Consider the following table:

| code | Romanian Jews | Soviet Jews |
|---|---|---|
| stratification conflicts | 14,1% | 9,5% |
| regional groups' conflicts | 1,3% | 16,2% |
| N = documents | 78 | 210 |

*tab. 50**

**column percentages relative to the number of documents, codings counted once per document*

Romanian Jews more often framed conflicts in the ghetto in terms of stratification, i.e. the rich harming the poor. Only very rarely did they draw a connection between social conflicts and different regions of origin, i.e. the distinction between Romanian and Soviet Jews. The topic of stratification conflicts is also a common feature of witness testimonies of Soviet Jews. But even more regularly, these local Soviet Jews describe social conflicts in the ghettos as a confrontation with the Jews deported from Romania.

Lastly, there is another relevant theme, namely accusations of anti-Soviet convictions and agitation. As the example of "go to Stalin" shows, such accusations were often, though not always, closely linked to a framing of social conflicts as conflicts among regional groups. And accusations that a defendant had held anti-Soviet convictions or even engaged in anti-Soviet agitation appear in 10,3% of the Romanian Jewish witnesses' testimonies, but feature in 19,5% of the testimonies that local Soviet Jews gave. However, one should also be aware that accusations of anti-Soviet behavior lend themselves very easily to a strategic approach that witnesses could take. It was not hard for witnesses to come up with the idea to claim a defendant was an enemy of Soviet power, if they wanted to hurt him – we termed this "desirability bias as instrument" above (see chapter 2). Yet while that indicator alone has its limits, it supports the general tendency visible in how witnesses frames social conflicts.

For historians, the conclusion should be clear: accusations such as that of systematic discrimination against the local Jews need to be treated seriously. But they should also be taken with a grain of salt and need to be examined carefully in every individual case. If possible, such

claims should be verified via triangulation with other sources Besides oral history and memoirs, the materials of CER and, if they survived, of the Jewish ghetto administrations themselves seem especially significant in this context. Unfortunately, such documentary materials in Romanian remain behind a language barrier for the present author.

Moreover, scholars need to compare Soviet trial documentation with other sources for everyone accused of such behavior individually. It is not enough to assert that these accusations are generally plausible on the collective level.[137] There are examples of relatively recent scholarship in the direction outlined here, but its quality is sometimes questionable. A publication by Gali Tibon can serve as a deterrent example.

Tibon makes far-reaching claims about several Transnistrian Jewish councils, including those in the Mogilev-Podol'skii and Shargorod ghettos. Tibon asserts that the Romanian Jews in those councils cared first and foremost about the needs of those Jews in the ghettos who stemmed from their own communities:

> "Thus, Danilov extended assistance primarily to the Jews from Dorohoi, Isidor Pressner did the same for those from Radautz, Jagendorf for the Jews of South Bukovina, Kessler for those from Vetera-Dornay and Teich mainly assisted Jews from Sochaba."[138]

According to Tibon, this biased approach was to the detriment of the poorer Jews and the local Soviet Jews. But at least for Taikh, that claim needs further qualification. If he really neglected the Soviet Jews so badly, one has to wonder then why many survivors from that group held Taikh in high regard, praising his efforts to support the ghetto population and sometimes describing him as no less than their savior.[139]

Besides the claim of a more broadly preferential treatment along the lines of said "communal-class separation", Tibon ascribes the Jewish councils a significant room for maneuver in choosing that the Romanians would deport the poor and the Soviet Jews from the ghettos to concentration camps in Transnistria, rather than to distribute that burden fairly among the different groups of

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[137] As Dumitru does: DUMITRU: Gordian Knot, p. 738.

[138] TIBON: Brother's Keeper, p. 113.

[139] See the following, incomprehensive and random examples from oral history: AVERBUKH, Mariia, Interview 40469. Interviewed by Tat'iana Dolina. Visual History Archive, USC Shoah Foundation 18.02.1998, https://vha.usc.edu/viewingPage?testimonyID=43390&returnIndex=0#, last accessed March 22, 2022 , segments 169–172. MONASTYRSKA, Dora, Interview 17342. Interviewed by Natalie Golub. Visual History Archive, USC Shoah Foundation 12.07.1996, https://vha.usc.edu/viewingPage?testimonyID=17881&returnIndex=0, last accessed March 22, 2021, segment 72. SKLIAREVICH, Leonid, Interview 30659. Interviewed by Lev Aizenshtat. Visual History Archive, USC Shoah Foundation 19.04.1997, https://vha.usc.edu/viewingPage?testimonyID=30885&returnIndex=0#, last accessed March 22, 2021, segments 43–45. VINNER, Arkadii, Interview 5211. Interviewed by Boris Zilper. Visual History Archive, USC Shoah Foundation 12.10.1995, https://vha.usc.edu/viewingPage?testimonyID=6801&returnIndex=1#, last accessed March 22, 2021, segments 40–44. ZHVANETSKII: Interview 38462, segments 94–95. See also the testimonies by local Soviets Jews praising Taikh, which stem from a Soviet investigation into the Shargorod ghetto Jewish council: Taikh Maer Mendelevich, DAVO, D633, p. 22–23. Sherf Isaak Lazarevich, HDA SBU VO, D20752, p. 62.

Jews in the ghettos.[140] Unfortunately, Tibon partially bases these claims on postwar court testimonies of a Romanian perpetrator, the commander of the gendarmerie legion in Mogilev-Podol'skii, a certain Oreshanu.[141] Tibon's analysis lacks even the most basic critical distance to these materials. The obvious problem with using such testimony is that Romanian perpetrators like Oreshanu had good reason to shift as much blame on the Jewish councils as possible, so that they themselves would face shorter terms of imprisonment. To take victim-blaming at face value hardly qualifies as solid scholarship.

Moreover, Tibon makes several problematic counter-factual claims, according to which the Romanian authorities could not have selected the poorer Jews and the Soviet Jews for deportation without the help of the Jewish councils.[142] For some reason, Tibon assumes that the Romanians were only capable of random roundups of Jews in the ghettos.[143] But why should the Romanians have failed at conducting a census of the Jews in those ghettos without direct assistance from the Jewish councils? The very same bureaucratic process the Romanians forced upon the councils could full well have been coordinated by a few Romanian civil servants. Consider the following counterfactual scenario as an alternative to Tibon's: The Romanian authorities announce that all Jews have to register in the ghetto and that in one week's time, everyone apprehended without new registration papers will be shot. They then charge a couple of their own civil servants to sit down and register the Jews. For fear of being killed, the ghetto Jews line up to be registered. Just by talking to those Jews, the Romanian civil servants could likely have identified the majority of the local Soviet Jews with a minimal margin of error. Most of those Jews spoke no Romanian. Differences related to stratification were probably ascertainable at least roughly just by looking at the clothes people were wearing. The emerging documentary record would have been only minimally different from that compiled by the Jewish councils. Based on that record, produced without involving any Jews, the Romanians could then have targeted the poorer Jews and the Soviet Jews.

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[140] TIBON: Brother's Keeper, p. 113, 111–114.

[141] Ibid., p. 112. The problem is only exacerbated by the fact that Tibon regularly refers to whole investigative casefiles as evidence for some of her claims. Only some of these references are accompanied by qualifiers that allow the reader to understand what concrete document from the files she is referring to. Thereby Tibon forces the reader to wonder whether she approached the documents in these files with the necessary critical distance, or whether she handled them like the testimony of the Romanian perpetrator she quotes. See, for example: Footnote 26 on page 98, footnote 114 on page 113, footnote 117 on page 114 and footnote 119 on page 115. On Oreshanu as gendarmerie commander, see the testimony of Samuil Rakhmut, who served in the ghetto's Jewish administration: Rakhmut, Samuil Khaimovich, USHMM, RG-31.018M, R-2838, F03, 322, p. 38. CREANGĂ, Ovidiu: Moghilev-Podolsk, in: Camps and ghettos under European regimes aligned with Nazi Germany, edited by Joseph R. WHITE / Mel HECKER / Geoffrey P. MEGARGEE (The United States Holocaust Memorial Museum Encyclopedia of camps and ghettos, 1933–1945, vol. 3), Bloomington 2018, p. 715–717, here p. 715.

[142] TIBON: Brother's Keeper, p. 111, 113, 114. Note that these claims are somewhat reminiscent of Arendt's cited in the introduction.

[143] Ibid., p. 114.

Another problematic counterfactual claim concerns the role of the Jewish ghetto police. Had the Jews not cooperated, Tibon asserts, then the Romanians would also "have been forced to deploy a stronger jandarmeria force" to conduct the deportations.[144] Yet besides the gendarmerie, the Romanians could also have used the local Ukrainian police force. And they would not have needed a great many of those Ukrainian collaborators: Even in large ghettos like Mogilev-Podol'skii, the Jewish police numbered around a hundred individuals – at least according to the testimony of Marchell Diamant, whom the Soviets later charged with having served as a gendarmerie informer in that ghetto.[145] Thus, that was the maximum amount the Romanians would have to had substitute. It is not hard to imagine that the Romanians could have mustered that kind of troops. We are not talking about some kind of elite special forces, but about several dozen half-way fit men who were brutal enough to force a population with disproportionally many women, children and elderly out of their flats. One could pull that kind of manpower from a prison by offering a bunch of convicts to reduce their sentences. Consider also that it would have been full well possible to recruit such a force and then employ it in different ghettos consecutively. In conclusion, scholars need to tread more carefully than Tibon does.

Returning to Rubinshtein's case and to the problem of witnesses' self-selection for testifying in trials, it appears that Rubinshtein was aware that other potential witnesses might provide exonerating testimony. During the pretrial interrogations, he named additional potential witnesses and asked the investigators to question them. Moreover, he sent a written request to the military tribunal almost a month before his trial, again asking that specific additional witnesses be heard. In total, Rubinshtein named 26 individuals.[146] Of these, the investigators tried to locate fourteen, as the certificates the Balta city soviet issued prove. According to the certificates, the potential witnesses had either died or no longer resided in Balta.[147] For twelve of the people Rubinshtein had named, there is no documentary evidence that the investigators made any effort to find them.

Interestingly, the certificates show that investigators tried to find five individuals who Rubinshtein had not named.[148] Neither did their names appear anywhere else in the casefile. Three of these people had testified against Moskovich, and his casefile is the likeliest source from where

[144] Ibid.
[145] Diamant's testimony against Ignatii Shtern is therefore highly dubious. It is possible that he incriminated other individuals in hope to strike a deal with the authorities and have his own sentence reduced. But the number of policemen was not related to any accusation against Shtern and lying about it provided no obvious gains for Diamant. That part of his testimony is therefore likely credible. See: Shtern Ignatii Samoilovich, HDA SBU ChO, D85-p, p. 49. Diamant was sentenced to a ten-year term in the Gulag, see: Diamant Marchell Iosifovich, D7319-p, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (Chernivets′ka oblast′) (HDA SBU ChO), p. 60.
[146] Rubinshtein Pinkhos Itskovich, HDA SBU OO, D7435, p. 26-30, 38-39, 83-85, 126.
[147] Ibid., p. 97–116.
[148] Ibid., p. 101, 107, 108, 109, 113.

the investigators drew their names.[149] Thus, the investigators likely familiarized themselves with Moskovich's file. That makes the issue of contradicting testimony in both files even more relevant, and the investigators' lack of effort to resolve these contradictions even more obvious, and pushes the bar in their handling of the evidence towards the prerogative state spectrum (ds8).

During the trial session, Rubinshtein repeated his appeal to have the additional witnesses summoned, but the court rejected it.[150] The authorities thus tried to locate at least the majority of those the defendant had named. But when they failed to locate these people in Balta, they were also content with sentencing the defendant without having heard those witnesses' testimonies. Hence, the authorities' record in allowing the defendant some agency in the gathering of evidence is mixed, we see both prerogative and normative state aspects (ds11).

At closer inspection, the verdict presents similar contradictions. On the one hand, certain accusations were omitted from the verdict. Possibly, these omissions meant that the adjudicators took notice of the acts their colleagues had incriminated Moskovich years earlier. Most notably, the court did not mention any of the accusations that Rubinshtein had helped to organize deportations.[151] These accusations had not even made it into the indictment.[152] This is surprising, since witnesses had emphasized his alleged role in the dreaded deportations both at the pretrial stage and in court. The evidence collected against Moskovich identified him as the responsible functionary in the ghetto. Was the court familiar with that evidence, and did it therefore not find Rubinshtein guilty in this regard? Or did the authorities acknowledge Rubinshtein's defense against these accusations as valid?

Ultimately, these questions must remain unanswered, since the court did not elaborate on this aspect in the verdict. That Rubinshtein was sentenced to "only" ten years in the Gulag is noteworthy, especially since there were several witnesses who said that he had beaten them. Under the circumstances, a higher sentence, even capital punishment, was at least a realistic prospect (see chapters 5 and 9). Were Rubinshtein's persistent attempts to deflect all accusations and to make the investigators understand his situation successful? In any case, neither the investigators nor the court recognized the specifics of that situation explicitly. And the court did not care to elaborate whether it had admitted mitigating circumstances, and if so, which.

Whatever the rationale behind the "relatively mild" sentence was, the verdict was ripe with political overtones. As cited above, the court framed the numerous complaints about lack of food, clothes, and medicine under the label of anti-Soviet agitation. In this framing, insults to Stalin took

[149] Ibid., p. 101, 107, 113.
[150] Ibid., p. 129.
[151] Ibid., p. 142–143. The claim that he had robbed or extorted ghetto inmates was also not mentioned.
[152] Ibid., p. 120–121.

precedence over denying food to starving ghetto inmates. To a degree, the verdict thus appears to emphasize prosecuting Rubinshtein as an enemy of the state, rather than as someone who had harmed its citizens. Satisfying witnesses' demands for retribution was secondary to getting rid of someone hostile to the regime.

## The frontline deal – from "get out of jail free card" to sword of Damocles

Other aspects point in that direction as well. There were likely political motives behind the timing the authorities initiated the criminal prosecution. Besides his alleged activities in the Balta ghetto until 1944, the order for Rubinshtein's arrest also concerned an aspect of his present life in 1947. Supposedly, Rubinshtein was "planning to flee to America".[153] The investigators searching his office and his flat found 180 US-Dollars and two handguns, albeit without ammunition.[154] To get behind the origin of the US-Dollars, the investigators questioned Rubinshtein, as well as his wife. Both told different stories about where the money came from. Conspicuously, the legally innocuous and mutually exclusive versions husband and wife related completely exculpated one another – a formidable example of martial solidarity and mutual protection.[155] In addition to Rubinshtein's supposed treacherous plans of defecting to the class enemy, the investigators apparently also suspected him of helping others to emigrate. When the ACC investigators questioned witness Kozhukaru in Bucharest, they were most curious about the witness's alleged plans to emigrate to Italy.[156] The interrogators also asked the witness whether he had turned to his old high school friend Pinkhos Rubinshtein to obtain a foreign passport and an international travel permit.[157] The witness denied to have done so. Rubinshtein himself rejected the accusation that he wanted to go to the US.[158]

These accusations might help to explain the timing when the investigation was initiated. After all, why should Soviet authorities begin a new investigation years after the Red Army had liberated the Balta ghetto? True, the first witness interrogations took place in Balta almost two weeks before Rubinshtein's arrest in Bucharest. However, this does not mean that the initial suspicions against the defendant in 1947 had not been raised some other place and time. Unlike with other defendants, there is no evidence of a chance encounter between the defendant and a former ghetto inmate that would help to explain the timing. Thus, the most probable version is that the authorities began suspecting Rubinshtein of being involved in illegal emigration, and then started digging. Therefore,

[153] Ibid., p. 2, 4.
[154] The search protocol does not explain whether the gun found in his office was his official sidearm. Since one gun was of a Hungarian, and the other of a German model, the weapons could have been war trophies. Ibid., p. 10–11.
[155] Ibid., p. 26-30, 78-79.
[156] Ibid., p. 80–82.
[157] Ibid., p. 82.
[158] Ibid., p. 26–30.

Rubinsthein's case is an example of how any alleged wartime collaboration became a sword of Damocles dangling over survivors' heads. And when someone misbehaved, Soviet authorities were all too ready to cut the thread that held the sword. "Treason to the motherland" was a superior kind of "kompromat" – information that allowed to bury someone deep, if necessary.

It should be noted that Soviet authorities' approach to Rubinshtein's case may have been specific to the time and place. Similar cases of Jewish ghetto policemen from ghettos in Lithuania are described in the literature. Some of these men were arrested in Soviet Lithuania between the early 1950s (before Stalin's death) and into the 1960s.[159] As seems to have been the case with Rubinshtein, the authorities initially went after these people for reasons that had nothing to do with their role in the ghettos during the Holocaust. Arrests were based on charges of anti-Soviet agitation or economic crimes. [160] The authorities then found out about the defendants' activities in the ghettos, but contrary to Rubinshtein's case, never made this the primary or even the sole focus of the case.[161] Rather, the authorities reduced a defendant's service in the ghetto police to one item on a list of evidence for that defendant's per se questionable character.[162] Thus, just a few years after Rubinshtein's conviction, the same Soviet organs in Lithuania took a strikingly different approach to quite similar cases.

One plausible hypothesis to explain that difference could be that the investigators going after Rubinshtein could not find enough evidence of his alleged links to illegal emigration schemes and then pursued another line of inquiry that they had stumbled upon. Thus, if Rubinshtein's trial offered the Jews of Balta any sort of collective reckoning and recognition of their suffering by the Soviet state, then these were accidental by-products of the criminal prosecution. These things were not ends in themselves for the authorities.

On the other hand, lack of evidence was hardly an obstacle in the Soviet judiciary in other cases. That the authorities dealt with both Rubinsthein and Moskovich using normative state mechanisms points to an awareness that both cases had great significance for the local population and could bolster regime legitimacy. After all, it is striking that accusations other than those of serving as a Jewish ghetto functionary played a role both in Moskovich's and Rubinshtein's case. Turning the previous paragraph on its head, it stands to ask why these two men even got a trial. Someone with highly placed political connections and someone working in a government institution – were these not prime candidates whom the Soviets would want to get rid off quietly? Why involve witnesses here, why even have a trial? In other words: why use normative state procedures on these men, if

[159] BLUM et al.: Survivors, p. 227–228.
[160] Ibid.
[161] Ibid.
[162] Ibid., p. 237.

those of the prerogative state were ready to use? Thus, the collective reckoning and recognition of Jewish suffering the trial offered likely sprung from an attempt to achieve legitimacy through legality.

Rubinshtein was not the only Balta ghetto functionary with whom Soviet authorities terminated the "frontline deal" in later years. Survivors recall that Izia Grechanik, too, was tried after the war.[163] As with Grechanik's initial recruitment into the Red Army, the evidence for his later trial is somewhat problematic (see above). It is not clear whether different sources mentioning an Il'ia and others mentioning an Izia Grechanik speak of the same man. If they do, then he too was first recruited and let off the hook, only to face criminal prosecution later. The website of the "Association of Concentration Camps and Getto Survivors in Israel" published a letter by Elena Vladimirovna Sherstova, the granddaughter of a man whose name, place of birth and year of birth match the man listed in "Memory of the People". According to the letter, in 1947 Il'ia Grechanik was "sentenced to 25 years under article 58-1 by the Military Tribunal of the East-Siberian Military District", where he was serving in the Red Army.[164] Although we could not locate Grechanik's casefile, the article and the sentence make it plausible that he was in fact Izia Grechanik, and that the Soviets tried him for his role in the Balta ghetto. We do not know why the Soviets suddenly chose to arrest Grechanik in 1947. But a pattern emerges here: much like with Rubinshtein, Soviet authorities initially acted pragmatically towards him – he was most useful for the war effort (considering the multiple decorations cited above). But eventually, the sword of Damocles dropped. If Rubinshtein had drawn unwanted attention with his plans to emigrate to the USA, what had Grechanik done to trigger the security organs' interest? According to an interview with survivor Malia-Bliuma Zil'berberg's, another former Balta ghetto inmate ran into Grechanik at his place of service – which allegedly triggered Grechanik's arrest and trial – exactly the kind of chance encounter between survivors for which we have no evidence in Rubinshtein's case.[165] For whatever reason Soviet authorities began to prosecute Grechanik, his case shows that for other Jewish ghetto functionaries too, the "frontline deal" was an unstable one and open to later revisions by the authorities.

[163] PODOL'NYI: Opalennye voinoi, p. 77–78. FLIKSHTEIN: Interview 31387, segment 21. MARKOVSKII: Interview 6369, segment 25.
[164] SHERSTOVA, Elena Vladimirovna: Pis'mo Aleksandru Vishnevetskomu, online: https://www.netzulim.org/R/OrgR/Search/Sherstova.html, last accessed August 20, 2021.
[165] ZIL'BERBERG, Malia-Bliuma, Interview 28474. Interviewed by Natalia Levkovich. Visual History Archive, USC Shoah Foundation 25.02.1997, https://vha.usc.edu/viewingPage?testimonyID=29318&returnIndex=0#, last accessed July 27, 2020, segments 73–75.

## Conclusion

Rubinshtein's 1947 investigation and trial appeared as largely governed by normative state mechanisms. But there was one notable exception. When they went after Rubinshtein, the investigators consulted Moskovich's investigative casefile, but they did so very selectively. The versions the authorities established in both investigations contradicted each other. Regarding some accusations, the 1944 version would have exonerated Rubinshtein as much as the 1947 version would have exonerated Moskovich – a problem the authorities conveniently chose to ignore. This a first prerogative state peculiarity in proceedings that otherwise mostly followed normative state procedures.

Social conflicts between the Romanian deportees and the local Soviet Jews in the ghetto were a common theme in both investigations and trials. Witnesses partially also framed these conflicts as accusations of anti-Soviet agitation, which the authorities were all too happy to pick up. That these accusations sounded exactly alike when witnesses leveled them against Moskovich in 1944 and when they did so against Rubinshtein in 1947 raises questions. One hypothesis is that Balta Jews collectively memorized experiences of discrimination and projected them from individual to all Romanian ghetto functionaries. However, as triangulation with memoirs and oral history proved, extreme caution is warranted when reconstructing social conflicts and potential discrimination by ghetto functionaries. It is by far not the case that local Jews universally perceived these men as foreigners acting to the detriment of the locals – on the contrary, some locals venerate the functionaries as heroes. The limited accusatory bias inherent in Soviet investigative casefiles and survivors' potential for self-selection as witnesses underline that caution is needed when tackling the issue. This does not mean that such conflicts did not exist. As a qualitative content analysis of several hundred witness testimonies from analytical level D) shows, similar accusations were a regular feature of Soviet witnesses' pretrial testimony. However, examining such accusations on the level of the individual Jewish ghetto functionary is something more demanding than noticing a common theme in the materials. An ideal analysis would triangulate Soviet criminal files not only with oral history and memoirs, but also with materials from CER, the Jewish councils themselves, Romanian postwar trial materials etc. And, as our discussion of a negative example drawn from recent historiography shows, such an analysis demands a critical approach to all of these sources and a great care in making counterfactual claims.

Lastly, Rubinshtein's case proves that the frontline deal Soviet authorities struck with some ghetto functionaries immediately after the Red Army's return was fragile in the long run. That the authorities let those men off the hook initially did not mean the security organs would not come for them later. Here, the events of the Holocaust became another form of kompromat, a sword of

Damocles the authorities could hang above someone's head and drop on them when they misbehaved. For Rubinshtein, "misbehaving" most likely meant planning to emigrate (and possibly helping others to do so). Thus, justice became conditional on other factors. And that is the core prerogative state feature of the investigation and trial. That particular prerogative state feature appears especially strong at the temporal fringes of the present study. In the first weeks after they liberated the ghettos in 1944, it was the necessities of the war that made Soviet authorities forgo some chances of prosecuting "traitors" and "accomplices". For those they let go and those they did not identify immediately after liberation, the service as ghetto functionaries then became a liability the Soviets were all too ready to exploit in the later years under study here (1946-1949). Soviet authorities later use of normative state procedures offered them the chance to allude to the events of the war, occupation and the Holocaust even years after the events, and to present themselves as legally legitimate dispensers of justice dealing with that past.

In Rubinshtein's case, two lines of Soviet repression overlapped: curtailing emigration and the fight against alleged collaborators. As we argue in the next chapter, there were other lines of repression that interceded with the prosecution of collaboration – namely the Soviet anti-religious campaigns. Here, Soviet authorities began to weaponize the Holocaust against the Jews.

# Case study 5: Weaponizing the Holocaust against the Jews – An Odessa ghetto Jewish functionary, Holocaust retribution and anti-religious campaigns in the late 1940s Soviet Ukraine

## Introduction – Hypotheses, structure, case selection

On May 23, 1947, the Odessa oblast' Military Tribunal of the MGB troops sentenced Igor' (Isai) Iakovlevich Fidler to ten years in the Gulag.[1] The court found Fidler guilty of having headed the Jewish administration of the ghetto in Odessa-Slobodka, in this function helping to dispossess ghetto inmates and preparing lists of inmates designated for deportation from the ghetto.[2] Yet beyond its Holocaust-related aspects, Fidler's case reveals an important new element in the way Soviet authorities prosecuted the "gray zone" of Jewish ghetto administrators: the overlap between such prosecutions and the emerging Soviet anti-religious campaign. From the authorities', witnesses' and defendant's perspectives, this new element appears as follows.

Even stronger than before, the authorities subjected the prosecution of former ghetto functionaries to a reservation of political expediency. Now, Soviet authorities instrumentalized this very prosecution for the Soviet regime's emerging anti-religious campaign. Increasingly, Soviet authorities used some Jews' earlier activities as ghetto functionaries as ammunition to prosecute their post-war religious activities. In other cases, the authorities used former ghetto functionaries' past activities as blackmail and recruited them as informants on the religious activities of other Jews. Thus, in Soviet authorities' catalog of objectives, the goal of investigating the actions of former ghetto functionaries, dispensing justice and, in the process, potentially legitimizing the regime receded into the background. A trial's political expediency for the regime's anti-religious campaign potentially superseded all these objectives.

Survivor witnesses still voiced demands for recognition of their suffering and for punishing former functionaries who they blamed for that suffering. However, the conditions under which the authorities met survivor witnesses' demands had changed. These witnesses now found their push "from below" potentially ignored or instrumentalized for the regime's own anti-religious persecution of Jews. The experiences and needs witnesses voiced were lost in the security organs' apparatus or misused in a perfidious way.

Defendants such as Fidler became victims of a secondary instrumentalization. Under threat of death, Holocaust perpetrators first coerced them into cooperation and forced them to facilitate the

[1] Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 177.
[2] Ibid., p. 176.

genocidal persecution of other Jews. Now Soviet authorities used that first coerced cooperation to blackmail former functionaries like Fidler into playing a part in Soviet authorities' efforts to squash the revival of Judaism after the Holocaust. By using people like Fidler as covert agents, the authorities once again degraded the defendants to the status of means to someone else's ends. In this situation, there was neither space for their individual moral conflicts and psychological trauma, nor for any sort of Jewish collective reckoning with the peculiarities of the functionaries' role during the Holocaust. The confined space for intra-Jewish interaction previous trials had offered was lost completely.

The argument supporting these points unfolds in three major steps. First, we discuss Fidler's role in Odessa-Slobodka. Based mainly on the investigative casefile, we examine the accusations witnesses brought forward against Fidler and discuss his own account of the events in the ghetto. We triangulate these descriptions with other materials, most notably the oral history interview of survivor Zhanna Berina, whose fate was closely connected with Fidler and his actions in Odessa-Slobodka. Second, we examine Fidler's life after the return of the Soviets and his role as a covert agent for the MGB's anti-religious campaign. Here we reconstruct the chronology of the investigation and discuss how the MGB blackmailed Fidler into working for them, as well as the assignments Fidler completed for the agency. Third and lastly, we examine the reasons for, and characteristics of, his eventual arrest and trial. We weigh both aspects – the Holocaust and the Soviet anti-religious campaign – against each other and discuss the implications this had for the trial, as well as for defendants and survivor witnesses.

As can be seen from the hypotheses opening this chapter, the time of arrest and trial is the most important dimension of those informing the case selection of the present study. Clearly, the newly emerging Soviet anti-religious campaign is the most significant aspect for explaining the differences between Fidler's case and that of other former ghetto functionaries. Locating Fidler's trial in the other dimensions further explicates why we chose it as a case study.

We conceptualized the dimension of space twofold, as place of ghetto and place of trial. In the context of Transnistria, the specificity of the Odessa judeţ lies in the fact that the Romanians aimed to remove all Jews from the region (be it by means of murder or deportation).[3] As will be discussed in detail below, the ghetto of Odessa-Slobodka was a very specific kind of ghetto: a short lived "transit point" for the expulsion of Odessa Jews that shrank to something more of a "Judenhaus", a single building into which the perpetrators cramped the remaining Jews before eventually

[3] ARAD: Holocaust in the Soviet Union, p. 237.

deporting them. Thus, Fidler's case proves that investigations did not depend on the duration of a ghetto's existence, its size or its other characteristics.

Regarding the place of investiations and trial, Fidler's case unfolded both on old and new Soviet territories. The bulk of the investigation happened in the Izmail oblast', a part of Bessarabia the Soviets annexed in 1940 from Romania, turning it into a part of Soviet Ukraine. As we will argue, the region likely influenced the course of the investigation and trial, since the "new" territories saw a somewhat stronger Jewish religious revival after the war, and thus provided more targets for the Soviet anti-religious campaign. The place of the investigations and trial also influenced which witnesses testified in the investigation. These include both Bessarabian and Soviet Jews, as well as a significant number of non-Jews.

As a defendant, Fidler is not only interesting because he was a Bessarabian Jew and thus someone the regime probably considered insufficiently Sovietized. More importantly, Fidler is the youngest defendant in our sample on the analytical levels C) and D). Born on an unknown date in 1925, he was a mere 16 years old when the Axis powers invaded the USSR. Since the bulk of his alleged crimes took place in January and February 1942, Fidler was most likely still not even 17 years old at the time. That fact throws an interesting light both on the Romanians' approach to recruiting Jewish ghetto functionaries, as well as on how Soviet authorities later treated defendants who had been underage at the time of their alleged crimes. Lastly, Fidler is one of the defendants who gave a full confession during his pretrial investigation, which potentially indicates the use of torture and demands close examination.

Regarding the dimension of outcomes, the trial resulted in the standard sentence of 10 years in the Gulag. Thus, Fidler's case allows reconstructing one of the several specific paths an investigation and trial could result in such a sentence.

The investigators belonged to the MGB, the NKGB's successor organization, but the changing name does not seem to have influenced the investigation methods significantly. On the adjudicators' side, both by the OSO and by a military tribunal handled the case, which allows assessing the operation of both administrative and judicial sentencing bodies.

Another reason in the dimension of Soviet authorities to chose Fidler's case is the high profile it had for the authorities.

## Fidler's case as a high-profile investigation

Several indicators help to decide whether cases had a high or a low profile for Soviet authorities, one of which is the geographical reach of the investigations. If a case was investigated no only locally, but across a wider region or even across the borders of different Soviet republics, this

speaks for a high profile. However, time determines how significant this indicator can be. To broaden investigations beyond the immediate locality was especially difficult in the dire conditions of the war and immediate postwar years. It says more about the significance of a case investigations went beyond the immediate locality in 1944, than in 1949.

Another such indicator are the ranks and positions of the officers involved.[4] Here, researchers should not consider who signed off key documents such as indictments, which demanded the signature of a "higher up" by definition. Far more interesting is the question of who did the actual legwork of interrogating witnesses and defendants.

According to the "Order of the Supreme Soviet on the ranks of the commanding staff of NKVD and militia", NKVD personnel was organized into 15 ranks, grouped into "superior", "senior", "intermediate" ("srednyi") and "junior" staff.[5] No statistics are available about the distribution of those ranks among NKVD/NKGB/MGB personnel in Ukraine in 1944 – 1949. However, we can safely assume a pyramid-shaped distribution, i.e. the lower the rank, the more people held it. As a provisory substitute for such republic-level statistics, we can also extrapolate a contrast-class from the case studies themselves. Though we did not select cases at random, the distribution of interrogators' ranks in the case studies almost matches a pyramid-like shape. The only exception is the rank of lieutenant, which does not fit this pattern.

| **interrogators' ranks - all case studies** | | |
|---|---|---|
| ranks | # of interrogators | % of interrogators |
| colonel | 1 | 2% |
| lieutenant colonel | 3 | 5% |
| major | 6 | 9% |
| captain | 12 | 19% |
| senior lieutenant | 13 | 20% |
| lieutenant | 9 | 14% |
| junior lieutenant | 20 | 31% |
| total | 64 | 100% |

*tab. 51*

A better basis for comparisons are the available statistics of positions officials held in the security organs. Such statistics are only available for 1945, and only for the Ukraine NKGB. Extrapolating

[4] We follow Melnyk here. MELNYK: Stalinist Justice, p. 225.

[5] The "superior" category were the four commissar ranks that we can exclude from the following considerations, as well as the "junior" ranks, which do not appear in the investigative casefiles as interrogators. The senior ranks were colonel, lieutenant colonel, major and captain, the intermediate ranks were senior lieutenant, lieutenant and junior lieutenant. ZOLOTAREV, Vladimir A.: Velikaia Otechestvennaia. Prikazy narodnogo komissara oborony SSSR 1943-1945 gg. (Russkii arkhiv, 13,2(3)), Moskva 1997, p. 75–76.

to other years and agencies (NKVD, SMERSH and the NKGB's successor, MGB) is of course difficult, but the statistics can well serve as a rough orientation. The numbers might change, but it is safe to assume that the distribution of different positions remained relatively stable even when the agencies as a whole were expanding or contracting.

| **NKGB statistics 1945: target numbers** | | |
|---|---|---|
| **position** | **# of officers** | **percentage** |
| head of oblast' NKGB administration | 24 | 0,4% |
| deputy head of oblast' NKGB administration | 51 | 0,8% |
| head of department | 138 | 2,2% |
| deputy head / aide to head of department | 196 | 3,1% |
| head of division | 516 | 8,1% |
| deputy head of division | 304 | 4,8% |
| senior investigator / senior authorized operative | 1887 | 29,6% |
| investigator / authorized operative | 2413 | 37,9% |
| junior investigator / authorized operative's aide | 842 | 13,2% |
| total | 6371 | 100,0% |

*tab. 52*

Judging by the ranks and positions of the investigating officers, Fidler's case had a high priority for the Ukrainian MGB.[6] Interrogators in the ranks of senior commanding staff are overrepresented. So are officers holding higher positions. More than half of the officers investigating Fidler held senior commanding staff ranks (major to colonel), while they only total 16% of all interrogators in the case studies. Regarding the positions the investigators held, almost four out of five investigators held higher positions from deputy heads of divisions to heads of departments. Thus, the proportions of such positions in the NGKB as a whole are reversed in Fidler's case (only one in five officers serving in the NKGB held such positions).

[6] Even if we just accept Melnyk's standards, we see that the MGB paid a lot of attention to Fidler's case. Melnyk saw the involvement of eight officers, all of whom belonged to ranks of intermediate (srednyi) commanding staff as an indicator of the high profile of the case he studied. With thirteen officers, seven of whom held senior commanding staff ranks and five of whom held intermediate commanding staff ranks, Fidler's case was given higher priority than the one Melnyk examined. MELNYK: Stalinist Justice, p. 225.

| interrogators' ranks - case study Fidler | | |
|---|---|---|
| **ranks** | **# of interrogators** | **% of interrogators** |
| colonel | 1 | 8% |
| lieutenant colonel | 2 | 15% |
| major | 4 | 31% |
| captain | 1 | 8% |
| senior lieutenant | 2 | 15% |
| lieutenant | 1 | 8% |
| junior lieutenant | 1 | 8% |
| unknown | 1 | 8% |
| total | 13 | 100% |

*tab. 53*

| positions of interrogators case study Fidler | | |
|---|---|---|
| **position** | **# of interrogators** | **percentage** |
| head of department | 3 | 21% |
| deputy head / aide to head of department | 2 | 14% |
| head of division | 4 | 29% |
| deputy head of division | 2 | 14% |
| senior investigator / senior authorized operative | 1 | 7% |
| investigator / authorized operative | 1 | 7% |
| junior investigator / authorized operative's aide | 1 | 7% |
| total | 14 | 100% |

*tab. 54*

Also suggestive of the importance the MGB attributed to Fidler's case is the amount of interrogations conducted by the officers involved. One might expect that the investigators in higher ranks and positions participated in the investigation, but left most of the work to their subordinates (thus invalidating any argument based merely on the ranks and positions of the officers). This is not the case. Four out of five investigators held higher positions from deputy heads of divisions to heads of departments, and they also conducted four out of five of all interrogations. The same is true for the ranks these officers held (54% of interrogators held senior commanding staff ranks of major to colonel, and they conducted 65% of the 40 interrogations in Fidler's case).

## Part 1 – From Odessa-Slobodka to the return of the Soviets

After Romanian and German troops conquered Odessa late in 1941, the occupiers murdered part of Jews they found there and deported the remainder. The perpetrators did so in several waves. Many of those who survived the waves of killings were concentrated in a ghetto in the Slobodka suburb. As a result of the ensuing waves of deportations, the ghetto eventually shrank from the whole city quarter to a transit point established in the maritime institute's former dormitory. It was in this building that Fidler served as a Jewish functionary, which sparked survivor witnesses' later accusations against him.

The occupiers began to murder Jews immediately after conquering Odessa. After more than three months of siege, the advancing Germans and Romanians captured the city on October 17, 1941.[7] Up to 100.000 Jews, mainly from Odessa, remained in the city and fell into the hands of the occupiers.[8] Those Jews were mostly women, children and elderly, since the younger men had been mobilized into the Red Army.[9] As soldiers, they had either died in battle or had left the encircled city by sea with the retreating Red Army.[10] On October 18, 1941, one day after entering the city, the occupiers interned a part of the remaining Jews in a provisory ghetto in the Odessa prison.[11] Furthermore, in the first days after they occupied the city, German and Romanian perpetrators shot between 4.000 and 8.000 Jews.[12] Given the size of the Jewish community of Odessa, it would have been possible that the Germans and Romanians established a large ghetto in the city, perhaps even second in population only to the Warsaw ghetto.[13] However, no such ghetto was created and the Romanians either murdered or deported the Jews remaining in Odessa.

A second wave of killings soon followed. Before their withdrawal, the Soviets had mined the building that housed the Romanian military headquarters in the first days of the occupation. On October 22, Soviet agents triggered the explosives, blowing up the building and killing several dozen Romanian personnel.[14] The Romanians had ignored multiple warnings from the local

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[7] ARAD: Holocaust in the Soviet Union, p. 238.
[8] Ibid. Estimates vary and Ioanid is cautious about the number of 100.000, which he thinks is likely inflated. IOANID: Holocaust in Romania, p. 177.
[9] IOANID: Holocaust in Romania, p. 177.
[10] Ibid. ARAD: Holocaust in the Soviet Union, p. 240. Soviet casualties in the defence of the areas which would become Transnistria are placed around 20.000, and in a city where Jews made up a large share of the population, it can be assumed that many Jewish men fell in battle. DELETANT: Hitler's Forgotten Ally, p. 87. The Romanians paid for taking the city with heavy casualties themselves, the anger for which they directed against the city's Jewish civilians. HAUSLEITNER: Großverbrechen, p. 17.
[11] DELETANT: Hitler's Forgotten Ally, p. 171.
[12] ARAD: Holocaust in the Soviet Union, p. 240. IOANID: Holocaust in Romania, p. 178.
[13] ANGRICK: Transnistrien, p. 305. On Warsaw as the largest ghetto, see: BROWNING, Christopher R.: Introduction by Christopher R. Browning, in: Ghettos in German occupied Eastern Europe, edited by Geoffrey P. MEGARGEE / Martin DEAN / Mel HECKER (The United States Holocaust Memorial Museum Encyclopedia of camps and ghettos, 1933-1945, vol. 2), Bloomington 2012, p. xxvii–xxxix, here p. xxxvi.
[14] ARAD: Holocaust in the Soviet Union, p. 240.

population.[15] The failure on their own part did not keep them from exacting extremely harsh reprisals against those they blamed for the attack. Though officially directed primarily against communists, those reprisals in fact mostly targeted Jews, 5.000 of whom Romanian perpetrators hanged or shot in the streets of the city on the next day.[16] On October 24, Romanian perpetrators marched thousands more to the village of Dal'nik and murdered them there.[17] Different sources give different numbers of victims of this three-day murder spree. Scholars estimate the death toll at a minimum of 25.000 (with the maximum estimate at 40.000).[18] The perpetrators then stopped the mass murder of Jews in Odessa itself and the immediate surroundings.[19]

Although they stopped killing Jews on a large scale in Odessa itself, the perpetrators did not cede to kill them elsewhere, be it by shooting, starvation, or disease. In November 1941, the Romanians deported tens of thousands of Jews from Odessa to three camps in the Golta district, namely Akmechetka (an estimated 18.000 people), Bogdanovka (an estimated 40.000 people) and Domanevka (an estimated 8.000 people).[20] These camps were death camps.[21] In all of Transnistria, the survival chances for Jews were lowest in this region the Jews were deported to from Odessa.[22] In Bogdanovka, most of the Jews from Odessa died, as did those deported to the camp from other places.[23] In total, some 50.000 Jews from different regions perished in Bogdanovka alone, most of them through shooting, some through hunger and disease.[24] After these deportations, between 20.000 and 40.000 Jews remained in Odessa.[25] However, their stay days in the city were counted.

In January 1942, governor of Transnistria Gheorghe Alexianu ordered the deportation of all remaining Jews from Odessa, for which they should be concentrated in a ghetto in the city's Slobodka neighborhood.[26] The area was fenced off with barbed wire and put under guard.[27] The non-Jewish inhabitants of Slobodka were not required to leave their homes, and the Jews had to

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15 IOANID: Holocaust in Romania, p. 178.
16 ARAD: Holocaust in the Soviet Union, p. 240.
17 Ibid., p. 241. IOANID: Holocaust in Romania, p. 180.
18 HAUSLEITNER et al.: Einleitung, p. 63. Ioanid lists the various numbers and the sources they are drawn from.IOANID: Holocaust in Romania, p. 182.
19 ARAD: Holocaust in the Soviet Union, p. 242.
20 HOPPE/GLASS: Einleitung, p. 67.
21 ANCEL/CREANGĂ: Romania, p. 579.
22 BURMISTR: Transnistrien, p. 405.
23 ARAD: Holocaust in the Soviet Union, p. 241–242.
24 The numbers given in postwar trial materials range from 48.000 to 54.000. DUMITRU, Diana: Genocide for "Sanitary Purposes"? The Bogdanovka Murder in Light of Postwar Trial Documents, in: Journal of Genocide Research 2 (2019), p. 1–21, here p. 16.
25 The lower estimate can be found in: HOPPE/GLASS: Einleitung, p. 67. For the higher estimate, see: IOANID: Holocaust in Romania, p. 208.
26 ARAD: Holocaust in the Soviet Union, p. 243. According to newer sources, the Romanians had already begun to force Jews into the Slobodka ghetto as early October 25, 1941. CREANGĂ, Ovidiu: Odessa, in: Camps and ghettos under European regimes aligned with Nazi Germany, edited by Joseph R. WHITE / Mel HECKER / Geoffrey P. MEGARGEE (The United States Holocaust Memorial Museum Encyclopedia of camps and ghettos, 1933–1945, vol. 3), Bloomington 2018, p. 728–729, here p. 728.
27 CREANGĂ: Odessa, p. 728.

find shelter anywhere they could.[28] As Sergei Sushon recalls, when he arrived at Slobodka with his family "[…] people were driven into empty barns, sheds, and garages."[29] Every public building was soon overcrowded with Jews.[30] Most simply found no shelter and remained out in the open in the freezing cold.[31]

Between January and March 1942, the Romanians deported most inmates of the Slobodka ghetto, as well as thousands of Jews who had been held at the Odessa prison.[32] Most of the deportations from Slobodka were headed for the Berezovka region, where local ethnic German units murdered the Jews (those units belonged to the "Selbstschutz" and the "Sonderkommando R" of the "Volksdeutsche Mittelstelle").[33] Until June 1942, the number of deportees reached an estimated 30.000, only 2.000 of whom survived.[34]

With ever more Jews deported from Slobodka and ever fever present there, the ghetto constricted, until the Romanians finally ordered all remaining Jews to move to the former dormitory of the Odessa maritime institute. The former dormitory was a "big, four-story, p-shaped building [*referring to the Cyrillic letter*, WS], that was located in a big yard".[35] Thus, the ghetto had shrunken to a sort of "Judenhaus". For some survivors, this building even became synonymous to the Slobodka ghetto.[36] Others struggle with the correct naming of the place, such as Zhanna Berina who at one point in her interview speaks of "[…] um, this ghetto, if one can say that, or this, um, well this place, this house, where they collected the people and sent them away".[37]

Although the building primarily served as a "transit point" for the deportations, some people spent months there.[38] This temporary permanence mainly concerned the sick inmates and the hospital located in the building. It was the building's sole purpose briefly to house ghetto inmates awaiting deportation. Only those inmates who had fallen ill were temporarily exempted and stayed

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[28] ARAD: Holocaust in the Soviet Union, p. 244.
[29] SUSHON, Sergei: "Mozhet, eto byl ne ia, mozhet mne eto prisnilos' …", in: My khoteli zhit'. Svidetel′stva i dokumenty, edited by Boris Michajlovič ZABARKO (vol. 2), Kiev 2013, p. 374–387, here p. 379.
[30] ARAD: Holocaust in the Soviet Union, p. 244.
[31] CREANGĂ: Odessa, p. 728. The experience of Zhanna Berina and her family seems highly exceptional. When they left their flat, the people who had taken over their Jewish neighbors' flat put them in contact with residents of Slobodka, who temporarily took Berina and her family into their home. BERINA: Interview 8608, segment 52.
[32] ARAD: Holocaust in the Soviet Union, p. 245. CREANGĂ: Odessa, p. 728.
[33] HOPPE/GLASS: Einleitung, p. 68. HAUSLEITNER et al.: Einleitung, p. 63. For a detailed description of these killings, see: STEINHART, Eric C.: The Holocaust and Germanization of Ukraine (Publications of the German Historical Institute), New York, NY 2015, p. 137–151.
[34] HOPPE/GLASS: Einleitung, p. 68.
[35] BERINA: Interview 8608, segment 52. Survivor Arkadii Chassin even calls the building "giant", see: CHASSIN, Arkadi: »Durch eine wahre Hölle«, in: Überleben im Schatten des Todes. Holocaust in der Ukraine. Zeugnisse und Dokumente, edited by Borys Mychajlovyč ZABARKO / Margret MÜLLER / Werner MÜLLER (Reihe Gesprächskreis Geschichte, vol. 57), Bonn 2004, p. 27–47, here p. 32.
[36] See the testimony of Arkadii Chassin: CHASSIN: »Durch eine wahre Hölle«, p. 32.
[37] BERINA: Interview 8608, segment 59.
[38] As Zhanna Berina recalls "a number of people lived there permanently, if you can talk at all about any sort of permanence here." Ibid., segments 63–64.

until declared cured. Since January, the anti-sanitary conditions, cold and hunger had led to a typhus epidemic in Slobodka.[39] According to survivor testimony and the historiographical literature, Jewish doctors in the ghetto put forward an initiative to organize a hospital. Such a facility was eventually placed in the former dormitory of the maritime institute.[40] The hospital was located on the building's top floor. [41] The Romanians were apparently scared to contract typhus and kept away from the patients.[42] The occupation authorities even ordered additional Jewish doctors to the hospital, who had not been part of the initial organizers. Iakov Turner, who testified in Fidler's case, recalls that someone from the Odessa municipal "medico-sanitary administration" ordered him to join the hospital staff as a doctor.[43] Despite the occupiers' approval to set up the hospital, it lacked all necessary resources, and doctors grappled with the typhus epidemic and other diseases under the most difficult conditions.[44]

However, for many ghetto inmates, sickness soon changed its meaning from a threat to their health to a temporary guarantee of their live. After the first deportations from Slobodka, rumors started to spread in the ghetto that those deported were shot at their destinations.[45] Some learned exactly what those destinations were, for others the places remained opaque, but the threat of murder was clear.[46] Because of the Romanians' fear of contracting typhus, sick ghetto inmates were less likely to get deported. As can be expected in such a situation, ghetto inmates started pretending to be sick to avoid deportation.[47] Most deportations commenced until March 1942, and only around 500 people remained in the maritime institute until June 1942.[48] The last contingent left Slobodka on June 10, 1942.[49] It consisted of the remaining inmates and the doctors.[50] With the last Jews leaving the dormitory of the maritime institute, the Romanians disbanded the Slobodka ghetto.[51]

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[39] ARAD: Holocaust in the Soviet Union, p. 244. The beginning of the epidemic dated according to Chassin's testimony, see: CHASSIN: »Durch eine wahre Hölle«, p. 34.
[40] ARAD: Holocaust in the Soviet Union, p. 244. See also the testimony of Sergei Sushon, whose mother was one of the doctors in the hospital: SUSHON: "Mozhet, eto byl ne ia", p. 380.
[41] CHASSIN: »Durch eine wahre Hölle«, p. 34.
[42] Ibid.
[43] Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 96.
[44] SUSHON: "Mozhet, eto byl ne ia", p. 380. If the conditions in the hospital were difficult, the situation in the parts of the building in which Jews awaited deportation can only be described as abhorrent. Zhanna Berina remembers "a room from which they did not lead you to the toilet", but simply to an adjacent room. Berina recalls: "The floor of this second room consisted of urine and feces, on which boards were lying, […] and people would stand on these boards and directly satisfy their natural needs. This room is impossible to forget." BERINA: Interview 8608, segment 62.
[45] CHASSIN: »Durch eine wahre Hölle«, p. 33. SUSHON: "Mozhet, eto byl ne ia", p. 381.
[46] BERINA: Interview 8608, segment 53.
[47] ARAD: Holocaust in the Soviet Union, p. 245.
[48] Ibid.
[49] BERINA: Interview 8608, segment 77.
[50] SUSHON: "Mozhet, eto byl ne ia", p. 382.
[51] ARAD: Holocaust in the Soviet Union, p. 245.

This building was the setting from which the bulk of the accusations survivor witnesses leveled against Fidler emerged. Earlier scholarship still assumed that there was no Jewish council in the Slobodka ghetto, but survivor testimony and Fidler's casefile clearly show that the Romanians appointed some sort of Jewish functionaries and that Fidler held a top position within their hierarchy.[52] As it is so often the case, the terms used to describe these functionaries' positions vary significantly. While some witnesses describe Filder's role in Slobodka as that of a "translator" or "chief translator" of the ghetto, others refer to him as the "head" ("nachal'nik") or "elder" of Slobodka.[53] Faced with this confusion, the investigators even put the question directly to witness Turner, who testified that he did not know whether there was a "committee" in Slobodka, but assured the interrogators that Fidler and others had held positions of considerable authority.[54]

Still, when it comes to the hierarchy that witnesses assumed existed between the Romanians and Fidler, witnesses exclusively described him as the occupiers' subordinate. Witnesses in other cases sometimes portrayed the Jewish defendants as the superiors of the Romanians. In Fidler's case, nobody depicted him even as an equal of the Romanians. Formulations as "he helped the administration of the camp", "he accommodated the Romanian authorities in every way", or "he was in the service of the camp's director" all imply that in relation to the Romanians, Fidler was receiving orders, not giving them.[55] Even the "very extensive rights" Fidler enjoyed according to one witness he received only from the occupiers.[56]

Despite the different titles ascribed to Fidler and the subordinate role witnesses assign to him in relation to the Romanians, Fidler's authority in the ghetto was consensus among the witnesses. This becomes clear in the accusations they brought forward against Fidler. Even the people just calling him a translator described responsibilities and actions far beyond mere translation. These actions mainly concerned a leading role in organizing deportations, as well as expropriating ghetto inmates' belongings.

Several witnesses accused Fidler of drawing up lists for deportations.[57] Two witnesses even estimated how often Fidler had supposedly done this, and how many people had been included in the lists (either twice for 300-500 people, or three to four times for 150-200 people).[58] The most concrete description of Fidler's involvement in organizing deportations came from witness Eva

[52] Ibid., p. 244.
[53] See the formulations in the testimonies (ordered as quoted): Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 96-99, 146–148, 87-88, 67-69, 96-99.
[54] Ibid., p. 96–99.
[55] Ibid., p. 96–99, 143-145, 70-71.
[56] Ibid., p. 67–69.
[57] Ibid., p. 67-69, 87-88, 143-145, 146-148.
[58] Ibid., p. 143-145, 146-148.

Gofishevich, who essentially described a "selection". Asked how she knew about Fidler's involvement, Gofishevich proclaimed:

> "I was an eyewitness of this misdeed *["zlodeistvo", WS]*, how Fidler, together with a Romanian soldier, went around the camp and drew up these lists. On the day the lists were compiled, I was lying sick with typhus, but I was well recovering and memorized it all (memorized it well). Meanwhile, Fidler himself came up to me personally with the purpose of putting me on this list, but seeing that I could not move, he did not do so."[59]

Another crucial description comes from witness Turner, who worked as a doctor in the ghetto. Mostly confirming Gofishevich's account, Turner accused Fidler of going from bed to bed with a Jewish doctor and a Romanian officer, forcing sick Jews to get up and joining that day's contingent of deportees.[60] Yet asked to explain the mechanism of selection in detail, Turner laid out a somewhat different version, one where Fidler appears less prominently involved:

> "Romanian doctors and gendarmes came to the camp and went to the elders of the floors where the Jews lived, and there, together with the brigadiers who had lists of Jews, they selected Jews and sent them to other camps. In addition to the bureau, the elders (brigadiers) had records of this kind, thus Fidler Igor (Izia), Rosenfeld Yuzia had such lists and others, whose names I do not remember at this time. […] Regarding this I would like to say that these lists were not compiled [*by Filder and others such as he, WS*], but as the elder, Fidler had a list of his floor, and he made notes that so-and-so had departed, or simply crossed out the names of the Jews from his list, whom the gendarmes had taken to be sent to another camp."[61]

To a certain degree, the severity of accusations concerning deportations depends on the consequences that witnesses ascribed to said deportations. In Fidler's pretrial investigation, only some witnesses claimed that those deported were shot but witnesses were mostly unable to offer anything more concrete than rumors and hearsay when Soviet investigators asked them to support these claims.[62] Other witnesses did not refer to the eventual fate of those deported at all, which could indicate that the rumors of the shootings did not come to the attention to everyone in Slobodka.[63] For two reasons, the general vagueness of the descriptions is not surprising. First, none of the witnesses were deported to the Berezovka region where a significant part of the mass shootings took place.[64] Second, those witnesses who recalled mass shootings at their destinations

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[59] Ibid., p. 67–69.
[60] Ibid., p. 96–99.
[61] Ibid.
[62] Ibid., p. 67–69, 70-71, 96-99.
[63] Ibid., p. 87-88, 143-145, 146-148. Other explanations are of course possible. Witnesses might have chosen to conceal things they did not know for certain or investigators might have chosen not to record rumors and hearsay. However, the latter explanation is highly unlikely, since the investigation materials examined in the present study include rumors and hearsay very regularly.
[64] Everybody eventually wound up in the Domanevka rayon. Witness Gofishevich was deported with the last contingent in June 1942 and wound up in the village of Semikhatka, where Turner also eventually found himself. Witnesses Shkol'nik, Sapino, M. Khersonskaya, Zh. Khersonskaya and Khersonskii all ended up in Karlovka, which these witnesses describe as a subcamp of the Domanevka camp. Ibid., p. 67-69, 70-71, 72-73, 87-88, 96-99, 143-145, 146-148. Judging by the times of arrival in Domanevka-Karlova that these witnesses provided, they were all in danger of being shot there. Between January and mid-March 1942, the Romanians shot some 18.000 Jews at Domanevka. See: CREANGĂ, Ovidiu: Domanovca, in: Camps and ghettos under European regimes aligned with Nazi Germany, edited

in Domanevka were apparently not selected to be shot and could not testify to those events as eyewitnesses.[65] None of the witnesses depicted having survived a mass shooting. Nevertheless, when questioned in late July 1945, witness Gofishevich could already point out the Berezovka region as a site of mass shootings and specify details of how the killings allegedly proceeded.[66] It is unclear how and when Gofishevich learned this information. Thus, witnesses either did not discuss the outcome of the deportations, or assumed they had deadly consequences, which added weight to their accusations.

Other recurring accusations against Fidler concerned property crimes, which amount to extortion. According to witness Shkol'nik, Fidler "robbed the Jewish population" interned in Slobodka.[67] Witness Khersonskii was a little more concrete, claiming that Fidler took bribes for freeing ghetto inmates from deportation.[68] Even further went witness Gofishevich, who accused Fidler of allowing anyone to stay "who had gold and other valuables", but only until Fidler had "drained" them of their property. Then, supposedly "to cover any tracks", Fidler "added these people to the list and they were shot".[69] According to two witnesses, the exploits of these crimes set Fidler apart from the other inmates, since he "was well dressed" and "had a lot of gold and valuables".[70] Both Zhenia Khersonskaia and Efim Khersonskii claimed that besides valuables, Fidler had extorted sex from young women in the ghetto.[71] The investigators did not follow up on this claim, which appears to have been the norm in wartime and postwar investigations into alleged collaboration.[72]

Witnesses used their conversations with Soviet investigators not only to bring forward concrete accusations against Fidler, but also to describe their immense suffering during the Holocaust. The protocol of Gofishevich's interrogation begins with a list of family members she had lost during

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by Joseph R. WHITE / Mel HECKER / Geoffrey P. MEGARGEE (The United States Holocaust Memorial Museum Encyclopedia of camps and ghettos, 1933–1945, vol. 3), Bloomington 2018, p. 670–671, here p. 670.

65 See, for example: Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 70–71.

66 Albeit with faulty details, such as wrongly identified perpetrators and a hyperbolically exaggerated number of vicitms: "Not far from the village of Berezovka in the Odessa oblast, the Romanians shot hundreds of thousands of Jews. The Jews dug graves for themselves and then they were struck down with machine guns." Ibid., p. 67.

67 Ibid., p. 71.

68 Ibid., p. 87–88.

69 Ibid., p. 67–69.

70 Ibid., p. 87-88, 67-69.

71 Ibid., p. 87-77, 146-148. These two witnesses were likely wife and husband.

72 HAVRYSHKO, Marta: Listening to Women's Voices. Jewish Rape Survivors' Testimonies in Soviet War Crimes Trials, in: If this is a woman. Studies on women and gender in the holocaust, edited by Denisa NEŠŤÁKOVÁ / Katja GROSSE-SOMMER / Borbála KLACSMANN, Boston, MA 2021, p. 221–242, here p. 226. EADEM: Sexual Violence During the Holocaust and Criminal Justice in Post-War Ukraine (Paper presentation held at Heidelberg University, February 15, 2022). Ukrainian historian Marta Havryshko, who studied that aspect in detail, asserts that Soviet investigators in the 1940s mostly chose to ignore the topic when witnesses brought forward such accusations. The investigators only put accusations of sexual violence on their agenda if the witnesses persistently pressured them to do so. This is consistent with another case of a Jewish ghetto functionary. During the investigation into the Rybnitsa ghetto Jewish administration one witness accused a Jewish functionary of extorting sex from women in the ghetto. The investigators did not follow up on that lead. See: Shtrakhman, Nakhman Mortkovich, USHMM, RG-54.003*44, p. 130.

the Holocaust. It includes her parents, her brother, her sister and two sons.[73] Similarly, witness Shkol'nik recalled how her mother had died of typhus in Slobodka. She then told investigators how after Slobodka, her father had committed suicide, "because he knew that every day they chased hundreds of Jews to execution and that the same fate awaited him too."[74]

Gofishevich's interrogation also shows how survivor witnesses were unable to direct the needs for punishment and justice emerging from such traumatic events towards anyone else than the former Jewish functionaries. Asked who had shot her relatives, Gofishevich answered that the perpetrators had been "Romanian soldiers and officers" the names of whom she simply did not know.[75] Yet when the MGB interrogator asked Gofishevich whether she remembered "persons from the Jewish population who were engaged in betrayals of the Jewish population and participated in executions", she could name Fidler and describe his actions in detail.[76]

Thus, the witness testimony regarding Fidler's role in the ghetto does not divert from the patterns we described in earlier case studies. Here too, ghetto survivors were willing to talk to Soviet authorities and tried to convey to the investigators the ordeal they had endured, which in combination with the accusations clearly conveys a need for justice and retribution. Within the region and period studied here, this aspect of the trials remains constant across time and space.

In the pretrial investigation, Fidler himself confessed much of, though not everything witnesses accused him of. He admitted having served as the head of the ghetto's Jewish council. According to Fidler, he followed the January 10, 1942, order to move into the Slobodka ghetto, where he arrived together with three friends of his, all of them young Jewish women.[77] Two of these women, Fidler claimed, had "intimate connections" with a local Romanian military prosecutor, senior lieutenant Savulescu.[78] Owing to these connections, Savulescu summoned Fidler and one of his friends the day after they arrived in Slobodka. Savulescu now also served as the commander of the ghetto.[79] In this function, he tasked them to organize a medical team from the Jewish doctors in the ghetto and to organize a hospital. During the meeting, Savulescu also offered to delay the deportation of Fidler and his friends.[80] Five days later, on January 16, 1942, Savulescu summoned Fidler again. Apparently pleased with how Fidler had fulfilled his last order, the Romanian ghetto commander appointed Fidler as head of the Jewish council and ordered him to pick four more

[73] Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 67–69.
[74] Ibid., p. 70–71.
[75] Ibid., p. 67–69.
[76] Ibid.
[77] Ibid., p. 12–15.
[78] Ibid., p. 17–20.
[79] Ibid., p. 12–15.
[80] Together with the testimony of witness Turner cited above, this suggests that the initiative to organize a hospital did stem more from the Romanian authorities, and less from the Jewish doctors themselves. Ibid.

council members from the ghetto inmates, which Fidler did.[81] According to Fidler, he remained in this position until the second half of February 1942, when he fell ill with typhus and was removed from the Jewish council.[82]

The mere fact of Fidler's recruitment into a position is striking because of his youth. The month and day on which he was born are unknown, but the year is given in the casefile as 1925.[83] Thus, during the crucial months of January and February 1942, he cannot have been older than 17 – and it is likelier that he was still 16. While witnesses, defendants and investigators occasionally call heads of Jewish councils "starosta", "elder", in the Soviet investigative casefiles, the use of this term was clearly off the table for Fidler (see chapter 7). That a man like Savulescu saw no problem in recruiting teenagers into the highest positions in the ghetto's Jewish administration also shows that he did not care about the potential candidate's qualifications. For a Jew under Romanian occupation, it was apparently not necessary to be a lawyer, professor of economics or even a bookkeeper to wind up in such a position. Nor was it necessary to have established oneself as a respected community leader in prewar times. And at least in Fidler's case, it was not even necessary to have reached adulthood.

Despite some formulations suggesting the opposite, the realm of Fidler's responsibilities was limited to the building of the maritime institute's former dormitory, and mostly concerned the Jewish hospital. That much becomes clear from Fidler's confessions, which echo the witness testimony in this aspect (triangulation with oral history also confirms this). Most informative in this regard is how Fidler described his involvement in the deportations from Slobodka.

Since Slobodka served as a transit point, the main task of the newly appointed committee was to select people for deportations.[84] According to Fidler, the selection process had two steps. Because the Romanians officially prohibited deporting sick ghetto inmates, the Jewish council's first task was to sort out sick ghetto inmates awaiting deportation on the other floors of the building and to move them to the hospital.[85] The Romanian ghetto commander then regularly demanded a certain number of people and the Jewish committee had to select them from the inmates in the hospital who had sufficiently recovered.[86] To determine who was sick and who was healthy, Fidler and the

[81] Ibid., p. 25–29.
[82] Fidler gave different dates in different interrogations (either February 20 or February 16), see: Ibid., p. 12-15, 23–26.
[83] Ibid., p. 5.
[84] Ibid., 12-15.
[85] Ibid., p. 25-29, 42-44, 12-15. According to Fidler, the hospital was only one of six sectors the ghetto had been divided into. Witness Turner's testimony cited above suggests that Jewish functionaries were involved in the selection process on the other floors of the building (i. e. "sectors" of the ghetto) as well. The details of this process, the underlying chain of command and the question whether it was carried out with Fidler's knowledge or whether he was involved in it remains unclear. Fidler claimed that Romanian gendarmes organized and conducted the deportation of healthy ghetto inmates from other sectors without his involvement.
[86] Ibid., p. 12-15, 38-41.

committee involved a medical commission of five Jewish doctors in both steps of the selection process. Jointly, council members and doctors visited the inmates on the other floors and had the sick moved to the hospital.[87] In the hospital itself, the committee and the doctors decided who was healthy enough for deportation, and added their names to a list, which Savulescu received for approval.[88] Each contingent consisted of around 200 people.[89] After initially putting the total of ghetto inmates he had selected at around one thousand, Fidler later confessed that it had been up to six thousand.[90] Once Savulecsu had approved the lists, Romanian gendarmes then carried out the physical act of deportation.[91]

Fidler mostly stuck to the version of events where he had nothing to do with deporting healthy ghetto inmates. Only in one pretrial interrogation did he state that "this commission [i.e. the medical commission with the five doctors, WS] had really only been formed for show, but in fact the task of this commission was to exterminate more prisoners and thus both sick and healthy people were put on the lists."[92] That healthy people wound up on the lists comes to no surprise, since Fidler too described how people faked illness to avoid deportation.[93] That sick people were included as well adds weight to the accusations, since they were even more helpless than the healthy ghetto inmates.

Fidler admitted that after he had first helped to draw up a list for deportation, he learnt of the rumors that the deportees were systematically being murdered. He did not question the ultimate veracity of these rumors but added two important caveats. The accused stated clearly that he had never seen an execution with his own eyes, and thus only knew about them by hearsay. Some deportees had survived, Fidler added, since he later met people in Domanevka whom he had earlier selected for deportation.[94] While he claimed not to have known for certain, Fidler neither denied being aware of the rumors, nor the fact that some of those he selected for deportation were in fact murdered.[95]

In addition to his position and his involvement in organizing deportations, Fidler also admitted to the accusations of property crimes. Contrary to witnesses' accusations, Fidler claimed that he was neither the original initiator nor the ultimate profiteer of the expropriations. According to

[87] Ibid., p. 25–29.
[88] The main criterion was apparently the ability to walk, which fits witness Gofishevich's testimony cited above. Ibid., p. 17-20, 25-29.
[89] Ibid., p. 30-33, 38-41.
[90] Ibid., p. 12-15, 34-35.
[91] Ibid., p. 17–20.
[92] Ibid., p. 42–44. He also added that whole contingents must have been murdered, since he met several people he had included on some lists, but nobody whose names he had put on others.
[93] Ibid., p. 38–41.
[94] Ibid.
[95] Ibid.

Fidler, Savulescu regularly summoned him, ordered him to find specific valuables or money and, in exchange for these goods, to offer a delayed deportation to the Jewish owners.[96] Fidler admitted acting as an intermediary for such extortions himself, as well as ordering other Jewish council members to identify ghetto inmates still owning valuables.[97] Nevertheless, Fidler claimed not to have kept anything for himself.[98]

It is impossible to decide whether this was true. Nevertheless, it is most likely that at least some of the extorted valuables went to the Romanians. Fidler's account contradicts the witness testimony in the casefile. Oral history shows that there were rumors that Fidler lost his position in the Jewish council not because he fell ill with typhus, but because "a huge number of gold and gems" were found on him.[99] In the context of Slobodka, it is highly probable that at least some of the things expropriated from ghetto inmates found their way into the Romanians' hands. On the day the Romanians ordered Jews in Odessa to move into the Slobodka ghetto, the occupiers also ordered the Jews to hand over all gold and valuables.[100] Local officials not only enforced that official policy, but also lined their own pockets with Jewish property.[101] Upon entering the former dormitory of the maritime institute, Jews were already searched and valuables confiscated.[102] Thus, whatever Fidler took from ghetto inmates was already only a reminder of their property – part of what they had been able to smuggle into the ghetto. And given the overwhelming imbalance of power in favor of the Romanians, it is unlikely that Fidler could have kept *everything* for himself.

In his defense, Fidler elaborated his motives, and highlighted his own suffering, as well as the fluidity of his role. Fidler described his motivation for his actions in Slobodka straightforwardly: He wanted to survive. Knowing that at least a part of those deported would be murdered, Fidler tried to buy time, and the Romanians promised that Jewish council members would be deported last.[103] Moreover, Fidler claimed that had not he done what he did, someone else would have.[104] While problematic as a moral justification, the claim was not without merit, since Fidler's spot in the committee was filled as soon as he was removed from it.[105] Adding to this theme, Fidler emphasized how fluid his role had been, and highlighted his status as a victim of the Holocaust. Fidler told investigators on multiple occasions that the Romanians had murdered both his parents

[96] Ibid., p. 12-15, 25-29.
[97] Fidler himself estimated that he had taken "six golden watches, 25 gold coins and up to 2000 German marks" from inmates. Ibid., p. 17–20.
[98] Ibid., p. 12-15, 25-29.
[99] BERINA: Interview 8608, segment 73.
[100] IOANID: Holocaust in Romania, p. 208.
[101] ARAD: Holocaust in the Soviet Union, p. 238.
[102] BERINA: Interview 8608, segment 55.
[103] Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 17-20, 34–35.
[104] Ibid., p. 12–15.
[105] Ibid.

at Dal'nik, from where he himself escaped before the shootings.[106] Thus, he was suddenly orphaned at age 16, and had to face the things to come without any parental guidance. After escaping the massacre at Dal'nik, Fidler said the Romanians briefly arrested him even before he had to move into the ghetto.[107] When he lost his position in the Jewish council, Fidler claimed to have suffered the same fate as anyone else in the ghetto. Once he recovered from typhus, he went into hiding inside the ghetto building, and every time Jewish council members caught him, he bribed them to avoid deportation.[108] This went on for two months, Fidler claimed, until he was eventually deported in May 1942.[109] Thus, Fidler admitted to many gruesome deeds, but emphasized that he had acted unwillingly and despite his actions, he had suffered just as the rest of the ghetto inmates both before and after the period of his service in the Jewish council.

The oral history account of Zhanna Berina allows to confirm Fidler's claim of a fluid role and sheds light on some of the horrors he had to endure after Slobodka. The fate of Berina's family was closely linked to that of Fidler – the family owed them their lives, and he owed them his. In the ghetto building, the family wound up in one of the deportation rooms. Berina's aunt ended up with them in that room. She had an acquaintance in the Jewish council, who she contacted. The man did not show up himself – but Fidler did, and he moved both the aunt's family, as well as Berina's immediate family to the hospital. Berina thus credits Fidler with saving their lives.[110] After Slobodka, Berina's brother repaid the favor by saving Fidler's life when he was turning into a "Muselmann".[111] Though Fidler and Berina's family were deported at different times, they eventually wound up together in the buildings of a former Soviet collective farm at a place called Viniary, where the Romanians had established a camp and forced Jews to do agricultural labor.[112] During the winter of 1942/1943, many of the deportees in this place died of cold, hunger or

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[106] Ibid., p. 12-15, 17-20, 25-29.

[107] Ibid., p. 15-16, 17-20. Such arrests were frequent during the period between the mass killings and the deportations. See: IOANID: Holocaust in Romania, p. 105.

[108] Attentive readers will wonder at this point whether these bribes do not underpin the claim that the defendant had previously enriched himself. However, Fidler had an explanation for this as well: he had enjoyed the material support of a female doctor who had large financial resources at her disposal. These claims were impossible to verify already when Fidler was interrogated: He claimed that said doctor had later died in Domanevka. Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 12–15.

[109] Ibid., p. 30-33, see also p. 12-15.

[110] BERINA: Interview 8608, segment 103. Berina summarized her experiences with Fidler in an interesting phrase: "He saved us. I never heard that he was particularly nasty, or particularly mean – I can't say, I don't know." Much of what Primo Levi put into his concept of the "gray zone" is contained in this phrase: Once you were in Fidler's position, you necessarily became somewhat "nasty", but there were also gradations of "nastiness", and some were "particularly nasty".

[111] On "Muselmann" as transitory state some inmates survived, see: BECKER, Michael/BOCK, Dennis: "Muselmänner" und Häftlingsgesellschaften. Ein Beitrag zur Sozialgeschichte der nationalsozialistischen Konzentrationslager, in: Archiv für Sozialgeschichte (2015), p. 133–175, here p. 151–155.

[112] Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 17–20. The exact locality could not be established by the researchers of the USC Shoah foundation. Fidler puts the location of this collective farm as "the Engels sovkhoz in the Domanevka rayon. See also: BERINA: Interview 8608, segments 84–94.

disease.[113] At some point, Fidler refused to get up and wash himself with snow at least once a day. The camp inmates had already learnt to identify such behavior as a sign on impending death.[114] Berina's older brother and his friends eventually saved Fidler, forcing him to get up, move around and wash himself, as well as supporting him otherwise.[115]

Interestingly, Berina describes Fidler's state as much as one of physical exhaustion, as one of ultimate psychological dismay. There are further indicators for the detrimental effects the events of the Holocaust had on Fidler's psyche. We had already seen that Fidler told the investigators about his suffering. After the Axis occupation had ended, he apparently felt a strong urge to talk about his Holocaust experiences. One witness told the investigators that Fidler "very often" talked about "how much he had had to endure during the occupation", although he did not disclose some core details.[116] This is, of course, not surprising given Fidler's personal suffering and the choiceless choices he had been forced to make.

Witness Gofishevich even claimed that Fidler included his own wife into one of the deportation lists, knowing that she would be shot.[117] Given Fidler's young age of only 16 years at the time of the Axis invasion, it seems unlikely that he was married. Nevertheless, he might have given up for deportation someone he was intimate with, whom Gofishevich falsely identified as his wife. Unfortunately, that question is relegated to the realm of speculation, because the investigators simply did not follow up on this accusation.[118]

However, one thing is sure: Fidler's marital troubles soon came to play an important role in his investigation and trial. His wife Evgenia Polushkina, whom he married in Konstantinovka (Stalin oblast', i.e. Donbass) in April 1945, subsequently testified against Fidler and became a key witness in his case.[119] As several other witnesses, Polushkina testified exclusively to Fidler's postwar behavior, namely to his work as an MGB covert agent in the Soviet anti-religious campaign. Within Fidler's investigation and trial, that period soon pushed into the background everything Holocaust-related.

## Part 2 – Fidler as an MGB agent in the Soviet anti-religious campaign

Initially, Fidler left occupation and Holocaust behind himself and began a new life, with a job and family, before the NKGB caught up with him. Fidler met his wife in Konstantinovka, Stalin

[113] BERINA: Interview 8608, segments 94–100.
[114] Ibid., segments 99–101.
[115] Ibid., segment 102.
[116] Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 127–130.
[117] Ibid., p. 67–69.
[118] As is the accusation that Fidler had extorted sex from young women in the ghetto – for the Soviet investigators handling the case, this was apparently not important enough of an accusation to put the question to Fidler himself, or even to other witnesses.
[119] Ibid., p. 75-76, see also p. 74, 81-82.

oblast' (i.e. the Donbass region) in 1945, where he was studying at the factory-and-workshop school of the glassworks.[120] He was living in Konstantinovka at least since January, because at that time he applied for membership in the Komsomol. He later confessed to have hidden his actions during occupation when applying, as well as to falsifying his social origins and claiming his father had been a worker, rather than a merchant.[121] In February, Fidler met Evgeniia Iakovlevna Polushkina, who introduced him to her family and married him already in April 1945.[122] During this time, Fidler already told his wife and in-laws about some of his experiences during occupation, though not about the events in Slobodka.[123] Fidler and his new wife also had a child together, but the exact time of its birth is difficult to establish from the casefile.[124]

Soon, Fidler's old life began to disrupt his new one. Soviet security organs eventually began investigating Fidler. Late in July 1945, NKGB officers recorded the first two witness testimonies about Fidler's role in Slobodka.[125] These interrogations took place in Sarata, Izmail' oblast', where Fidler had been born, some 660 kilometers from Konstantinovka. He eventually had to cover that distance himself and was interrogated in Sarata in early September 1945. Already in his first interrogation, Fidler confessed many of the accusations concerning Slobodka.[126] At the end of this interrogation, Fidler professed his will "atone for his crimes against the Motherland at any cost".[127] For Soviet authorities, the incriminating information gained from witness testimony and Fidler's confession made for a good stick to incite such obsequiousness (and the authorities would soon also bait him with a carrot). With the Second World War concluded both in its European, as well as in its Pacific theatres, Fidler could no longer "atone" at the frontline. However, the authorities eventually found other ends for which Fidler could become the means.

Before the authorities "offered" Fidler a chance to atone, they left him in limbo for some time, not putting him on trial, but also not doing anything else with him. It took almost a year until they finally recruited him as a covert agent and sent him on his first assignments. While her husband was hanging in limbo, Fidler's new wife soon came to feel the first effects of her husband's trouble with the authorities. In Konstantinovka, Polushkina's application for membership in the communist party was refused and she was told that the reason lay in "compromising materials"

[120] Ibid., p. 17–20.
[121] Ibid.
[122] See Evegniia Polushkina's testimony: Ibid., p. 75–76.
[123] Ibid., p. 75-76, 81-82, 83-85.
[124] Ibid., p. 75-76, 127-130.
[125] Ibid., p. 67–71.
[126] Ibid., p. 12–15.
[127] Ibid.

about her husband.[128] In late January 1946, the NKGB interrogated Fidler again in Izmail. Judging by the protocol, the officer familiarized Fidler with an indictment in his case.[129] Conspicuously, this document is not contained in the casefile. Neither is the protocol of the next interrogation, which apparently took place on March first, 1946.[130] In June, Fidler and his new wife moved to Belgorod-Dnestrovskii, Izmail oblast'.[131] This return to his home region probably happened already on MGB orders – these arrangements may well have been the topic of the interrogation for which there was no protocol.[132] In July, Fidler spent three more days in Sarata, to where the rayon MGB had again summoned him for further questioning.[133] There, the MGB recruited Fidler as a covert agent.[134] In the postwar years, security organs often used people's "stained" wartime past to blackmail them into service.[135] As many others, Fidler now went over from MGB interrogators to MGB handlers.

Eventually, Fidler would transfer back from handlers to interrogators. He served as an MGB agent for five and a half months, before the MGB officially arrested him and put him on trial.[136] The reason for his eventual arrest was that he apparently told several people about his work for the MGB. Their accounts and his confessions allow to piece together a solid picture of his agent work from the casefile. According to the witnesses testifying to Fidler's post-war activities, he disclosed the details of this brief career as an agent to his wife, his mother-in-law as well as both his sister-in-law and her husband.[137] In less detail, he apparently also talked to a colleague of his wife and to one of her friends.[138] Furthermore, several of these witnesses claimed that Fidler had spoken to others as well, some of whom they could name, but whom the MGB did not question.[139] Fidler himself claimed that he had only spoken to his wife.[140]

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128 Ibid., p. 75–76. The exact time this happened is difficult to pinpoint. Polushkina was most likely refused membership sometime between July 1945, when the first witnesses were interrogated, and June 1946, when she and Fidler left Konstantinovka.

129 Ibid., p. 38–41.

130 At least according to the investigator who questioned Fidler on July 22, 1946. See: Ibid., p. 18.

131 Ibid., p. 75–76.

132 The NKGB and SMERSH had fused into the MGB in March 1946, see: HILGER: Sowjetunion (1945–1991), p. 45–46.

133 Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 17–24.

134 The exact date was July 31, 1946. See: Ibid., p. 49-54, 105–107.

135 MERTELSMANN/RAHI-TAMM: Cleansing and Compromise, p. 334. There was a broader pattern behind such tactics. Local Soviet officials often knowingly kept people with a stained past on staff in various institutions. Apparently, their fear of reprisals made them diligent workers and easy to handle subordinates. See: JONES: "Every Family", p. 755–756.

136 The interrogation protocol from January 15, 1947 lists Fidler as "arrestee". The official order of arrest was issued three days later. Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 25–29, 2–4.

137 See the testimonies: Ibid., p. 75–85.

138 Ibid., p. 86, 127-130.

139 Ibid., p. 75-76, 77-80, 81-82, 83-85.

140 In turn, his wife claimed that Fidler had known full well that talking to her was illegal, since his handlers had explicitly told him so: "For example, he told me how when he was in Izmail in the flat of MGB officer Blinov, the officer warned him not to tell his wife anything about his work, allegedly saying 'See, my wife works for the MGB, but I do not tell her about my work.'" Ibid., p. 49–54, 75-76.

By speaking about his assignments, Fidler jeopardized the safety precautions the MGB had taken to ensure that his work for the agency remained a secret. Fidler had been recruited by the Izmail oblast' MGB and for secrecy's sake, had received a pseudonym.[141] Furthermore, he was not allowed to go into any MGB office.[142] He met his handlers at a conspiratorial flat in Belgorod-Dnestrovskii.[143] Given the tasks the MGB wanted Fidler to fulfill, such secrecy was crucial.

The MGB primarily ordered Fidler to infiltrate the local Jewish community in Belgorod-Dnestrovsky. As a first assignment in August 1946, the MGB sent Fidler abroad for a full week, most likely to Romania.[144] The exact target of that mission is unknown, but it was likely religious Jews and "Zionists", since this is whom the MGB set as Fidlers next target. The MGB demanded that he infiltrate the local Jewish community in Belgorod-Dnestrovsky and gather information on their leadership. The authorities believed that the community's religious activities were a front for the operation of "Zionist" and "anti-Soviet" groups.[145] Fidler spent much time at the synagogue, including, but not limited to attending services.[146] Moreover, Fidler often went to public places like restaurants and cafes, where he was to "listen to people's conversations and moods and report all this to the MGB".[147] The ultimate local goal was to uncover and dismantle both the "illegally operating Jewish community" and the "Zionist organization" linked to it.[148]

Besides the local one, Fidler's mission had an international dimension. The MGB believed that the local "Zionist" group was the puppet of an international master, the "Union of Akkerman Jews" in the USA (Akkerman was the name of Belgorod-Dnestrovsky until 1944). This organization supposedly wanted to establish a local committee in Belgorod-Dnestrovsky, which Fidler was to infiltrate and about which he was to gather information.[149] Moreover, the security organs tasked Fidler to establish contact with a representative of the main organization in New York.[150] Fidler had his wife take the package to the post and warned people in his household that he would soon receive an answer.[151] The aim of this was to learn the "goals and intentions" of the organization and inform the MGB about them.[152] The international dimension and the local

[141] Ibid., p. 75-76, 77-80, 81-82, 83-85.
[142] Ibid., p. 75–76.
[143] The address and owner of which witnesses could identify, see: Ibid., p. 49-54, 75-76, 77-80, 83-85.
[144] Ibid., p. 75–76.
[145] Ibid.
[146] Ibid., p. 75-76, 77-80, 83-85.
[147] Ibid., p. 77–80.
[148] Ibid., p. 84–85, 75-76, 81-82.
[149] Ibid., p. 75–76.
[150] Ibid., p. 77–80.
[151] Ibid., p. 49-54, 81-82.
[152] Ibid., p. 77–80.

dimensions were closely linked. For the MGB, gathering intelligence about the organization in the USA was crucial for dismantling the local branch.

Thus, Fidler was plunged head on into the postwar Soviet anti-religious campaign. Jewish communities became one of its targets, since there was a significant revival of Jewish religious life once the Red Army drove out the Axis forces. Practically everywhere where Jewish Holocaust survivors and/or Jews returning from evacuation lived, some of these people reestablished Jewish communities or created them for the first time.[153] Even assimilated Soviet Jews now were interested in Jewish religion and culture "for the first time or to a greater extent than before".[154] The main reasons for this renewed interest were the experience of the Holocaust and the contact with far less assimilated Jews from the territories annexed by the Soviet Union since 1939 (the Baltic countries, Poland, Bessarabia and Northern Bucovina).[155] These less assimilated Jews also provided a significant social base for the religious revival of the last war year and immediate postwar years.[156] On the surface level, political conditions had also changed in favor of renewed interest in Judaism, be it strictly religious or more cultural-historical. During the war, the regime had made "temporary concessions" in its Jewish policy, such as allowing the Jewish Anti-Fascist Committee to act publicly as the representative of the Jewish people.[157] Such concessions mainly served propaganda purposes.[158] Nevertheless, to a degree, they facilitated the revival of Jewish religion and culture.

A primary component of this revival was the opening (or reopening) of many synagogues. In 1947, some 162 synagogues were registered in the USSR.[159] An unknown number was operating additionally, but not registered.[160] Moreover, there was an uncounted number of minyans (religious circles of at least ten Jewish men over the age of thirteen).[161] Grüner estimates the total of Jewish religious communities in the USSR between 1946 and 1948 at up to 200.[162] This was a staggering reduction to prewar times, when there had been 657 synagogues in Ukraine alone (that is the

153 GRÜNER: Patrioten und Kosmopoliten, p. 406.
154 Ibid., p. 372.
155 This should, however, not be oversimplified. As Grüner argues: "Although it is difficult to argue that the events of the war and the Holocaust brought Soviet Jewry back into the embrace of religion, for many Soviet Jews there was a fundamental reorientation in their relationship to Jewish tradition and history." GRÜNER: Jüdischer Glaube, p. 539.
156 Ibid.
157 GRÜNER: Patrioten und Kosmopoliten, p. 419.
158 Ibid.
159 Ibid., p. 383.
160 Ibid., p. 384.
161 BOECKH, Katrin: Jüdisches Leben in der Ukraine nach dem Zweiten Weltkrieg. Zur Verfolgung einer Religionsgemeinschaft im Spätstalinismus (1945-1953), in: Vierteljahrshefte für Zeitgeschichte 3 (2005), p. 421–448, here p. 438.
162 GRÜNER: Patrioten und Kosmopoliten, p. 386.

amount in 1940).[163] Nevertheless, despite the catastrophic blow the Holocaust had dealt to Judaism, the religion and Jewish culture more broadly had survived and were recovering.

Such a religious revival soon attracted the regime's attention, and it reacted with repression. Until 1948, these repressions were part of the general anti-religious campaign, but in 1948, the regime began a parallel line of distinctly anti-Semitic persecutions. In the war years, the regime's religious policies were characterized by "the lack of a general line and a certain disinterest", but the overarching anti-religiousness was never questioned.[164] Thus, throughout its existence, the primary goal of the regime's Jewish policies was, and remained, the "complete assimilation and integration of the Jews into […] Soviet society".[165] From 1946 onwards, the Soviet regime focused its "general line" and approached religious communities with renewed interest, putting increasing pressure on them, including Jewish communities. Until 1948, the repressions the Jews faced are best understood in the context of the broader anti-religious campaign – the Jews endured the same treatment as other religious communities.[166] Only in 1948 did the regime turn openly anti-Semitic.[167] And only then did it begin to treat Jews significantly different from other targets of its anti-religious policies.[168] Anti-religious persecution of Jews thus became intertwined with, and was shaped by, distinctly anti-Semitic campaigns in 1948.

The repressions that initially ensued in 1946 were two-tiered: both the "Council for the Affairs of Religious Cults" and the security organs were involved. In 1943, the Soviets had established the "Council for the Affairs of the Russian Orthodox Church", and in May 1944, they followed with a "Council for the Affairs of Religious Cults" for the other religious groups (*from here on: "the Council",* WS).[169] The Council created the "administrative prerequisites for central organization and supervision of all religious communities".[170] The institution had representatives on the Republic- and oblast'-levels.[171] According to Soviet law, each local religious community had to register with the Council, and to achieve this the community had to designate a religious leader and a place of

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[163] BOECKH: Jüdisches Leben, p. 430. Compared to the 1000 Jewish communities that had existed in Ukraine in 1926 and the 400 in the Russian Soviet republic, the prewar numbers already show a stark decline under Soviet rule, even before the devastating effects of the Holocaust. See: GRÜNER: Patrioten und Kosmopoliten, p. 386.
[164] GRÜNER: Patrioten und Kosmopoliten, p. 378.
[165] GRÜNER: Jüdischer Glaube, p. 534.
[166] GRÜNER: Patrioten und Kosmopoliten, p. 399.
[167] GRÜNER: Jüdischer Glaube, p. 549.
[168] A short enumeration should suffice here: in 1948, Stalin ordered the murder of the head of the Jewish Anti-Fascist Committee. In 1948 the committee itself was closed, as were practically all Jewish cultural institutions. The years 1948 and 1949 saw the "anti-cosmopolitan" purges targeting the intelligentsia. The members of the Jewish Anti-Fascist Committee were tried in a secret trial in 1952. From January 1953 until Stalin's death in March, the regime pursued a further anti-Semitic campaign, revolving around a fictional "doctor's plot". See: IDEM: Did anti-Jewish mass violence exist in the Soviet Union? Anti-Semitism and collective violence in the USSR during the war and post war years, in: Journal of Genocide Research 2–3 (2009), p. 355–379, here p. 370–372.
[169] BOECKH: Jüdisches Leben, p. 426.
[170] GRÜNER: Patrioten und Kosmopoliten, p. 377.
[171] BOECKH: Jüdisches Leben, p. 427.

worship – both of which proved to be effective levers for the Council's future attempts at reducing the number of Jewish communities.[172] If the Council declined to register a building or a rabbi, it could use the lack of either component to deny the respective community registration and eventually dismantle it. Moreover, Jewish communities could not train new rabbis, since the council declined to open the necessary educational facilities, which led to a chronic shortage of religious personnel among Jewish communities.[173] The above-mentioned minyans were wholly illegal in any case, since they did not meet the requirement of a designated building.[174]

Concerning synagogues, the Council initially registered a significant amount, most of them as pre-existing, some of them as newly founded. From 1948 on, the Council then followed a policy of reducing the number of synagogues to one per oblast'. Between 1944 and 1947, hundreds of Jewish communities applied for the official registration of their synagogues with the Council.[175] Many of those synagogues were pre-existing ones that already operated without any sanction from the Council (of 59 existing in Ukraine as of October 1, 1945, only 5 had been established *after* the community had secured the Council's approval).[176] The Council granted a number of applications, but that number declined, until it sank to three in 1947.[177] With decreasing chances of success and with the onset of open government anti-Semitism in 1948, the number of applications dwindled as well.[178] Jewish communities understood that the tides were turning and that applying to register was a waste of time. The Council eventually set as its policy goal to reduce the number of synagogues to one per oblast'.[179] The agency did not achieve this goal completely by 1952, but made considerable "progress" in that direction.[180] Historian Katrin Boeckh argues that the regime here nominally tried to conform to the religious freedom guaranteed in the 1936 constitution.[181] The motivation for such an approach likely lay in foreign policy concerns.[182]

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172 Ibid., p. 429.
173 GRÜNER: Patrioten und Kosmopoliten, p. 387. BOECKH: Jüdisches Leben, p. 429. The MGB was well aware that many Jewish communities tried to gain the Council's approval for opening such facilities, as can be seen from the agency's February 1946 report: "The Chernovtsy rabbinate addressed an urgent request to the oblast' executive committee to legalize special Jewish schools for training ministers of the religious cult […]." People's Commissar of State Security, lieutenant-general Savchenko: Report on the intelligence and operative work on Jewish religious organizations, 20.02.1946, F16O1D564, p. 33–43, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU), p. 34.
174 BOECKH: Jüdisches Leben, p. 438.
175 GRÜNER: Patrioten und Kosmopoliten, p. 383.
176 BOECKH: Jüdisches Leben, p. 430.
177 GRÜNER: Patrioten und Kosmopoliten, p. 383.
178 BOECKH: Jüdisches Leben, p. 432.
179 Ibid., p. 431.
180 A total of 19 regions is listed in Boeckh's article. In 1948, there were 56 synagogues, in 1952, only 39 were left. In 1948, seven of the regions had five or more synagogues. In 1952, that number had dropped to three. In 1948, nine regions had one or zero synagogues, in 1952 that figure was ten. See: Ibid.
181 Ibid.
182 EADEM: „Liberalisierung" und Repression. Zur Praxis der Religionspolitik in der Ukraine während NS-Besatzung und stalinistischer Herrschaft 1941-1953, in: Religion under Siege, Vol. 2:. Protestant, Orthodox and Muslim

Apart from its own policies, the Council closely cooperated with the security organs even before 1948, which formed the second tier of anti-religious repression.[183] The security organs increasingly persecuted Jewish religious communities at least from 1946 onwards.[184] The Council kept the MGB well informed about the number of synagogues in Ukraine and their registration, or lack thereof.[185] The MGB compiled its own reports and began to implement its own policies. At the fore of the Jewish religious revival, the MGB saw "[…] nationalist minded people, many of whom lived in Palestine in the past, were close to the Zionist movement and engaged in active nationalist work."[186] These "activist circles" were behind the illegal operation of synagogues as well as behind applications for registering or opening even more synagogues, the MGB claimed.[187] The MGB was also unhappy how Jewish communities applied for registering synagogues, which an early report describes as "in the form of ultimatums".[188] Adding to the picture of wide-spread illegal activity and disregard for state authority were the numerous minyans, which had the hydra-like quality of quickly returning, even after being dismantled.[189] Finally, the supposed Jewish nationalist activists spread their propaganda among the intelligentsia and the "Jewish youths", whom they tried to "educate in the nationalist Zionist spirit".[190] The MGB's concerns with "Jewish youths" provide a first indication why Fidler was a suitable candidate for recruitment: He was only 21 years old on 1946 and perfectly fit the alleged target group of the people about whom the MGB wanted information.

Even more worrying than their religious activities and nationalist propaganda were the international connections of these anti-Soviet circles. The MGB contended that "[…] under the cover of religious activities, the Jewish communities' leadership engages in active nationalist work, establishes connections to Zionist organizations in America, England and Palestine, where they send defamatory information about the allegedly 'disastrous' situation of the Jews in the Soviet Union".[191] Moreover, Jewish communities "[…] in their majority maintain connections to different

communities in occupied Europe (1939-1950), edited by Lieve GEVERS / Jan BANK (Annua nuntia Lovaniensia, vol. 56,2), Leuven 2007, p. 119–174, here p. 151.

183 BOECKH: Jüdisches Leben, p. 438–439. Boeckh assigns this to the MVD. The MGB was heavily involved as well, as the following pages demonstrate.

184 The earliest report we could find stems from late February, 1946: Work on Jewish religious organizations, HDA SBU, F16O1D564.

185 Ibid., p. 33. See also the report on the situation in August/September, 1946: Deputy Minister of State Security, major-general Poperenka to USSR Deputy Minister of State Security, lieutenant-general Blinov, Moscow: Report on the operative and intelligence work on Jewish clerical organizations during August/Semptember 1946, 31.10.1946, F16O1D579, p. 294–300, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU), p. 294.

186 Work on Jewish religious organizations, HDA SBU, F16O1D564, p. 33.

187 Ibid.

188 Ibid., p. 34.

189 Ibid. See also: Jewish clerical organizations during August/Semptember 1946, HDA SBU, F16O1D579, p. 294.

190 Work on Jewish religious organizations, HDA SBU, F16O1D564, p. 35. These concernes were repeated in later reports. See: Jewish clerical organizations during August/Semptember 1946, HDA SBU, F16O1D579, p. 295.

191 Work on Jewish religious organizations, HDA SBU, F16O1D564, p. 34–35.

foreign aid organizations and committees, such as: "[…] 'Joint', 'Distribution committee', 'Agrojoint' and others, from which they receive material aid."[192] The claim that Jewish communities organized social welfare and distributed foreign aid was completely true.[193] Yet the Soviet regime considered rather benign activities such as receiving and distributing material aid nothing short of a state crime. Besides funneling foreign aid, the MGB also observed that Jewish communities had links to Zionist organizations who funneled people, i.e. facilitated their illegal emigration from the USSR.[194] Worst of all, for the MGB these international contacts also made the Jewish communities a potential hotbed for spies and foreign agents.[195]

Already in February 1946, the MGB set itself the goal to end these intolerable activities. The minyans were to be removed completely: "At the current time we are preparing measures for the ultimate liquidation of all illegally existing 'minyans'", the head of the agency reported.[196] People's Commissar of State Security Savchenko also laid out a future program for dealing with Jewish communities in general. His plans were as follows: "We direct further operative and intelligence measures on Jewish clerics towards suppressing hostile anti-Soviet activities of Jewish religious communities; towards acquiring new agents capable of examining the existing Jewish nationalist underground and to identify foreign intelligence agents and, above all, British intelligence agents who might conduct intelligence work through Jewish nationalists."[197]

Thus began the MGB infiltration of Jewish communities, as well as the criminal prosecution of alleged Zionists, spies and nationalists. The MGB's network of agents and informers in religious communities was unbelievably small at first, but then expanded steadily. The MGB collected the necessary information for criminal prosecutions in intelligence files ("agenturnoe delo") and other operative materials.[198] To gather the compromising information, the MGB recruited agents and informers who could provide insights into Jewish communities and the actions of their leaders.[199]

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[192] Jewish clerical organizations during August/Semptember 1946, HDA SBU, F16O1D579, p. 294–295.
[193] GRÜNER: Patrioten und Kosmopoliten, p. 381. See also: BOECKH: Jüdisches Leben, p. 428. FRUNCHAK: Making of Soviet Chernivtsi, p. 357.
[194] Minister of State Security, lieutenant-general Savchenko to USSR Minister of State Security,army general comrade Merkulov V. N.: Report on the uncovered and liquidated Zionist underground / intelligence case "CROSSING", 13.04.1946, F16O1D568, p. 255–265, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU).
[195] Work on Jewish religious organizations, HDA SBU, F16O1D564, p. 42–43.
[196] Ibid., p. 34.
[197] Ibid., p. 42–43.
[198] Such an "agent file" was defined in the 1972 top secret internal KGB "Dictionary of Counter-Intelligence" as "a type of operational record", a "file that was opened against resident espionage networks, an anti-Soviet group or organization, as well as against an individual around whom anti-Soviet elements were gathered." Such operational records were a one basis for officially initiating criminal prosecution. NIKITCHENKO, V. F.: Kontrrazvedyvatel'nyi Slovar', Moskva 1972, p. 14, 57.
[199] Work on Jewish religious organizations, HDA SBU, F16O1D564, p. 35–36. Jewish clerical organizations during August/Semptember 1946, HDA SBU, F16O1D579, p. 294. Minister of State Security, lieutenant-general Savchenko to USSR Deputy Minister of State Security, lieutenant-general Blinov A. S., Moscow: Report on Ukrainian SSR MGB operative and intelligence work in the line of clergy, churchmen and sectarians in May 1947, 16.06.1947, F16O1D600, p. 73–99, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU), p. 95. Minister of State Security,

Recruiting such assets was a bitter necessity, since as of September 1946, the whole "agent and informer apparatus on clericals", i.e. representatives of Jewish religious community structures, consisted of just 84 individuals.[200] For different religious groups, the "agent and informer apparatus" was apparently small as well. The MGB's department "O" thus steadily recruited new people from the different religious groups (around 20 agents and around 100 informers monthly).[201] It is impossible say how many of the agents and informers the MGB recruited in Jewish communities specifically.

Examining this campaign also shows that time and place are the most significant dimensions of case selection; both heavily influenced how the Soviets prosecuted and tried Fidler. The Izmail oblast', where the MGB used Fidler to infiltrate the local Jewish community, was a "new" Soviet territory, a part of Romanian Bessarabia first annexed by the USSR first in 1940.[202] When the Soviets reconquered Bessarabia in 1944 and then split the region among the Izmail, Odessa and Chernovtsy oblast's, it proved to be a hotspot of Jewish religious life in Ukraine. According to a March 1946 MGB report, a third of all synagogues in Ukraine were in the city of Chernovtsy alone (20 out of 60).[203] It was on such "new" territories that Jewish communities were especially recalcitrant when it came to fending off state involvement in their religious life.[204] For the MGB this meant a lot of work, for the Jewish communities an increased pressure from state persecution. Fidler's case was thus heavily determined by place and time.

As Fidler's example shows, the MGB used pre-obtained information about Jews' "stained" wartime past to blackmail them into cooperation. In other cases, similar information was only uncovered during investigations into the activities of Jewish communities. The MGB then used

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lieutenant-general Savchenko to USSR Deputy Minister of State Security, lieutenant-general Blinov A. S., Moscow: Report on Ukrainian SSR MGB operative and intelligence work in the line of clergy, churchmen and sectarians in July 1947, 12.08.1947, F16O1D609, p. 267–294, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU), p. 290–294. Minister of State Security, lieutenant-general Savchenko to USSR Deputy Minister of State Security, lieutenant-general Blinov A. S., Moscow: Report on Ukrainian SSR MGB operative and intelligence work in the line of clergy, churchmen and sectarians in September 1947, 15.10.1947, F16O1D620, p. 65–95, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU), p. 93–95. Deputy Minister of State Security, major-general Poperenka to USSR Deputy Minister of State Security, lieutenant-general Blinov A. S., Moscow: Report on Ukrainian SSR MGB operative and intelligence work in the line of clergy, churchmen and sectarians in October 1947, 20.11.1947, F16O1D627, p. 1–28, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU), p. 25–28.

[200] Jewish clerical organizations during August/Semptember 1946, HDA SBU, F16O1D579, p. 300.

[201] On May 4, 1946, all activities directed against religious communities were concentrated in the newly formed department "O" of the MGB. See: KOKURIN et al.: Lubianka, 1917–1960, p. 35–36. Incomplete data is available for some months of 1947: May 1947: 25 agents, 116 informers; July 1947 27 agents, 103 informers; September 1947: 19 agents, 96 informers; October 1947: 17 agents, 70 informers. See: Clergy, churchmen and sectarians in May 1947, HDA SBU, F16O1D600, p. 99. Clergy, churchmen and sectarians in July 1947, HDA SBU, F16O1D609, p. 294. Clergy, churchmen and sectarians in September 1947, HDA SBU, F16O1D620, p. 95. Clergy, churchmen and sectarians in October 1947, HDA SBU, F16O1D627, p. 28.

[202] SOLONARI: Moldauische Sozialistische Sowjetrepublik, p. 88.

[203] People's Commissar of State Security, lieutenant-general Savchenko to Central Committee of CP(b)U, comrade Khrushchev: Report on the anti-Soviet activities of Jewish religious organizations, 01.03.1946, F16O1D565, p. 109–116, Haluzevyi derzhavnyi arkhiv Sluzhby bezpeky Ukrainy (HDA SBU), p. 109.

[204] BOECKH: Jüdisches Leben, p. 440–441.

such compromising materials to prosecute the respective community figures. In other words, the MGB reduced the gray zones of the Holocaust to an instrument for its own increasingly anti-Semitic persecution of religious Jews. This was no coincidence: The agency explicitly put on its agenda to uncover incriminating information about suspects' behavior during occupation. In a report for October 1947, the authors explicitly formulated the MGB's interest not only in a suspect's "connections" had with his brother in America, but also in "treasonous activities in the past".[205] There are four instances listed in the MGB reports where these efforts were crowned with success. However, since these reports only describe notable examples, it is almost certain that more cases exist.

A March 1946 report spoke of a man arrested in Voroshilovgrazhskaia oblast'. The MGB targeted him "[…] as one of the active organizers of the Jewish community".[206] Besides his leading role in the community, the report contended, the man "[…] confessed that, remaining on occupied territory, [he] was recruited by the Gestapo, following the instructions of which he identified […] pro-Soviet persons; was engaged in significant treasonous work."[207] The alleged Jewish Gestapo informer was sentenced to 15 years of Katorga.[208]

Two further instances relate to former Jewish ghetto or camp functionaries. The Vinnitsa oblast' MGB reported in October 1946 that it had arrested two men involved in the "illegal Jewish religious community" of Bershad.[209] The "organizer and head" of this community, the report continued, had been "the deputy of the Jewish commander of the 'GETTO' during the period of occupation".[210] The Jewish community's second man had served in the ghetto police.[211] As of October 1946, both men were "being prepared for arrest, after which the illegal community will be dissolved."[212]

In May 1947, the MGB reported that it had arrested the cantor of one of Chernovsty's synagogues.[213] According to the report, the man had been "the commander of the Akhmechatka Jewish 'death camp'" from 1942 to 1944, where he had "abused the Jewish population interned in the camp and maintained close ties to the Romanian gendarmerie."[214] The report did not specify the man's further fate in the hands of the MGB.

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[205] Clergy, churchmen and sectarians in October 1947, HDA SBU, F16O1D627, p. 28.
[206] Anti-Soviet activities of Jewish religious organizations, HDA SBU, F16O1D565, p. 116.
[207] Ibid.
[208] Ibid.
[209] Jewish clerical organizations during August/Semptember 1946, HDA SBU, F16O1D579, p. 296–297.
[210] Ibid.
[211] Ibid.
[212] Ibid.
[213] Clergy, churchmen and sectarians in May 1947, HDA SBU, F16O1D600, p. 99.
[214] Ibid.

Unfortunately, we could not locate the investigative casefiles of the above-mentioned individuals in the various archives. A notable exception to this pattern is Iulii Izrailovich David, whose arrest and trial can therefore be reconstructed in more detail. An MGB report on the agency's activities in September 1947 identified David as the rabbi of another synagogue in Chernovtsy.[215] Besides his role in the Jewish community, the report also claimed that David had been so successful a businessman, that the Romanians had not deported him to Transnistria during occupation.[216] David had allegedly owned a "tavern" and a "soap factory" and used his wealth to do business with the Romanians.[217] Thus, the report claimed that "[s]ince he possessed sufficient funds, David transferred a large sum of money to the occupiers for the construction of a workshop for repairing tanks in Chernovtsy, a construction in which he actively participated. Furthermore, it is currently being established if David was an informer for the Romanian gendarmerie."[218]

Apparently, it took the MGB some time to "establish" more information about David, since the agency only issued an arrest warrant on January 19, 1949.[219] The indictment against David from July 1949 pushes the earlier allegations from the 1947 report even further. The indictment's authors claimed that David had supplied the Romanian gendarmerie with foodstuffs even before the Soviets first annexed Northern Bucovina in 1940.[220] Once the Romanians returned in 1941, David and the authorities then allegedly resumed their previous successful cooperation.[221] The indictment claims that renewing this cooperation cost David a "donation" of "a million lei from his personal savings for the repair of military equipment".[222] Clearly, a class enemy is described here, the worst kind even, a capitalist, though the indictment's authors did not use either term. Moreover, the indictment claimed that David had held "illegal gatherings of Zionists, during which he voiced nationalist propaganda".[223] Allegedly, he continued his activities in this vein even after the return of the Soviets, when he took on a leading role in one of Chernovtsy's synagogues, the "Khoral'naia sinagoga".[224]

More information about how the Soviets targeted said synagogue can be glimpsed from a report by the local representative of the "Council for the Affairs of Religious Cults", which is contained in David's file. The anti-Semitic overtones are very clear in this document. According to the document, in 1946 David was elected as the rabbi of the synagogue located on 9 Mitskevich

[215] Clergy, churchmen and sectarians in September 1947, HDA SBU, F16O1D620, p. 94.
[216] Ibid.
[217] Ibid.
[218] Ibid.
[219] David Iulii Izraelevich, D2224, Derzhavnii arkhiv Chernivets′koi oblasti (DAChO), p. 3.
[220] Ibid., p. 328.
[221] Ibid., p. 329.
[222] Ibid.
[223] Ibid.
[224] Ibid.

street.[225] The Council's representative characterizes the synagogue as "a gathering place for profiteer-speculant and anti-Soviet elements".[226] The synagogue's leadership thus combined the "incitement of Zionist feelings among the faithful" with "profiteer-speculative transactions".[227] Thus, the report describes the synagogue's leadership not only as nationalist fanatics, but also as greedy money-grabbers – a core anti-Semitic stereotype. Allegedly, the synagogue had also engaged in religious educational activities. Moreover, its leadership had proclaimed itself as the main synagogue of Ukraine, the report contended, establishing an interregional hierarchical network with other Jewish places of worship, all of which was "categorically forbidden by the law on religious cults".[228]

Because of this, as well as a host of other similar accusations, the synagogue lost its registration with the Council, which ordered to close the synagogue on May 3, 1949.[229] The OSO sentenced David to 10 years in the Gulag on October 10, 1949.[230] Clearly, both tiers of repression went hand in hand here. For Soviet authorities, arresting the rabbi was a simple way to close a synagogue. Robbed of its legally prescribed authority figure, a synagogue could no longer meet a core requirement for maintaining its registration with the Council.[231]

The cases discussed beckon the question whether there were Jewish honor courts in the respective Jewish communities. As the examples show, at least occasionally individuals working in postwar Jewish communities had earlier been forced into cooperating with the perpetrators during the Holocaust. This could indicate a personal continuity of authority figures in the surviving remnants of those Jewish communities. Moving further into the area of speculation, we might ask whether there were Jewish honor courts in those communities.

Three hypotheses are possible: Frist, it could be that those individuals' wartime activities remained unknown to the Jews in their community. Second, it could be that people knew about the community figures' activities, but that there were no honor courts or similar initiatives for collectively coming to terms with their past. Third, it could be that such initiatives existed, that the communities vetted these individuals internally and cleared their names. After all, many trials in

[225] Ibid., p. 322.
[226] Ibid.
[227] Ibid.
[228] The author peppered these political allegations with the claim that the synagogue's leadership had sexually exploited young Jewish women turning to them for material support. Ibid., p. 322–323.
[229] Ibid., p. 323.
[230] Ibid., p. 341, 458-460. It is noteworthy that the Ukrainian SSR Supreme court nullified the verdict in 1958 "for lack of any criminal wrongdoing" on David's part.
[231] BOECKH: Jüdisches Leben, p. 439–440.

Jewish honor courts were even initiated by the defendants themselves to repudiate accusations of improper behavior under Axis rule.[232]

Since many of the judicial proceedings discussed in the present study emerged as much thanks to initiatives "from below" as "from above", it is unlikely that people's wartime behavior remained unknown and was not discussed within the Jewish communities themselves. Whether these communities organized internal mechanisms to deal with such painful questions is a different matter. There might have been a silent consensus not to raise these issues, or the communities might have vetted their leading individuals and decided they had a clean slate. For lack of historical materials, these questions cannot be answered here.

Returning to the core subject of this case study, Fidler's career as an agent opens new perspectives on the Soviet anti-religious campaign and on the quality of MGB intelligence operations at the time. Judging from Fidler's case, some of the MGB's work was at the time was quite unprofessional. Although Fidler's assignments even had an international dimension and although the MGB seemed to value secrecy above all, the agency itself compromised this goal by not providing Fidler with any resources. This led to suspicious behavior on Fidler's part and marital trouble in his household. For one of his assignments in October 1946, Fidler borrowed his brother-in-law's "military uniform with the shoulder straps of a senior lieutenant" and disappeared all night.[233] If the MGB wanted Fidler to keep his mouth shut about his work, why did his handlers not provide the necessary gear? Grabbing his relative's army uniform was a sure way to make people ask questions. Furthermore, several witnesses who testified to Fidler's activities between June 1946 and October 1946 stress how poorly he lived with his wife and child in Belgorod-Dnestrovsky.[234] The MGB had apparently forbidden him to work a regular job.[235] At the same time, the agency tasked him to send packages internationally and to spend all day in cafes and restaurants, all of which must have cost money. To fund his work for the agency, Fidler apparently subsisted on his wife's salary and at some point even started to sell her personal belongings.[236] She later told a friend this was the reason why she filed for divorce from Fidler in November 1946.[237] Thus, Fidler's alleged "chattiness" aside, the MGB did not handle this agent professionally – they put him in a position in which his

[232] ENGEL: Why Punish Collaborators, p. 41.
[233] Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 83–85.
[234] Ibid., p. 77-80, 81-82, 83-85, 127-130.
[235] Ibid., p. 77-80, 83-85.
[236] Ibid., p. 77-80, 127-130.
[237] Fidler's alleged lifestyle, his gambling and his selling of his wife's things was even cited in the Odessa oblast' procuracy's decision of December 16, 1957, to deny Fidler's request for rehabilitation. See the witness testimony and the decision by the procurary: Ibid., p. 86, 197.

behavior had to perplex people and make them ask questions, as for instance a fried of his wife did when she came to visit.[238]

However, Fidler's handlers apparently promised that this situation was temporal. Besides the stick of impending criminal prosecution, the MGB also dangled a carrot in Fidler's face. His handlers promised him significant financial rewards, missions to exotic places abroad and a career as a regular officer in the MGB. Fidler told his in-laws that the MGB had promised to compensate him with 25.000 rubles for successfully completing his missions.[239] He also talked about how the MGB would soon send him on further missions abroad, with destinations as "Berlin, London and Madrid".[240] Most importantly, the MGB also seems to have promised Fidler to recruit him as a regular officer.[241] Thus, he had reason to be optimistic about his future.

This optimism might not have been completely unrealistic. Fidler left Belgorod-Dnestrovsky in November 1946 for L'vov, where he later claimed to attend "MGB training courses".[242] He described these courses as a reward for how well he had fulfilled his missions.[243] To finalize the divorce from his wife, he returned in January 1947.[244] Upon return he told an acquaintance that he had been "well received" in L'vov and that his material situation had improved, a claim the witness supported by pointing out how well dressed Fidler had been on the occasion.[245] Besides the fancy civilian clothing, Fidler now also claimed to be the proud owner of a uniform.[246] He expressed optimism about ending his present studies in the rank of a lieutenant and then possibly receiving permission to continue with further training.[247] Moreover, Fidler talked about the methods of gathering intelligence he was learning in L'vov.[248]

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238 Ibid., p. 127–130.

239 Ibid., p. 83-85, about financial compensations, see also p. 77-80, 81-82. Previous scholarship has proven that Soviet security organs used such incentives as monetary rewards and support for career advancement already since the 1920s. See: SEMYSTIAHA, Volodymyr: The role and place of secret collaborators in the informational activity of the GPU-NKVD in the 1920s and 1930s, in: Cahiers du Monde russe 2-4 (2001), p. 231–244, here p. 243–244.

240 Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 83–85.

241 Ibid., p. 77–80.

242 Ibid., p. 127–130, 86.

243 Ibid., p. 127–130. The witness's emphasis on Fidler's clothes fits an observation of the Harvard interview project on a hierarchy of scarcity complaints in the USSR at the time ("Clothing is the source of greatest complaint, housing follows, and food is last."). This was also true for relatively well-off social strata, where "[…] a professor's new suit would cause a stir in an academic gathering". See: BAUER, Raymond Augustine/INKELES, Alex/KLUCKHOHN, Clyde: How the Soviet system works. Cultural, psychological, and social themes (Russian Research Center studies, vol. 24), Cambridge 1956, p. 243.

244 Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 86.

245 Ibid., p. 127–130.

246 Ibid.

247 Ibid.

248 "He also told me how interesting it was to work for the MGB, that you had to study the psychology of each person in order to approach him and provoke him to open up. First, Fidler said, you sympathize with the person, and then he starts to tell you himself – then you already have the material." Ibid.

It is impossible to verify any of this information. Fidler might have referred to the L'vov inter-district school of the MGB. However, according to the few information that is known about the school, it was only established late in 1946, the commission to select cadres for training was only created on January 10, 1947, and the first MGB cadres began their training only in March.[249] This would rule out the school as the institution Fidler talked about, since the MGB arrested him on January 18, 1947.[250] On the other hand, there might have been a predecessor of this inter-district school in L'vov or training at the school might have started earlier than the documentary record indicates. The beginning of the training at the school discussed in the literature refers to the training of MGB cadres. It could be that there was also a training tier for agents the MGB had not yet recruited as official personnel, and that this began earlier. However, this is mere speculation. Nevertheless, the level of detail in which Fidler talked about his training suggests that he was not merely making things up. It seems the MGB had further plans for him. Yet ultimately, nothing was to come of them.

## Part 3 – Fidler's downfall from agent to convict and the displacement of the Holocaust

Fidler's prospects crumbled when his (ex-)wife informed the MGB that he had disclosed secret information about his work for the agency to her and others. However, Evgeniia Polushkina was no unbiased witness and for similar reasons, the quality of all witness testimony as judicial evidence in the case was low. The earliest documentary evidence that Polushkina was in contact with the MGB is a letter she wrote to the local office on January 9, 1947.[251] Judging by the contents, this was not her first contact with the agency. The letter reads:

> "Igor' Iakovlevich Fidler, who has [not] been in the city for about two months, has now returned here again. Today at about 11 a.m. he stopped by the City Executive Committee, where my friend Petrenko Ada Nikolaevna works, with whom I live as with a sister. He told her that he had come 'to resolve some matters' and that he really wanted to see me and the child. He promised to come over to our house, which [I am] very worried about."[252]

Polushkina and Fidler moved to Belgorod-Dnestrovsky in June 1946, and she filed for divorce from him in November.[253] She probably turned to the MGB *after* filing for divorce, since becoming the relative of an "enemy of the people" was not a desirable prospect. Therefore, the most likely scenario is that once Fidler left for L'vov, Polushkina filed for divorce from him and only then informed the MGB about his actions. As soon as Fidler returned, Polushkina sent the letter to the

[249] OKIPNIUK, Volodymyr: Komplektuvannia kadgrovoho skladu orhaniv derzhavnoi bezpeki v Ukraini v period panuvannia totalitarnoho pezhimu (1929–1953 rr.), in: Law Review of Kyiv University of Law 4 (2020), p. 35–41, here p. 38.
[250] Fidler Igor' Iakovlevich, HDA SBU OO, D22239, 5, 34.
[251] Ibid., p. 74.
[252] Ibid.
[253] Ibid., p. 75-76, 86.

MGB and her first witness testimony was officially recorded the next day.[254] She gave the officer an extensive and seriously incriminating statement about Fidler's actions during and after the Axis occupation. In other words, Polushkina dropped him like the proverbial hot potato.

Besides being rooted in marital troubles, Polushkina's decision to distance herself from Fidler was apparently also an act of self-protection. When confronted with Polushkina's testimony, Fidler admitted telling her about his work as an MGB agent. In his defense, Fidler highlighted his wife's political loyalty and how in Konstantinovka, she had "as a Komsomol member actively participated in public life and also been a member of the Komsomol's city committee office".[255] However, Fidler also claimed that "her father had been arrested by the NKVD before the war and that her maternal uncle was convicted as a Zionist."[256] The officer questioning Fidler pointed out that Polushkina could thus not be called "ideally loyal to Soviet power".[257]

If Polushkina's father and uncle had really been repressed earlier, it is understandable why she wanted him gone and why her friends and family supported the effort. Fidler was bad news, being associated with him was dangerous, and it meant a potential repetition of traumatic events from the past. First Polushkina was refused party membership because of Fidler, and then he told her how the MGB blackmailed him into becoming an agent.[258] Then he kept talking about things he was not supposed to talk about. If Fidler really told these things to almost everyone he knew, it must have made him seem increasingly unreliable. Such behavior meant looming danger of MGB reprisals – which would potentially also harm his family. With each person Fidler disclosed state secrets to, it became more likely that *someone* would talk. It was probably better to be the first to tell the MGB than to have to explain to the agency's officers why you had kept your mouth shut about something so obviously illegal.

By virtue of close personal ties, Polushkina's troubles, and her attempts to resolve them, extended to other witnesses of Fidler's postwar actions. These witnesses were her friends and relatives (to be specific: her mother, her sister, her brother-in-law, and two of her close friends).[259] It is difficult to decide whether Fidler really told all these people about his work for the MGB. There is a more sinister interpretation. Maybe it was Polushkina herself who spread Fidler's secrets among people she trusted. Collectively, they could then testify against Fidler and get rid of him (and the danger he posed). On the other hand, that would have required a very high degree of cohesion, planning,

[254] Ibid., p. 75–76.
[255] Ibid., p. 49–54.
[256] Ibid.
[257] Ibid.
[258] Ibid., p. 75–76.
[259] Polushkina's brother-in-law phrased his dislike of Fidler in well-known terms of political discipline: "Fidler's permanent chattiness led me to the suspicion that he is not a serious person and does not inspire political trust." Ibid., p. 83–85.

and discipline among the witnesses – which is hardly believable. Nevertheless, all the main witnesses testifying to Fidler's activities after the Holocaust had strong interests to see Fidler disappear in a Soviet corrective labor camp, which possibly skewed their testimony.

A similar pattern emerges with the witnesses who testified about Fidler's wartime behavior. Take the testimony of witness Turner cited above. Since Turner himself worked as a doctor in Slobodka, he might have been involved in selecting people for deportations as well. Naturally, Turner would not have disclosed such an involvement when questioned by the MGB in 1947. In his account, Turner only describes how he tried his best to support ghetto inmates, shifting all blame for the selection process to the Romanians, Fidler and another Jewish doctor.[260] In contrast, Fidler pointed out that when he fell ill, Turner was the man who replaced him as head of the medical commission selecting patients for deportation.[261] To put it mildly, it is questionable whether Turner's account of Fidler's actions was unbiased.

Similarly, witnesses Zhenia Khersonskaya and Sapino were two of the women who Fidler claimed had "intimate connections" to Savulescu before the ghetto was established.[262] According to Fidler, Savulescu only appointed him because he was friends with these women.[263] Unsurprisingly, both Khersonskaya and Sapino denied Fidler's claims.[264] Yet if they were true, this would compromise the credibility of their testimony – they had strong motivations for giving biased testimony and getting rid of Fidler and his knowledge. After all, accusations of "horizontal collaboration" could have severe consequences.[265] There is at least one case in which Soviet authorities convicted a Jewish ghetto inhabitant for alleged sexual relations with a Romanian officer, among other accusations. Khaia Liberman, who was confined in the Piatkovka ghetto near Bershad, was sentenced to 10 years in a corrective labor camp in September 1945.[266] The verdict maintained that she had served the Romanian occupiers as an informer, which lead to arrests and corporal punishments for other ghetto inmates.[267] The judges also found it necessary to point out that Liberman had allegedly "lived together with the commander ["sozhitel'stovovala s komendantom", a euphemism for sexual relations, *WS*]".[268] Thus, the testimony of Sapino and Zhenia Khersonskaia was potentially biased because they tried to shield themselves from similar accusations. But the bias does not stop with them. Khersonskaia's husband, Efim, and his sister, Maria Khersonskaia, also

[260] Ibid., p. 96–99.
[261] Ibid., p. 12–15.
[262] Ibid., p. 17–20.
[263] Ibid., p. 12–15.
[264] Ibid., p. 143-145, 146-148.
[265] VOISIN: Soviet Punishment, p. 255, 260.
[266] Liberman Khaia Moiseevna, F3401I1D2173, Arhiva Naţională a Republicii Moldova (ANRM), p. 67–68.
[267] Ibid.
[268] Ibid.

testified against Fidler.[269] In turn, these two people had a significant interest to protect their relative from harm.

Moreover, remarkably few accusations concerning Fidler's time in Slobodka came from eyewitnesses – most information came from unspecified sources or hearsay. Only three of seven primarily Holocaust-related witness testimonies are explicitly identifiable as eyewitness accounts.[270] The rest of what was said about Fidler in Slobodka was either clearly marked as hearsay, or the protocols leave the origin of the information unspecified.[271] The authors of Fidler's indictment did not care about such subtleties and cited witness testimony as evidence regardless of its quality as such.[272] Based on triangulation with Zhanna Berina's oral history interview cited above, we can confirm many of the accusations against Fidler. The investigators did not have that possibility – but they also did not care. In contrast, at least for Fidler's post-war activities, all witness testimony was eyewitness testimony: it all revolved around things witnesses claimed they had seen Fidler do or had heard him say.

While the reliance on witness testimony (ds9) certainly remains a normative-state feature, that aspect is thus tainted by prerogative-state influences. In Fidler's case, the credibility of witness testimony is highly restricted because of the looming pressure these witnesses faced. The status of witness testimony is thus a mix of prerogative and normative state: Witness testimony played a role equal to Fidler's confessions. Yet the witnesses were under pressure to protect themselves or their loved ones from potential state repression – which makes their testimonies somewhat similar to that of "staff witnesses".

There are several normative-state elements to Fidler's case. His prosecution and trial represent an ex-post criminal prosecution focusing on an individual's concrete acts, rather than group affiliation (ds1, ds2, ds3). The Soviet judiciary did not target Fidler as part of a union-wide campaign with pre-set target numbers, his prosecution thus unfolded localized as the incriminated acts and the judiciary did not sentence him to death to meet a quota (ds4, ds5, ds14).

Despite these normative-state features, indicators for the pretrial phase are a mix of normative and prerogative state features, with an imbalance towards the latter. As an investigating agency, the MGB was clearly a prerogative-state institution (ds6). It also operated predominantly according to prerogative state principles in the case. On the normative state side, the MGB investigators formally followed procedure, securing all necessary sanctions from their superiors inside the agency and in

[269] Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 87-88, 149-153, 72-73.
[270] Ibid., p. 67-69, 70-71, 96-99.
[271] Ibid., p. 72-73, 87-88, 143-145, 146-148.
[272] Ibid., p. 162–165.

the procuracy (ds7).[273] Fidler also had some limited agency in the course of the investigation. The MGB questioned two witnesses whose names they only learned from Fidler, both of whom could have confirmed that he accepted his appointment unwillingly and thus could have partially exonerated him.[274] In contrast, on the prerogative side of things, Fidler apparently had no chance to consult with a lawyer in the pretrial phase (ds10). Most significantly for qualifying the MGB's actions as prerogative-state behavior, there are some indications that MGB officers tortured Fidler (ds8).

It is impossible to be certain whether Fidler was tortured, but the signs speaking for torture outweigh the ones speaking against it (ds8). Speaking against torture is the fact that Fidler did apparently not bring it up during the court session, though enough outsiders were present who might have cared about whether the investigators had beaten him (namely his lawyer, a procuror and the court). Judging by the witness accounts, Fidler also seems to have handled information generously (to say the least). Maybe his talkativeness even extended to MGB interrogations, leading him to confess freely.

However, there are many more aspects pointing towards torture, rather than away from it. First, it was somewhat out of character for Fidler just to confess – it contradicted the remarkable resourcefulness and resilience to pressure he had shown time and again. Fidler had escaped the shootings as Slobodka, hidden in Odessa and tried to pose as a Ukrainian to evade further persecution by the Romanians.[275] In the ghetto, he had managed to survive both as a ghetto functionary, as well as after his demotion to regular inmate. In the chaotic last months of the war, he had even briefly posed as a German and served a Wehrmacht officer as a translator, before eventually escaping him.[276] Fidler had also tricked the Komsomol into accepting him as a member.[277] In other words: this young man did not lose his head easily and might have withstood the immediate pressures of a regular interrogation.[278]

Nevertheless, Fidler gave a substantial confession already during the first recorded interrogation. Moreover, Fidler's confessions conspicuously escalated over time. A good illustration for this is the number of people whose names he admitted putting on deportation lists. Fidler initially put the number at "1000-1200 people" and claimed not to know which percentage of them were later

[273] See, for instance, the order for extending the time limit of the pretrial investigation: Ibid., p. 123.
[274] Ibid., p. 12-15, 23-24.
[275] Ibid., p. 17–20, 25-29.
[276] Ibid., p. 13-16, 31-34.
[277] With this record of hiding, evading and posing as someone else, it also becomes clearer why the MGB chose Fidler as an agent. In a sense, he had an incredible amount of "under-cover" experience even before the agency recruited him.
[278] The detrimental long-term effects on his psyche discussed above notwithstanding, Fidler apparently kept his cool in the face of immediate danger.

shot.[279] The number eventually increased to 6000 in later interrogations.[280] According to the later testimony, all deportees were shot.[281] Note that the MGB had not gained any new information and the officers could not confront Fidler with new incriminating evidence. The escalation of Fidler's confessions did not stem from new external information. What then, prompted Fidler to confess to increasingly incriminating actions?

Additional observations from the trial phase of Fidler's case support the ones from the pretrial phase. While Fidler did not speak of torture in court, there is reason to speculate the MGB have worried he would just do that – and therefore tried to shove the case off to the OSO in Moscow. Whatever the motivation, sending the case to an extra-judicial sentencing body was a prerogative-state action by the Izmail MGB (ds12).[282] However, the prerogative-state institution reacted in a normative-state way. The OSO rejected the case and sent it back for additional investigation because of insufficient evidence (ds14).[283] After a month of additional investigation, the Izmail MGB then put Fidler on trial in a military tribunal.[284]

During the trial session, Fidler confessed to a significant part of the accusations against him. Yet his confessions were much less incriminating than the things he had said during the pretrial investigation. For illustration, take again the crucial accusation of organizing deportations. In court, Fidler put the number of people he had helped deport at 150 and he claimed not to have known where they were deported or what happened to them.[285] That Fidler "softened" his confessions in front of outsiders such as the procuror and his lawyer casts further doubt on the pretrial interrogations. Fidler now followed a rational defense strategy. He knew there was eyewitness testimony implicating him in helping to organize deportations, but this testimony was not clear on the background mechanisms. Thus, the task was clear: Get the number down and claim not to have known the consequences. Again, we here see the protective effect even the most limited publicity of a trial session could have (see chapter 6). In contrast to the pretrial interrogations, the defendant now did what one might expect of him, rather than digging his own grave. In summary, it appears more likely that the MGB did torture Fidler than not – an important prerogative state feature of the pretrial investigation (ds8).

That Fidler "softened" his confessions in court also speaks for a limited agency on his part at that stage. However, this agency should not be overestimated. Despite many aspects of the case

[279] Ibid., p. 12–15.
[280] Ibid., p. 34–35.
[281] Ibid., p. 30–33.
[282] Ibid., p. 106.
[283] Ibid., p. 107–108.
[284] Ibid., p. 171–179.
[285] Ibid., p. 171–175.

pointing towards torture, he either did not bring it up in court or his protests were not recorded in the protocol. The defendant's agency in court is thus at most a mix of prerogative and normative state features (ds20).

To be sure, there are also normative-state features of the trial. Fidler was subjected to a judicial procedure, which took more than five hours – as opposed to the mere seconds administrative sentencing by a troika often took (ds12, ds 17).[286] The court provided some limited documentation of its decision process, as specified by Soviet law of the time (ds18).[287] That Fidler had a lawyer at least at this final stage is another normative state feature of his case (ds19). According to article 53 of the Ukrainian code of criminal procedure, a lawyer had to be present at the trial since Fidler had been underage at the time of the incriminated crimes.[288] The lawyer was also not passive during the trial.[289] The trial was non-public (a prerogative state aspect), but both the defendant, as well as some witnesses, the lawyer and the procuror were present in court – which amounts to a minimal local audience and shifts the category of publicity somewhat in the normative-state direction (ds15, ds16).

But other factors are closer akin to prerogative state practices. One such factor is the failure of the court to consider Fidler's age as attenuating circumstances and the danger of being sentenced to death despite being underage when he was in the ghetto. The court was surely aware of that, not least because Fidler's lawyer asked the court to consider his client's age as attenuating circumstances. Fidler himself echoed that request in his closing remarks.[290] However, there is no indication that the court took that request into account when imposing the sentence.[291] Moreover, the defendant's age potentially could have figured into the verdict, but not in a normative-state fashion as one might hope. Fidler was lucky that none of the witnesses accused him of beatings. As our analysis has shown, this would have greatly increased the possibility of a severe sentence, and despite his age at the time of the crimes, a severe sentence could potentially have been a death sentence. The Soviet judiciary still considered even underage "traitors" potentially worthy of that punishment (see chapter 5). Timing was of the essence here: Fidler was tried on May 23, 1947 – a mere two days before the capital punishment would be suspended in the USSR.[292] And the danger is no pure speculation on our part. In her oral history interview, Zhanna Berina recalls that Fidler

[286] Ibid.
[287] Ibid., p. 176–177.
[288] Ugolovno-protsessual'nyi kodeks, p. 46.
[289] He protested against the court's decision to review the case although one of the witnesses had not appeared in court. The lawyer also cross-examined witnesses and posed questions to Fidler, which allowed the defendant to present potentially exonerating aspects of his case. Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 171–175.
[290] Ibid., p. 175.
[291] See the verdict, which does not mention the defendant's age or any other attenuating circumstances. Ibid., p. 176–177.
[292] NEWTON: Red demiurge, p. 51. EPIFANOV: Organizatsionnye i pravovye osnovy, p. 74.

was armed and beat people during his tenure. She describes seeing him first when he entered an overcrowded room she was in: "And in his hands he held a steel rod. […] After he cleared the space around himself with the rod, Romanians then surrounded him, who were dressed in army uniforms."[293] Clearing space around oneself in an overcrowded room with a steel rod very much sounds like beating people. It was a lucky coincidence for Fidler that none of the witnesses testifying to his time in the ghetto had seen him do something similar – a coincidence that increased his chances of survival.

Hence, despite some normative-state aspects, Fidler's prosecution and trial remain a prerogative-state endeavor at their core. The main reason for this is that the MGB subjected the question of whether to prosecute at all Fidler's actions during the Holocaust to considerations of political expediency. Justice became conditional. The MGB's officers only charged Fidler once they realized that he had turned from an intelligence asset into a liability for their political and security goals.

In pursuing these goals, the MGB was unscrupulous, bordering on perverse. According to the indictment, Fidler had "testified that he went down the path of treason […] to save his own life".[294] The phrase occurs regularly in the protocols of Fidler's interrogations as the primary motive he gave for his actions in Slobodka.[295] But it also appears in the testimony of his ex-wife, albeit in a different context: "Fidler told me that he was forced to agree to work for the MGB, because he wanted to save his own life for me and the child."[296] Polushkina's testimony was accurate: When the MGB confronted Fidler with the alternatives of either working for them or facing trial, the agency utilized the same urge for survival the Romanians had misdirected before – and it was therefore absurd that the indictment should blame him for that.

That the MGB prioritized political expediency over criminal justice also lead to a complete displacement of the Holocaust from the focus of the trial. The court did not even summon the witnesses who could actually have testified to these questions. The military tribunal was content with listening only to Polushkina, her sister and her brother-in-law – all of whom primarily talked about Fidler disclosing state secrets.[297] From the point of view of the MGB, it made perfect sense not to invite other witnesses. That would have meant to create another opportunity for people to learn about the agency's operations. It would have been downright stupid to disclose state secrets for the sake of punishing someone for disclosing state secrets. Therefore, only the people who

[293] BERINA: Interview 8608, segment 58.
[294] Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 163.
[295] Ibid., p. 12-15, 14-17, 25-29, 34-35, 38-41.
[296] Ibid., p. 75–76.
[297] Ibid., p. 171–175.

already knew anyway were invited, and the witnesses who could speak about the Holocaust were not.

The same pattern persists in the way the court evaluated the evidence. When it came to the events in Slobodka, the court fully accepted the less incriminating version Fidler had presented during the trial. Yet regarding the political and security-relevant aspects of Fidler's case, the court did not accept his version. The tribunal accepted as fact the information provided by the witnesses during the trial, namely that Fidler had told many more people than his wife about his work for the MGB.[298] Ultimately, the court found Fidler guilty of actions covered by Article 54-1 "a" of the Ukrainian SSR criminal code and sentenced him to ten years in the Gulag.[299] This could mean either that Fidler had "gone over to the side of the enemy" or that he had disclosed "military or state secrets" – both were subsumed under the same article.[300] Clearly, the court prioritized the latter over the former.

In its sociopolitical dimension, the trial could thus not have any legitimizing function for the regime. The new priorities also closed any "locus for interaction" the trial could have presented for survivors, and it robbed the proceedings of any functional equivalency with Jewish honor courts (however limited that may have been). The defendant and the witnesses accusing him because of his conduct during the Holocaust never met, not during pretrial confrontations, not during the trial. Even the faint semblance of an intra-Jewish space for collective reckoning that other trials had offered now disappeared. He could not tell them his version; they could not tell him theirs.

Under the right political conditions, the regime was more than ready to ignore any demands for retribution "from below". Unresponsive to such demands, the MGB did not care that "far from everything [was] in order with Fidler, since people who were under occupation with him now turn away their heads when they meet him", as one witness testified.[301] As long as the man whom people turned away from was politically useful, the regime did not care about such bagatelles. At most, the experiences survivor witnesses shared with the authorities were good enough for blackmail and to make an agent shut up who talked too much. Justice, even the kind called "socialist legality", was now more than ever conditional on political expediency.

Years later, eerily similar events to the ones described in this chapter would take place in Czechoslovakia, suggesting a pattern across the Eastern Bloc. As Jan Láníček has shown, the communist secret police in Czechoslovakia tried to blackmail Holocaust survivors "into

[298] Ibid., p. 176–177.
[299] Ibid.
[300] Ugolovnyi kodeks USSR, p. 21.
[301] Fidler Igor' Iakovlevich, HDA SBU OO, D22239, p. 77–80.

cooperation in the anti-Zionist campaign" that the government unleashed in the early 1950s.[302] Among them was Erich Kraus, the former deputy elder of the Prague "Council of Jewish Elders", which had represented the Jews during the German occupation.[303] Based on this work, the secret police accused Kraus of "overzealous collaboration with the Nazis in the extermination of the Jews".[304] The authorities threatened him with 20 years in prison, arrested his wife and promised to send his children to a foster home if he would not cooperate.[305] Ultimately, the secret police wanted to turn Kraus into an informer providing intelligence on other Jews and their involvement in "'Zionism' or 'bourgeois Jewish nationalism in the service of Western imperialism'".[306] Despite the incredible pressure, Kraus never cooperated and was ultimately released, apparently owing much to the fact that the secret police realized how limited his contacts were – they had poorly picked their prospective asset.[307] However, the secret police successfully recruited others by similar means of blackmail, using alleged collaboration with the Nazis.[308]

## Conclusion

In Soviet Ukraine in the late 1940s, Soviet authorities increasingly intertwined the criminal prosecution of former ghetto functionaries with anti-religious policies. Igor' (Isai) Iakovlevich Fidler was one individual whom the authorities targeted with their new mixture of policies. The Romanians had put Fidler in a functionary position when he was still a minor. In the "Jew house" the Odessa-Slobodka ghetto had shrunken to, they tasked Fidler with organizing deportations before eventually sending him off as well. He survived his ordeal in Slobodka and beyond only narrowly.

Yet after the war, when Soviet authorities learned about his activities in the ghetto, they initially did not put him on trial. On the contrary, they made him a job offer he could not refuse. Soviet security organs turned Fidler into an asset instead of a convict and send him to spy on the local Jewish community in Belgorod-Dnestrovskii. The Soviets began cracking down on religion, and the Jewish religious revival in Ukraine was particularly strong in the new Soviet territories, such as Izmail oblast', where they put Fidler to work. For Fidler, that relationship with the Soviet security organs meant a secondary instrumentalization. First, under threat of deportation and death, the Romanians had turned him into a tool they could use to assist them in persecuting the Jews

[302] LÁNÍČEK, Jan: Communist Use and Abuse of Wartime »Jewish Collaboration« in Trials during the 1940s and 1950s 2021 (Paper presentation held at online on May 28, 2021, Fritz Bauer Institut, Frankfurt am Main; Imre Kertész Kolleg Jena).
[303] Ibid.
[304] Ibid.
[305] Ibid.
[306] Ibid.
[307] Ibid.
[308] Ibid.

confined in Odessa-Slobodka. Now, under threat of criminal prosecution and a long term in the Gulag, the Soviets used Fidler to implement their anti-religious, and increasingly anti-Semitic, policies in Izmail oblast'. Thus, while previous scholarship assumed that Soviet collaboration trials of Transnistrian Jewish ghetto functionaries were not "part of an official anti-Jewish campaign", Fidler's and similar cases demonstrate how such proceedings could become intertwined with precisely these campaings.[309]

Eventually Fidler lost his usefulness as an agent, at least partially because of how unprofessional his Soviet handlers had acted – and because he could not keep his mouth shut. Yet even when he went on trial, the Holocaust was pushed into the background. The trial session was exlusively about the security concerns resulting from Fidler's chattiness and him disclosing state secrets. Justice was completely conditional on security interests – the prerogative state was in full force, even if the eventual trial retained some normative state features. Witnesses' who had related their Holocaust experiences to the authorities found these experiences first instrumentalized, then marginalized. In other cases, the overlap between prosecuting former ghetto functionaries and suppressing Jewish religious life played out differently. Here, the Soviets began investigating religious activists and leaders, then learned of their past as Jewish functionaries and eventually used this new information to bury them. Both Fidler's case and those related case attest to the same: The Soviet security apparatus not only instrumentalized the Holocaust but wielded it as a weapon against the Jews.

But for witnesses and defendants alike, the result was clear. Their ordeal during the Holocaust was reduced to a chess piece the authorities could use in the game they themselves were now playing against the Jews. Any sort of collective reckoning, any sort of engagement with the "gray zone" that earlier trials might have offered at least to a minimal degree were lost in the case of Fidler. Jewish suffering was good enough to be turned against Jews and make them turn against each other, but for the Soviet agencies handling these cases, examining that suffering had no value in itself.

[309] DUMITRU: Gordian Knot, p. 745–746.

# Conclusion

## Summary of argument and empirical findings

In the present dissertation, we examined Soviet collaboration trials of Jewish functionaries from ghettos in the Romanian occupation zone Transnistria. We analyzed these trials from the perspectives of three main sets of actors: witnesses, defendants, and authorities. Taking these perspectives, the dissertation asked what the interests and goals of each group of actors were, what strategies these actors employed to achieve these goals, and what the outcomes of their interaction were.

To answer that question, we first discussed statistics of Soviet investigative and adjudicative institutions handling collaboration trials and defined four levels of analysis: A) Soviet collaboration trials in general (roughly estimated at between 330.000 and 500.000 defendants), B) the subset of these trials that dealt with Jewish ghetto functionaries from Transnistrian ghettos (very roughly estimated at around 200 defendants), C) the trials of those 51 individual functionaries for whom archival evidence is available, and, lastly, D) a non-probability maximum-variation sample drawn from those 51 individuals. The maximum-variation sample ensures a certain degree of representativeness between levels D) and C). However, further, up the chain, representativeness decreases, especially since the exact proportions of both levels A) and B) are unknown.

Soviet state representatives were the dominant actors on all four levels of analysis. Because of that imbalance of power and because the broader topic of Soviet collaboration trials is severely understudied, the present dissertation had to extensively dwell on level A), both conceptually and empirically. The result is essentially a book within a book (chapters 3 through 6). Moreover, the state of the research field and the distribution of power among the different actors necessitated a research design resembling a zooming-in motion from level A) to level D).

Performing that motion, we employed a variety of methods. We conceptualized the dominant actors' behavior through Ernst Fraenkel's concept of the "dual state" and then used it as descriptive ideal-type heuristics on all four analytical levels. On level A), we then provided a broad institutional analysis and periodization of Soviet collaboration trials in general, summarizing the existing literature and analyzing documents of the Soviet institutions responsible (mainly from our region of study, Soviet Moldova and Ukraine). Turning to level C), we looked for patterns in the way Soviet authorities targeted, prosecuted, and adjudicated cases of Jewish ghetto functionaries from Transnistria. To establish such patterns, we prepared a collective portrait of the defendants, provided a quantitative overview of their prosecution and trials, and correlated the data of both. Lastly, we conducted a qualitative content analysis of the decision documents (verdicts and case

termination orders) of the defendants on level C), examining patterns in how Soviet adjudicators explained their decisions. Further zooming in on analytical level D), we complemented the analysis of patterns with that of specifics, which we established in five qualitative case studies, dealing with three different ghettos and 12 defendants. Adding another five cases related to eight more defendants from three other ghettos, we conducted a second qualitative content analysis of witness testimony, defendants' interrogation, and confrontation protocols from those investigative casefiles. That second qualitative content analysis thus encompasses the testimonies of 26 defendants and 247 witnesses and allows to complement some findings from the five case studies.

Moreover, the same qualitative content analysis also allowed us to empirically analyze document validity, which preceded the zooming-in motion described above. Source criticism is essential because of the Soviets' extensive track record of fabricating trial documentation, torturing defendants, and staging show trials. That background sparks much skepticism among scholars about whether the contents of Soviet investigative casefiles are valid.

Such skepticism can be radical or informed, and informed skepticism is the right approach for several reasons. Being a radical skeptic about the investigative casefiles of 1940s Soviet collaboration trials means discarding the materials altogether for analysis, depriving historians of valuable sources of information. Radical skepticism is unnecessary – one can analyze these materials and still not be naïve about their inherent problems. Since these casefiles are process-produced data, informed skepticism needs to be based on a theory of the interrogation process that produced the most contentious kind of data, namely protocols of verbal exchanges (defendants' interrogations, witness depositions, confrontations). The key task of such a theory is to identify distortions on three levels – that of the protocols vs. events, vs. verbal exchanges, and vs. free will.

On the level of protocols vs. the events they refer to, the protocols' contents are, by and large, no mere fabrications. However, these contents should be triangulated with other materials whenever possible. Unfortunately, triangulation is mostly impossible when determining whether a protocol is a faithful representation of the verbal exchange it purportedly reports and whether witnesses and defendants were forced to say things against their free will. On these two levels, indicators for identifying distortions and estimating document validity need to be drawn from the protocols themselves.

Verbal exchanges entered protocols only in heavily selected and redacted form. However, the words of witnesses and defendants as the intellectual authors of protocols did not disappear from the protocols completely. That is true despite a certain uniformity of form and the frequency of Soviet ideological clichés, behind which lies a wide variety of contents and topics. Moreover,

witnesses should be taken seriously as active agents who used different strategies in pursuing their own goals within the criminal proceedings. Among such strategies was the use of desirability bias as an instrument. Thus, the ideologically loaded language in the protocols is not necessarily a result of investigators twisting witnesses' words. On the contrary, witnesses could use ideological desirability bias as an instrument to find a common tongue with Soviet state representatives and push their own agendas during investigations and trials.

To be sure, encounters with state security officers were probably fearful events for many witnesses and the same desirability bias was most likely a serious impediment to many witnesses' free will, constraining what they could say. However, witnesses had avenues of evasion available to them, such as simply saying "I do not know." Moreover, as the later discussion in the first case study on the Balta ghetto showed, there was a certain potential for self-selection among witnesses. At least for some, it was possible simply not to testify, even when a representative of Soviet state security asked them to do so.

Thus, regarding the level of protocols vs. free will, the much bigger issues concern defendants' interrogations. Defendants faced the general pressure of criminal prosecution and potentially even the specific pressure of torture. The pre-torture pressures had measurable effects. In trials with several defendants and/or with witnesses who could potentially have been indicted, a classic prisoner's dilemma played out. Defendants accused each other rather than protecting one another by remaining silent. Defendants tried to shift the blame on other suspects, which makes their testimonies about one another dubitable sources. Regarding torture, several indicators are available for detecting it in protocols. Recognizing torture in defendants' interrogation protocols remains difficult, but not impossible if one only strives for a probabilistic estimate rather than definitive proof.

After establishing that the materials which form the primary basis of the present study can in fact be utilized for historiographic analysis, a second stepping stone for the analysis remained: the understudied overarching phenomenon of Soviet collaboration trials. Before saying anything about such trials of Jewish ghetto functionaries from ghettos in Transnistria, the larger phenomenon demanded both a conceptual and empirical discussion. Ernst Fraenkel's idea of a "dual state" provides a highly useful conceptual tool.

A "dual state" can be described as pair of dichotomic ideal types designating two competing modes of operation used in dictatorships' legal and executive branches. There is a sharp asymmetry of power between the two modes, with the "prerogative state" being the dominant side and the "normative state" the dependent side. The "prerogative state" is the mode of exercising power unbound by formal legal restraint and as such mainly produces political violence aimed at those

deemed foes of the regime. In the "normative state" mode of operation, the regime restricts its exercise of power by adhering to laws, which mainly benefits those the regime deems friends. However, in a dual state, adhering to laws is always subject to "policy reservation" – if necessary, the prerogative state takes over. Normative state and prerogative state partially overlap with the institutional compartmentalization of dictatorships, but ultimately, both are best understood as modes of operation transcending that compartmentalization.

Since key indicators for Fraenkel's concept can be found in the history of the Soviet judiciary and executive up to the 1940s, that dictatorship can be qualified as a "dual state". Applying the concept to the Soviet Union in such a broad sense is not enough to make it analytically useful. To fill that gap, we operationalized the "dual state" based on a cursory discussion of the 1930s mass operations as the prime example of the Soviet "prerogative state". We identified 22 indicators ranging from macro-level features to micro-level aspects of investigations and trials. These indicators allow determining the mixture of prerogative state and normative state elements both in the broader phenomenon of Soviet collaboration trials as well as in each individual investigation and trial.

Using these conceptual tools, two phases of how the Soviets prosecuted collaboration can be identified. Up until 1943, the Soviets primarily relied on existing legal instruments and institutions for investigating and adjudicating cases of alleged collaboration. The way these institutions applied those legal instruments was chaotic and mostly followed prerogative state procedures, resulting in harsh repressions and many death sentences. During the second phase, from 1943 on, the Soviets created new legal instruments and new institutions and eventually systematized their work at least to a degree. Normative state procedures now partially regulated the operation of these institutions, bringing the number of death sentences down.

A significant part of that regulation was implemented through supervision of investigative and adjudicative organs by the procuracy and the higher echelons of the adjudicative and investigative organs themselves. Thus, investigators of NKVD, NKGB, and SMERSH and the adjudicators of the lower-level military tribunals handling the bulk of collaboration cases found their work regularly assessed for quantity (caseload) and quality. Supervisors could interfere at different stages of an investigation and trial and used these occasions to complain about the backlogs their subordinates accumulated, how incorrectly these subordinates often applied the law, and the low quality of the evidence these subordinates gathered.

Together, these complaints represent conflicting incentives. The normative state push for a correct application of the law and high standards of evidence was counterbalanced by a prerogative state drive for efficiency (to tackle an immense caseload) combined with occasional demands for harshness. Despite the conflicting incentives, normative state procedures resulted in a relatively

high rate of pretrial case terminations and greatly influenced the course and results of many trials. Therefore, even the organs of extraordinary political justice showed normative state tendencies at least to a certain degree.

Examining supervision also allowed to further analyze the crucial question of torture. The investigative organs themselves had only minimal safeguards and their "special inspections" posed no effective deterrent against investigators abusing defendants. Much more effective was the judicial supervisors' push for a high quality of evidence, which made it difficult to get a case even through a military tribunal if the evidence consisted only of a suspicious confession. Witness testimony was needed. The stricter standards of evidence reduced the benefits investigators could gain from torturing defendants. That does not mean that no defendants were tortured, which likely still occurred quite regularly. However, that was by no means the determining factor in collaboration trials at least during the second phase unfolding since 1943 onwards.

Since the earliest documentation for trials of former Jewish ghetto functionaries dates back to 1944, our study falls into the second phase. And since investigators and adjudicators faced competing incentives, the exact mixture of normative and prerogative state procedures in these trials needs to be analyzed both for the 51 defendants on level C) as well as in each case study on level D). On level C) three analytical steps allow to locate the Soviets' treatment of the 51 defendants on the spectrum between normative state and prerogative state. These steps concern the way Soviet authorities targeted and prosecuted the defendants and adjudicated their cases.

The first analytical step was a collective portrait of the defendants, which showed that targeting was not category-based and thus followed normative state procedures. The 51 men present a demographically diverse, socially stratified group with different political affiliations. Among this group were not only Romanian deportees but also a significant number of local Soviet Jews, which proves a certain variety in the composition of Jewish ghetto administrations in Transnistria. The diversity in the group shows that Soviet authorities did not target former Jewish ghetto functionaries based on social categorizations. "Undesirable" traits were not a necessary condition for targeting, "desirable" traits did not shield from it. Moreover, the fact that ghetto functionaries who had formerly held higher positions of authority (heads of Jewish councils) were disproportionally targeted for prosecution suggests that the Soviets were interested in individual behavior and proof of individual guilt.

The second and third analytical steps consisted of a quantitative overview of prosecution and adjudication, as well as a qualitative content analysis of the decision documents (verdicts and case termination orders) in the investigations and trials on level C). With the NKVD, NKGB, and SMERSH as the investigative organs and the "Special board of the People's Commissariat of

Internal Affairs" (OSO) and military tribunals as the adjudicative bodies, prerogative state institutions adjudicated the cases of Jewish ghetto functionaries. The way these institutions treated the defendants on level C) was partially regulated by normative state principles. For example, four in five defendants at least partially confessed during the pretrial investigation, which suggests that the investigators likely used illicit methods of interrogation. However, confessions neither determined whether a defendant would eventually be convicted or released, nor how severe a sentence a convict would receive, which speaks for a normative state standard of evidence.

Another important normative state feature was the presence of legal counsel. One in three of the defendants on level C) was represented by a lawyer at their trial. And judging by the mere outcomes, representation by a lawyer lowered conviction rates, shortened sentences, and diminished a defendant's chances of receiving the harsher "katorga" punishment. However, the following qualitative content analysis of decision documents relativized that finding. The analysis showed that lawyers were apparently more often admitted to trials (they could not meet their clients during the pretrial stage) of defendants who faced "lighter" accusations anyway. The case study on the trials in Tul'chin expanded these findings by showing the concrete defense strategies that lawyers employed, in this case, very successfully.

Regarding the question of publicity, the defendants on level C) could hope for at least a limited normative state influence on their trials. In operationalizing the dual state, we had assigned secret proceedings to the prerogative state and public proceedings to the normative state. That distinction is complicated by the hybrid of show trials (prerogative state proceedings masked as normative state trials) and publicity demands a closer look both conceptually and empirically. Conceptually, we connected publicity with "legal legitimization", the regime's claim to legitimacy by demonstrating it governed by principles of legal rule. Adding empirical data, we developed a typology of six different types of publicity that Soviet collaboration trials could have. This typology was based on a discussion of the conceptual literature on "show trials", of the empirical examples of large show trials the Soviets conducted in their prosecution of collaboration, as well as on a further analysis of Soviet internal documentation and statistics, plus local newspapers from our region and period of study. The resulting typology ranged from purely administrative procedures to show trials.

For defendants, publicity remained a double-edged sword. Both completely secret proceedings, as well as show trials, heightened their chances of being tortured and treated in a prerogative state manner. Completely secret proceedings meant the defendants could not complain about mistreatment in front of outsiders and show trials meant the authorities would probably put so much pressure on a defendant that he did not dare to complain.

For witnesses, publicity meant a chance to voice their grievances and engage with one another, with the defendants, and with representatives of the state. Thus, recognition and the chance for any sort of Jewish collective reckoning with the events in the ghettos depended on at least minimal publicity – the witnesses themselves had to be summoned. The completely administrative decision-making of the OSO, or the semi-administrative / semi-trial proceedings in military tribunals, when only the defendant was summoned, robbed witnesses of that chance.

In the overall Soviet prosecution of collaboration, the six types of publicity were not distributed equally. The overwhelming majority of trials were secret, and it was rare that even a small audience was admitted. Even rarer were cases for which the Soviets allowed reporting even in the local press. The same overweight of secret proceedings characterized the trials on level C). Regarding publicity, some 40% of these proceedings can clearly be characterized as prerogative state endeavors, belonging either to the administrative or the semi-administrative / semi-trial types. The other 60% of the trials had a minimal local audience comprised of the witnesses and thus exhibited at least a limited normative state influence.

Therefore, witnesses had the chance to voice their views on the events in the ghetto at least in the minimal public forum of other survivor witnesses only in 60% of the proceedings. But in 40% of the instances when Soviet institutions adjudicated a defendant's case, the witnesses' only interaction with state representatives was their pretrial interviews.

Interestingly, Soviet authorities summoned witnesses more often to trials of former heads of Jewish councils. Thus, when the authorities gathered minimal local audiences comprised of the witnesses, they showed a tendency to go after the most visible and highly placed figures of the ghettos. In turn, picking those defendants probably best known in survivor communities for these trials fits the goal of legal legitimization well.

Regarding category-based patterns in the way Soviet authorities prosecuted and adjudicated the Jewish ghetto functionaries, a first potential category would be that of "Jew". In other words, were those Jewish defendants treated differently than others? It appears not. The sentences of the defendants on level C) were distributed similarly to anyone else convicted during these years in the USSR under "special jurisdiction". Compared to Soviet Ukraine and Moldova, the defendants received the same punishments for the same articles as other defendants. However, it is noteworthy that while the severity of sentences for the various legal instruments does not differ from other groups of defendants, Jewish ghetto functionaries were more often tried for the "lighter" article 54-3 ("liaison with foreign powers") instead of the legal instruments carrying harsher punishments. And those tried under article 54-3 receivd slightly less severe sentences. Nevertheless, the later qualitative content analysis of decision documents suggests that this distribution of legal

instruments and punishments was not category-based, but reflected the concrete accusations that Soviet authorities brought forward against the defendants. In sum, we here mostly see a normative-state approach.

Another striking feature of how the Soviets prosecuted Jewish ghetto functionaries on level C) is the unusually low conviction rate compared to others prosecuted under the same articles. A quarter of the defendants on level C) were not convicted, with most of them being freed at the pretrial stage. Thus, as in the overall prosecution of collaboration, the true bottleneck was the trial stage. Once a defendant's case went to trial, the chances for acquittal were close to zero. That holds true for the defendants on level C) as well. However, the high release rate of ghetto functionaries should not be misread as an explicit recognition of the gray zone the defendants had acted in. Only in the case of two defendants acquitted in court do we see such a recognition, it thus remains an exception underscoring the rule. Almost universally, red courts did not care about gray zones.

Much more decisive was the factor of assisting the partisans or the communist underground. For defendants, rendering such assistance during their time in the ghetto could become a lifeboat in their later dealings with the Soviets. Assisting the partisans could trigger normative state procedures and fairer treatment. When investigators learned of such assistance, it increased the chance they would play by the rules. In cases of defendants already convicted despite their assistance for the partisans, that assistance could later also lead to prerogative state interventions even by the highest echelons of the Soviet judiciary, illegally revoking a conviction.

Besides potentially treating the defendants on level C) differently, because they were Jews, the Soviets could also have applied a category-based approach within the group of Jewish ghetto functionaries. However, correlating the collective portrait with a quantitative overview of prosecution and adjudication showed that this was not the case. The social, political, and cultural differences among the defendants had no discernable effect on prosecution and adjudication. The one notable exception to that trend was the fact that Soviet Jews had a higher conviction rate and faced severer sentences. Two hypotheses resulted: First, that Soviet Jews were held to a different loyalty standard than deportees from Romania, which would constitute a category-based and thus prerogative state approach. Second, that Soviet Jews on average faced different accusations than Romanian Jews and were prosecuted and tried according to the incriminated actions, which would constitute a normative state approach. The qualitative content analysis of decision documents helped determine the correct hypotheses.

Correlating the decisions documents' contents with the overview of prosecution and adjudication allowed to establish a central pattern of adjudication. Both conviction rates and the severity of sentences depended on whether a defendant was accused of direct, physical involvement in actions

like arrests, deportations, and forced labor mobilization. If the involvement was only indirect and organizational, then conviction rates and sentences were lower. Moreover, accusations of violent acts, mostly beatings, were a central aspect of that pattern, and the accusation of committing such acts directly, rather than being indirectly involved by informing or ordering, is the best predictor for convictions and the severity of sentences. In turn, accusations of direct involvement in property crimes, arrests, forced labor mobilization, deportations, etc. pointed to likely situational contexts in which a defendant might have committed such violent acts. The sentencing pattern was thus largely independent of social categorizations and it adhered to one of the central tendencies of the contemporary Soviet legal framework as it was systematized in the second phase since 1943 described above. Soviet adjudicators' decisions were not arbitrary and the sentencing pattern thus constitutes a normative-state tendency.

The sentencing pattern also explains the differing trial outcomes of Soviet and Romanian Jews, which do not constitute category-based adjudication. Soviet Jews were not convicted more often and sentenced more harshly because they were Soviet Jews and held to a different standard of loyalty. The differing outcomes adhere to the normative state sentencing pattern. On average, the accusations between the two groups differed, with Soviet Jews more often facing the more severe accusations – direct involvement in various actions and doing the beating rather than facilitating it by ordering or informing. The reason for these differing accusations is that during their time in the ghettos, Soviet Jews were overrepresented in police functions. As ghetto policemen, they were more likely to be directly involved in things like forced labor recruitment and in those situational contexts more likely to beat people.

There is only a loose correlation between the sentencing pattern and the publicity of trials. On the one hand, accusations of more direct involvement raised the chance that the defendant would be tried in front of a minimal local audience. On the other hand, the critical accusation of perpetrating violent acts directly is not mirrored in the publicity of trials, despite the significant propagandistic value we may expect it to have carried. Therefore, for determining to whose trial to summon the witnesses, the type of position a ghetto functionary had held seems to have been the more important factor for Soviet authorities.

Despite the prevalence of significant prerogative state strategies in the way the Soviets treated the defendants on analytical level C), it is obvious that normative state countertendencies should not be underestimated. Defendants had a realistic chance the authorities would grant them limited procedural rights, would try to establish individual guilt for concrete actions, and base these attempts on witness testimony. The witnesses could hope to have their views on the events in the ghettos heard and had a realistic chance that they may voice them in a small public forum.

Moving from analytical level C) to level D) allowed to specify mechanisms that lead to the patterns established on level C), such as the actions different actors had to take to achieve a defendant's release for assisting the partisans, the actual defense strategies employed by lawyers, etc. The case studies on level D) also complemented the previous findings by identifying various factors the more distant overview on level C) necessarily missed.

The first case study dealing with the proceedings against Tul'chin ghetto functionaries in Chernovtsy helped to further specify the issue of release for assisting the partisans / Soviet underground. For the two defendants eventually released, Shraiber and Shtainbok, supporting the partisans was a lifeboat shielding them from conviction by a Soviet court in the mid and long terms. But during their time in the ghetto, there was an immediate trade-off for these later benefits. The defendants faced the constant danger of Romanian repression. Moreover, as a detailed look at the investigation in Chernovtsy and at other similar proceedings showed, there was no automatism between a defendant assisting partisans or members of the Soviet underground and his later release. To ensure a release, it was of prime importance who informed the authorities, as well as when and how they did it. Thus, it was decisive how many witnesses were there, when they testified and how they conducted themselves. A defendant's claims alone were not sufficient. Chances of release rose significantly if the witnesses had a certain socio-political status, organized themselves at least into a loose support network, and if they knew how to interact with Soviet authorities both in writing and in person.

Moreover, the Chernovtsy investigation of Tul'chin ghetto functionaries revealed an extortion scheme and the functional polyvalence of prerogative state strategies. When Soviet authorities on the ground employed such strategies, they could easily divert them from their intended goal of eliminating political enemies to more prosaic ends, such as enriching themselves. Examining the Chernovtsy investigation uncovered a host of circumstantial evidence pointing towards an extortion scheme that dominated these proceedings. Defendants were selectively targeted, prosecuted, and adjudicated based on who of them could and who could not pay. The selective approach investigators took is not explicable by what evidence was available to them. Soviet officials used an informer to extort money from defendants, selectively prosecuted them, selectively weighed the available evidence, and eventually forwarded the cases of those who could not pay enough to the OSO, depriving the defendants of any chance to complain about their treatment publicly. Therefore, defendants Brender, Mozner, Veshler, and Vitner were sent to the Gulag for terms between four and eight years, and the scarce information on Vitner's further fate suggests some of them had to stay there even longer. As the extortion scheme was the decisive factor, the proceedings became part of a larger enterprise by which Soviet officials deprived Jews in

Chernovtsy of their property, mostly for allowing them to emigrate. Hence, Soviet investigators could use prerogative state strategies to achieve various ends, and political repression was only one of them.

For the witnesses, almost exclusively Romanian Jews, the extortion scheme meant that their testimonies were diverted from their intended purpose and misused for completely different goals. Whatever justice and retribution witnesses might have hoped for was shoved aside. Neither did the authorities grant them any space to engage with the defendants and other witnesses for any sort of collective reckoning with the recent past of the ghetto.

Besides the investigation in Chernovtsy, Soviet authorities in Tul'chin itself also dealt with former members of the ghetto's Jewish administration. That second investigation and trial prove how much variation there was in cases under "special jurisdiction". In Tul'chin, the authorities followed normative state principles to an extent unmatched in any other case on level D). That approach did not turn the trial into something compatible with the rule of law, but to witnesses and defendants, the difference to the proceedings in Chernovtsy mattered greatly. To be sure, even in the Tul'chin investigation, there were prerogative countercurrents, such as the pressure investigators likely put on defendants to make them confess to signing German and Romanian documents stating that they would follow all orders of the occupiers. However, in the Tul'chin investigation and trial, such practices were an exception to otherwise dominant normative state principles.

These principles afforded the defendants and their lawyers a broad room for maneuver, which they utilized with different defense strategies. By cross-examining witnesses during the trial they were able to bring to light exonerating information not recorded in these witnesses' pretrial testimony protocols. Moreover, the accused and their defense were quite successful in turning the accusers of one defendant into the defenders of another. Most witnesses did condemn all three of the accused for their service as ghetto functionaries but had quite specific complaints regarding individual defendants. The defense used that fact to its advantage. The trial thus approximated an actual adversarial process that opened a forum in which survivors addressed some of the most difficult aspects of life and death in the ghetto and the nearby Pechora extermination camp.

The Vinnitsa oblast' military tribunal hearing the case ended it with a unique decision. It explicitly stated that defendants Khusid and Zabakritskii had done bad things. But the court also acknowledged that, as Jewish ghetto functionaries, their room for maneuver had been too constrained to consider their actions criminal. The tribunal thereby delivered the only explicit recognition of the gray zone by a red court that could be found in the archival record so far. However, while Khusid and Zabakritskii benefitted from that insight, the Manichean tendency

returned in the verdict the court passed on defendant Eidler. The court sentenced him to a comparatively harsh 15 years of katorga. Only upon appeal did Eidler's lawyer manage to have the sentence reduced to five years in a corrective labor camp.

The reasons for that incoherent decision-making remain difficult to ascertain. Both political friend-foe distinctions and a simple "majority rule" of the witnesses can be excluded as causes. Had the court tried to punish defendants it could credibly suspect of political disloyalty, it would not have convicted only Eidler. Neither did the court just convict the defendant who had the most witnesses against him since that was not Eidler either. It is likely that the quality of witnesses' accusations was decisive and that Eidler's alleged indirect involvement in mass shootings and the death of children distinguished him from the other defendants. Moreover, it is possible that faced with witnesses' collective ambiguity, the court tried to fulfill survivors' demands for retribution at least somehow.

The first case study on the Balta ghetto revealed additional interesting features of the relations between witnesses, defendants, and state representatives. After the Red Army reconquered Balta, Soviet security organs struck a "frontline deal" with former ghetto functionaries, among them the former head of the Balta ghetto Jewish council, Rubinsthein. From the perspective of the three groups of actors, that deal had different implications.

Balta ghetto survivors took various stances on retribution and punishment of former ghetto functionaries. Some survivors refrained from addressing their grievances with the former Jewish functionaries to the newly returned Soviet authorities. Others demanded justice and retribution from the authorities. A few even took matters into their own hands, settling scores with former functionaries right in the streets. The authorities handled these pressures "from below" according to their own priorities. They curtailed any vigilante justice and arrested the former Jewish functionaries but did not put most of them on trial. Instead, Soviet security officials arrested the men and then recruited them into the Red Army. For ghetto survivors demanding justice and retribution, that meant their demands were not met, at least if they did not consider military service a punishment in of itself.

From the authorities' perspective, the frontline deal clearly shows that as long as the fighting continued, the war effort superseded many other potential goals. The authorities prioritized filling the ranks of the Red Army even if it meant missing opportunities for eliminating potential enemies and legitimizing the regime in the eyes of local communities on the recently reconquered territories. Under the right circumstances, the authorities apparently considered criminal justice a "luxury" for peacetime and chose to forgo it for military goals, which presents a prerogative state element of the proceedings against the Balta ghetto Jewish functionaries.

For the defendants, the frontline deal meant a chance to leave their role in the ghetto behind, at least when it came to their relationship with the Soviet state. Whatever other ghetto survivors might have thought or wished for, the former functionaries were not dragged in front of a military tribunal as "traitors" or "accomplices". Instead, some of them went to the front and ultimately became decorated war veterans. The trade-off was obvious: being drafted into the ranks of the Red Army posed enormous risks, and some of the functionaries-turned-soldiers did not return from the war. And it is dubitable that the former functionaries had a say in the matter anyway – accepting the trade-off was beyond their choice.

Not all former functionaries were "offered" the frontline deal. The authorities quickly arrested and soon tried Moskovich, who had headed the Balta district bureau of Jewish labor. Moskovich's case is an example of an exceptional road that led to the harsher punishments at the end of the sentencing spectrum on level C). While accusations of directly perpetrating violent acts were an element of all other sentences at that end of the spectrum, they are absent from the decision documents in Moskovich's case. Nevertheless, the Odessa oblast military tribunal sentenced Moskovich to 20 years of katorga – there was not much room for a harsher verdict here if the court did not want to have the defendant shot.

Rather than accusations of violence, it appears that the defendant's pre-war biography influenced his fate both during the Holocaust as well as in the hands of Soviet authorities, whose deep-seated spy mania the unusual defendant triggered. The sentence thus rested on an implicit political categorization (even if only partially), which is a prerogative state feature (ds 14). Moskovich had been a prominent communist lawyer in interwar Romania. In the initial phase of the Holocaust, Moskovich found himself in the Vapniarka camp with many other prominent Jewish communists. He could only escape the camp because of his prewar connections. Either he himself was acquainted with the Romanian governor of Transnistria, Alexianu, or Moskovich's wife had some sort of access to Alexianu because she was friends with the governor's mistress. Whatever the exact connection, Alexianu had Moskovich brought to him for a meeting and appointed the Vapniarka inmate as the new head of the Balta district bureau of Jewish labor, transferring him to the Balta ghetto.

When the Soviets later arrested Moskovich, they found his meeting with Alexianu most suspicious. Moskovich tried to dispel any skepticism, which included providing Soviet security officers with a host of intelligence on the Romanian secret services both in Transnistria and Romania. Moreover, he time and again asked the investigators to contact one of his prewar comrades, Romanian communist leader Anna Pauker, on his behalf. Both of Moskovich's strategies to prove his allegiance to the communist cause ultimately failed. The local investigators in Balta

understood that the man before them was somewhat important, so they sent him to their superiors in Moscow. However, those superiors did not deem Moskovich operationally significant. Neither did anyone manage, or perhaps even try, to contact Anna Pauker. Thus, Moskovich ultimately stood trial in Balta and was convicted. His Romanian comrades eventually learned of his troubles and their diplomatic efforts lead to a reopening of the case. But Moskovich would not see a second trial and died shortly after he was transferred from the Gulag back to Balta.

Moskovich's fate is instructive in several respects. As with the "frontline deal", we here see that justice became conditional on other factors. Had Soviet officials found Moskovich a valuable intelligence asset or had they managed to contact his comrades earlier, it is highly likely that they would not have hesitated to close the investigation. In addition, the case shows that even being a dedicated communist activist did not necessarily shield a defendant from prosecution and conviction. These things needed to be proven, and that could turn out to be impossible. Lastly, for the survivor witnesses testifying in Moskovich's case, the eventual trial with a minimal local audience opened space to voice their experiences with the defendants and in the ghetto more generally. However, it is clear that as with the frontline deal, the question of whether Soviet authorities granted or withheld such an opportunity was conditional on other factors.

As the second case study on the Balta ghetto shows, justice remained conditional, which again presents an important prerogative state aspect. In 1947, Soviet authorities terminated the frontline deal they had struck with Rubinsthein three years prior, because he now planned to emigrate (and possibly helped others to do so). Again, the occasion to begin an investigation and eventually hold a trial in Balta lay not in the details of the case itself. Had Rubinsthein not "misbehaved" in his job as a translator for the Allied Control Commission for Romania, Soviet authorities would not have arrested him and sent him back to Balta to be investigated and tried. Thus, Soviet security organs turned the defendants' role in the Holocaust into just another form of compromising materials to be used against them should it become necessary. In the long run, the frontline deal was fragile, and their role in the ghetto was hanging over former functionaries' heads like the proverbial sword of Damocles. Therefore, the prosecution of collaboration could overlap with other lines of repression, such as the Soviet fight against emigration. Rubinshtein's fall from grace had reasons beyond his role in the ghetto and for the authorities, the events of the Holocaust became merely a convenient way to bury him.

For the authorities, there were also beneficial side-effects of such an approach. Since they summoned the witnesses to the trial, the proceedings provided Soviet state representatives with an opportunity to allude to the period of occupation and the Holocaust, simultaneously casting the Soviet state as a legitimate lawful ruler addressing that recent past. For ghetto survivors in Balta,

Rubinshtein's trial opened another space to grapple with the events of the ghetto, years after Moskovich's trial had already presented such an opportunity.

Similar to Moskovich's case, once initiated, the proceedings against Rubinshtein mostly followed normative state principles. A notable exception was that the investigators and adjudicators dealing with Rubinshtein had familiarized themselves with Moskovich's casefile from the earlier investigation, but did not care to resolve the contradictions emerging between the two investigations. Thus, the version the later investigation against Rubinshtein established was incompatible with the judicially sanctioned version that had led to Moskovich's conviction. That these contradictions were not resolved is the second important prerogative state element of Rubinshtein's case.

Another important aspect emerging in both case studies dealing with the Balta ghetto is the issue of social conflicts among different groups of Jews in the ghettos, namely deportees from Romania and local Soviet Jews. Such conflicts were not only a regular topic of witness testimonies in the proceedings both against Moskovich and Rubinshtein. As could be demonstrated by a qualitative content analysis of several hundred witness testimonies from analytical level D), social conflicts were a theme that a certain percentage of witnesses addressed across the different investigations on that analytical level.

However, a closer look at the accusations that witnesses brought forward against Moskovich and Rubinshtein proves that estimating the veracity of such claims regarding individual ghetto functionaries is more demanding than noticing a common theme in witness testimonies. Triangulation with other types of data (oral history and memoirs) shows that some local Soviet Jews venerated the functionaries as heroes and did not condemn them as strangers who supposedly discriminated against the Balta Jews. Such positive assessments by local Jews make it unlikely that the defendants treated Soviet Jews badly across the board. Thus, it remains difficult to decide whether the functionaries did discriminate at least selectively or whether a part of the local Soviet Jews had a "nationalized" perception of the general structural opposition between Jewish functionaries and other ghetto inmates that sprang from the functionaries' role regardless of the ghetto population's socio-demographic composition.

In turn, Soviet authorities gladly picked up such accusations, especially when Soviet Jewish witnesses framed the communal-class separation in the ghetto in terms of anti-Soviet convictions and agitation. Thus, some witnesses presented the authorities with what from state representatives' point of view had to look like almost ideal enemy figures – bourgeoise strangers with anti-Soviet attitudes. As our discussion of desirability bias as instrument showed, such accusations of anti-

Soviet agitation were ideally suited for witnesses to nudge authorities towards a conviction and higher sentences. Therefore, caution is advised when examining that type of accusation.

In sum, it is quite difficult to determine which of the three versions (discrimination, misperception, and instrumental accusation) is correct. First, the defendants may have discriminated along the lines of the communal-class separation. Second, witnesses may just have perceived the way the Jewish council acted towards *all* ghetto inmates in a "nationalized" way, misinterpreting the realities. Third, witnesses may have consciously alluded to the communal-class separation in their testimonies to influence Soviet authorities and assure a conviction of the defendants, being well aware that this was false, but trying to achieve the goal of conviction because the defendants had wronged them in some other fashion.

Further complicating matters in the case of Moskovich and Rubinshtein is the fact that witnesses' accusations against both defendants were formulated almost exactly the same (especially regarding the phrase "Go to Stalin!"). The striking similarity raises the question of whether we are dealing with a form of socially standardized memory, a fourth potential explanation for the descriptions of social conflicts in witness testimonies (on socially standardized memory, see chapter 2). In witnesses' memory underwent social standardization, it appears credible that they projected deeds of one defendant onto the other – without any obvious chance for researchers to find out in which direction this took place. The fourth potential explanation just underscores the general trend: accusations that defendants discriminated along the lines of communal-class separation need to be treated with utmost caution.

The issue of social conflicts also has implications for other cases. While the case studies on the Balta ghetto allowed to study the testimonies of local Soviet Jews about Romanian Jewish ghetto functionaries, the case studies dealing with the Tul'chin ghetto provided information on Romanian and Soviet Jews' attitudes towards a Jewish council with mixed composition. During the investigation in Chernovtsy, a collective letter that Soviet Jews from Tul'chin sent to the investigators was crucial for defendants Shraiber and Shtainbok to prove that they had assisted the Soviet underground. Therefore, earlier good cross-group relations were key both for the survival of local Soviet Jews whom the Romanian Jewish ghetto functionaries protected during the Holocaust, as well as for the later release of those functionaries from Soviet custody.

However, cross-group interaction was an exception during the investigations and trials dealing with the Tul'chin ghetto. For the most part, the moment of liberation split the major groups of Jews confined in the ghetto (and the Pechora camp) along prewar community lines. Thus, the Bucovinian former deportees dealt with the time of the ghetto and with the former functionaries from their region during the investigation in Chernovtsy. And the Soviet Jews in Tul'chin did the

same with "their" functionaries in their town. Both groups did so in a framework that Soviet authorities provided.

Regarding the proceedings in Chernovtsy, it is noteworthy that Romanian Jewish ghetto survivors' attitudes towards Soviet state representatives were not necessarily evasive or hostile. That is somewhat surprising in face of how exploitative Soviet authorities at the time generally treated the town's Jewish population, such as when they extorted bribes for allowing Jews to emigrate. Despite the broader strains on Soviet-Jewish relationships in the city, the Chernovtsy investigation shows that at least some Romanian Jewish survivors were ready to provide Soviet security organs with testimony, even if that readiness was probably based on a rather vague idea of how Soviet investigative and adjudicative institutions operated.

Finally, the last case study on the Odessa ghetto further expanded the topic of "conditional justice". In the case of Fidler, justice again was conditional on other factors, namely Soviet security interests as expressed in the anti-religious and increasingly anti-Semitic campaigns Soviet authorities unleashed on Jewish community structures. The case study thus showed how collaboration trials of Jewish ghetto functionaries overlapped with yet another line of repression. In 1945, witnesses told Soviet investigators about Fidler's role in the Odessa-Slobodka ghetto. Despite his young age of merely 16 years at the time, witnesses alleged that he had held one of the leading posts in the ghetto's Jewish administration and played an important role in deciding whom to deport from the ghetto. Again, Soviet authorities reacted to such testimony with prerogative state mechanisms. "Policy reservation" governed what the consequences of the testimony would be. Instead of putting Fidler on trial following these accusations, Soviet state security officials first arrested and then recruited him as a covert informer. Thus, Fidler became an intelligence asset, not a convict. As his targets, the authorities set the local Jewish community in Belgorod-Dnestrovskii, as well as its international contacts. Fidler was thus drawn into the Soviet anti-religious campaign in postwar Ukraine. By coercively recruiting Fidler, Soviet authorities weaponized the Holocaust against the Jews, using one of its most painful aspects to the end of crushing Jewish religious and community structures.

From Fidler's point of view, his short career as a Soviet informer can be described as a secondary instrumentalization. First, the Romanians had forced him under threat of death to act as a Jewish functionary in the Slobodka ghetto, now the Soviets were using that service to coerce him into serving as their informer, again under threat of death (it was not sure whether, once convicted, one would ever return from the Gulag). Again, Fidler was turned into a means of someone else's ends, and again, these ends went against his fellow Jews.

Taking a step back from Fidler's case, there are several other instances in which Soviet authorities weaponized the Holocaust for implementing their anti-religious, and increasingly anti-Semitic policies in the second half of the 1940s in Soviet Ukraine. The way the authorities wielded this weapon was more similar to Rubinshtein's case than to that of Fidler. When Soviets security officials arrested and tried Rubinshtein, they intertwined their prosecution of collaboration with another line of repression, namely targeting people who wanted to emigrate. Similarly, Soviet authorities used several other Jewish ghetto and camp functionaries' activities during the Holocaust to put these men on trial. In these cases, the authorities first targeted Jews for their role in postwar Jewish community and religious life and then learned of their role during the Holocaust. That was the same order of events as in Rubinshtein's case. Again, Soviet authorities reduced the gray zones of the Holocaust to "kompromat" for getting rid of individuals deemed politically disloyal for some other reason. Yet contrary to Rubinshtein's case, the targets were no longer only individuals who "misbehaved", but Jewish community structures as well.

In Fidler's case, Soviet authorities not only weaponized the Holocaust against the Jewish minority but also marginalized it when the case went to trial. Fidler eventually lost his usefulness as an intelligence asset, partially because he could not keep his mouth shut and partially because his handlers acted quite unprofessionally. When the security organs learned that their informer was talking freely about the work he was doing for them, they quickly arrested him and soon put him on trial both for his actions during the Holocaust and for divulging state secrets.

Yet on trial day, the latter aspect dominated the proceedings. The witnesses who could have testified to the events of the Holocaust were not even summoned, obviously because they should not hear anything that concerned Fidler's later activities as an informer. Thus, the military tribunal dealing with Fidler's case marginalized the events of the Holocaust. Soviet authorities therefore first instrumentalized the experiences of those survivors of the Slobodka ghetto who had testified against Fidler and then marginalized these experiences when they became inconvenient.

Having completed the zooming-in motion described above, it is time to zoom out again and return to the guiding research question. The present dissertation asked what the interests and goals of authorities, defendants, and witnesses were in Soviet collaboration trials of Jewish ghetto functionaries from Transnistria, what strategies these actors employed to achieve these goals, and what the outcomes of their interaction were.

The dominant group of actors was clearly the representatives of Soviet investigative and adjudicative institutions. These actors took a prerogative state approach to the proceedings that was at least partially regulated by normative state procedures. The degree of such regulation varied greatly, on all relevant levels: that of the overall Soviet prosecution of collaboration, that of

investigations and trials of 51 Jewish ghetto functionaries from Transnistria, and that of select cases drawn from those 51 individuals. Employing different mixtures of prerogative and normative state strategies, Soviet state representatives strove to achieve various goals. These included effecting retribution for crimes committed during the Axis occupation via the criminal justice system, but also self-enrichment, the elimination of political enemies, legitimizing the regime, as well as military and security goals, such as winning the war, gathering compromising materials that would enable later repressions in cases of individuals "misbehaving", as well as crushing Jewish community structures. The degree to which the two other sets of actors, defendants, and witnesses, could influence the proceedings and their outcomes largely depended on the approach that Soviet state actors took in each case.

For the defendants, the variation in the authorities' behavior amounted to a game of chance. There was a realistic perspective that they could enjoy some limited procedural rights, that they would be judged in a court for their individual actions according to the law, and that they could meet the witnesses accusing them during a trial and lay out their own version of events to defend themselves, possibly even backed by legal counsel.

In a certain sense, the defense strategies different defendants used began even before their arrest. At least if one assumes that certain activities in the ghettos were not only means for achieving short-term goals but also served the long-term end of averting prosecution by the Soviets. That concerns defendant Moskovich's gathering of intelligence on Romanian secret services and, much more commonly, the assistance different defendants rendered to the partisans and Soviet underground. To successfully use such assistance in their defense, the accused depended on witnesses and their support networks. And to an even greater degree, success depended on how Soviet authorities approached the defendant's case.

Besides the chance for a normative state treatment, there was an equally realistic perspective that the authorities would simply deny the defendants all it entailed. Many did not enjoy procedural rights, have a trial, get to see their accusers, or have a chance to defend themselves in a court, or consult with legal counsel, even if only on trial day. Defendants also faced the danger of falling victim to extortion schemes and/or torture. And those who initially walked free because they were not immediately arrested or put on trial could face serious consequences as well. At least in individual cases, Soviet authorities subjected defendants to a secondary instrumentalization as intelligence assets to attack Jewish community structures or used their past as "kompromat" to punish any individual postwar behavior they deemed politically undesirable.

The role survivor witnesses could play in the proceedings also largely depended upon the approach the authorities took, but not solely. Ghetto survivors apparently had a certain room to

decide whether they wanted to testify as witnesses in the first place. Moreover, the degree to which they got involved in the proceedings varied greatly, with the most active witnesses playing important roles in initiating the proceedings and in determining their outcomes. Besides strategies such as supplying authorities with testimony on defendants and information on additional witnesses, survivors could also form networks aimed at supporting defendants or ensuring their conviction. Some survivors also employed ideological desirability bias to their advantage, as well as their understanding of how Soviet institutions operated and how one had to engage with them.

If the Soviet security and judiciary organs approach allowed for it, survivor witnesses got the chance to voice their experiences and grievances not only to investigators but also to one another and the defendants during trials. Thus, for witnesses, the trials could result not only in a sort of Jewish collective reckoning with the recent past (however constrained by the Soviet framework) but also in an official recognition of their suffering that led to retribution and the administration of justice (however insufficient it appears from our contemporary perspective).

On the other hand, witnesses often had to contend without anything of the sort. Many found their testimonies misused by Soviet officials for completely different goals. Besides simple criminal behavior like extortion, the witnesses' perspective was very much under "policy reservation". All pressure "from below" came to naught when Soviet officials deemed other goals more relevant, whether it was finding new recruits for the Red Army or coercing a former ghetto functionary into becoming an informer. For the authorities, the witnesses' perspective had no value in of itself and Soviet officials instrumentalized witnesses' testimonies and marginalized their experiences at will. The apex of this pattern is probably the way the authorities weaponized witness testimony about former Jewish functionaries for their own anti-Semitic campaign in the late 1940s.

## Outlook: Future avenues of research and transnational comparison

The findings of the present dissertation could be expanded in several directions. A first obvious step is extending the temporal boundaries of the study to include the question of rehabilitation after Stalin's death, after the end of the USSR, and in the meantime.[1] For example, Soviet and post-Soviet authorities raised the question of whether defendant Akhtemberg should be rehabilitated three times: in 1955, 1971, and 2004.[2] The authorities taking these decisions were no longer the same as those described in the present book, and in a sense that holds true not only for the post-Soviet institutions. Moreover, the social and political situations in which they took their decisions

[1] One of the most instructive works on post-Stalin rehabilitation is still: DOBSON, Miriam: Khrushchev's cold summer. Gulag returnees, crime, and the fate of reform after Stalin, Ithaca 2011.
[2] Akhtemberg, Moisei Iakovlevich, USHMM, RG-54.003*01, p. 78–94.

were quite different from the ones examined in the present dissertation. We have therefore not included rehabilitation in the present book, but the issue urgently demands scholarly attention.

Systematic empirical comparisons with other groups the Soviets prosecuted as collaborators represent another important potential avenue of research. In the present book, such comparisons were mostly based on exegesis of the available research literature and, where possible, empirical analysis of Soviet internal reports and statistics. Another basis for empirical comparisons would be materials from collaboration trials against other groups of Jews besides Jewish ghetto functionaries. The Soviets conducted such trials, but no researchers have studied them so far. These other Jewish defendants include translators, Kapos of concentration camps, as well as Jews serving in Axis armed formations (by hiding that they were Jews – individual such cases exist). Comparisons to these other groups of Jewish defendants could show how robust some of the present dissertation's findings are, for example regarding the question of whether Soviet authorities recognized that Jews under Axis occupation acted in very specific circumstances.

Besides focusing on other Jewish defendants, the qualitative content analysis of decision documents could also be expanded with non-Jewish defendants for further empirical comparisons. The USHMM archive holds several hundred casefiles of collaboration trials from Ukraine. To check whether the finding that Jews were not treated differently from other defendants is robust, it should be reproduced on the level of concrete accusations. Comparisons of village elders, mayors, and members of local police forces spring to mind immediately. It can be assumed that Soviet officials perhaps saw these individuals as similar to Jewish ghetto functionaries. It can also be assumed that these individuals faced similar accusations at least to a certain degree (think of the compilation of census lists and their later use for forced labor mobilization). Ultimately, a qualitative content analysis of the decision documents from the USHMM collection could also show whether the sentencing pattern established for Jewish ghetto functionaries extended to other groups of defendants.

Lastly, empirical transnational comparisons with trials held outside the Soviet Union could be instructive. The most obvious candidate is Romania, where several Jewish ghetto functionaries went on trial after their return from Transnistria (sometimes even in group trials together with perpetrators from the Romanian military or gendarmerie). Focusing on specific ghettos, such an analysis could compare the versions that Soviet and Romanian institutions established about the same events. Moreover, contrasting trials in this way could sharpen our understanding of how the specifics of the gray zones of Jewish ghetto administrations were treated in each country. Since the Soviet influence on Romania and its judiciary was rising after 1944, leading eventually to the Sovietization of the country, a Romanian-Soviet comparative analysis of 1940s trials could also

help to understand that process better. Besides future empirical transnational comparisons, it is also instructive to compare the present dissertation's findings to some of the already available research literature on state and non-state trials of Jews in other countries.

Across many countries, state and non-state courts held trials of Jewish ghetto and camp functionaries, Gestapo informers, and other Jews accused of collaboration with Axis Holocaust perpetrators (see introduction).[3] The non-state Jewish courts handling such cases were mostly secular honor courts, but some trials took place in rabbinical courts as well.[4] Exhaustive comparisons between the different countries and types of courts exceed the scope of the present dissertation. To illustrate the potential of such comparisons, we, therefore, limit the following remarks to one specific aspect, the relations between the state and the Jewish minority, as well as to selected countries (Germany, Poland, USA). Regarding state-Jewish relationships, trials could take place in a pure state framework, as part of a cooperation between state institutions and Jewish representative bodies, or as a purely intra-Jewish matter.

A case from the USA illustrates what such purely intra-Jewish proceedings could look like. In 1950, Holocaust survivor Benjamin Krieger attacked another survivor, Majer Mittelman on the streets of Brooklyn.[5] Krieger claimed that Mittelman had served as a Kapo and beaten his brother to death at the Mühldorf concentration camp in 1945 and threatened to take him to a US federal court.[6] Following press reports on the incident, the American Jewish Congress (AJC) set up a beit din (rabbinical court).[7] The defendant readily agreed to have the beit din hear the case but only after two months did AJC representatives manage to convince Krieger not to take the case to US authorities.[8] The AJC leadership was anxious that anti-Semites would exploit a murder trial between two Holocaust survivors in a state court and thus tried to resolve the conflict in a Jewish court.[9] During the eventual trial in the beit din, Krieger threatened to stop participating in the proceedings and to turn to US authorities but ultimately refrained from doing so.[10] While the trial received some press coverage, the judicial framework was nevertheless exclusively provided by Jewish community structures.[11] The court heard several dozen witnesses, whom the defendants and their lawyers

[3] On these trials as a "transnational phenomenon", see: JOCKUSCH: In Search of Retribution, p. 128.
[4] FINDER, Gabriel N./JOCKUSCH, Laura: Introduction. Revenge, Retribution and Reconciliation in the Postwar Jewish World, in: Jewish honor courts. Revenge, retribution, and reconciliation in Europe and Israel after the Holocaust, edited by Gabriel N. FINDER / Laura JOCKUSCH, Detroit, Michigan 2015, p. 1–27, here p. 4. For examples of trials in rabbinical courts, see: SILVERMAN: Krieger v. Mittelman. MUIR: Rumkowski's Scapegoat.
[5] SILVERMAN: Krieger v. Mittelman, p. 40.
[6] Ibid., p. 40–41.
[7] Ibid., p. 41.
[8] Ibid., p. 42.
[9] Ibid., p. 41.
[10] Ibid., p. 46.
[11] Ibid.

cross-examined.[12] Ultimately, the court cleared Mittelman of the charge of murder, since it found the evidence presented in the trial inconclusive.[13] Thus, the state played no role in the proceedings, since Jewish organizations managed to keep its representatives out of the matter completely.

The trials in Jewish honor courts in Germany were also largely an intra-Jewish affair, but they carried implications for the decisions of state institutions as well. In the second half of the 1940s, both the remnants of German Jewry, as well as Jewish displaced persons residing in Germany established Jewish honor courts.[14] In the American zone of occupation, the authorities granted Jewish displaced persons the right to live in separate DP camps and allowed those Jews "a considerable measure of self-government".[15] Represented by the "Central Committee of Liberated Jews" the Jews in those camps elected honor courts and eventually decided to have a central honor court in Munich preside over the camp courts.[16] Among those courts' tasks was regulating conflicts among camp inhabitants revolving around accusations of collaboration.[17] Similarly, the Berlin Jewish community set up its own honor court in 1946.[18] The Munich court alone handled up to 150 cases of Jews accused of collaboration.[19]

There are significant differences between honor courts and state courts. Since they were not part of state legal systems, honor courts had no levers to summon defendants.[20] Many trials only came about because defendants willingly approached the courts in an attempt to clear their names in the eyes of the Jewish community.[21] Moreover, these honor courts "applied rather open-ended moral standards in determining the guilt or innocence of a defendant".[22] In Germany, too, honor court trials were "more about morality than the law".[23] Yet while honor court trials often were an improvised form of justice, the courts nevertheless tried to prove individual guilt, granted defendants important procedural rights, and adhered to an adversarial process.[24] The sanctions such courts could pass all focused on a defendant's status within the Jewish community. For example, in the American occupation zone, they included "'warnings', the demand for a public apology, fines, a temporary occupational ban, detention, the denial of supplies from the American Jewish Joint Distribution Committee […] and the prohibition to hold office within the camp

[12] Ibid., p. 43–50.
[13] Ibid., p. 50.
[14] JOCKUSCH: In Search of Retribution, p. 128. DINKELAKER: Jewish Collaboration?, p. 256.
[15] JOCKUSCH: In Search of Retribution, p. 133.
[16] Ibid., p. 133–134.
[17] Ibid., p. 133.
[18] DINKELAKER: Jewish Collaboration?, p. 256.
[19] JOCKUSCH: In Search of Retribution, p. 133.
[20] FINDER/JOCKUSCH: Introduction, p. 5.
[21] Ibid.
[22] Ibid.
[23] JOCKUSCH: In Search of Retribution, p. 135.
[24] Ibid.

structure […]" as well as being declared "'traitors to the Jewish people' and banished them from the Jewish community".[25]

At first, the honor court trials thus appear as a purely intra-Jewish matter. However, as a recent study has shown, these trials carried implications far beyond a defendant's status within the Jewish community. Both in the German Democratic Republic and in the Federal Republic of Germany, honor court decisions influenced German state institutions in their treatment of Holocaust survivors who had stood trial before the honor court.[26] The implications for these survivors concerned their legal recognition as victims of National Socialism, material compensation as well as criminal trials.[27] Therefore, the honor court trials in Germany were part of a nexus between the Jewish minority and state institutions that was absent from the trial of Krieger vs. Mittelman described before.

In Poland, that nexus was much stronger. Jewish organizations closely cooperated with state institutions and initially relegated it to those institutions to adjudicate cases of Jews accused of collaboration. Jewish representatives established their own honor court only when they began to take issue with the way official state courts adjudicated such cases.

Polish authorities investigated up to 80.000 people for war crimes and collaboration, mostly between 1944 and 1950, and Jewish representatives partially supported these investigations.[28] Besides Germans, Poles, and Ukrainians, some Jews were also investigated, for "crimes committed in concentration, labor, and death camps as well as Jewish ghettos".[29] As the primary Jewish organization in postwar Poland, the Central Committee of Polish Jews (Centralny Komitet Żydów w Polsce, in the following: CKŻP) supported Polish authorities in their retributive efforts against the various groups of defendants, including the Jews.[30]

That cooperation lasted "until the liquidation of independent Jewish political parties and institutions in 1949-50".[31] The CKŻP supported Polish authorities' investigations primarily through its Central Jewish Historical Commission (Centralna Żydowska Komisja Historyczna, in the following: CŻKH).[32] That support included not only investigations against Germans and Poles

[25] Ibid.
[26] DINKELAKER: Jewish Collaboration?, p. 271–273.
[27] Ibid.
[28] FINDER/PRUSIN: Jewish Collaborators, p. 128.
[29] Ibid.
[30] Ibid., p. 126–129.
[31] Ibid., p. 129.
[32] Ibid., p. 130. CŻKH was just one of several similar commissions that Jewish survivors created in different European countries. See: STENGEL, Katharina: Die ehemaligen NS-Verfolgten - Zeugen, Kläger, Berichterstatter, in: NS-Prozesse und deutsche Öffentlichkeit. Besatzungszeit frühe Bundesrepublik und DDR, edited by Jörg OSTERLOH / Clemens VOLLNHALS (Schriften des Hannah-Arendt-Instituts für Totalitarismusforschung, vol. 45), Göttingen 2011, p. 307–322, here p. 309.

but also against Jews, for which CŻKH gathered evidence and identified witnesses.[33] Until 1946, CKŻP was content with leaving collaboration trials of Jews in the hands of Polish state courts.

The situation only changed in 1946, when Polish courts acquitted Michal Weichert, whom postwar Jewish leaders in the CKŻP considered a collaborator and wanted to see convicted.[34] To compensate for what was deemed a misjudgment in the area of criminal law at least in the social sphere, CKŻP set up a civic honor court dealing with cases of Jews accused of collaboration.[35] The court was tasked with deciding "'whether during the occupation a member of the [Jewish] community [had] behaved in a manner befitting a Jewish citizen.'"[36] It employed similar social sanctions as other honor courts.

Interestingly, CKŻP continued to cooperate with Polish authorities not only in trials of Germans and Jews but also in collaboration proceedings against Jews even after establishing its own honor court. Polish prosecutors supported the honor court trials just as the Jewish representatives did for Polish state courts.[37] Moreover, the Jewish representatives still forwarded "cases of Jewish collaborators to state courts when their alleged offenses seemed to be in violation of penal law and thus exceeded the jurisdiction of the tribunal."[38] Several individuals were eventually even tried both before state courts and the honor court.[39]

The examples of Poland, Germany, and the USA show different types of Jewish-state relationships in the investigations and trials of Jewish ghetto functionaries and similar groups of defendants after the Holocaust. Jews could deal with the gray zones of the Holocaust in an organized but purely intra-Jewish way, even if these dealings could have effects on state actors. Organizations such as CKŻP in Poland could also choose to closely cooperate with state authorities when it came to cases of Jews accused of collaboration.

For the question of how to position oneself vis-à-vis the state to arise in the first place, Jewish minorities in different countries needed to have recognized autonomous representative bodies. In the USSR, the closest thing to a Jewish representative body was the Jewish Anti-Fascist Committee (JAC) which operated during the years studied in the present dissertation.[40] However, there is no

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[33] FINDER/PRUSIN: Jewish Collaborators, p. 131–132.
[34] ENGEL, David: Who is a Collaborator? The Trials of Michal Weichert, in: The Jews in Poland, edited by Slawomir KAPRALSKI, Cracow 1999, p. 339–370, here p. 341–343.
[35] FINDER/PRUSIN: Jewish Collaborators, p. 133–134. The honor court was known under different names in Polish and Yiddish, see: FINDER, Gabriel N.: Judenrat on Trial. Postwar Polish Jewry Sits in Judgment of Its Wartime Leadership, in: Jewish honor courts. Revenge, retribution, and reconciliation in Europe and Israel after the Holocaust, edited by Gabriel N. FINDER / Laura JOCKUSCH, Detroit, Michigan 2015, p. 83–106, here p. 84.
[36] FINDER: 'Sweep Out Evil', p. 273.
[37] FINDER/PRUSIN: Jewish Collaborators, p. 132.
[38] Ibid.
[39] Ibid., p. 139–146.
[40] REDLICH, Shimon/AL'TMAN, Il'ia Aleksandrovich: War, holocaust and Stalinism. A documented study of the Jewish Anti-Fascist Committee in the USSR (New history of Russia series, vol. 1), Luxembourg 1995. VEIDLINGER, Jeffrey:

evidence that the JAC had any influence on the trials studied in the present dissertation. These proceedings took place in a pure state framework.

Trials within such a state framework could, at best, be partial functional equivalents to honor court trials. Experts on Jewish honor courts stress that their proceedings helped to curtail vigilante justice and strengthen social cohesion among survivors.[41] On the level of the individual, honor court trials could also help "survivors' moral rehabilitation, because they provided them with a means to restore their self-respect and agency".[42] On the group level, trials offered Jewish "survivors with diverse backgrounds, wartime experiences, and ideological outlooks" a chance to engage with one another and debate their different perspectives on the recent past and the role of Jewish ghetto functionaries and other inhabitants of the gray zone.[43] Those Soviet proceedings that were actual trials, instead of administrative or semi-administrative backroom decision-making, offered at least some space for a Jewish collective reckoning with the recent past. It is conceivable that those Soviet trials had similar effects – as did trials in state courts of other countries.

However, honor court trials are a completely different affair than state court proceedings regarding many other effects they could have on the group level. Laura Jockusch argues that the honor courts trials she studied could help in "forging of a collective identity and to enforcing the autonomy of the Jewish community", provided Jews with an "opportunity to institute their own principles of justice" and fulfilled the "educational purpose of reestablishing the social norms and ethical values of Jewish society" which in turn "contributed to creating a community with a clearly defined ethical and behavioral code".[44] It is not conceivable that even those Soviet trials adhering most closely to normative state principles had any such effects.

Moreover, even any partial functional equivalence was inconsistent, short-lived, and subject to policy reservation. Soviet courts did not pursue such effects on survivors and their communities as ends in themselves but merely accepted them as accidental by-products. And as the frontline deal, the Soviets' use of the Holocaust as "kompromat" and its later weaponization against Jewish community structures show the window of opportunity for trials to yield such results was short. These short remarks are based on a review of the historiographical literature. They demonstrate that transnational comparisons are a valuable further avenue of research, especially if designed as empirical studies.

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[41] FINDER/JOCKUSCH: Introduction, p. 2.

[42] JOCKUSCH: In Search of Retribution, p. 143.

[43] Ibid., p. 144.

[44] Ibid., p. 143.

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