

NOVA

LAW REVIEW

SYMPOSIUM ON INTERNATIONAL CRIMINAL LAW

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Apprehending and Prosecuting Nazi War Criminals in the United States

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I. INTRODUCTION¹

When World War II ended, there were millions of refugees in Europe. Many of them had been victims of the Nazis, survivors of Nazi concentration camps, or persons who had been forced to leave their homelands by the Nazis. But hiding in this large mass of people were also some of the Nazi officials who had assisted in the mass murder and persecution. They lied about their activities during the War, claiming that they were also refugees from the Nazis or from the Communists.

In order to help the millions of true refugees, the United States enacted special immigration laws in 1948² and 1953³ which allowed large numbers of refugees to come to the United States without regard to traditional immigration quota restrictions.⁴ These special immigration laws specifically excluded any person who had assisted the Nazis in persecuting civilians.⁵ However, Nazi criminals were able to enter

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1. I wish to express my appreciation to my partner, Laurence M. Berman, for his assistance on this article.

2. Displaced Persons Act of 1948, Pub. L. No. 80-774, 62 Stat. 1009 (*as amended by* Pub. L. No. 81-555, 64 Stat. 219 (1950)).

3. Refugee Relief Act of 1953, Ch. 336, 67 Stat. 400 (expired 1956).

4. Since the 1920's, immigration laws have limited immigration into the United States to a fixed percentage each year of persons of the same ethnic origin already in the United States. The Displaced Persons Act admitted over 400,000 refugees to the United States, but required that these admissions be counted against future quotas for particular countries, thereby limiting or closing off immigration from some countries for several years.

5. The Displaced Persons Act excluded from entry into the United States any

the United States under these special immigration laws by lying about their activities during the period from 1933 to 1945.

This article will discuss the apprehension, investigation, and institution of legal proceedings against Nazi war criminals in the United States. The first part of this article will describe who these Nazis were, the crimes they committed, and how Nazi criminals are apprehended and investigated. The second part of the Article focuses on the prosecution of Nazi criminals and discusses the denaturalization, deportation, and extradition proceedings which are brought against them.

II. NAZI WAR CRIMINALS IN THE UNITED STATES: WHO ARE THEY AND HOW ARE THEY FOUND?

A. *Nazi Criminals Subject to Legal Proceedings in the United States*

The Nazi criminals who are subject to denaturalization, deportation, and extradition proceedings in the United States are persons who assisted in persecuting innocent civilians during the period from 1933 to 1945, and who lied about their activities during World War II in order to obtain a visa to enter the United States. Most of these Nazi criminals served as concentration camp guards, Nazi police officials, or Nazi government officials.

1. Concentration Camp Guards

Among the Nazis who entered the United States by misrepresenting or concealing their wartime activities were concentration camp guards such as Feodor Fedorenko, Karl Linnas, and Ivan Demjanjuk. Feodor Fedorenko was a guard at the Nazi death camp at Treblinka where 800,000 Jews were brutally murdered in gas chambers. When he entered the United States, Fedorenko claimed on his visa application that he had been a farmer during this time. Fedorenko was denaturalized (*i.e.*, his citizenship was revoked)⁶ and deported⁷ to the U.S.S.R.

person "who advocated or assisted in the persecution of any person because of race, religion, or national origin." Displaced Persons Act, § 13, 64 Stat. 227.

The Refugee Relief Act excluded from entry into the United States any person "who personally advocated or assisted in the persecution of any person or group of persons because of race, religion, or national origin." Refugee Relief Act, § 14(a), 67 Stat. 451.

6. *United States v. Fedorenko*, 455 F. Supp. 893 (S.D. Fla. 1978), *rev'd*, 597 F.2d 946 (5th Cir. 1979), *aff'd*, 449 U.S. 490 (1981).

7. *In re Fedorenko*, I & N Dec. 2963 (1984).

where he was tried and executed for crimes against humanity.

Karl Linnas served as chief of the Nazi concentration camp at Tartu, Estonia. According to witnesses' testimony:

Linnas supervised the transportation of prisoners from his camp to a nearby antitank ditch. On such occasions, innocent Jewish women and children were tied by their hands and brought in their underwear to the edge of the ditch where they were forced to kneel. The guards then opened fire. The ditch became a mass grave.

There was also eyewitness testimony that Linnas on at least one occasion announced his victims' death sentence at the side of the ditch and gave the order to fire. Linnas was also said to have then personally approached the edge of the ditch, and fired into it. Another eyewitness recounted having seen Linnas help direct Jews out of a school and onto a school bus. That witness recalled that Linnas helped a small child with a doll onto the bus, and that the doll was later placed in a storage area for the personal effects of those who had been killed.⁸

When he entered the United States, Linnas misrepresented his activities by claiming that he had been a student and technical artist during this time. Linnas was denaturalized⁹ and deported¹⁰ to the U.S.S.R. where he died in prison awaiting trial for mass murder.

When he came to the United States, Ivan Demjanjuk told immigration officials that he had been a farmer during World War II. In truth, he had been a guard at the Nazi death camp of Treblinka. Several witnesses identified him as Ivan the Terrible, the man who actually ran the gas chamber at Treblinka, in which hundreds of thousands of Jews were murdered. Children, even babies, were thrown into the gas chamber at Treblinka and murdered, just because they were Jewish. Demjanjuk was denaturalized¹¹ and extradited to Israel¹² where he was

8. *Linnas v. I.N.S.*, 790 F.2d 1024, 1026-1027 (2d Cir.), *cert. denied*, 479 U.S. 995 (1986).

9. *United States v. Linnas*, 527 F. Supp. 426 (E.D.N.Y. 1981), *aff'd*, 685 F.2d 427 (2d Cir.), *cert. denied*, 459 U.S. 883 (1982).

10. *In re Linnas*, I & N Dec. 3000 (1985); *Linnas v. I.N.S.*, 790 F.2d 1024 (2d Cir.), *cert. denied*, 479 U.S. 995 (1986).

11. *United States v. Demjanjuk*, 518 F. Supp. 1362 (N.D. Ohio 1981), *aff'd*, 680 F.2d 32 (6th Cir.), *cert. denied*, 459 U.S. 1036 (1982).

12. *In re Demjanjuk*, 612 F. Supp. 544 (N.D. Ohio 1985); *Demjanjuk v. Petrovsky*, 612 F. Supp. 571 (N.D. Ohio), *aff'd*, 776 F.2d 571 (6th Cir. 1985), *cert. denied*, 475 U.S. 1016 (1986).

convicted of murder. His case is currently on appeal to the Israeli Supreme Court.

2. Nazi Police Officials

Police officials in the areas under Nazi control often assisted the Nazis in carrying out the murder of Jews and other innocent people. One such police official was Boleslavs Maikovskis who was a police chief in Latvia during World War II.¹³ On his visa application, Maikovskis claimed that he had been a bookkeeper for the Latvian Railway Department from 1941 to 1944. Because he lied, he was able to procure a visa to enter the United States.¹⁴

Witnesses testified that while he was chief of police, Maikovskis was in charge of murdering all the Jews in his police precinct. These witnesses testified that Maikovskis and the policemen working under him rounded up the Jews, took them into the mountains, and shot them. Several hundred people were killed in one day. Entire families were murdered.

Witnesses also testified that Maikovskis and his men rounded up all the inhabitants of the village of Audrini, took them into the mountains, and shot them. Every inhabitant of the village, including all of the children, were murdered. Maikovskis and his men burned the entire village of Audrini to the ground. Maikovskis is currently in prison in West Germany where he is standing trial on charges of mass murder.¹⁵

Another Nazi police official who entered the United States by misrepresenting his Nazi past was Serge Kowalchuk. Kowalchuk served in the Ukrainian Schutzmannschaft (militia-police) in the city of Lubomyl.¹⁶ Prior to the Nazi occupation, five thousand Jews lived in Lubomyl. Almost all of the Jews were shot by the Germans and the Ukrain-

13. *Maikovskis v. I.N.S.*, 773 F.2d 435 (2d Cir. 1985), *cert. denied*, 476 U.S. 1182 (1986).

14. *Id.* at 437.

15. After a deportation trial lasting several years, the trial judge ordered that Maikovskis would not be deported. *In re Maikovskis*, No. A8 194 566 (Immigration Court, New York, June 30, 1983). However, this ruling was unanimously overturned by the Board of Immigration Appeals, *In re Maikovskis*, A8 194 566 (B.I.A Aug. 14, 1984), and the United States Court of Appeals for the Second Circuit, *Maikovskis v. I.N.S.*, 773 F.2d 435 (2d Cir. 1985), *cert. denied*, 476 U.S. 1182 (1986), which ordered that Maikovskis be deported.

16. *United States v. Kowalchuk*, 571 F. Supp. 72 (E.D. Pa. 1983), *aff'd*, 773 F.2d 488 (3d Cir. 1985) (en banc), *cert. denied*, 475 U.S. 1012 (1986).

ian Schutzmannschaft during two days in October, 1942.¹⁷ Witnesses testified that Kowalchuk participated in the mass murder.¹⁸ Kowalchuk swore at his trial that he was not in town on the day the Jews were shot.¹⁹ Without finding that Kowalchuk had actually participated in the murder of the Jews, the United States District Court revoked Kowalchuk's citizenship on the grounds that he had been a Nazi police official and had thereby assisted in persecution, and because he lied by claiming that he had been a tailor during this time on his visa application.²⁰

3. Nazi Government Officials

Andrija Artukovic was a Nazi government official who was able to enter the United States after World War II by misrepresenting his wartime activities. Artukovic served as the Minister of Internal Affairs of Croatia (now Yugoslavia) during World War II. Artukovic was in charge of concentration camps in Croatia where thousands of Serbs, Jews, and opponents of the Nazis were murdered. Artukovic entered the United States in 1948 on a visitor's visa, using a false name. Artukovic's deportation was held up in the courts for more than twenty years on various procedural technicalities.²¹ In 1984, Yugoslavia asked the United States to extradite Artukovic. He was extradited to Yugoslavia, where he was convicted of murder.²²

These are only a few examples of the hundreds of Nazis who came to the United States after World War II. The United States Justice Department Office of Special Investigations (OSI) has investigated hundreds of cases, and is still prosecuting Nazi criminals residing in the United States.²³

17. *Id.* at 81.

18. *Id.* at 76-80.

19. *Id.*

20. *Kowalchuk*, 571 F. Supp. 72 (E.D. Pa. 1983), *aff'd*, 773 F.2d 488 (3d Cir. 1985) (en banc), *cert. denied*, 475 U.S. 1012 (1986).

21. *See, e.g., Artukovic v. I.N.S.*, 693 F.2d 894 (9th Cir. 1982).

22. *In re Artukovic*, 628 F. Supp. 1370 (C.D. Cal.), *stay denied*, 784 F.2d 1354 (9th Cir. 1986).

23. The Office of Special Investigations (OSI) was formed in 1979 to consolidate all activities of the United States government relating to Nazi war criminals. Its sole purpose is to locate, investigate, and institute legal proceedings against Nazi criminals in the United States. It is a part of the Criminal Division of the United States Justice Department.

B. *Apprehending and Investigating Nazi Criminals in the United States*

Much of the information regarding Nazi criminals in the United States comes from the governments of other countries, in particular the Soviet Union, Germany, Israel, and Poland.²⁴ The governments of these countries cooperate very closely with the OSI in identifying Nazi criminals in the United States. The OSI has also received information regarding Nazi criminals from organizations such as Simon Wiesenthal's documentation center in Vienna and the Simon Wiesenthal Center in Los Angeles.

Beginning in 1982, the OSI initiated a program to locate Nazi criminals in the United States who were not known to foreign governments or to organizations. The OSI obtained lists of concentration camp guards, police officials, members of the SS, and others who may have taken part in Nazi atrocities. The OSI computerized these lists and matched them against the lists that the U.S. Immigration and Naturalization Service maintains of persons who have entered the United States. A sophisticated computer program was developed to allow matching of names on a phonetic basis so that names spelled in Cyrillic and other alphabets could be matched against the American spelling of the name. When the OSI obtains a match, it conducts an investigation to determine if the person living in the United States was a concentration camp guard, Nazi police official, or a member of the SS, and if he participated in criminal activity.

Once the OSI identifies an individual who may have been a Nazi criminal, it initiates a worldwide investigation of his activities during the period from 1933 to 1945. As in any other lawsuit, there are two main types of evidence which the OSI seeks—witnesses and documents.

1. Locating Witnesses to Nazi Crimes

The OSI has located witnesses in the United States, the Soviet Union, Israel, Germany, and other countries. There are generally two types of witnesses who testify for the government in these law-

24. Movies and television shows often depict the discovery of Nazi criminals by a former concentration camp inmate who fortuitously runs into a former concentration camp guard on the bus or walking down the street. I am not aware of any case in which a Nazi criminal who has been prosecuted by the Justice Department was discovered in such a manner.

suits—survivors of the Holocaust and other Nazi criminals.

Because there were relatively few survivors of the Nazi death-camps, it is generally very difficult to locate survivor witnesses who are able to identify a particular defendant and testify about crimes which they saw him commit. Additionally, many of those who were able to survive have died during the forty-five years since the War ended. Moreover, even if the OSI is able to locate a survivor who witnessed a certain atrocity, it is often very difficult for that survivor to identify the individual who committed the atrocity more than 40 years ago.

Despite the difficulties, there have been cases in which the OSI was able to locate survivor witnesses who were able to testify about crimes committed by a particular defendant. Several Holocaust survivors were able to identify Demjanjuk, the guard at Treblinka who operated the gas chambers.²⁵ These witnesses testified that they were able to identify Demjanjuk because they saw him on several occasions and because of the particularly heinous nature of his criminal acts.²⁶ Several survivors were able to identify Kowalchuk as a Ukrainian police official because they had gone to school with him before the War and therefore easily recognized him when they saw him in a police uniform.²⁷

The OSI also uses other Nazi criminals as witnesses.²⁸ For example, in the *Maikovskis* case, policemen who served under Maikovskis when he was the chief of police were located in Latvia.²⁹ OSI attorneys conducted depositions of these witnesses in Latvia. The depositions were videotaped for presentation in United States courts.

25. See *supra* notes 11-12 and accompanying text.

26. *United States v. Demjanjuk*, 518 F. Supp. 1362, 1369-71 (N.D. Ohio 1981), *aff'd*, 680 F.2d 32 (6th Cir.), *cert. denied*, 459 U.S. 1036 (1982).

27. *United States v. Kowalchuk*, 571 F. Supp. 72, 76-77 (E.D. Pa. 1983), *aff'd*, 773 F.2d 488 (3d Cir. 1985) (en banc), *cert. denied*, 475 U.S. 1012 (1986).

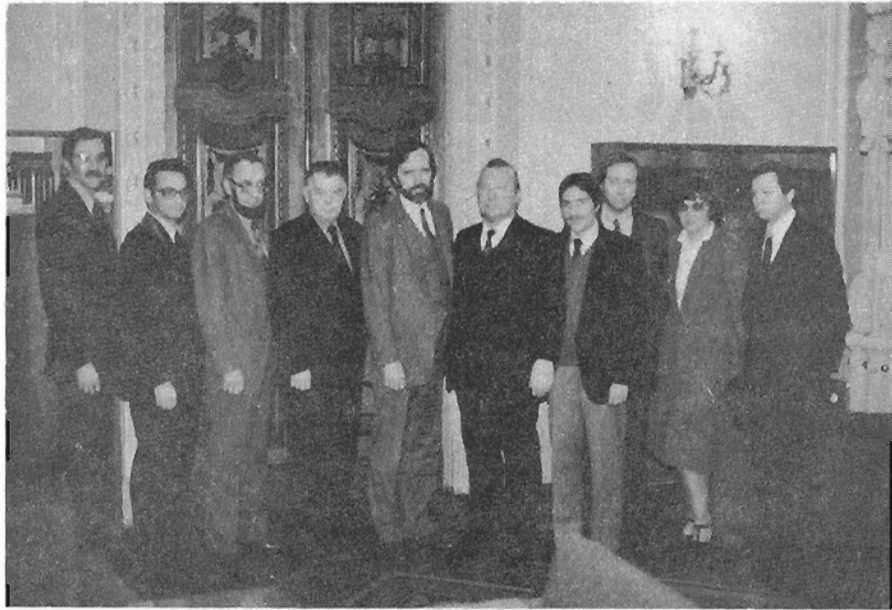
28. In many prosecutions conducted by the Justice Department, it is necessary to rely on the testimony of other criminals. This is often true in drug cases, securities fraud cases, and other types of criminal prosecutions. In cases involving the prosecution of Nazi criminals in which the testimony of another Nazi criminal has been used, there has always been corroborating evidence from documents, survivor witnesses, or admissions of the defendant himself.

29. Latvia has been incorporated into the U.S.S.R. The United States does not recognize this incorporation.



THE AUTHOR (LEFT) WITH FORMER OSI DIRECTOR ALLAN RYAN (RIGHT) AND DEFENSE ATTORNEY IVARS BERZINS (CENTER), IN RIGA, LATVIA FOR THE TAKING OF DEPOSITIONS.

The witnesses in Latvia testified that Maikovskis served as the police chief in Rezekne, Latvia, and that they served as policemen under his command. They testified that Maikovskis ordered them to assist in the shooting of hundreds of Jews and all of the inhabitants of the village of Audrini. These witnesses were able to positively identify Maikovskis from a photospread containing the photographs of Maikovskis and 17 other men. They easily recognized Maikovskis because they had worked with him on a daily basis during their service with the police.



THE AUTHOR (FAR LEFT) WITH LATVIAN PROSECUTORS AND OTHER UNITED STATES JUSTICE DEPARTMENT AND STATE DEPARTMENT OFFICIALS, IN RIGA, LATVIA AFTER THE CONCLUSION OF DEPOSITIONS. FIFTH FROM THE LEFT IS ALLAN RYAN, FORMER DIRECTOR OF OSI. FIFTH FROM THE RIGHT IS THE PROCURATOR GENERAL (ATTORNEY GENERAL) OF LATVIA.



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Photospread used in the identification of Maikovskis by witness Anton Zhukovski's at his deposition in Latvia. Maikovskis is shown in photograph number 13 in his police captain's uniform taken in 1942. The witnesses deposed in Latvia were able to identify Maikovskis, from this photograph, as the person who served as the police chief and who was

*Копия верна
 Коллекция Прокурора Латвийской ССР
 исторический архивный фонд
 (Латвия)*

responsible for the murder of the residents of Audrini and the Jews in Rezekne, Latvia. These witnesses were able to identify Maikovskis' photograph from a photospread that contained eighteen different photographs of Nazi officials.

2. Locating Documentary Evidence

The OSI also relies on documents to prove its case and obtains documents from all over the world, including Germany, Israel, the Soviet Union, Poland, and the United States National Archives. The documents are records created by the Nazis during the period from 1933 to 1945. For example, the OSI has used duty rosters for concentration camp guards at a particular camp in order to help establish that a defendant was a concentration camp guard. The OSI has also used Nazi police documents which conveyed orders to the police to establish that a defendant served in the police and took part in certain atrocities.

C. *Use of Evidence From the Soviet Union*

Because many of the crimes committed by the Nazis took place in areas which are now part of the Soviet Union, much of the evidence used in the prosecution of Nazi criminals comes from the Soviet Union. Nazi documents were captured by the Soviet army as it advanced toward Germany, and witnesses to Nazi crimes reside in areas that are now part of the U.S.S.R. Accused Nazis have claimed that documents which OSI obtained from the Soviet Union were forged by the Soviet secret police, the K.G.B. The accused Nazis have also alleged that Soviet witnesses who implicated them in crimes were coerced into testifying against them by the K.G.B.³⁰

However, evidence from the Soviet Union has proven to be very reliable. Documents which come from the Soviet Union are actual World War II documents which were captured by the Soviet Army during the War. These documents were created by the Nazis, not by the Soviet government. All documents which the OSI uses are ex-

30. The cases which have gone to trial in which these claims regarding evidence from the Soviet Union were raised were tried during the period from 1980 to 1987, during which time cold war tensions were high. There have not been any trials in which evidence from the Soviet Union has been used since Glasnost and Perestroika were instituted. It will be interesting to see if defendants continue to raise the claim that evidence from the Soviet Union is unreliable, now that there have been fundamental changes in the Soviet political and judicial systems.

amined by handwriting experts, chemists, and other scientists from the Federal Bureau of Investigation (FBI), United States Treasury Department, and the Immigration and Naturalization Service. These experts testify in court regarding the authenticity of the documents. If a Nazi document was purportedly signed by the defendant, a handwriting expert compares the signature on the Nazi document with the defendant's signature on his immigration application. Chemists examine the chemical content of the ink and paper to determine if the ink and paper of the Nazi document are consistent with its date. The inks and papers in use during the 1940's have certain chemical contents. The government chemists are able to determine if the ink and paper of the Nazi documents were in use during the 1940's.

However, even with all of this expert testimony, some defendants still claimed that documents which came from the Soviet Union were forged. They claimed that the Soviet K.G.B. was extremely sophisticated, and that it was able to use ink and paper stored from the 1940's in order to forge the documents. However, during the 1980's the United States Treasury Department developed a scientific technique called relative aging. This technique allows experts to determine, within certain limits, how long the ink has been on the paper by examining the solubility of the ink (*i.e.*, the extent to which the ink has dried). This test reveals whether the ink was recently put onto the paper. In other words, the test could prove that a purported Nazi document was not a recent forgery. Without exception, every Nazi document which has been examined, including all Nazi documents obtained from the Soviet Union, has been found to be authentic through the use of handwriting comparison, ink and paper analysis, and relative aging.³¹

Evidence from the Soviet Union has also been corroborated by documents and witnesses from other countries. For example, in the *Kowalchuk* case, witnesses from the Soviet Union, Israel, and the United States all identified Kowalchuk as a Nazi police official.³² In some cases, the defendant himself will end up admitting the truth of facts proven by evidence which came from the Soviet Union. One of

31. See, *e.g.*, *United States v. Demjanjuk*, 518 F. Supp. 1362, 1365-69 (N.D. Ohio 1981), *aff'd*, 680 F.2d 32 (6th Cir.), *cert. denied*, 459 U.S. 1036 (1982); *In re Maikovskis*, A8 194 566, at 15-17; *Maikovskis v. I.N.S.*, 773 F.2d 435, 438 (2d Cir. 1985), *cert. denied*, 476 U.S. 1182 (1986).

32. *United States v. Kowalchuk*, 571 F. Supp. 72, 76-81 (E.D. Pa. 1983), *aff'd*, 773 F.2d 488 (3d Cir. 1985) (*en banc*), *cert. denied*, 475 U.S. 1012 (1986).

the best examples of this is the *Maikovskis* case.³³ When he came to the United States, Maikovskis claimed on his visa application that he had been a bookkeeper for the Latvian Railway Department from 1941 to 1944.³⁴ The Justice Department received documents from the Soviet Union, purportedly signed by Maikovskis, stating that he had been police chief in the city of Rezekne, Latvia during this time. These documents also indicated that Maikovskis had participated in the arrest of all of the inhabitants of the village of Audrini and the burning of the village by the police.³⁵ Former policemen who served under Maikovskis were deposed in Latvia, and they testified that Maikovskis was in fact the chief of police. According to these witnesses, Maikovskis had given orders to arrest all of the inhabitants of the Audrini village and then burn it to the ground. The former policemen also testified that Maikovskis and his men transported the residents of the village to the hills outside of town and shot them in mass graves.³⁶

When Maikovskis was first questioned by the Justice Department, he denied that he had served as chief of police and further denied that he had any involvement in the arrest or murder of the inhabitants of Audrini or the destruction of the village. He claimed that the Soviet secret police, the K.G.B., was trying to frame him. He and his attorney argued that the witnesses in Latvia had been coerced into testifying against him, and that the documents obtained from Soviet-occupied Latvia had been forged.³⁷

At the deportation trial, a handwriting expert and expert forensic document examiner testified that the same person who signed Maikovskis' visa application also signed the documents obtained from the Soviet Union. These were documents which were signed by Maikovskis as chief of police, and which implicated him in the Audrini incident.³⁸ Maikovskis was then recalled to the stand and admitted that he had

33. *In re Maikovskis*, No. A8 194 566 (B.I.A. Aug. 14, 1984); *Maikovskis v. I.N.S.*, 773 F.2d 435 (2d Cir. 1985), *cert. denied*, 476 U.S. 1182 (1986).

34. *Maikovskis*, 773 F.2d at 437.

35. *In re Maikovskis*, No. A8 194 566 at 15-17; *Maikovskis*, 773 F.2d at 438.

36. *In re Maikovskis*, No. A8 194 566 at 11-15.

37. *Id.* at 10.

38. *Id.* at 17 n.14; *Maikovskis*, 773 F.2d at 438. One such document obtained from the U.S.S.R. was a January 3, 1942 report from the Chief of Rezekne District Police Precinct 2 (Maikovskis) to the Vice Prosecutor in the Second Precinct. The report states that "on orders of the German authorities, all the residents of Audrini village, Makeseni County, were imprisoned, but the village itself was burned." The report was signed by Boleslavs Maikovskis, Police Chief.

served as chief of police. He admitted that he had written and signed the documents obtained from the U.S.S.R. and finally admitted that he had given the order for, and participated in, the arrest of all of the inhabitants of Audrini and the burning of the village.³⁹ The evidence from the Soviet Union had been correct.

However, Maikovskis continued to deny that he had participated in the shooting of the Audrini villagers or the rounding up and murder of the Jews of Rezekne, as the witnesses in the Soviet Union testified. The United States courts did not have to reach a determination regarding whether the witnesses from the Soviet Union were correct on those points, because it was determined that there were sufficient grounds to deport Maikovskis based on his own admissions. Maikovskis is currently in prison in West Germany, standing trial on charges of mass murder. The West German court will determine whether Maikovskis participated in the murders of the Audrini villagers and the Jews of Rezekne. The German prosecutors have a convincing argument that Maikovskis has been shown to be a liar, while the witnesses in the Soviet Union have been proven correct on several points by Maikovskis' own belated admissions.⁴⁰

39. *In re Maikovskis*, No. A8 194 566 at 10-11; *Maikovskis*, 773 F.2d at 438.

40. I have conducted depositions of witnesses in the Soviet Union (including the witnesses in the *Maikovskis* case) and I have viewed the videotapes of depositions of other witnesses. I believe that most of them are truthful. I have never seen any evidence of coercion of witnesses by the Soviet authorities. The lawyer for the accused Nazi can accompany the OSI attorneys to the Soviet Union and cross examine the witnesses in order to test the truth of their testimony. When the Justice Department has been able to locate witnesses in other countries, such as the United States, Germany, or Israel, those witnesses have corroborated the testimony of the Soviet witnesses. Nevertheless, there have been several cases in which courts have refused to credit testimony of witnesses in the Soviet Union, simply because the witnesses were from the Soviet Union. *In re Maikovskis*, No. A8 194 566 (Immigration Court, New York, June 30, 1983), *rev'd on other grounds*, *In re Maikovskis*, No. A8 194 566 (B.I.A. Aug. 14, 1984), *aff'd*, *Maikovskis v. I.N.S.*, 773 F.2d 435 (2d Cir. 1985), *cert. denied*, 476 U.S. 1182 (1986); *United States v. Kungys*, 571 F. Supp. 1104 (D.N.J. 1983), *rev'd on other grounds*, 793 F.2d 516 (3d Cir. 1986), *rev'd and remanded*, 485 U.S. 759 (1988).

In the *Maikovskis* case, the trial judge, Judge Francis Lyons, went so far as to deny the government's motion to take depositions in the Soviet Union. The trial judge was overruled by a higher court, and depositions were taken in the Soviet Union. Not surprisingly, the trial judge then refused to credit the testimony of the Soviet witnesses. It should be noted that this was the same judge who determined that Maikovskis should not be deported, even though he admitted lying about his activities during World War II in order to obtain a visa to enter the United States, and even though he

III. PROSECUTING NAZI CRIMINALS

Criminal proceedings are not brought against Nazi criminals in the United States. Because the Nazi crimes did not take place in the United States, the United States does not have jurisdiction over the crimes. However, there are two types of proceedings which may be properly brought against Nazi criminals in the United States. The first type is under the United States immigration laws. A proceeding under the immigration laws involves a two-step process: denaturalization (revocation of citizenship) and deportation (expulsion from the United States). Denaturalization proceedings and deportation proceedings are completely separate, are brought in different courts, and have separate appeals. Deportation proceedings cannot be commenced until denaturalization proceedings and all appeals have been successfully concluded.

The second type of proceeding brought against Nazi criminals is extradition. Upon the request of a foreign country, a Nazi criminal may be extradited to that country to be criminally prosecuted for the crimes he committed.

A. *Immigration Proceedings*

1. Denaturalization

If a Nazi criminal has become a United States citizen, his citizenship must be revoked. As noted above, only after citizenship has been revoked can deportation proceedings be instituted in order to remove the Nazi from the United States. Denaturalization proceedings are conducted in United States District Court. There are two grounds for revocation of citizenship: 1) proof of a material misrepresentation in the course of procuring citizenship; and 2) proof that citizenship was illegally procured.⁴¹ Proof of either of these grounds must be by "clear,

admitted forcibly rounding up all of the residents of Audrini and burning the village to the ground. This ruling was unanimously reversed by the higher courts, which ordered that Maikovskis be deported. Maikovskis is now in prison in West Germany standing trial on charges of mass murder. The trial is taking place in the city of Muenster, West Germany.

41. 8 U.S.C. § 1451(a) (1986) provides in pertinent part:

It shall be the duty of the United States attorneys . . . to institute proceedings . . . in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the cer-

unequivocal, and convincing" evidence which does "not leave the issue in doubt."⁴² This burden is "substantially identical with that required in criminal cases—proof beyond a reasonable doubt."⁴³

a. *Denaturalization Based on Material Misrepresentation in the Course of Procuring Citizenship*

In order to become a United States citizen, an applicant must answer questions regarding his background and history. Title 8, U.S.C. § 1451(a) provides for the denaturalization of citizens whose citizenship was "procured by concealment of a material fact or by willful misrepresentation"⁴⁴ Courts have concluded that "this requires misrepresentations or concealments that are both willful and material."⁴⁵ The Supreme Court has held that this "provision plainly contains four independent requirements: the naturalized citizen must have misrepresented or concealed some fact, the misrepresentation or concealment must have been willful, the fact must have been material, and the naturalized citizen must have procured citizenship as a result of the misrepresentation or concealment."⁴⁶

b. *Denaturalization Based on Illegal Procurement of Citizenship*

Citizenship was illegally procured, and must be revoked, if the applicant for citizenship did not meet all of the requirements to become a United States citizen at the time of naturalization.⁴⁷ One of the requirements for United States citizenship is that the applicant must

tificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation

42. *Fedorenko v. United States*, 449 U.S. 490, 505 (1981); *Kowalchuk*, 773 F.2d 488, 493 (3d Cir. 1985).

43. *Kowalchuk*, 571 F. Supp. 72, 73 (E.D. Pa. 1983); *United States v. Riela*, 337 F.2d 986, 988 (3d Cir. 1964).

44. *Maikovskis*, 773 F.2d at 438.

45. *United States v. Kungys*, 485 U.S. 759, 767 (1988); *see also Fedorenko*, 449 U.S. at 507-08 n.28.

46. *Kungys*, 485 U.S. at 767; *see also United States v. Schellong*, 547 F. Supp. 569 (N.D. Ill. 1982), *aff'd*, 717 F.2d 329 (7th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984). In *Schellong*, the defendant lied on his citizenship application about his service in the Nazi SS as a concentration camp guard. Schellong was denaturalized based upon his misrepresentations in his citizenship application. *Id.* at 574-75.

47. *Fedorenko*, 449 U.S. at 506; *Kowalchuk*, 773 F.2d at 494.

have entered the United States pursuant to a valid visa.⁴⁸ If a naturalized citizen was not eligible for the visa he obtained, citizenship must be revoked.⁴⁹

Many Nazis illegally entered the United States under the Displaced Persons Act ("DP Act").⁵⁰ The DP Act excluded from entry into the United States any person "who advocated or assisted in the persecution of any person because of race, religion, or national origin."⁵¹ Consequently, citizenship must be revoked from those Nazis who assisted in persecution and who entered the United States under the DP Act.⁵² Additionally, section ten of the DP Act excludes "[a]ny person who shall willfully make a misrepresentation for the purpose of gaining admission into the United States as an eligible displaced person"⁵³ Therefore, citizenship of any person who willfully made a material misrepresentation regarding his position or activities during World War II, for the purpose of gaining admission into the United States as an eligible displaced person, must be revoked.⁵⁴ Although the DP Act does not on its face require that a misrepresentation be material in order to render an applicant ineligible, it has been held that such a misrepresentation must be material.⁵⁵

Another prerequisite for citizenship is that the applicant must be "a person of good moral character."⁵⁶ It has been held that a person who participated in Nazi atrocities cannot be "a person of good moral character," and must therefore be denaturalized.⁵⁷

Lack of good moral character is also demonstrated when an individual gives false testimony in the immigration or naturalization process. Pursuant to 8 U.S.C. § 1101(f)(6), a person shall be deemed not to be of good moral character if he "has given false testimony for the

48. *Kowalchuk*, 773 F.2d at 494.

49. *Fedorenko*, 449 U.S. at 506; *Kowalchuk*, 773 F.2d at 494-95.

50. Displaced Persons Act of 1948, Pub. L. No. 80-774, 62 Stat. 1009 (as amended by Pub. L. No. 81-555, 64 Stat. 219 (1950)).

51. Displaced Persons Act, § 13, 64 Stat. 227.

52. See *United States v. Linnas*, 527 F. Supp. 426 (E.D.N.Y. 1981), *aff'd*, 685 F.2d 427 (2d Cir.), *cert. denied*, 459 U.S. 883 (1982); *Kowalchuk*, 571 F. Supp. 72 (E.D. Pa. 1983), *aff'd on other grounds*, 773 F.2d 488 (3d Cir. 1985) (en banc), *cert. denied*, 475 U.S. 1012 (1986).

53. Displaced Persons Act, § 10, 64 Stat. 226.

54. *Fedorenko*, 449 U.S. at 507; *Kowalchuk*, 773 F.2d at 495.

55. *Fedorenko*, 449 U.S. at 507; *Kowalchuk*, 773 F.2d at 495 n.8.

56. 8 U.S.C. § 1427(a) (1982).

57. See *Linnas*, 527 F. Supp. at 439-40.

purpose of obtaining" immigration or naturalization benefits. Recently, the Supreme Court held that 8 U.S.C. § 1101(f)(6) does not have a materiality requirement, as does 8 U.S.C. § 1451 and the DP Act.⁵⁸ The issue under section 1101(f)(6) is whether the misrepresentation was made with the subjective intent of obtaining immigration benefits.⁵⁹ Therefore, the citizenship of any person who gave false testimony regarding his position or activities during World War II, with the subjective intent of obtaining immigration benefits, must be revoked.⁶⁰

2. Deportation

Once a Nazi criminal has been denaturalized by revoking his citizenship, he must still be deported from the United States.

a. *Deportation Based on Assistance in Persecution*

As noted above, the DP Act prohibited the entry into the United States of any person "who advocated or assisted in the persecution of any person because of race, religion, or national origin."⁶¹ Any person who assisted the Nazis in persecution and then entered the United States under the DP Act is deportable under 8 U.S.C. § 1251(a)(1).⁶²

There were, however, Nazi criminals who entered the United States under other immigration laws which did not specifically exclude persons who assisted the Nazis in persecuting civilians. Such persons could not be deported based upon their assistance in persecution. Therefore, in 1978, the Immigration and Nationality Act was amended to specifically provide for the deportation of all persons who assisted the Nazis in the persecution of civilians, regardless of the immigration law they used to enter the United States.⁶³ This amendment (known as the Holtzman Amendment) provides for the deportation of any person who

58. *United States v. Kungys*, 485 U.S. 759, 782 (1988).

59. *Id.*

60. However, the Court in *Kungys* recognized that "it will be relatively rare that the Government will be able to prove that a misrepresentation that does not have the natural tendency to influence the decision regarding immigration or naturalization benefits [i.e., an immaterial misrepresentation] was nonetheless made with the subjective intent of obtaining those benefits." *Id.* at 780.

61. Displaced Persons Act, § 13, 64 Stat. 227.

62. *Maikovskis v. I.N.S.*, 773 F.2d 435 (2d Cir. 1985).

63. Immigration and Nationality Act, § 241(a)(19), 8 U.S.C. § 1251(a)(19) (1989).

during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

- (A) the Nazi government of Germany,
 - (B) any government in any area occupied by the military forces of the Nazi government of Germany,
 - (C) any government established with the cooperation of the Nazi government of Germany, or
 - (D) any government which was an ally of the Nazi government of Germany,
- ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion.⁶⁴

Ordinarily, a person found deportable for making a material misrepresentation may be eligible for a discretionary ruling relieving him of the order of deportation. However, such relief is not available to a person found deportable under the Holtzman Amendment for assistance in persecution. Any person who is found to have assisted the Nazis in persecuting civilians *must* be deported.⁶⁵

b. *Deportation Based on Material Misrepresentation in Procuring a Visa*

Section 241(a)(1) of the Immigration and Nationality Act provides for the deportation of persons who were excludable at time of entry into the United States because they procured their visa by fraud or misrepresentation.⁶⁶ The DP Act also made excludable any person who "willfully ma[d]e a misrepresentation for the purpose of gaining

64. *Id.* This provision is known as the "Holtzman Amendment," named for its chief sponsor, Representative Elizabeth Holtzman of Brooklyn, New York. The constitutionality of the Holtzman Amendment has been challenged on the grounds that it is an ex-post-facto law and a bill of attainder. However, the amendment has been found to be constitutional. *See Artukovic v. I.N.S.*, 693 F.2d 894 (9th Cir. 1982); *Linnaas v. I.N.S.*, 790 F.2d 1024, 1028-30 (2d Cir.), *cert. denied*, 479 U.S. 995 (1986).

65. *See* Immigration and Nationality Act, § 241(f), 8 U.S.C. § 1251(f) (1989) (waiver of deportation unavailable to person found to have assisted the Nazis in persecution); Immigration and Nationality Act, § 243(h)(2)(A), 8 U.S.C. § 1253(h)(2)(A) (1989) (withholding of deportation unavailable); Immigration and Nationality Act, § 244(a), 8 U.S.C. § 1254(a) (1989) (suspension of deportation unavailable); *see also Maikovskis*, 773 F.2d at 442.

66. Immigration and Nationality Act, § 241(a)(1), 8 U.S.C. § 1251(a)(1) (1989).

admission into the United States."⁶⁷ Such persons are deportable under Section 241 (a)(1) of the Immigration and Nationality Act.⁶⁸ Under all of these statutes, "[a]n alien who has made misrepresentations in his visa application documents is deportable on account of those misrepresentations only if they were material."⁶⁹

3. Materiality of Misrepresentations

One of the issues which has caused a great deal of difficulty in both denaturalization and deportation proceedings is the standard for measuring the "materiality" of misrepresentations. In *United States v. Fedorenko*,⁷⁰ one of the first cases involving denaturalization of a Nazi, the district court held that in order to establish materiality, the government must prove that if the applicant for citizenship had revealed the true facts about his position and activities during World War II, citizenship *would* have been denied.⁷¹ Under this standard, the district court held that Fedorenko, who admitted lying about his service as an armed guard at the Nazi death camp of Treblinka, was not subject to denaturalization, because the government had not proven by clear and convincing evidence that a guard at Treblinka could not have been eligible for immigration under the DP Act.⁷²

The court of appeals for the Fifth Circuit reversed, holding that a misrepresentation was material if 1) disclosure of the true facts *would* have led to an investigation, and 2) the investigation *might* have uncovered other facts warranting denial of citizenship.⁷³ The court of appeals held that if Fedorenko had revealed his wartime activities when he applied for his visa, the American authorities *would* have conducted an investigation, and this investigation *might* have resulted in denial of a

67. Displaced Persons Act, § 10, 62 Stat. 1013.

68. *Fedorenko v. United States*, 449 U.S. 490 (1981); *Maikovskis*, 773 F.2d 435.

69. *Maikovskis*, 773 F.2d at 440; *see also Fedorenko*, 449 U.S. at 507-08. As noted above, a person who is found deportable for making material misrepresentations is normally eligible for certain forms of discretionary relief from deportation. However, a person who is found to have assisted the Nazis in persecuting civilians is not eligible for such discretionary relief and *must* be deported. *See supra* note 63 and accompanying text.

70. 455 F. Supp. 893 (S.D. Fla. 1978), *rev'd*, 597 F.2d 946 (5th Cir. 1979), *aff'd*, 449 U.S. 490 (1981).

71. *Fedorenko*, 455 F. Supp. at 916.

72. *Id.* at 909.

73. *Fedorenko*, 597 F.2d at 950-51.

visa. Consequently, the court concluded that Fedorenko's citizenship must be revoked.⁷⁴

The Supreme Court affirmed Fedorenko's denaturalization, but sidestepped the issue of which of the two lower courts' tests for materiality was correct. The Court held that

disclosure of the true facts about [Fedorenko's] service as an armed guard at Treblinka would, as a matter of law, have made him ineligible for a visa under the DP Act At the very least, a misrepresentation must be considered material if disclosure of the true facts would have made the applicant ineligible for a visa.⁷⁵

After *Fedorenko*, courts set forth several standards for materiality in the denaturalization and deportation contexts. For example, in *Maikovskis v. I.N.S.*⁷⁶ the second circuit articulated the following standard for materiality in deportation cases:

[O]nce it has been shown that the alien made misrepresentations in his visa application, the materiality of the misrepresentations is established where the government shows that disclosure of the concealed information probably would have led to the discovery of facts warranting the denial of a visa.⁷⁷

In *United States v. Kungys*,⁷⁸ the Supreme Court attempted to frame a definition of materiality in the denaturalization context which would clarify the standard and put an end to the inconsistent standards adopted by different courts. The Court framed the relevant inquiry as follows:

[W]hether the misrepresentation or concealment was predictably capable of affecting, *i.e.*, had a natural tendency to affect, the official decision. The official decision in question, of course, is whether the applicant meets the requirements for citizenship, so that the test more specifically is whether the misrepresentation or concealment had a natural tendency to produce the conclusion that the applicant was qualified.⁷⁹

74. *Id.* at 951-52.

75. *Fedorenko*, 449 U.S. at 509.

76. 773 F.2d 435 (2d Cir. 1985) *cert denied*, 476 U.S. 1182 (1986).

77. *Id.* at 442.

78. 485 U.S. 759 (1988).

79. *Id.* at 771-72.

4. Assistance in Persecution

The question of whether an individual "assisted in persecution," warranting denaturalization or deportation, has also been an issue in several cases.⁸⁰ In *Fedorenko*, the Supreme Court set forth the following standard:

[A]n individual who did no more than cut the hair of female inmates before they were executed cannot be found to have assisted in the persecution of civilians. On the other hand, there can be no question that a guard who was issued a uniform and armed with a rifle and a pistol, who was paid a stipend and was regularly allowed to leave the concentration camp to visit a nearby village, and who admitted to shooting at escaping inmates on orders from the commandant of the camp, fits within the statutory language about persons who assisted in the persecution of civilians. Other cases may present more difficult line-drawing problems but we need decide only this case.⁸¹

The following cases exemplify the requisite "assistance in persecution," which warrant denaturalization and deportation. In *United States v. Koziy*,⁸² a Nazi policeman who personally murdered a little Jewish girl was found to have assisted in persecution.⁸³ In *Maikovskis*,⁸⁴ a police chief who gave orders to arrest all of the inhabitants of a village and burn the village to the ground, and then participated in

80. The issue of assistance in persecution becomes difficult in those cases in which the court does not credit, or chooses not to rely on, testimony of eyewitnesses, either from the Soviet Union or other countries, who testify that the defendant participated in murders, assaults, or other atrocities. If the court credits such testimony, there is no question that the defendant assisted in persecution. *See, e.g., United States v. Linnas*, 527 F. Supp 426 (E.D. N.Y. 1981) *aff'd*, 685 F.2d 427 (2d Cir.) *cert. denied*, 459 U.S. 883 (1982); *United States v. Koziy*, 540 F. Supp. 25 (S.D. Fla. 1982), *aff'd*, 728 F.2d 1314 (11th Cir.), *cert. denied*, 469 U.S. 835 (1984). In those cases in which the court does not credit eyewitness testimony regarding the defendant's commission of atrocities, the court must usually rely on admissions made by the defendant as to his wartime activities. The defendant will, of course, attempt to minimize his involvement in persecution, thereby giving rise to close questions of whether the defendant assisted in persecution. *See, e.g., United States v. Kowalchuk*, 571 F. Supp. 72 (E.D. Pa. 1983), *aff'd*, 773 F.2d 488 (3d Cir. 1985) (en banc), *cert. denied*, 475 U.S. 1012 (1986).

81. *Fedorenko*, 449 U.S. at 512 n.34.

82. 540 F. Supp. 25 (S.D. Fla. 1982).

83. *Id.* at 32.

84. 773 F.2d 435.

the arrests and burning, was found to have assisted in persecution.⁸⁵ In *Kowalchuk*,⁸⁶ an individual who occupied a largely clerical, but responsible, position in a Nazi police force which carried out atrocities was found to have assisted in persecution, even though the court did not credit testimony of witnesses regarding the defendant's personal participation in the atrocities.⁸⁷

B. *Extradition of Nazi Criminals*

As mentioned above, extradition is the second type of proceeding brought against Nazi war criminals. If a foreign country wishes to try a Nazi criminal for his crimes, that country may request extradition of the criminal. Extradition of Nazi criminals has occurred in only three cases: *In re Ryan*,⁸⁸ *In re Artukovic*,⁸⁹ and *In re Demjanjuk*.⁹⁰

Extradition is a simple and quick procedure. The U.S. government must only make out a prima facie case that there is probable cause to believe that the respondent committed a crime.⁹¹ Review by appeals courts of an order of extradition is very limited.⁹²

Extradition can only take place when there is an extradition treaty

85. *Id.* at 446-48.

86. 571 F. Supp. 72.

87. *Id.* at 81. In both *Maikovskis* and *Kowalchuk*, witnesses from the Soviet Union testified that the defendants had personally participated in the mass murder of Jews and other innocent civilians. However, the courts did not rely on that testimony, instead relying on the defendants' own admissions regarding their service in the Nazi police and assistance in persecution.

88. 360 F. Supp. 270 (E.D.N.Y.), *aff'd*, 478 F.2d 1397 (2d Cir. 1973).

89. 628 F. Supp. 1370 (C.D. Cal), *stay denied*, 784 F.2d 1354 (9th Cir. 1986).

90. 612 F. Supp. 544 (N.D. Ohio 1985). In the 1950's and 1960's, the U.S.S.R. requested extradition of Maikovskis and Linnas, but extradition did not take place because there was not an extradition treaty between the United States and the Soviet Union.

91. *Id.* at 548. In contrast, as noted above, the government must prove a denaturalization and deportation case by clear, unequivocal, and convincing evidence which does not leave the issue in doubt. *See supra* notes 41-42 and accompanying text.

92. *Demjanjuk v. Petrovsky*, 776 F.2d 571, 576 (6th Cir. 1985), *cert. denied*, 475 U.S. 1016 (1986). In contrast, denaturalization and deportation proceedings involve the following steps: 1) denaturalization trial in United States District Court; 2) appeal to the United States Court of Appeals; 3) certiorari to the United States Supreme Court; 4) deportation trial in United States Immigration Court; 5) appeal to the Board of Immigration Appeals; 6) appeal to the United States Court of Appeals; and 7) certiorari to the United States Supreme Court. This procedure can take from five to ten years.

between the United States and a foreign country covering the alleged crimes, and the government of the foreign country asks the United States government to send a person to the foreign country to stand trial for crimes allegedly committed in that country or under that country's jurisdiction. Germany has only requested extradition of one Nazi criminal from the United States.⁹³

IV. CONCLUSION

Despite the many obstacles in prosecuting crimes which took place more than forty years ago, thousands of miles from the United States, Nazi criminals in the United States are finally being brought to justice. The OSI was not created until 1979, more than thirty years after the murder of six million Jews and millions of other innocent people. Since 1979, the OSI has done an excellent job making up for the lost time in bringing these criminals to justice. The work of the OSI must continue until all Nazi criminals in the United States have been brought to justice.

93. *Ryan*, 360 F. Supp. at 270. The government of Germany never requested the extradition of Maikovskis. German law currently allows for extradition of Nazi criminals from the United States only if 1) the Nazi criminal is or was a German citizen; 2) the crimes took place on German territory; 3) the crimes were committed against German citizens; or 4) the Nazi criminal was a member of a German military or police unit. Because Maikovskis was a Latvian whose alleged crimes were committed in Latvia against Latvian citizens, and he was a member of a Latvian police unit, Germany could not request extradition under German law. However, once Maikovskis was in Germany, he could be tried under German law for his alleged crimes.

Maikovskis' deportation proceeding and appeals lasted seven years. If German law had provided for the extradition of Maikovskis and the government of Germany had sought extradition, he could have been extradited in less than one year.