

DOKTORI DISSZERTÁCIÓ

HALAKHA ÉS ZSIDÓTÖRVÉNYEK: RESPONSUM-IRODALOM MAGYARORSZÁGON AZ 1930-as, 40-es ÉVEKBEN

KÓNYA JUDIT

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**HALAKHA AND ANTI-JEWISH LEGISLATION:
RESPONSA LITERATURE
WRITTEN IN THE 1930s AND 1940s IN HUNGARY**

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Introduction

1.A Aims of the present study¹

By the late 1930s the elimination of Jews from Hungary's political, economic, and social life was moving ahead apace. Discrimination on religious and later on racial grounds had begun much earlier than the German occupation of the country in March 1944, which introduced ghettoization, deportation, and the extermination of more than 500,000 Hungarian Jews.

In Hungary, between 1938 and 1944, the antisemitic social discrimination against Jews was raised to an official and administrative level by anti-Jewish legislation. Despite the vast amount of published research on the Shoah of the Hungarian Jewry, the impact of the anti-Jewish Laws and decrees on religious life in Hungary has received very little attention in the scholarly literature.² In order to rectify this lack the present study brings previously unknown sources into the discussion. *Responsa* written by Orthodox rabbis in Hungary during and immediately after World War II were direct reflections on the persecution of the Jews and on the reviving of Jewish religious life after 1944. My research aims to show that Orthodox Jewish perspectives should be integral parts of the historiography of the Shoah, and that *responsa* literature sheds light on the experience of Hungarian Jewry during the time of persecution. Dealing with relevant issues of the daily life of a significant segment of the Jewish religious population in Hungary, these texts give a Jewish background for investigating the destruction of the Hungarian Jewry.

In Hungary, *responsa* generally are not regarded as relevant sources of scholarly research on the Shoah because for most Holocaust historians in Hungary and elsewhere, these sources are hardly accessible due to lack of linguistic and other competences. On the other hand, the historiography of the Shoah has not focused on revealing the specific experiences of the observant Jews living in Hungary during World War II. My study aims to show that *halakhic* decision

¹ The research has been supported by a Claims Conference Saul Kagan Doctoral Fellowship in Advanced Shoah Studies.

² For some exceptions, see Frojimovics, Kinga, "Angórányúl-tenyésztés orthodox szemmel", in Bányai, Viktória and Koltai, Kornélia, eds., *Rabbinikus források a Holokauszthoz* (Ma'amakim, Holocaust Studies, vol. 2) (Budapest: ELTE BTK, Program in Holocaust Studies, 2006) pp. 5-25, and Kónya, Judit, "A peszahkor zsidó tulajdonban maradt hamecról", in *ibid.*, pp. 27-58; Kónya, Judit, "Halakhah and Micro-History: Anti-Jewish Legislation in Hungary (1938–1944) as Reflected in the Responsa Literature," in Bányai, Viktória and Komoróczy, Szonja, eds., *Responses and Questions* (Hebrew), Studies in Responsa Literature, vol. 1 (Budapest: Center of Jewish Studies at the Hungarian Academy of Sciences, 2010), pp. 123–133; Kónya, Judit, "Hungarian Rabbinic Responsa Regarding Local Decrees on Opening Shops on Saturdays" (*Yad Vashem Studies*, 42 no.1, 2014) pp. 83-109 and the reference to the *responsum* of R. Pinhas Zimetbaum (Nagyvárad) by Hirsch J. Zimmels in his book *The Echo of the Nazi Holocaust in Rabbinic Literature* (Hoboken NJ: Ktav, 1977), pp. 297–298; and also Esther Farbstein, *In the Clefts of the Rock: Hungarian Orthodox Jewry Facing the Holocaust* (Hebrew) (Jerusalem: Mosad Harav Kook, 2013).

making is an important expression of the victims' simultaneous perception of the period prior to the destruction.

Unlike in other European countries, in Hungary the ghettoization and deportation took place in a relatively short period of time between May and July 1944. The quick and unexpected destruction of Hungarian Jewry in the spring and summer of 1944 did not leave room for *halakhic* discussions on life-and-death dilemmas in the ghettos (such as survival at the cost of endangering others, cooperation with or disobedience to the persecuting authorities), as was the case in Poland or Latvia, due to the local circumstances. The present dissertation does not deal with similar topics subsumed under the category of "danger to life," but with the impact of the anti-Jewish legislation on the daily life of the observant Jews by presenting the *halakhic* response to the discriminatory legislation in Hungary.

The primary source of the present research is *responsa* literature. The documents belonging to this genre (the *responsa*, plural of *responsum*) are written by rabbis, and contain a specific *halakhic* question (Hebrew, *sheelah*) and a reply or response (Hebrew, *teshuvah*) to it.³

Generally speaking, Hungarian Jewry was a passive subject and victim of antisemitic legislation and policies. However, there were cases – the case of the ban on ritual slaughter was not the only one – when Orthodoxy opted for an active resistance to an edict issued by the Hungarian government.

Since *responsa* were direct responses to the persecution, they give us glimpses of the preparatory phases of the destruction of the Jewish population in Hungary, the effects of anti-Jewish legislation on Jewish society, and on Jewish responses to these new threats. The texts show the Hungarian administration at its peak in the process of the discrimination of the Jews, as well as the importance of the local factors of this policy.

The majority of the rabbis referred to and quoted in the study, and their communities, were deported by the Hungarian administration and murdered by the Nazis in 1944.⁴ The Orthodox rabbis who survived the war either did not return to Hungary in 1945 or left the country in the following decade (at the latest in the wake of the Hungarian Revolution in 1956). Their work was published either during the war or by their descendants or followers after the war, as a commemoration to the authors and their perished communities. The murder of the authors and readers of the texts who lived according to the *halakha* basically put an end to the significant Hebrew literary production in Hungary.

³ This genre of *halakhic* literature is called *she'elot u-teshuvot* in Hebrew ("questions and answers," abbreviated in the Hebrew acronym *Shut*).

⁴ In 1941 there was a total Jewish population of about 324,000 in those areas that came under Hungarian rule between 1938 and 1941. On the whole, discriminative anti-Jewish decrees referred to 825,000 people in Greater Hungary (5 percent of the population). The number of Jewish people who perished in the Holocaust was about 550,000 and there were about 256-275,000 people who survived (together with those who returned from deportation). See Karsai, László, *Holokauszt* (Budapest: Pannonica, 2001), p. 15.

This dissertation is also a modest commemoration to the authors who were murdered, but their *halakhic* work remains.

1.B Historical setting

The discriminative process against the Jewish population in Hungary on religious and later on racial grounds was followed by the concentration of Jews into ghettos and concluded with the deportation of 437,000 Jews.⁵

The legislative process of economic, social and political discrimination against the Jewish population living in Hungary began with the introduction of the Numerus Clausus (‘closed number’) law. The law adopted during the premiership of Prime Minister Count Pál Teleki September of 1920 aimed to align the number of students of ethnic minorities (including Jews) in higher education with their proportion in society.⁶ The law limited the number of Jewish students admitted to Hungarian universities to six percent, which was much lower than their proportion in the preceding years.

The first discriminative law that disturbed religious practice and struck every Jewish community severely was the ban on ritual slaughter issued by the Hungarian Ministry of Agriculture on April 1st, 1938. It ordained mandatory stunning prior to slaughter of cattle at slaughterhouses maintained and supervised by the state. As a consequence, the practice of Jewish ritual slaughter was interrupted and the financial position of Jewish communities was severely stricken. The decree was followed by the four so-called anti-Jewish Laws and local decrees limiting Jewish activity in the economy. Following the German example, the second anti-Jewish Law (1939) changed the first Law’s religious definition of “Jewish” to a partly racial definition, which resulted in the recognition of many Christians as Jewish. The third anti-Jewish law, the Race Protection Law (*Fajvédelmi törvény*) of 1941 explicitly defined Jewishness on racial grounds. The Law aimed at total social exclusion of the Jewish population and the protection of racial purity of the Magyar nation by prohibiting intermarriage and sexual contact between Jews and non-Jews.

⁵ “According to German statistics, between May 15 and July 9 – in the period of 56 days – the Hungarian authorities deported 437,402 Hungarian Jews on 147 trains (with the exception of 15,000 people) all to Auschwitz-Birkenau.” Kádár Gábor – Vági Zoltán, *Self-financing Genocide. The Gold Train, the Becher Case and the Wealth of Hungarian Jews* (Budapest – New York: Central European University Press, 2004 (1st, Hungarian edition, 2001) transl. Enikő Koncz, Jim Tucker, András Kádár, 2004, p. XXII. If we count Jews who were deported in additional transports, app. 450,000 people were deported. “...the total loss of Hungarian Jewry during World War II must have been at least 516,000” László, Ernő, “Hungary’s Jewry. A Demographic Overview, 1918-1945”, in Braham, Randolph L., ed., *Hungarian-Jewish Studies*, II (New York: World Federation of Hungarian Jews, 1969) p. 181 (pp. 137-182).

⁶ The 1920: XXV Law was finally alleviated in 1928 by the Hungarian Parliament. See Kádár – Vági, 55ff. I found no reflection of this Law in *responsa*.

Transylvania and Upper Hungary,⁷ annexed by neighboring countries in 1920, had massive Orthodox Jewish populations. Thus, after 1920 Orthodoxy became a minority among Jews in Hungary proper, and the country lost many of its most prestigious *yeshivas* (rabbinical academies)⁸ and rabbinic leaders, and this caused some problems in maintaining religious continuity in Hungary proper. However, correspondence between rabbis living in the annexed territories, which were no longer part of Hungary and those living in Hungary testifies to vibrant and continuous connections between the two groups.

The First and Second Vienna Awards in 1938 and 1940 returned some of these territories to Hungary. As a result a massive, mainly Orthodox Jewish population living in the re-occupied territories became subject to anti-Jewish measures legislated by the Hungarian parliament. The authors and readers of the texts referred to in the present study typically lived in these re-annexed territories with a high Jewish population in smaller towns in the Hungarian countryside.

Hungarian Jewry shared, essentially, a common fate. Nonetheless, anti-Jewish legislation and the machinery of annihilation affected Orthodox Jewry, with its distinct sociological characteristics, in some ways differently than they affected other segments of the Jewish population. As their religious outlook and way of life were different in more peaceful times, so their life and fate in a time of crisis were different. And this was also the case with regard to their experiences of this crisis. As compared to the higher social and political status of Neolog Jewry living in Hungary proper, members of non-assimilated Orthodox communities of Greater Hungary (especially in the Máramaros area and Subcarpathian Ruthenia) had a lower standard of living.⁹ Economic and religious oppression naturally affected Orthodox communities more harshly than Neolog and Status Quo Ante communities.

According to estimations, more than 80% of Jews living in the re-annexed territories perished in the Holocaust, while the figure was 78.2% in Trianon Hungary.¹⁰ Jews of the countryside suffered great losses, while half of Budapest Jewry survived.¹¹ As a consequence, the composition of Hungarian Jewry has radically changed after the war, in favor of the more powerful Neolog communities of the capital.

In 1945, immediately after the battles were over, returnees started to re-establish destroyed communities. The first step was to provide basic living conditions, i.e. to establish soup kitchens

⁷ *Felvidék* in Hungarian, meaning literally “Upland”, the northern part of the Kingdom of Hungary; after WWI, the meaning of the term was restricted to Slovakia and Carpathian Ruthenia.

⁸ Frojimovics, Kinga, *Szétszakadt történelem. Zsidó vallási irányzatok Magyarországon, 1868–1950 (Torn History. Jewish Religious Movements in Hungary between 1868 and 1950)* (Budapest: Akadémiai Kiadó, 2008), pp. 260–261. On the ideological and social basis of Hungarian Orthodoxy, see Farbstein, *In the Clefts of the Rock*, 19ff, and also the book’s Introduction, pp. 17–56, for the status of Hungarian Orthodoxy in 1939.

⁹ Kádár and Vági refer to the statistics of the 1941 census published in *Magyar Zsidók Lapja* (Journal of Hungarian Jews) in September 23, 1943. See Kádár and Vági, *Self-financing Genocide*, p. 12.

¹⁰ “The losses of Jewry in these areas were at least 259,000.” László, “Hungary’s Jewry. A Demographic Overview, 1918-1945”, p. 181.

¹¹ Frojimovics, *Szétszakadt történelem*, p. 374.

and to solve housing problems. At the same time, observant survivors made extra efforts to create proper conditions for living a Jewish life according to religious regulations. The last chapter of the study elaborates on some central *halakhic* problems of the observant survivors in the post-war years.

I.C Literary setting – Sources

I.C.1. The characteristics of *responsa* written in the period

Besides their historical importance, *responsa* written in the 1930s and 1940s deserve attention as part of a long tradition of Hungarian Orthodox legal literature. In the 19th century rabbis active in Hungary attained greater significance in the field of Jewish law than ever before. Hungary became a recognized and relatively independent center of *halakhic* studies and decision-making. One of the leading *halakhic* authorities during the nineteenth century in the Ashkenazi territories (and beyond, to some extent) was a “Hungarian” rabbi, R. Moshe Sofer (or Schreiber), more often referred to as “the Hatam Sofer.”¹² His *responsa* serve as major sources also in many of the twentieth-century *responsa* referred in the present work. Discussing particular problems and cases, and attempting to reach a legal decision, authors of the texts referred to here based their argumentation on previous *responsa*, the *Shulhan Arukh* (the standard codex of Jewish law from the sixteenth century) and its commentators. Establishing analogies between past decisions and present *halakhic* questions, which emerged as the consequence of the anti-Jewish legislation was a way of comprehending the current situation in light of Jewish law and tradition.

Applying Jewish law to a particular situation, *responsa* provide information on the social conditions of observant Jews in Hungary in the shadow of the anti-Jewish Laws and decrees. Historical conditions created by the Shoah did not appear to the correspondents as something unprecedented, which would justify a radical reassessment or modification of the *halakhic* tradition in general. The rabbis’ main goal was to ensure as much as possible, with *halakhic* adjustments as minor as possible, the continuation of observant Jewish life under the changed circumstances.

The topics chosen for analysis are problems that were shared in common among observant Jews living in Hungary until the destruction. The importance of certain issues and problems in the life of Hungarian Orthodoxy during the war years can be measured by the number of *responsa* dealing with these problems in this period.

¹² The *responsa* collection of R. Moshe Sofer (Rabbi Moses Schreiber, 1762–1839, Pressburg), the “Hatam Sofer,” the head of the Pressburg Yeshiva (present Bratislava, Slovakia) had considerable impact on the further development of Ashkenazi *halakhah* in his time and afterwards.

All texts referred to in the dissertation reflect *halakhic* opinions of local rabbis who discussed local matters related to the anti-Jewish legislation. Their decisions related, as a rule, to a specific case of local relevance. For example, the decrees issued by the local municipalities about opening shops on Sabbath – according to the testimony of the *responsa* – had an impact on thousands of Jewish tradesmen living in Hungary and in Northern Transylvania. Nevertheless, the rabbis who gave decisions in the matter dealt only with the specific case before them and did not aim to reach a decision valid for the whole country. In this matter of permitting Jewish shopkeepers to keep their shops open with the help of non-Jews, the decision – strict or lenient – reflected the decisor’s concerns mostly with the local circumstances. Moreover, in a matter so sensitive as trading on Sabbath, some authorities finished their discussion with a stipulation or disclaimer that their conclusions are to be regarded as merely theoretical analysis without practical application.

Broadly speaking, the decisors attempted to find a *halakhic* solution for problems that put observant Jews facing the hard dilemma of choosing between obedience to their own religious norms or to the decrees and laws of the state. The intention of the authors to ease the life of the observant Jews and at the same time to stay within the *halakhic* framework is clearly recognizable in the texts. The rabbis mostly had to face the problem of “prioritizing” between transgressions, choosing the “lesser evil”.

I.C.2. Sources in Hungarian

Besides *responsa* literature the study also utilizes sources written in Hungarian: archival sources produced by the Hungarian administration, and Orthodox Jewish press. For revealing the administrative background of the ban on ritual slaughter I relied on archival documents of the Ministry of Agriculture. The source-book of Elek Karsai on forced labor service in the Hungarian Army¹³ mostly provided the background for the *responsa* regarding *halakhic* problems of forced labor service. The documents of the Budapest Public Court and the Books of the House of Representatives of the Hungarian Parliament served as primary sources for investigating the bureaucratic background of the anti-Jewish Laws and local decrees limiting Jewish handicraft and trade.¹⁴

This work presents Hebrew sources as no less important than these archival documents in the research of the Shoah of the Hungarian Jewry. The documents produced by the Hungarian administration contributed significantly in revealing the historical background (motives,

¹³ Karsai, Elek, Intr., ed., “*Fegyvertelen álltak az aknamezőkön...*” *Dokumentumok a munkaszolgálat történetéhez Magyarországon / Armless They Stood in the Minefields. Documents on the History of Labour Service in Hungary* 2 vols (Budapest: MIOK, 1962)

¹⁴ I am grateful to Dr. László Karsai and Izabella Sulyok who helped me to locate these sources.

mechanisms, etc.) of the historical actors. The Hebrew sources – the *responsa* themselves – revealed the impact of the anti-Jewish legislation on the life of observant Jews in Hungary.

1.D Main themes

The second chapter deals with the ban on Jewish ritual slaughter in Hungary. The obligation of stunning the animals before their slaughter prevented observant Jews from continuing with their traditional way of slaughter. The chapter elaborates on the background and implementation of the ban as well as its effect on the Jewish communities. The ban did not put an end to ritual slaughter in Hungary, and the Ministry of Agriculture was not able to fully enforce the decree in the re-annexed territories of Carpatho-Russ. The petitions of the slaughterers' trade association, against the obligation, testify that the ban on ritual slaughter conflicted with their interests too. Further documents also show that the first discriminative decree in Hungary not only endangered Jewish community life economically and religiously but also had a negative impact on the Hungarian meat industry in general.

The third chapter offers glimpses into the life of observant forced laborers serving in the Hungarian Army, and also shows the impact of forced labor service on the life of Jewish communities. The *halakhic* problems of forced labor emerged as a consequence of conditions in labor camps, which were incompatible with religious observance, i.e. the lack of kosher food and the obligation to work on Sabbath and Jewish holidays. Questions discussed in this chapter mostly concern these two issues. The *responsa* also report on cases where the commanders intentionally forced Jews to transgress Jewish religious commandments.

The fourth chapter deals with the effect of economic discrimination of the Jews from the *halakhic* perspective. The major purpose of the anti-Jewish Laws was to exclude Jews from the economic life of the country. Further decrees issued by the local authorities prescribed that all sorts of enterprises (e.g. grocers, innkeepers and landholders) had to work on Sabbath – something strictly forbidden by Jewish law. There was a revision of licenses of trade and craft implemented by the Trade Authorities aimed at regulating the market based on the “trustworthiness” of the applicant. The revision was exercised on the basis of the “Hungarian nation’s interests;” typically the licenses of Jewish tradesmen and craftsmen were not renewed. Many Jewish owners responded to the new situation by passing their businesses over to non-Jewish guarantors (*stróman*, in German *Strohmann*, “straw man”), who thus became the nominal owners of the businesses, but in practice everything continued to be managed by the original Jewish owners. Thus, since a non-Jew had been involved in the business, it was possible for the Jewish owners to rest on Sabbath in accordance with the *halakha*. By the implementation of the anti-Jewish Laws the legislators of the

country intended to reduce the number of Jewish participants in craft and trade, and starting up new businesses was impossible. The making of partnerships with non-Jews that made the evasion of the anti-Jewish Laws possible is a phenomenon that was not covered before by scholarly research on the discrimination of the Jews in Hungary.

The last, fifth chapter addresses the main ambitions of the Jewish communities after WW II: re-establishing Jewish religious life, creating the forms of commemoration to the victims, preserving the Jewish communities' property (the Jewish cemeteries and synagogues) or selling the synagogues in order to evade their further degradation.

The restricted budget and the centralized structure of Jewish life emerging after 1945 severely limited the freedom of action of the local communities. Generally speaking, every Jewish "space" – mainly the empty synagogues and the so often looted cemeteries – became a "place of memory" in the post-war years. The synagogues and other buildings in the ownership of the local communities mostly lost their original function in the countryside and their maintenance gained a commemorative function. The transformation of the buildings mapped the crucial transformation of earlier Jewish identities in Hungary into an identity in which the Holocaust featured prominently; while Jewish communities became "communities of memory" after the war.

1.E Methodology

The discussion is based on 101 *responsa* written by rabbis in Hungary and in the annexed territories between 1938 and 1954.¹⁵ The ban on ritual slaughter, the forced labor service in the Hungarian Army and the exclusion of the Jewish population from the Hungarian economy are the three topics, which the overwhelming majority of rabbinic discussions in Hungary related to the anti-Jewish Laws and decrees focused on. Orthodox newspapers of the period also support the claim that these topics were the most reflected problems of Hungarian Orthodoxy in the 1930s and 1940s in Hungary. The fourth chapter supplements the first three by presenting the post-war era that gave a closure to the period.

In each chapter the relevant *responsa* are presented, taking into consideration both the religious and historical contexts, combining the *halakhic* and historical approaches. The presentation reconstructs and summarizes the gist of the *halakhic* argumentation of each *responsum*

¹⁵ I studied all *responsa* collections of Hungarian rabbis of the period that are listed in the Catalogue of the National Library in Jerusalem. In addition, I used the following three databases: Glick, Shmuel, *קונטרס התשובות*, הוצר ביבליוגרפי לספרות השאלות והתשובות מראשית הדפוס ועד שנת תשס"ט (Jerusalem-Ramat Gan, Universitat Bar-Ilan, Makhon Schechter and Makhon Schocken, 2006), [משאב אלקטרוני] *שאלת השואה* (Alon Shvut: Makhon Netivei ha-Halakha, 2009) (*Holocaust Responsa Project. A Comprehensive Database of Rabbinical Responsa on Matters Pertaining to the Holocaust*, CD-ROM) and Spitzer, Shlomo J., *Die Rabbiner Ungarns, 1944 (Die orthodoxen Gemeinden) / Orthodox rabbik Magyarországon, 1944* (Hungaria Judaica, 12) (Budapest: MTA Judaisztikai Kutatócsoport, 1999).

and at the same time tries to retrieve all the relevant historical information provided by the texts. All the four chapters include an introduction on both the historic and *halakhic* backgrounds of the *responsa* crucial for the interpretation of the texts, as well as a conclusion.

The *responsa* relevant to the given topics are presented in detail: I summarize the main elements of the argumentation. The Hebrew words in square brackets beginning every paragraph sign the first word of the paragraph of the *responsum*. Those paragraphs that add little to the analysis from our perspective are ignored in the discussion. (These paragraphs are indicated by their first word [in Hebrew] in square brackets.) Passages are quoted in the Hebrew original whenever they seem to be relevant to the discussion. *Responsa* that use arguments already summarized are presented in a shortened form in order to avoid repetition. The question which the *responsum* answers to is usually quoted in the beginning of the discussion in both Hebrew and its English translation.

Hundreds of *responsa* in Hungary relate to the anti-Jewish legislation and its effects on the lives of observant Jews. Besides *halakhic* problems generated by the anti-Jewish legislation they reflect the difficulties of observant Jews in the war conditions, such as problems of women getting to the *mikve* after the curfew, getting rid of the *hametz* before Pesah in factories owned by Jews but run by non-Jewish partners (partnership was usually made as a consequence of the anti-Jewish Laws) or the difficulties of purchasing *etrog* for the Sukkot holiday. These issues are not covered in the dissertation, because they involved less interaction between Jews and non-Jews and were less directly related to the anti-Jewish legislation.

LF Results

The present study adds *responsa* literature as a relevant source for historical research on the Shoah of Hungarian Jewry. I aimed to place the Hungarian Orthodoxy back into focus and investigate specifically the observant Jewish experience of the Shoah. The overall conclusion is that *responsa* are essential for the historical research on the life of observant Jewry in general, and are necessary for the discussion of the process of discrimination and persecution of Hungarian Jewry in particular.

The study analyzed texts mirroring some aspects of the bureaucratic process leading to the destruction of Hungarian Jewry. In this sense the scope of the research is broader than the particular Orthodox experience of the Shoah and reflects the Jewish experience of discrimination in the given period in general. I have focused on Hebrew *responsa* to allow the reader to confront the point of view of the Jews who lived through the process that led to their almost total physical destruction.

According to Yehuda Bauer the task of the historian of the Shoah is more than understanding the process of the murder of the Jews and answering the question of how they died. "I want to know how they lived," he wrote.¹⁶ This dissertation intended to answer this question in its possible range.

The restriction of Jews in the Hungarian economy was carried out without taking into account the well-established common interests of the Jewish and non-Jewish actors in Hungarian economy. Interestingly, the discriminatory measures that intended to separate "Hungarian" and "Jewish" financial interests, in some respect resulted, as a side effect, in actually strengthening cooperation. The chapter on the ban on ritual slaughter and the chapter on the exclusion of the Jewish population from the economy are both based on texts, which clearly show that Jewish and non-Jewish actors often had common economic interest, depending on local factors. Jewish tradesmen and craftsmen employed non-Jews to work on the Sabbath and made contracts of dubious legality with them in an effort to evade the regulations of the anti-Jewish Laws and decrees. The second chapter on the army service of observant forced laborers misses this perspective as forced labor itself realized the disintegrative aim of the Hungarian administration.

The texts referred in the study show that the original attempt to separate "Jewish" and "Hungarian" interests and put a stop to their cooperation within the Hungarian economy could not be fully achieved.

The first anti-Jewish Law in 1938 defined Jewishness by religion. However, neither the first nor the second laws had explicit religious motives, and in fact the latter, following the German example, defined the term "Jewish" predominantly on racial grounds, disregarding religion and thereby making conversion an unsatisfactory escape from the law.¹⁷ Many contemporary rabbis noticed the racial (and non-religious) character of the Laws and decrees.¹⁸ This assessment of the current persecution, instead of defining it as a "religious persecution" (*shmad*) had significant *halakhic* ramifications, and enabled some rabbis to adopt a lenient position in some issues. Nonetheless, from a historical point of view, there is no doubt that one of the aims of the anti-Jewish legislation was to destroy the infrastructure of Jewish religious observance (see especially the chapter on the ban on ritual slaughter).

Within the parameters of the Orthodox religious worldview, rabbis made considerable efforts to cope with harsh economic and other realities of the persecution.

¹⁶ Bauer, Yehuda, *The Death of the Shtetl* (New Haven, 2009), p. 178.

¹⁷ A person was considered a Jew if at least two of his grandparents were members of the Jewish community and considered Jews. Exemptions: anyone baptized before August 1, 1919, and whose ancestors had settled in Hungary before January 1, 1848; and anyone with mixed parentage was exempted, provided they had both been members of a Christian denomination since at least January 1, 1939. The third anti-Jewish Law, the Race Protection Law (*Fajvédelmi törvény*) of 1941, explicitly defined Jewishness on racial grounds.

¹⁸ R. Yoel Teitelbaum also spoke about the persecution of the Jewish race and not the Jewish religion. See: R. Yoel Teitelbaum, *Sheelot u-teshuvot Divrei Yoel, Orah Hayyim*, no. 16 (Jerusalem, 1981).

In the Orthodox worldview, the key to survival – under oppression no less than under conditions of relative stability and tranquility – is adherence to religious laws and customs. R. Ephraim Billitzer (Bethlen, Transylvania, today Beclean, Romania) in his *responsum*¹⁹ (May 29, 1944) says as follows:

"אבל ה"ו [חס וחלילה] להפר התורה הקדושה יתבטלו כל האומות ודבר אלקינו יקום לעולם ואבות אבותינו מסרו נפשם לשמים ולא רצו לעבור ח"ו על התורה כי היא חיינו ואורך ימינו וקיים דתנו ואמונתנו באורך הגלות ואתם הדבקים בה' חיים כולכם היום."

“So we must not breach the holy Torah, God forbid, as all the nations will perish while our Almighty’s word will still exist forever. Our forefathers suffered martyrdom for God and did not want to transgress [the commandments of] the Torah, God forbid, as the Torah is our life, it lengthens our life and sustains our religion and faith in the exile, and you, the adherents of the Almighty are alive today.”

In *responsa* and other rabbinical works written in the Shoah we find relatively little of what may be called theological reflection on the historical situation of the Jewish community or individuals. There is no doubt that many of them perceived the current crisis as the most recent one in a long series of crises, persecutions, “times of distress” (*shaat ha-dhak*), which mark the course of Jewish history.

Our *responsa* tell us that observant Jewish life was sustainable even after the promulgation of extensive anti-Jewish legislation. The inherent logic of *halakhic* decision-making in concrete problems – looking for precedents and analogies in earlier Jewish legal literature – also creates a sense of historical continuity, more than a sense of uniqueness. By making analogies with past cases and interpreting the reality of the 1940s by the traditional Jewish historical approach, the rabbis transformed the external threat into an internal Jewish problem, making it a challenge to be faced within the *halakhic* framework. And the adherence to religious law and staying by all means in the *halakhic* framework provided hope for survival even under the harshest conditions.

1.G Technical remarks

The Hebrew and Yiddish words are transliterated according to the standard transliteration. Hebrew words that are generally known to the English reader from the Hebrew, such as *halakha* or *mikve* are transliterated according to the modern Sephardic pronunciation. In the Appendix I give the biography of the rabbis whose *responsa* are referred to in the study, and a glossary of the

¹⁹ R. Ephraim Billitzer, *Yad Ephraim*, no. 15 (Tel Aviv, 1970), see the third chapter.

foreign (mostly Yiddish and Hungarian) words that appear in the discussed *responsa*. I give the relevant bibliography in the end of every chapter.

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II. Introduction of Mandatory Stunning in Hungary as Reflected in the Responsa

II.A The decree on mandatory stunning in Hungary. Sources

The decree on mandatory stunning prior to slaughter of cattle was issued on April 1, 1938 by the Hungarian Ministry of Agriculture. It reinforced a decree that had already been introduced in 1932, which made stunning animals prior to slaughter mandatory but at the same time exempted Jewish ritual slaughter (*shehitah*). In April 1938 the decree on obligatory stunning terminated the exceptional status of Jewish ritual slaughter.¹ This step was considered by the Jewish public as an anti-Jewish measure. The decree resulting in the cessation of legal ritual slaughter was the first drastic anti-Jewish measure taken by the Hungarian administration in the end of the 30s, which was the start of a six-year period of anti-Jewish policy in the country.² The cessation of legal ritual slaughter in Hungary affected every Jewish community financially, predicting the forthcoming more and more drastic and more explicit anti-Jewish legislation.³

Responsa are first-rate sources for examining the preliminaries and consequences of the decree and the effect that the cessation of ritual slaughter had on Jewish communities. Besides responsa, this chapter utilizes archival documents of the Hungarian Ministry of Agriculture.⁴

The text of the decree did not explicitly prohibit the practice of Jewish ritual slaughter. Its explicit goal was to “humanize” the process of slaughter at state-controlled slaughterhouses by

¹ Decree No. 21.700/1938 signed by Ferenc Marschall, the Minister of Agriculture. See *Magyarországi Rendeletek Tára (Body of Hungarian Decrees) 1938*, vol. 1 (Budapest, Magyar Királyi Belügyminisztérium, 1939). Preliminaries of the decree: decree No. 54.300/1908 of the Ministry of Agriculture ordered stunning of cattle prior to slaughter. This order was extended over smaller animals 18 years later by decree No. 13.113/1926. According to the 2nd section of paragraph 90 of decree No. 100.000/1932 (issued as an implementation of Law 1928: XIX.): “Big animals has to be stunned before bleeding to death, apart from urgent compulsory slaughter (*kényszervágás*) and Jewish ritual slaughter. This decree has to be applied to small animals as well (calf, foal, pig, hog, sheep, lamb, goat and kids) if they were slaughtered at public or private slaughterhouses.” *Magyarországi Rendeletek Tára 1933*, vol. 1 (Budapest, Magyar Királyi Belügyminisztérium, 1933), 125 and *Magyarországi Rendeletek Tára 1938*, vol. 1 (Budapest, Magyar Királyi Belügyminisztérium, 1939). The decree was put into force on April 15, 1938.

² The first anti-Jewish Law (*For the More Effective Protection of the Social and Economic Balance (A társadalmi és a gazdasági élet egyensúlyának hatályosabb biztosításáról)*) was issued a month later.

³ “(...) The prohibition of slaughtering animals without prior stunning (...) was almost always one of the first anti-Jewish steps taken by occupation authorities of the Nazis all over Europe.” (Michman, Dan, *Holocaust Historiography. A Jewish Perspective* (London-Portland: Vallentine Mitchell, 2003), 260.

⁴ National Archives of Hungary / Magyar Országos Levéltár (MOL), K184, 1938, 66/20320; *ibid*, K184, 1939 66/40006; *ibid*, K184, 1940 66/90102.

obligating ritual slaughterers to introduce stunning prior to Jewish ritual slaughter. Stunning was introduced on smaller animals too, with the exception of poultry.⁵ However, as consumption of small meat stock was unfamiliar in the kosher market, this aspect of the decree had no great influence on Jewish communities.

The history of the ban on ritual slaughter all over Europe before World War II as well as Hungarian archival sources clearly show that the obligation of stunning prior to slaughter had antisemitic motives. The decree concerning mandatory stunning prevented observant Jews from continuing with proper and legal religious practice of ritual slaughter, thus Jewish communities in Hungary could not provide their members with legally slaughtered cattle. It is plausible that many members of the Orthodox camp shared the view of R. Shalom Wieder, the Orthodox rabbi of Nyíregyháza, who considered the ban on ritual slaughter as a test imposed by God on his nation. In R. Wieder's view "Israel" could not fully pass the test.⁶

Halakha strictly prohibits pre-stunning, which makes the meat religiously unfit for consumption. And yet, despite the clear prohibition, the possibility of stunning at kosher slaughters *after* slaughter was discussed by some Hungarian Orthodox authorities after the decree took effect. The Orthodox and Neolog leaderships stood out for an unequivocal prohibition of stunning *prior* to slaughter of meat stock. The uniform prohibitive standpoint of Hungarian Orthodoxy is apparent in four responsa addressed to R. Yehuda Rubinfeld, the rabbi of Lugano from 1940-1941.⁷ However, after receiving support from rabbinic authorities in Poland, Bessarabia and Galicia,⁸ the central organization of Hungarian Orthodoxy, the Central Bureau⁹ suggested to the Hungarian Ministry of Agriculture that they introduce stunning *after* ritual slaughter at slaughterhouses.¹⁰

The Hungarian Government did not respond to the Orthodox petition and continued with its original policy. As a consequence, slaughtering without preliminary stunning was terminated at every slaughterhouse supervised by the state, including smaller slaughterhouses maintained by Jewish communities.

The decree imposed a punishment on those who continued with the practice of ritual slaughter without mandatory pre-stunning. However, reports of local municipalities on perpetrators testify that illegal ritual slaughter without stunning had been continued secretly, out in the sticks, in

⁵ Stunning became obligatory on calf, foal, pig, hog, sheep, lamb, goat and kids.

⁶ R. Shalom Wieder (Nyíregyháza), *Shu"t Mashmiah Shalom, Yoreh Deah*, 20. See later.

⁷ The four responsa were published in the second volume of *Shu"t Mekadshei ha-Shem*, collection of responsa dedicated to the memory of rabbis who perished in the Shoah: R. Tzvi Meisels, ed., *Sheelot u-teshuvot Mekadshei ha-Shem* (2 vols, Brooklyn, 1993).

⁸ See below the responsa of four rabbis addressed to R. Shlomo (Salamon) Strasser (representing the Central Bureau), *Ibid*, vol. 1, nos. 26-29.

⁹ Central Bureau of the Autonomous Orthodox Israelites in Hungary. The Bureau was located in Budapest. (*A Magyarországi Autonom Orthodox Izraelita Hítfelekezet Központi Irodája*).

¹⁰ The petition sent to the Ministry of Agriculture on stunning after slaughter, see National Archives of Hungary / Magyar Országos Levéltár (MOL), K184, 1939 66.40006.

cellars and in woodsheds. There were even slaughterhouses in populous cities that overlooked the presence of Jewish slaughterers during slaughter. Both responsa and archival documents of the Hungarian Ministry of Agriculture show that the practice of Jewish ritual slaughter continued despite the decree and the rabbinic prohibitions.

R. Shalom Wieder, the rabbi of Nyíregyháza presented the Jewish standpoint to the government. R. Wieder came out with a *psak din* ('halakhic verdict') against stunning *prior* to ritual slaughter. This document was translated into Hungarian and the Central Bureau sent it presumably to the Ministry of Agriculture or to the Ministry of Religion and Education in order to convince Hungarian authorities to withdraw the decree on mandatory stunning. The Hebrew original of R. Wieder's text and its Hungarian translation have been lost. Post-World War literature credits R. Wieder and his letter with the success of effectively neutralizing the decree. The overrated role of R. Wieder as the savior of ritual slaughter appeared for the first time in the introduction of R. Wieder's responsa collection that was published by the author's grandson.¹¹ In his book on rabbinic sources of the Holocaust¹² Abraham Fuks also emphasizes R. Shalom Wieder's role and ascribes the repeal of the decree to him.

As opposed to this interpretation, archival documents of the Ministry of Agriculture show that Jewish resistance to the ban did not cause any change in the policy of the Hungarian Government and the decree on mandatory stunning remained in effect unaltered within the borders of Hungary proper.

However, the implementation of the decree was never observed in Carpatho-Russ, due to the great number of traditional Jews in the local population and their large share in the local economy in the re-annexed territories. Carpatho-Russ was re-annexed by the Hungarian Army in March, 1939 and the administrative decrees issued by the Hungarian Parliament, together with the decree on obligatory stunning, came into force in July of the same year. The practice of ritual slaughter had never ceased in Carpatho-Russ due to a decree issued by the Ministry of Agriculture in January 1940, which absolved the whole area from the obligation of stunning prior to slaughter.¹³ Due to its illegal transport to Hungary proper kosher meat was available in the North-Eastern parts of Hungary as well, areas that were mostly inhabited by Orthodox Jews.

The introduction of the second decree that endorsed ritual slaughter in Carpatho-Russ was an outgrowth of the different composition of the Jewish population living within the borders of Hungary proper and beyond Trianon borders: leniency of the administration flowed from their realization that it could not be enforced, could not stand up against the power of the large Orthodox population living in Carpatho-Russ. The exemption from mandatory stunning in Carpatho-Russ

¹¹ R. Shalom Wieder, *Mashmia Shalom* (Brooklyn, 1971), pp. 10-11.

¹² Fuks, Abraham, *Ha-Shoah bi-mekorot rabbaniim* (Jerusalem, 1995), p. 57.

¹³ The decree was issued on January 16 in 1940. Decree No. 90.462/1940 (published in *Budapesti Közlöny / Budapest Gazette*, no. 16 on January 21, 1940).

prior to slaughter was due to Endre Korfáth, lord lieutenant (*főispán*) of Ung and Bereg counties of Carpatho-Russ and Baron Zsigmond Perényi the Government commissioner (*kormányzó*) of Carpatho-Russ. Documents of the archive of the Hungarian Ministry of Agriculture affirm that they both were in favor of the continuation of Jewish ritual slaughter in the territories under their supremacy.

Thus the availability of kosher meat both in Carpatho-Russ and in some parts of Hungary proper was due to socio-economic factors, which were reflected in the legislation of the Ministry of Agriculture.

II.B Halakhic conditions of proper ritual slaughter

The Torah enumerates pure and consumable (*kosher*) and impure and unconsumable (*treifa, neveia*) animals.¹⁴ According to *halakha*, besides fish, every kosher animal – mammals and poultry – has to be ritually slaughtered in order to make it fit for consumption.¹⁵ The Torah prohibits the eating of blood, thus every attempt is made by the Jewish slaughterer (*shohet*) to remove blood from the animal during slaughter. Jewish religious law strictly controls ways of slaughtering: proper ritual slaughter has to be performed by a trained and qualified person, whose duty is to check the physical condition of the animal before and after slaughter. During the slaughter the animal has to be tied up and lain down in order to cause total bleeding. The cut must be made immediately after casting and the *shohet* has to use a razor-sharp, long and wide knife without a notch. He has to cut the neck with one move to the spinal column including the windpipe (trachea), pharynx and the big cervical arteries together with all the soft parts. The neck of the animal has to be bent backwards and tightened while all the blood leaves the body. The sudden blood loss, especially from the brain, dissolves the function of the cerebrum and also relieves pain before the cattle loses consciousness.

Prior to its slaughter and death, the animal must possess sufficient vitality; the *shohet* has to make sure that none of the specified, vital organs exhibit any essential impairment of its normal intact condition. The only animals that are consumable are those, which were supervised by the *shohet* during the whole process and reacted suitably, in a way characteristic of healthy animals.

¹⁴ Lev. 9-11.

¹⁵ bHullin 9a.

II.C Decrees on stunning in European countries

Stunning of animals prior to slaughter has been initiated by societies for prevention of cruelty to animals since the 19th century in Europe. Anti-*shehitah* agitation originated in Germany in the 1860s, and spread to Switzerland, where mandatory stunning prior to slaughter was introduced in some of the provinces resulting in the cessation of Jewish ritual slaughter. A general obligation of stunning was issued in 1893 in Switzerland; and later in Finland (1902-03 and 1909-12), Norway (1929), Poland (1936), Denmark, Sweden, Hungary and Italy (1938).¹⁶ Anti-*shehitah* campaigns had also more or less antisemitic roots: their initiators claimed that Jewish ritual slaughter is brutal and expresses the cruelty of Jews.¹⁷

Antisemitic propaganda helped to promote the cause of animal protectors, and stunning prior to slaughter was introduced in German provinces under the pressure of the Nazi party (Bavaria 1930, Braunschweig 1931, Oldenburg 1932, Thuringia 1932). After the Nazi takeover on April 21, 1933, the order to stun by striking or by an electric shock was put into force in entire Germany.¹⁸ German Jewish communities immediately organized the importation of kosher meat from Denmark. The German occupation entailed the ban of ritual slaughter all over Europe during the Second World War.

In Germany of the 1930s protesting against the ban by public bodies and organizations amounted to rejecting Nazi ideology and the Nazi Party itself, and supporting Jewish organizations against the ban meant commitment to religious freedom. The German Catholic Center Party was

¹⁶ On the situation in Poland see the correspondence between R. Ben Tzion Halbershtam from Bobov, R. Yosef Yitzhak Schneerson from Lubavitch and R. Chaim Ozer Grodzinski from Vilna on the situation following the promulgation of the decree on stunning in Poland: *Shu"t Mekadshei ha-Shem*, vol. 1, nos. 22-25.

¹⁷ Opponents of circumcision relayed similar complaints claiming that "(...) Jews knowingly caused animals and infants pain." Judd, Robin, *Contested Rituals: Circumcision, Kosher Butchering, and Jewish Political Life in Germany, 1843–1933* (Ithaca, NY: Cornell University Press, 2007), p. 107. Blood libels, accusation of brutality, charges against all Jewish ritual behavior done with a knife all have the same root: "The campaigns against kosher butchering and circumcision also articulated and reinforced this supposed affinity between Jews and blood." Ibid, p. 112. As in the view of antisemites this "cruel behavior" threatened the non-Jewish world, restrictive measures had to be taken against them.

¹⁸ On the ban on Jewish ritual slaughter in Germany see also Munk, Michael L. and Munk, Eli, eds., vol. 1: *Shechita. Religious and historical research on the Jewish method of slaughter* (Brooklyn : Gur Aryeh, Institute for Advanced Jewish Scholarship, 1976), Zimmels, Hirsch Jakob, *The Echo of the Nazi Holocaust in Rabbinic Literature* (New York: Ktav Pub. House, 1975), chapter on the prohibition of the ritual slaughter, pp. 181-193. Kirschner, Robert, transl., intr., *Rabbinic Responsa of the Holocaust Era* (New York: Schocken Books, 1985), pp. 38-50. Michman, Dan, *Holocaust Historiography. A Jewish Perspective* (London-Portland: Vallentine Mitchell, 2003), pp. 253-254; 260. On the ban in European countries see the work of Tydor-Baumel, Yehudit: "לבירור היסטורי של שתי סוגיות הלכתיות, שנתעררו בתקופת השואה" (Sinai, vol. 91, nos. 3-4, 1982), pp. 156-162 and Warhaftig, Zerah, "המאבק ההיסטורי והמשפטי על השחיטה היהודית" (Jerusalem, Mossad Harav Kook, 1963) pp. 151-159.

the most important ally of the Jewish community in its defense of kosher butchering.¹⁹ A similar phenomenon took place in Hungary, where organization of non-Jewish slaughterers requested the repeal of the decree along with Jewish organizations.

II.C.1 First rabbinic responses

After 1933 rabbis living in Germany debated whether they ought to permit the stunning of animals prior to slaughter. Experiments were performed to ease rabbinic concerns regarding the physiological effects of an electric shock and narcosis. The experts debated whether sense of pain is eliminated by any of the new stunning methods; the debate also concerned the question of whether it is possible to draw general conclusions from experiments done on just a few animals.²⁰

Due to Nazi restrictions on the import of kosher meat from Denmark, pressure on rabbis living in Germany to permit consumption of meat that had gone through electro-narcosis prior to slaughter increased. In Switzerland the importing of kosher meat was terminated in the summer of 1940 as a consequence of the war. Supply of kosher meat ceased in the country, causing great distress in Jewish communities.²¹

R. David Weinberg, a prominent Orthodox rabbi and scholar in Berlin, permitted the consumption of meat of pre-stunned animals by narcosis, thus disregarding some conditions of proper, kosher slaughter.²² He was opposed by most rabbinic authorities who all prohibited stunning prior to slaughter regardless of the stunning method but R. Weinberg was convinced by the new experiments that narcosis does not injure the animal.²³ In order for his lenient opinion to be consistent with rabbinical authorities' views on new methods of stunning he travelled to eastern Europe seeking advice from R. Chaim Ozer Grodzinski (Grodzinski) of Vilna²⁴ and R. Meir Shapiro of Lublin.

¹⁹ Judd, *Contested Rituals*, pp. 12-13.

²⁰ See R. Weinberg's opinion on the limits of the experiments in his tractate on stunning published after the war: "(...) I was convinced that the experiments performed on animals who underwent electric shock and afterward remained alive proved nothing. For not all animals are identical in their nature or body structure; what does not injure one animal may well cause certain death to another. We lack tested and proven means to discern that the electric current does not cause lethal injury or damage sufficient to render the slaughtered animal's internal organs *terefah*." In spite of his reservations R. Weinberger argued in favor of using this method prior to slaughter. Kirschner, *Rabbinic Responsa of the Holocaust era*, p. 48.

²¹ R. Wieder, rabbi of Nyíregyháza, elaborated on the problem in his responsum sent to Switzerland (see below). Kirschner, *ibid*, pp. 38-50.

²² See Tydor-Baumel, "לבירור היסטורי", p. 158.

²³ R. Weinberg refused to print his treatise on stunning during the Second World War. For the text see R. Yehiel Weinberg, *Sheelot u-teshuvot Seridei Esh*, vol. 2 (*Yoreh Deah*), no. 4 (Jerusalem, 2012).

²⁴ R. Chaim Ozer Grodzinski (1863-1940), rabbi of Vilna.

R. Weinberg argued for the permission to stun *prior* to slaughter knowing that Orthodox authorities would never agree to it. R. Weinberg argued that conditions forced him to permit narcosis prior to ritual slaughter: had the prohibition stayed in effect, German non-Orthodox Jews would have started consuming stunned, non-kosher meat. The majority of rabbis living in Lithuania and Poland rejected Weinberg's argument and prohibited the consumption of stunned animals claiming that in a "time of persecution" (עת גזירה) even the smallest commandment has to be fully performed.

R. Mordekhai Brisk, rabbi of Tasnád (Transylvania, today Tășnad, Romania) used the same argument as R. Weinberg, permitting consumption of poultry that was cut in the neck with one movement. His responsum²⁵ was sent to the rabbi of Breslau, R. Moshe Wassermann, as a response to the decree introduced in Germany that ordered the cutting of the neck of poultry with one move. During proper ritual slaughter the *shohet* notches the neck so the blood can leave through the larynx; cutting the neck with one move renders the meat unfit for consumption.²⁶

R. Wasserman's most important argument is that harsh circumstances and "time of distress" (שעת הדחק) should be taken into consideration in decision making. R. Brisk agreed with that and added an argument based on the principle of 'transgress the law so as to be acquitted' (חטא) (בשביל שיזכה), namely had the rabbis forbidden transgression of a "light prohibition" entailing lenient punishment, they would have provoked observant Jews to transgress "severe prohibitions." It follows – argues R. Brisk – that it is the rabbis' bounden duty to decide leniently in order to protect those observant Jews who are inclined to transgress commandments in distress by eating non-kosher meat. R. Brisk refers to earlier lenient decisions regarding other issues based on the same principle.²⁷

As opposed to R. Brisk's decision, R. David Sperber (Brasov) prohibited the consumption of poultry that had had its head cut. His responsum²⁸ (1940) addressed to R. Shlomo Ehrenreich, the rabbi of Szilágysomlyó (Transylvania, today *Șimleu Silvaniei*, Romania) was written as a response to R. Ehrenreich's responsum.²⁹ The responsum³⁰ of R. Yehoshua Grünwald, the rabbi of Huszt, written three years later in 1943, elaborates on a case of a rabbi who declared slaughtered poultry kosher though its *kashrut* was doubtful – referring to "time of distress" (שעת הדחק).

²⁵ R. Mordekhai Brisk, *Shu"t Maharam Brisk*, vol. 1, no. 83. [1940]. The same argument is used by R. Vorhand, see later.

²⁶ Though there were many decisors who permitted this method, as the *Heshiv Moshe* (no. 27).

²⁷ See *Shu"t Shaarei Tzedek, Even ha-Ezer*, 27 and *Turei zahav, Yoreh Deah*, 334: 1.

²⁸ R. David Sperber, *Shu"t Afarkasta de-Anyah*, vol. 2, no. 38: 2-3.

²⁹ R. David Sperber, *Shu"t Afarkasta de-Anyah*, vol. 2, no. 37. א' מטות ת"ש (21/07/1940).

³⁰ R. Yehoshua Grünwald, *Shu"t Heshiv Yehoshua*, no. 32 (ה' וירא תש"ג) (29/10/1942) addressed to R. Naphtali Schwartz, rabbi of Szatmár.

II.C.2 Stunning methods of the 1930s in Europe and in Hungary

By the early 1880s the most common stunning method was pummeling the animal into a state of unconsciousness. The head of the animal was covered and there was a space left through which butchers could stun the animal with mallets, spikes or revolvers. In the 1930s, contrary to these “primitive” methods, the use of anesthesia and electrotherapy were developed as “humane” stunning methods.³¹

The four stunning methods in use in the 1930s in Germany were: 1, piercing the animal’s brain with a sharp spear; 2, shooting a dart into the brain (Yidd. *shiss apparat*, ‘shooting apparatus’) deadening the animal’s sensory response and killing the animal on the spot; 3, putting the animal to sleep with strong drugs, such as chloroform; and 4, using electric shock by a machine.³² All four methods made slaughtered cattle inconsumable for observant Jews: the Torah prohibits the consumption of a carcass (*nevela*)³³ so lethal methods make the animal unfit for consumption. Nonlethal methods that injure the animal’s inner organs were also rejected, because only healthy animals can go through ritual slaughter.

In Germany electro-narcosis was regarded as the most effective and modern method for “humanizing” the slaughter of animals. The majority of rabbis living in Germany rejected this method also, because electro-narcosis induces a change in the brain, causing the absorption of blood to the animal’s organs. On the other hand, rabbis living in Holland expressed a permissive attitude towards electro-narcosis.³⁴

Halakha obligates the slaughterer to make sure that no anatomic or functional damage has happened to any internal organ of the animal prior to slaughter. The examination covers examination of heartbeats, brain, the lungs and proper movements of the limbs during slaughter until its end. Unaffected circulation of the animal’s blood must also be checked during slaughter. Interior damage to the animal’s organs resulting from the fall of the animal (ריסוק אברים) must be evaded also, along with the absorption of the blood into the animal’s organs (הבלעת דם באברים).

Had stunning been introduced slaughterers could not make sure that the animal did not die already before the beginning of slaughter. In simple words: for kosher slaughter to be valid the

³¹ Judd, *Contested Rituals*, p. 95.

³² Kirschner, *Rabbinic Responsa of the Holocaust Era*, p. 40.

³³ Deut. 14: 21.

³⁴ Stunning *prior* to slaughter by an electric shock was permitted by R. Dasberg. See: Michman, Dan, “Religious life during the Holocaust,” Michman, Jozeph – Levie, Tirtsah, eds., *Dutch Jewish History*, vol. 1 (Jerusalem: Tel-Aviv University – Hebrew University of Jerusalem – The Institute for Research on Dutch Jewry, 1984), 383 (379-399). The electric shock instrument constructed by Philips was accepted by all members of the Assembly of Chief Rabbis in Holland, however only a few communities could afford to buy the very expensive equipment. It was accepted in Belgium and some rabbis tried to introduce it in Switzerland also.

animal must be conscious when killed. Anesthetization and electric shock both render the meat inconsumable, because they make the animal unconscious before slaughter.

In Hungary of the 1930s the most prevalent stunning method was blowing the head with a club, which fractures of the skull, causing flooding of the blood to the skull, resulting in the animal crashing to the floor. Not only this method makes the animal unfit for consumption according to the standards of all streams of Judaism in Hungary, but all stunning methods were rejected by the rabbinical authorities.

The decree on mandatory stunning forced rabbis to take a closer look at different methods of stunning. R. Yonathan Steif elaborates on the common stunning method in Hungary: striking the animal's head with a cudgel.³⁵

- ◆ R. Yonathan Steif, *Shu"t Mahar"l Steif*, no. 130.
Addressee: –
Respondent: R. Yonathan Steif (Budapest)
Date: [After April 1, 1938]

"ע"ד [על דבר] אם מותר לעשות ההימום הנקרא בעטייבונג קודם השחיטה. הנה יש לדון בזה משלשה וארבעה טעמים: (א) מטעם מסוכנת, (ב) מטעם חשש נפולה, ג) מטעם חשש שמא ניקב קרומו של מוח, או שנתמסס ונעשה מים, ד) שמא אירע בו טריפות משאר ח"י [18] טריפות."

"Regarding whether it is permitted to stun the animal (*Betäubung*) before slaughter. Hereby we will discuss the matter from three or four aspects: 1, animals of poor health; 2, fear of falling [onto the ground], 3, fear of the cerebral membrane being broken or becoming dissolved and turning to water; 4, [the meat is ritually unfit for consumption] because of one of the other 18 causes."

[והנה] R. Steif focuses on four problems. The first is whether the animal that has been stunned falls under the category of an animal of poor health³⁶ (חולנית מסוכנת). Slaughterers have to make sure before and during ritual slaughter that they slaughter healthy animals: only those animals can be consumed, that showed vitality during their slaughter. If the animal died of disease and not as a consequence of the slaughter, its consumption is forbidden. It follows that it would be prohibited to slaughter the animal if stunning deprived slaughterers of checking whether the animal is still alive before slaughter, because the Torah prohibits the consumption of a carcass (גבלה).³⁷

³⁵ Another responsum of R. Steif elaborates on the shot of the iron spit (Yidd. *shiss apparat*) into the brain immediately after slaughter. The end of the text and the decision have been lost, see R. Yonathan Steif, *Shu"t Mahar"l Steif*, no. 141.

³⁶ See bHullin 37a-b and *Shulhan Arukh, Yoreh Deah*, 17.

³⁷ Deut. 14: 21.

[והנה] Stunned animals collapse onto the ground, and there is a chance that inner organs would be smashed to pieces. According to the ruling of the *Shulhan Arukh*³⁸ if an animal fell from the height of ten *tefahot* (ca. 1 meter) then it would have to be more carefully supervised before its slaughter. Had stunning caused the fall of the animal to the ground, stunning would have made the animal unfit for consumption.

[והנה] The third point is whether stunning makes changes in the brain of the animal. Had the cerebral membrane been broken or became dissolved,³⁹ consumption of the animal would be forbidden. R. Steif agreed that the electric stunning does not result in any change in the inner organs.

[והנה] R. Steif alludes to the fact that not all the above mentioned doubts concerning the effects of stunning can be dismissed .

"והנה בוודאי ע"י [על ידי] ההימום יש לחוש שגורם שינוי והפסד צורה בכל איברים וה' צריכין לבדוק מכפא דמוחא עד אטמא ואין אנו בקיאים בזה ע"כ [על כן] כל כמה שלא נתברר שאין לחוש בכל אותן החששות שהערותי עליהם אין להתיר ההימום קודם השחיטה כלל עד ירחם ד' עלינו ויתבטלו כל גזירות רעות מעלינו ומעל כל בית ישראל ונזכה לגאולה קרובה לעלות לציון ברנה ולאכול שם מן הזבחים ומן הפסחים הכשרים ביתרון הכשר בב"א [במהירה בימינו אמן]."

"So certainly there is legitimate concern that stunning causes change and transformation of the limbs and we should check the brain but we are not experts in that. Therefore, until these mentioned concerns are dispelled, stunning before slaughter cannot be permitted at all. [This prohibition will stay in effect] until the Almighty will have mercy on us and all the evil decrees will be repealed from us and from all the house of Israel and may we be redeemed in the near future to ascend to Zion in joy and to eat there from the sacrificed animals and from the kosher Pesah sacrifice, soon in our days."

II.D Antecedents of the decree on mandatory stunning in Hungary. Reactions

In Hungary, regulations concerning meat stock fell within the competence of the Directorate of Animal Protection (*Állategészségügyi Igazgatás*), division IV/B.2 of the Hungarian Ministry of Agriculture. A summary prepared by the Direction in February 1938 described Jewish ritual slaughter in the following terms:

"Jewish ritual slaughter is an utmost cruelty to animals, an outdated ritual, namely a religious practice that does not follow from the fundamental principles of the religion.

³⁸ *Shulhan Arukh, Yoreh Deah, 58.*

³⁹ *Ibid, 31.*

Jewish ritual slaughter is [...] obsolete and unsuitable, and gives a cruel and dangerous example for public morality.” “[...] Freedom of religion is granted only within the confines fitting with public order and good morals.”⁴⁰

The mayor of Budapest addressed a petition to Ferenc Marschall,⁴¹ the Minister of Agriculture on February 18, 1938, requesting the prohibition of Jewish ritual slaughter. The mayor argued for mandatory electric stunning at slaughterhouses and presented his request as a presumed “common wish of municipalities of the country and local residents of the capital.” The mayor was concerned that Jewish ritual slaughter causes more pain to the animal than regular slaughter.

The Corporation of Butchers of Budapest (*Budapesti Mészárosok és Hentesek Ipartestülete*) rejected the petition of the mayor of Budapest and asked for the Minister’s intervention in favor of ritual slaughter on the same day as the decree on mandatory stunning was introduced (April 1, 1938). The letter of the Corporation gives a detailed description of the interdependence of Jewish and Christian butchers regarding Jewish ritual slaughter. Front parts of the ritually slaughtered slaughter cattle (ca. one third of the animal) were sold to Jewish consumers as kosher meat. The back parts of the cattle were not consumed by Jews because of *halakhic* reasons – they were sold to Christians.⁴² The bony front parts were less demanded in the non-kosher market – however, they were sold at a higher price as kosher meat. According to the estimation of the Corporation had the ritual slaughter been stopped, the front parts would have been consumed neither by Jews nor by Christians, so these parts would have not been sold at the same price as before. The result would be rendering the back parts of the cattle more expensive. It follows that according to the estimations of the principals of the Corporation, introduction of stunning would cause a decline in the quantity of animals at slaughterhouses. The other plausible cause for the rise of prices is the loss of income from the export of kosher meat.

The petition of the National Chamber of Agriculture (*Országos Mezőgazdasági Kamara*) dated March 21, 1938, and sent to the Minister of Agriculture, did not hesitate to take a stand on Jewish religious matters:

“In our view stunning before ritual slaughter does not contradict either the religious feelings of the Jews or Jewish religious law. [...] We have to call your to Excellency’s

⁴⁰ “A sakterolás a legnagyobb állatkinzás, idejétmúlt rítus, vagyis olyan vallásos gyakorlat, amely nem érinti a vallás alapjait. A zsidó rituális vágás [...] elévült és alkalmatlan, kegyetlen és veszedelmes példát szolgáltat a közerkölcsnek.” “[...] A vallások szabad gyakorlata a közrenddel és a jó erkölcsökkel összeférő határok közt van biztosítva.”

⁴¹ Ferenc Marschall hold the position of Minister of Agriculture in the Darányi Government between the 9th of March and the 15th of May in 1938.

⁴² According to Jewish law the sinew in the back part of the animal has to be gouged out (Heb. *nikkur*). Nikkur was not practiced in Hungary because of numerous local rabbinical decisions, which often cite a lack of proficiency that it requires and the opposing opinions regarding the practice as its main reason, so consumption of the back parts of the animal was prohibited.

esteemed attention that in Hungary it is not Jewish laws that are in effect and they have no binding force. It follows that Hungarian legislation should be based exclusively on what we derive from Hungarian law and Hungarian traditions and what is required by Hungarian interests.”⁴³

The petition suggests the superiority of the state over religious practice, and urges the putting an end to practices that contradict the laws of the state. (The petition also claims that Jewish objections to stunning are based on late oral traditions.) Thus from the perspective of the legislators the limitation of the autonomy of Jewish communities was inevitable in order to protect the laws of the state and its juridical order. Contrary to the declared aim of the decree, it was not animal rights that had to be protected from the Jews, but the law of the state needed protection from Jewish religious practice. The decree concerning obligatory stunning is comparable to other anti-Jewish decrees: the general antisemitic political climate of the late 1930s was conducive to the original claim to ban ritual slaughter. However, the issue of Jewish ritual slaughter – unexpectedly – did not come to rest with the promulgation of the decree; on the contrary, it began a long and hopeless struggle between political will and realities without any prospect of settling the issue.

The mentioned petition brought up the issue of the proportion of ritually slaughtered meat stock in state-controlled slaughterhouses and criticized the high proportion of Jewish ritual slaughter: as opposed to the percentage of the Jewish population in Budapest (20 percent), the percentage of ritually slaughtered horned cattle was three times higher (59.45 percent). According to a note attached to the petition there were 35,889 cattles slaughtered at the main slaughterhouse in Budapest (*Budapesti Nagyvághíd*) in 1937, out of which there were 21,338 ritual slaughters. This disproportionality was due to a number of factors: stunning made the process more expensive; ritual slaughter was technically simpler; the back parts of slaughtered cattle were not consumed by Jews, and were sold to non-Jewish consumers. The high number of kosher ritual slaughters and the mentioned circumstances indicate a prosperous cooperation between Christian and Jewish butchers.⁴⁴

The Chamber of Agriculture aimed to put an end to the disproportionality by putting on the mask of animal protection, emphasizing that the planned decree requiring compulsory stunning was completely independent of the government’s anti-Jewish policy and was not actually a corollary to

⁴³ “Véleményünk szerint tehát a rituális vágás előtti kábítás nem ütközik sem a zsidók vallási érzületébe, sem a zsidó vallási törvényekbe. [...] Fel kell hívnunk Nagyméltóságod nagybecsű figyelmét arra, hogy Magyarországon nem a zsidó törvények vannak hatályban és bírnak kötelező erővel és hogy a magyar jogszabályalkotás egyedül azon alapulhat, amit a magyar törvények és magyar hagyományok hagytak ránk és amit a magyar nemzet érdekei kívánnak meg.”

⁴⁴ See the article of Gyula Tennenbaum (Miskolc) on the cooperation between Jewish slaughterers and Christian butchers: “A társas egyezmény szerint: minden a vágóhídra kerülő marha, rituálisan, a metsző által lesz levágva. Ha az állat a vizsgálatok után kósernek találtatik, úgy a kóser mészáros magának veszi az elejét, a tréfó mészáros pedig a hátulját. Viszont ha a marha tréfó, akkor az egész a tréfó mészárszékbe vitetik kimérésre.” *Zsidó Újság* (Jewish Newspaper), XIV. No. 20 (27 May, 1938), p. 3.

the anti-Jewish law being in preparation. The petition requested to finish the 10-year process of animal protection in Hungary referring to the debate in the Parliament in 1928 on Animal Health Protection Law⁴⁵ that already discussed a proposal to prohibit Jewish ritual slaughter.

Proportional approach characterized the anti-Jewish legislative agenda in Hungary in the end of the 1930s: the first anti-Jewish Law being prepared at the same time⁴⁶ intended to re-regulate the Hungarian economy by redistributing positions according to the proportion of Jews in Hungarian society. The second anti-Jewish Law issued a year later in April 1939 reduced the percentage of Jewish participants in some sectors of the Hungarian economy even more drastically.

In opposition to the petition of the National Chamber of Agriculture, the petition of the Alliance of Workers of Meat Industry in Hungary (*Magyarországi Húsipari Munkások Szövetsége*) from March 1938 supported the continuation of Jewish ritual slaughter and requested the withdrawal of the planned decree on stunning. The head of the Alliance referred to the fact that the quantity of animals had already been much reduced and the ban on kosher slaughter would cut down the amount even more. According to the estimations of the Alliance, the cessation of kosher slaughter would lead to a loss of 500 thousand consumers, and cause the total collapse of the meat industry with catastrophic effect on non-Jewish consumers and on butchers who received their salary according to the amount of animals that were slaughtered.

The head of the alliance supposedly did not overestimate the recession in consumption.⁴⁷ R. Tzvi Meisels, rabbi of Vác, attests the following in his commentary on responsa elaborating on the ban on ritual slaughter in Hungary: the Neolog and Status Quo Communities in Hungary officially shared the opinion of the Orthodox Community and prohibited the consumption of pre-stunned animals. However, according to R. Meisels, many members of these “reformed” communities started eating non-kosher beef as a consequence of the lack of kosher meat, moreover, every Jew, including those who were observant, was endangered by the threat of eating non-kosher food:

"וגם לרבות הסתדרות של הקהלות המתחדשים (הנקראים נעאלאגים ושטאטוסקווא) החליטו שבדבר זה אין הפרש בין הקהלות האורתאדאקסי ובין קהלותיהם וגם המה לא רצו להנהיג שחיטת הבהמות ע"י [על ידי] הימום מקודם אעפ"י [אף על פי] שאצלם ה' גורמת ההחלטה הזאת שהרבה אנשים השייכים לדגלם אשר מעולם נהגו לאכול בשר שחיטה מתוך מסורת ירושת אבות לבנים התחילו לאכול בשר טריפה רחמנא ליצלן. אמנם נולדה שערורי' גדולה וממש פקוח נפש לאלפים מישראל ומכשולות רבות עד אין מספר וגם לרבות חרבן הקהלות היראים עד שהמורא ה' שרבים מהעם יפרצו גדר לאכול טריפות ח"ו [חס וחלילה] והקהלות היראים החרדים לדבר ה' יחרבו ר"ל [רחמנא ליצלן] שבר על שבר [...]"⁴⁸.

⁴⁵ 1928: XIX. Law on Animal Health Protection (*Állategészségügyi Törvény*), Section No. 30 of the law regulated the process of slaughter (See *Magyar Törvénytár 1928. évi törvénycikkek* (Encyclopedia of Hungarian Laws, 1928) (Budapest: Franklin, 1929).

⁴⁶ The law was issued in May, 1938.

⁴⁷ On the recession in consumption see *Zsidó Újság*, XIV. Nos. 51-52 (30 December, 1938), p. 6: The estimated financial loss due to the cessation of ritual slaughter in Hungary was about four million *pengő*.

⁴⁸ R. Tzvi Meisels, *Dvar Tzvi, Shu"t Mekadshei ha-Shem*, vol. 1, p. 51.

“And even the unions of the reform communities (the so-called Neologs and Status Quo) decided not to differ from the Orthodox concerning the matter. They [the Neologs and the Status Quo] did not want to introduce stunning before ritual slaughter, although as a consequence of their decision many under their banner, who always consumed only meat of [ritually] slaughtered animals according to the tradition, started to eat meat ritually unfit for consumption, may the All-merciful protect us. Indeed, it became a big scandal and [the situation] truly requires the saving of lives of thousand Jews. Because it involves uncountable obstacles and [even lead to the] destruction of the Orthodox communities and we fear that many from [the Orthodox] people would transgress the law and eat food ritually unfit for consumption, God forbid! And the Orthodox communities of God-fearing people will be destroyed for observing God’s rule, piece by piece, may the All-merciful protect us.”

R. Meisels alludes to the difficult financial situation of Orthodox communities due to the loss of the *gabella*, the tax on the slaughter of meat stock, which gravely hit the budget of the communities. The ban on ritual slaughter shattered Jewish communities financially as they lost this major source of income. The *gabella* was paid by consumers to the Jewish community indirectly: it was included in the price of kosher meat. Following the ban on legal ritual slaughter many communities – Orthodox, Neolog and Status Quo alike – were compelled to supply the deficit by introducing a new substitute tax. The deficit badly affected every Jewish community, but hit the poorer Orthodox communities more drastically. R. Meisels predicted the “destruction of Orthodox communities” (חורבן הקהלות היראים), because on top of their bad financial situation there were even members of Orthodox communities who were also tempted to eat non-kosher meat.⁴⁹

The petition of the Orthodox community of Nagyléta dated April 8, 1938, also mentioned the crucial issue of the lack of the *gabella* tax. Both the petitions of the Orthodox Community of Szikszó and Nagyléta sent to the Hungarian Ministry of Agriculture referred to the prosperous cooperation between Christian and Jewish butchers.⁵⁰ Both petitions called the attention of the administration to the fact that obligation to stun would mean effectively a prohibition of ritual slaughter. There were non-Jewish butchers also (of Diósgyőr and Mezőcsát) who supported the continuation of Jewish ritual slaughter.

In November, 1938, the First Vienna Award partitioned Czechoslovakia and Southern Slovakia and Southern Carpathian Russ (Carpatho-Russ), including Királyhelme⁵¹ (Upper Land / Felvidék) became re-annexed to Hungary. Four months later, on March 20, 1939, the Orthodox community of Királyhelme⁵¹ sent a petition to the Ministry of Agriculture arguing for the continuation of the practice of ritual slaughter. The petition was signed by the head of the rabbinic court in Királyhelme⁵¹, R. Vilmos (Yoel) Glattstein, chief rabbi of the Bodrogek area, and by six

⁴⁹ On reactions see the article in *Zsidó Újság*, XIV. Nos. 14-15 (pp. 4-5) (April 15, 1938) titled: “Schitó nélkül. Kábítás nélkül tilos a rituális vágás” (“Without *shita*. It is forbidden to slaughter without stunning.”) See also the title page of *Zsidó Újság*, XIV. No. 18 (May 13, 1938).

⁵⁰ National Archives of Hungary / Magyar Országos Levéltár (MOL), K184. 1938, 66/20320.

⁵¹ Today Kráľovský Chlmec, Slovakia, center of the Bodrogek area.

further representatives of the community along with further 30 non-Jewish stockmen. The petition supported the request by pointing out that 26% of the population of Királyhelmece was Jewish and consumed only ritually slaughtered animals.

The petition of Királyhelmece demonstrates that the Orthodox Jewish population of the town ceased to consume beef and calf after the cessation of ritual slaughter, and consumed only poultry. This decrease in consumption badly affected the financial position of the whole population of the town, which mostly lived by stock-raising. The ban on Jewish ritual slaughter affected badly the poor as well: before the introduction of the decree Jews consumed the front part of the animal, while the back parts of the ritually slaughtered animals were sold on a lower price to non-Jews. After the cessation of Jewish ritual slaughter the price of meat soared and the excise of animals decreased drastically.⁵² The petition also mentions that the practice of ritual slaughter was still permitted both in Ungvár and in Csap (towns in Carpatho-Russ).

These petitions show that besides the Jewish population living both in Hungary proper and in the annexed territories all participants of the meat industry were stricken by the decree and the Ministry unconsciously started an avalanche-like, unpredictable process. The persistence of the administration on stunning followed from the political conditions of the country to a great extent and ignored basic economic interests of the country in the name of “humanization” of slaughter and animal protection.

II.E Two responsa on the ban of legal ritual slaughter in Hungary and Poland

The following responsum of R. Yonathan Steif, rabbi of Budapest, depicts the complexity of the meat industry by throwing light on the different financial interests of its participants. He elaborates on a case that arose as a consequence of the cessation of legal Jewish slaughter and resulted in a significant deficit in the budgets of Jewish communities.

⁵² The immediate result of the cessation of ritual slaughter was a decline in meat consumption and the fall in prices. See *Zsidó Újság* (Jewish Newspaper), XIV. No. 24, p. 5 (June 24, 1938) and *ibid*, XIV. Nos. 25-26, p. 2 (July 1, 1938).

- ◆ R. Yonathan Steif, *Shu"t Mahar"i Steif*, no. 259

Addressee: –

Respondent: R. Yonathan Steif (Budapest)

Date: [After April 1, 1938]

"שנים ששכרו הרשות מהקהל למכור בשר כשר מעוֹשן ונתפשו, בהגאבעללע" לשלם לשנה סכום קצוב והתשלומים הוא שבכל שבוע ישלם כל אחד סך מסויים ונתבטל השחיטה באמצע חודש ושלמו עד אמצע חודש והקהל תובעים על כל החודש בטענתם שלפי חשבון כבר שחטו כ"כ [כל כך] בשר בחצי החודש כפי ערך ששחטו בשנה העבר לכל חודש. וטוענים עוד שמאחר שמעמידים להם המשגיח גם להלאה למכור הבשר הנשחט צריכים לשלם איזה סכום גם להלאה. והקונים הגאבעללע טוענים שמה ששלמו הגאבעללע על הבשר ששחטו, התשלומין היה גם על ההשגחה שלא שלמו כ"א [כי אם] כדי למכור בהשגחה וגם יש להם רשות לשחוט כמה בהמות שרוצים א"כ [אם כן] פטורים גם על להבא, ורק להמשגיח המה משלמים מידי חודש כמו ששלמו גם עד עתה כן ישלמו לו גם להלאה. הדין עם מי."

"Two [meat-tradesmen] who received the right of sale of kosher smoked meat from the community made a compromise that the two pay the yearly gabella[-tax] in installments every week according to a fixed payment rate. As Jewish ritual slaughter ceased in the middle of the month the two paid accordingly until the middle of the month but the community wants them to pay [the gabella-tax] for the whole month, claiming that until the middle of the month as much meat had been already slaughtered as in a whole month in the preceding year. The community also argues that the supervisor of the selling of slaughtered meat works in the whole month, and they have to pay him a certain sum in advance also. However, the renters of the gabella argue that the gabella they paid concerns the meat they already slaughtered and the installments covered the supervision they paid only for selling the meat under supervision. Moreover they have the right to slaughter as many animals as they want so they are exempted from the advance payment [for the second half of the month]. They are willing to pay only to the supervisor for the future [for the second half of the month] as until now. Who is right?"

The two tradesmen argued that according to their arrangement with the community the gabella-tax was paid in fixed installments, thus it never depended on the amount of slaughtered animals. Accordingly, after the cessation of ritual slaughter they are supposed to pay only for the services of the supervisor for the rest of the month, but not the main part of the gabella (for the rest of the month), which is related to the slaughter itself.

[לכאורה] R. Steif makes an analogy based on the *Shulhan Arukh, Hoshen Mishpat*.⁵³ A worker who was hired for watering the field does not get his salary on a rainy day when he has no work.

[אמנם] Another analogy is taken from the *Mordekhai* who decides in favor of a woman, the renter of a house who died in the middle of the month before paying the lease. According to the decision the heirs cannot be obliged to pay the remainder of the lease for the whole month.

⁵³ *Shulhan Arukh, Hoshen Mishpat*, 334: 2.

[ויבענין] The author presents two analogies on the concept of “national disaster” (מכת מדינה). Following the core of the decision of R. Isserles based on this concept, R. Steif decides in favor of the two tradesmen against the community. As the community always required a fixed weekly payment from the tradesmen, they were authorized to slaughter as much meat as they wanted, and are exempted from paying the community based on the extra amount of meat stock slaughtered in the first half of the month.

R. Steif based his decision on the two mentioned analogies and on his assessment of the situation as a “national disaster.”

R. Yoel Teitelbaum’s responsum relates to the reduction in the number of legal ritual slaughters performed in Poland due to the decree on mandatory stunning introduced in 1936. His responsum elaborates on an interesting aspect of the decree: the *halakhic* consequences of illegal slaughter. R. Teitelbaum also depicts the decline of traditional Jewish life in his generation both in Poland and in Hungary. The responsum was written when Jewish ritual slaughter was still practiced legally in Hungary.

◆ R. Yoel Teitelbaum, *Shu”T Divre Yoel, Yoreh Deah*, no. 34.

Addressee: R. Yehezkel Shraga Halberstam⁵⁴ from Cieszanów, Poland

Respondent: R. Yoel Teitelbaum (Szatmárnémeti, Transylvania, today Satu Mare, Romania)

Date: [Between January 1, 1936 and April 1, 1938]

"ראשית מ"ש [מה שכתב] בדין מה שלפי משפטי המדינה אין לשחוט אלא סכום מצומצם והשובי"ם [והשוחטים ובודקים] שוחטים יותר במחבא ומצד דינא דמלכותא עונשן גדול עד מאוד [...]"

“First, regarding his reference to state orders that reduced the number of ritual slaughters; and slaughterers who practice [ritual] slaughter mostly in secret and the law of the state punishes them with great punishment.”

(א) In the beginning R. Teitelbaum refers to the situation that had evolved in Poland where state orders restricted the number of ritual slaughters. Jewish slaughterers started to practice ritual slaughter in secret risking harsh punishment. The addressee, R. Yehezkel Halberstam, refers to R. Shlomo Kluger approvingly,⁵⁵ who prohibited practicing ritual slaughter in secret and without

⁵⁴ R. Yehezkel Halberstam (1913-1986) announced a one-day fast and a day of prayer for *erev rosh hodesh Nissan*, 1938 in Poland. A day of mourning and fasting was proclaimed by rabbis a year later again, on the day the law against ritual slaughter was processed in the Sejm. See *Orthodox Zsidó Újság* (Orthodox Jewish Newspaper), I. No. 9. (20 March, 1939), pp. 3-4.

⁵⁵ (1785-1869), rabbi in Brody, Galicia. His book was published in 1933.

proper Jewish religious supervision.⁵⁶ However, R. Hayyim Yitzhak Rahlin in his book (1906)⁵⁷ opposed this position, referring to the Talmudic permission to perform ritual slaughter on a boat.

In his answer, R. Teitelbaum sums up the decisions of earlier authorities regarding slaughter practiced under irregular circumstances or outside the slaughterhouse – for example while sitting or in a forest. R. Teitelbaum emphasizes that a most important requirement for slaughterers is the ability to concentrate when doing their work.

(ב) Referring to the decision of the *Shulhan Arukh* R. Teitelbaum suggests that slaughterers are trustworthy regarding their own physical state: a slaughterer is reliable stating that his hand did not shake during slaughter.

There is no general *halakhic* ruling on slaughterers who were in anxiety during the practice of slaughter. Even now, when “our understanding is limited” (בפרט עכשיו שדעתנו קצרה) and slaughterers easily fail due to their fear of being caught, slaughterers are considered reliable to perform the slaughter if their character was not tremulous and they were able to focus their mind.

R. Teitelbaum adds that contemporary life in Poland differs from earlier times, thus the decision has to be made very carefully; especially because any lenient decision made in a single case can be easily misinterpreted as a general lenient decision. R. Teitelbaum suggests that local rabbinic courts lost their power in Poland: instead of listening to decisions of the *bet din*, slaughterers tend to obey the butchers and the leaders of the community. As a consequence of slaughtering in secret both the slaughter and the commerce of the meat lack the supervision of the rabbinic court.

(ג) In Poland a rabbi prohibited consumption of meat from a certain slaughterer and despite the prohibition, Jewish butchers traded with the meat slaughtered by him. The power of the butchers of the same community became manifest also in their opposition to the rabbi, who supported the appointing of a supervisor. Hence the rabbi opposed a ban on consumption of meat that was not supervised from the beginning of the slaughter until its disposal and rendered all meat unfit for consumption.

(ד) Living in a generation, which deteriorates [from a religious point of view], one must deal with *halakhic* matters with extra care. This applies especially in his generation when [religiously] unreliable people form the majority in the Jewish population.

(ה) (ו) The author continues his responsum with depicting the general decline of his generation. The process that started hundred years ago in Poland resulted in the fact that observant Jews constitute only a minority in Jewish communities. Non-observant Jews now constitute the majority even in the few settlements where the majority population was observant. It follows that the *halakhic* principle of “presumption regarding one’s trustworthiness” (חזקת כשרות) is

⁵⁶ R. Shlomo Kluger, *Ha-elefkha Shlomo, Yoreh Deah*, no. 1.

⁵⁷ R. Hayyim Yitzhak Rahlin, *Bar Livai* (New York, 1906).

inapplicable, namely no Jew is reliable regarding the commandments any more. R. Teitelbaum depicts the situation that developed in Hungary at that time as follows:

“ואנו רואים בחוש במדינתנו שת”ל [שתודה לאל] מתוקן הדבר ויש משגיחים על הבשר מתחלת הזביחה עד לאחר המכירה, ואעפ”כ [ואף על פי כן] עושין הקצבים כל טצדקי והרבה פעמים נתברר מה שרוצים הקצבים לעשות בסתר באיזה אופן שלא ירגישו המשגיחים להכשיל הבריות עבור הנאה מועטת, וכמה פעמים רואים אף בקצבים שמתנהגים בדרכי התורה והיראה בכל ענינים עצהיו”ט [על צד היותר טוב], ובענין מכירת הבשר שהוא נוגע למו”מ [למשא ומתן] שלו הוא נחשד, וק”ו [וקל וחומר] בהקלים והריקים גם בשאר עניני דתוה”ק [דתורת הקודש], ואך יען שיש משגיחים מרגישים במעשיהם, ובמקומות שאין השגחה כראוי אינם יודעין זה יען שהקצבים עושים מה שלבם חפץ ומאכילים נו”ט [נבלות וטרפות] רח”ל [רחמנא ליצלן] ולא חלי ולא מרגיש שום אדם מהמת חסרון ההשגחה”.

“And we have a sense that in our country – thanks to the Almighty – all is well managed: meat supervisors supervise the process from the beginning of the slaughter until the selling of the meat. Nevertheless [Jewish] butchers use excuses and many times it turns out that they intend to act in secret behind the back of the supervisors for small benefits, causing people to fail. And many times we see that even butchers who follow all religious norms punctiliously are suspected [of transgressing some rules] in selling the meat, because it concerns business. This is true even more so concerning people who are light-minded [=less observant] also in other religious matters. At least [in some places] supervisors are aware of their acts, but in places where there is no appropriate supervision butchers do what they want and feed [the people] with ritually unfit food – may the All-merciful protect us – and no one cares about the lack of supervision.”

This diagnosis of R. Teitelbaum on the situation in Hungary depicts the years before mandatory stunning was introduced in the country. Butchers evaded supervision and found excuses to sell the meat even without proper supervision. Thus, according to this sober summary, when it comes to business, even observant butchers lose their reliability regarding certain *halakhic* matters. All the more so with those who are religiously not reliable at all. Still, R. Teitelbaum emphasizes the importance of supervision, even if it isn’t able to prevent all religious abuses and laxities.

(ט) R. Teitelbaum affirms R. Halberstam’s prohibition on the consumption of meat the preparation and selling of which was not supervised. He adds that since the ruling of the *Tevuat Shor*⁵⁸ it is not allowed to buy from anyone who does not hold a *kashrut* certificate issued by the local rabbi. Thus R. Halberstam acted in accordance with this old norm.

⁵⁸ The work of R. Ephraim Zalman Shor (1550-1633).

II.F A proposed solution by the Hungarian Orthodox leadership: the idea of stunning animals after slaughter

Responsa and archival documents testify that both the Neolog and the Orthodox leadership expected the repeal of the decree on mandatory stunning. After the introduction of the decree, the Neolog leadership in Budapest hurried to the authorities asking permission to stun the animals *after* proper religious slaughter. In the beginning prominent religious authorities in Hungarian Orthodoxy prohibited consumption even of *post*-stunned animals. However, their standpoint changed radically in the course of time. The petition of the Central Bureau was submitted to the Hungarian Ministry of Agriculture on April 5, 1938, four days after the decree came into force.

- “1. Before slaughter. The rejected methods of the present practice of ritual slaughter criticized [by the decree] such as tying, toppling, tightening of the animal’s head or having the animal wait before slaughter, we propose to be eliminated by applying the Weinberg-tool (or any similar method) in places where the great quantities of ritual slaughters make possible the related huge expenses. This tool, which eliminates all the present disadvantages [criticized by the decree] is a very practical tool invented for this goal, which eliminates the necessity of having the animal toppled.
2. After slaughter. We are ready to offer the same advantages provided by stunning: we would arrange stunning immediately after ritual slaughter in an appropriate and suitable manner.”⁵⁹

The petition expresses the strong will of Hungarian Orthodoxy to fulfill the requirements of the Ministry by presenting a halakhically acceptable alternative to the traditional methods.

The offer regarding stunning the animal after slaughter reflects a radical change in the Orthodox viewpoint. The Central Bureau seemingly took the decree’s declared, but fake, concern for animal protection seriously without referring to the hidden antisemitic motives behind the Ministry’s decree.

The issue of quickening the death of the animal after slaughter had been already discussed by rabbinic authorities before the 1930s. When dealing with the problem of stunning from a *halakhic* point of view rabbis could refer to earlier discussions of the matter.

⁵⁹ “1. A metszés előtt. Azokat a kifogásolt módozatokat, amelyek a jelenlegi rituális vágást megelőző megkötözésre, ledöntésre, az állat fejének kifeszítésére, várakoztatására stb. vonatkoznak, akként kívánjuk kiküszöbölni, hogy azokon a helyeken, ahol a vágások nagy száma az ezzel kapcsolatos tetemes kiadásokat elbírják, készek vagyunk az u.n. Weinberg-féle – vagy más hasonló – apparátust alkalmazni, amely apparátus olyan konstrukciójú, hogy az itt számbajöhető összes hátrányokat kiküszöböli. Ez az apparátus egy erre a célra előállított igen praktikus találmány és az állat földredöntését mellőzhetővé teszi. 2. A metszés után. Azokat az előnyöket, amelyeket leölésével kapcsolatosan a kábítás jelent, ugyancsak készek vagyunk biztosítani, még pedig olyképpen, hogy nyomban a rituális metszés megtörténte után történjék meg megfelelő alkalmas módon az állat elkábítása.” National Archives of Hungary / Magyar Országos Levéltár (MOL), K184. 1939 66/40006

In Hungary the prohibition of striking the animal's head after slaughtering spread because the Hatam Sofer and his son, the Ktav Sofer strictly prohibited using any method that would hasten the death of the animal after its slaughter. And their opinion rested on the *Turei Zahav*,⁶⁰ who prohibited striking the head of the animal after slaughter until the animal had fully bled to death. The opinion of Hungarian rabbis was stricter than of the rabbis of Austria who – following a similar decree on stunning – permitted the consumption of meat stock stunned by a strike after slaughter. (In Vienna striking on the head of the animal and stabbing its throat had been ongoing practices for 50 years.)

The difficulty of forming an Orthodox *halakhic* opinion regarding post-stunning is reflected in two responsa: one by the rabbi of Tét, R. Abraham Sofer and the other by the rabbi of Makó, R. Moshe Vorhand. The first, a prohibitive opinion by R. Sofer was written before the permissive standpoint of the Central Bureau had been put forth, and predicted the rejection of stunning. The second text of R. Vorhand was written after a meeting of Orthodox rabbis to form an opinion on the matter. R. Vorhand was one of the participants.

- ◆ R. Abraham Sofer, in: *Kovetz Bet Vaad la-Hakhamim*, vol. 6 (2011), pp. 76-79

Addressee: R. Ephraim Fischl Sofer

Respondent: R. Abraham Sofer (Tét)

Date: 1938

Title: (!) בענין גזירת המלכות באונגאריין להמית הבהמה תיכף אחר השחיטה (!) / About the decree of the Hungarian state to stun the animal immediately after slaughter (!)

[מכתב] R. Abraham Sofer mentions that he barely had time to answer R. Ephraim Sofer's long letter as he was occupied with searching for data in the registers of the community by request of community members.⁶¹

[ויהגני] R. Abraham Sofer already wrote a letter earlier to R. Ephraim Sofer on post-stunning, but the addressee still seeks for his guidance: he asks R. Abraham Sofer to clarify his earlier decision that rendered the meat of stunned animals ritually unfit for consumption. R. Ephraim Sofer asks whether this prohibition is meant to be valid *be-di-avad* (after the event, *ex post facto*), namely after the slaughter has already taken place, or even *mi-le-khatehillah* (in the first place), namely before the slaughter itself. The question was whether R. Abraham Sofer's prohibition has a general validity.

⁶⁰ Commentary on the *Shulhan arukh* by R. David ha-Levi Segal. *Shulhan Arukh, Yoreh Deah*, 67 (1586-1667).

⁶¹ According to a note by the editor, R. Sofer worked on filling in false documents to save Jews from forced labor service by changing the date of birth in the birth register.

[בלתי ספק] R. Zvi Hirsh Palato's book *Kunteres havlaat ha-dam*⁶² unequivocally ruled that it is strictly forbidden to quicken the death of the animal after slaughter in any way until the blood runs out of the body. The introduction of the book already elaborated on the attempts of animal protection societies to oblige Jews to kill animals immediately after slaughter. R. Abraham Sofer makes an important distinction: at the end of the 19th century authorities did not intend to force Jews to transgress religious laws and even consulted rabbis on the matter. He recalls that at that time there were rabbis who permitted striking the animals' head immediately after slaughter and there were those who opposed this practice, with the Shevet Sofer⁶³ among them.

R. Abraham Sofer argues that had the issue of post-stunning arisen at the time of the Hatam Sofer, he would have unequivocally prohibited the practice. Regardless of the prohibition itself, the Hatam Sofer followed the principle that it is prohibited to uproot a prohibitive custom set up earlier by the majority.

[ולא ידעתי] Thus the author himself would also prohibit stunning *be-di-avad* in the case where there was a consensual prohibition on post-stunning. These are the author's words from his first letter sent to R. Ephraim Sofer:

"ועתה אחרי שיבא ביטול הגזירה כאשר נקוה בע"ה [בעזרת השם], מלבד כי תהי' פילוג חדש בענין איסור והיתר כי אנחנו הארתדוכסים ננהוג לחומיא גם במעשה אחר השחיטה שהיא טריפה גמורה במוחלט אחרי שאנחנו רואין שם בהסכמות עמוד 5 דברי מו"ר [מורי ורבי] הגאון בעל שבט סופר שמעיד וכו', א"כ [אם כן] עלינו לילך לאור שלשת הרועים רבותינו הקדושים ואין לנו בזה שום ספיקא דדינא."

"And now after the decree will be canceled – with the Almighty's help – as we hope, in spite of the forthcoming new split [between the different streams in Hungary] about the matter of prohibition or permission, because we, the Orthodox, will practice prohibition on [stunning] after religious slaughter as the meat of an animal stunned after slaughter is totally unfit for consumption. After we see the points of agreement of my teacher and rabbi, the wise *Shevet Sofer* on page 5. Thus we should follow our holy rabbis without any doubt about the decision."

The decision of R. Abraham Sofer is the following: It is forbidden to stun the animal in any way after slaughter even in "time of distress" (שעת הדחק). R. Sofer refers to a supposed agreement of "our ancestors" to his decision even "in time of [suppressive] decrees [against Jews]" (אפילו בשעת הגזירה כזאת). He knows no argument in favor of allowing a permissive decision.

[וא"כ] The author warns that a permissive statement from the Central Bureau would bring about an objection: many would consider stunned meat as prohibited, because it is not accepted to permit something that was prohibited before. Thus according to R. Sofer there is even no need to present the matter before the rabbinic committee of Hungarian Orthodoxy (ועד הרבנים).

⁶² R. Tzvi Palato, *Kunteres havlaat ha-dam* (Frankfurt: 1890).

⁶³ Simha Bunem Sofer, the son of the Ktav Sofer and the grandson of the Hatam Sofer.

[הנה] The author refers to the fact that R. Ephraim Sofer had previously given his permission to stun the animals immediately after slaughter “by the electric hat they put on the head of the animal” (“ע"י [על ידי] הכובע העלעקטרי שנותנין על ראש הבהמה”) R. Ephraim Sofer argued that the electric current does not render the meat ritually unfit for consumption.

R. Abraham Sofer strictly opposes his view and argues that even in the case of introducing stunning by electricity the situation of Jews living in settlements without electricity would not have been solved. (According to the author’s estimation there were more than two thousand settlements of this kind in Hungary). Moreover, even in settlements with an electricity supply the outdated practice of striking the animal’s head was practiced. The author adds interesting details of the process of stunning: non-Jewish butchers are disappointed that they are forced to strike the head of animals “that go on four legs,” because striking gives the meat a “black look.” R. Sofer even states that they do not keep to the law of the state themselves. For the sake of appearances those butchers strike the head of the animal after slaughter in the presence of a supervisor, who – together with non-Jewish veterinarians – disregard the offence. However, the tendency to overlook the correct implementation of the decree does not refer to Jewish butchers.

[והאמת] R. Abraham Sofer uses a lenient interpretation of the decree on mandatory stunning as an important argument, stating that animal protection was not the real motive behind the decree. The goal of the decree was not humanizing slaughter, since it does not prohibit the slaughter of pigs outside slaughterhouses.⁶⁴ The author gives an account of the traditional method of sticking the pigs’ hearts, lengthening mortal agony for half an hour in some cases, resulting in death-rattle sounds being heard from a great distance. He ranks this practice as brutal, and considers the traditional stunning method of striking the head of the animal in a similar way. From the fact that there was no central intention of the authorities to put an end to this cruel practice of pig-sticking, the author draws the conclusion that the decree on mandatory stunning is “a *gezera* that was introduced due to hatred of the Jews” (“א"כ [אם כן] אין כאן בעיקר אלא גזירה מחמת שנאה לישראל”). As such, according to him, it is a duty to fight against the decree as it is possible to get such decrees withdrawn.

[ובכל אופן] R. Abraham Sofer expresses his astonishment regarding the Neolog community of Hungary, which published its permissive attitude concerning stunning after slaughter. According to him the suggestion weakens the Jewish position in the struggle against the decree. Interestingly the author does not reject the use of chloroform even before slaughter as suggested by R. Fischer, who wrote to the author that they were hoping for the decree to be canceled soon.

⁶⁴ Decree No. 21.700/1938 made stunning mandatory on pigs slaughtered at the slaughterhouses. R. Sofer refers here to the traditional Hungarian pig sticking practiced in the backyard.

As opposed to R. Sofer's, the responsum of R. Moshe Vorhand, the rabbi of Makó, argues for permitting stunning. R. Vorhand was a member of the rabbinic committee of Hungarian Orthodoxy convened by the Central Bureau to discuss the *halakhic* consequences of the decree.

The text reflects changes in the Orthodox viewpoint on post-stunning. It sums up the *halakhic* arguments, which render introduction of stunning prior to Jewish ritual slaughter impossible. He also reports on the Orthodox attempt to convince authorities that stunning the animal immediately after slaughter would satisfy the original "humanitarian" purpose of the decree.⁶⁵

◆ R. Moshe Vorhand, *Shu"t Ohel Moshe, Yoreh Deah*, no. 41

Addressee: –

Respondent: R. Moshe Vorhand (Makó)

Date: [After April 1, 1938]

Title: בענין גזירת שחיטה / On the decree of [stunning before] slaughter

"בענין השחיטה בעו"ה [בעונותינו הרבים] בשנת תרצ"ה קודם פסח יצא הגזר דין לאסור השחיטת גסה ודקה רק עופות מותרים מטעם שרצו שכל בהמה קודם השחיטה צריכין לתת לה "לעקטרישען שטראם" על מוחה כדי שתפול לארץ בתרדימה וזה אסור מדאורייתא מהרבה טעמים."

"Regarding ritual slaughter – in our great sins – in the year 1938 before Pesah a legal decree came out, which prohibited the slaughter of cattle and small animals⁶⁶ and exempted only poultry. They wanted to introduce giving an electric shock to the animal's brain so that it would fall to the ground, stupified. This is prohibited by the Torah for many reasons."

[אחז] First, striking breaks through the cerebral membrane (קרומ), and blood is released internally making the consumption of the animal forbidden. Second, many animals die directly because of the strike. *Kashrut* of the meat becomes doubtful if the animal falls down at once, even if the height from which the animal fell is less than the traditionally established "dangerous" measure, 10 *tefahot* (ca. 1 meter).

As stunning prior to slaughter could not been accepted by the Orthodox, the idea of post-stunning came up:

⁶⁵ An article published in the Jewish periodical *Zsidó Élet* (Jewish Life) brought up the possibility of post-stunning at the first time. *Zsidó Élet* (Jewish Life), VI., nos. 17-18, p. 3. titled: "Méltányosságot és igazságot a rituális vágás kérdésében! Üresek a kóser mészárszékek. Csak baromfit fogyaszthat a vallásos zsidóság" / "Equity and justice concerning ritual slaughter! Kosher butcher's shops are empty. Observant Jews can eat only poultry."

⁶⁶ See note 5.

"אבל לאח"ז [לאחרי זה] חשבו שיכולו לתקן הדבר שיתנו הלעקטרישען שטראם מיד אחר השחיטה ויתרצו בזה, ולכן קראו יחדיו הקאמיטע מהרבנים ה' או ו' וגם אני הייתי בתוכם ועיינו בדבר באיזה אופן יהי נכון עפ"י [על פי] הלכה, ובררנוהו בה"י [בהשם ישמרנו] כדת ונכון, אף שלא הועיל כלום בעו"ה [בעונותינו הרבים] עד שירחם ד' והרשעה כעשן יכלה במהרה דידן אמן וכי"ר [וכן יהי רצון]. [...]"

"However, after this they [the Central Bureau] thought that they would find a solution by using the electric shock immediately after religious slaughter and they agreed on it, thus they convened the rabbinic committee of five or six members and I was also one of them. I considered which [stunning] method would be compatible with the *halakha* and we clarified the matter in the name of the Almighty to find the right way, but nothing helped, in our great sins; [and the matter will be solved only when] the Almighty will have mercy on us and may the Evil slip away like smoke as soon as possible, Amen."

It seems that the rabbinic committee summoned by the Central Bureau did not decide in favor of stunning in the first round of the discussion. The decision of the Central Bureau in favor of post-stunning may have been influenced by the lenient decisions of Polish and other authorities (see below).

[הנה] R. Vorhand refers to Rema⁶⁷ in saying that in the case where the slaughtered poultry or animal does not die after being slaughtered, it is permitted to strike it on its head but to slaughter the animal a second time is strictly forbidden. The *Turei Zahav*⁶⁸ and the Shakh⁶⁹ warned against breaking the neck of the animal as that would result in absorption of the blood into the animal's organs (הבלעת דם באברים), which automatically renders the meat forbidden for consumption.

[ועיין] R. Isserles warns to be cautious with methods that hasten the death of the animal to avoid absorption of the blood into the animal's organs.⁷⁰ The *Turei Zahav* interprets R. Isserles as the following: striking on the head is permitted only in cases when the blood of the animal has already flowed out before the strike is administered. In all the other cases the meat has to be cut into small portions before salting. As opposed to that the Shakh⁷¹ represents a more permissive attitude.

[והתבואות] The *Tevuat Shor*⁷² follows the Shakh's leniency and permits striking on the head. After reflecting on all the previous decisions, the rabbinic committee decided to permit the use of the electric stunning machine (לעקטרישען שטראם), arguing that it was dubious whether the use of the machine meant that the animal would die sooner. However, had the stunning been carried out by striking the head of the animal with a hammer (האמער), the meat would have to be cut into pieces of

⁶⁷ *Shulhan Arukh, Yoreh Deah*, 23: 5.

⁶⁸ *Ibid*, 23: 7.

⁶⁹ *Ibid*, 23: 12.

⁷⁰ *Ibid*, 67: 3.

⁷¹ *Ibid*, 67: 3 (9).

⁷² *Ibid*, 23: 10.

five kilograms or less before salting. Had stunning been done by an axe (קרדום), the meat would have to be cut into pieces of two kilograms or less before salting.

There is a *halakhic* tradition of hastening the death of the animal after its slaughter, based on the Shakh's position, who permitted in certain cases the hastening of the death of the animal after slaughter by striking its head. R. Vorhand relies on this position in his argument for introducing post-stunning. At the end of the responsum R. Vorhand expresses his wish that Jewish ritual slaughter (in its traditional form) will continue in the near future.

II.F.1 Responsa written by rabbinic authorities of Eastern Europe

The Orthodox leadership of Hungary preferred to take counsel with leading authorities before granting general permission to consume *post*-stunned animals. The change in the opinion of the Orthodox leadership in Hungary was due to the correspondence between the head of the Bureau, the prominent Orthodox rabbi of Debrecen, R. Shlomo (Salamon) Strasser, and Orthodox authorities living in Eastern Europe. R. Chaim Ozer Grodzinski (Vilna, Latvia), R. Eliezer Mishel (Turka, Galicia, today Ukraine), R. Yehuda Zirelsohn (Kishinev, Romania, today Moldova) and R. Abraham Horowitz (Probezhna, Ukraine) all permitted the consumption of animals that were stunned *after* slaughter in their responsa addressed to R. Shlomo Strasser.⁷³ The initial letter of R. Strasser to these authorities probably informed them that there were many who started to eat ritually unfit meat after the introduction of the decree.⁷⁴

R. Chaim Ozer Grodzinski, the rabbi of Vilna, permitted the consumption of post-stunned animals – regarding the difficult circumstances – on condition that they had been slaughtered in the proper way before stunning:

◆ *Shu"t Mekadshei ha-Shem*, vol. 1, no. 26

Addressee: R. Shlomo (Salamon) Strasser (Debrecen)

Respondent: R. Chaim Ozer Grodzinski (Vilna)

Date: ד' כ"ה תמוז תרצ"ח (July 27, 1938)

"אחדשה"ט [אחרי דרישת שלומו הטוב] יקרת מכתבו הנכבד בצירוף מכתב הרבנים הגאונים מבודאפעסט יצ"ו [ישמרהו צורו ויחיהו] הגיעני לנכון. בו יודיע כי יש תקוה להשתדלות במקום הגבוה, להתיר את השחיטה באופן

⁷³ *Shu"t Mekadshei ha-Shem*, vol. 1, nos. 26-29.

⁷⁴ See the responsum of R. Zirelsohn: "[רהמנא ליצלן]" / "נפרצה הגדר לפני קלי הדעת להכשל באכילת נבלה ר"ל [רהמנא ליצלן]" / "The fence [built up by *halakhic* restrictions around the Torah] was burst before the [religiously] corrupt who failed and started to eat ritually unfit food, may the All-merciful protect us."

שיסדרו את ההימום ע"י [על ידי] אלקטרי, או באופן אחר לקרב את המיתה אחר השחיטה, והעלו בדעתם דעת תורה מכמה טעמים ונמוקים להתיר, ושואלים בזה חות דעתי."

"I send my greetings to you. I have received your kind letter together with the letter of the wise rabbis of Budapest, may the Almighty keep them in good health. You inform me that you hope for lobbying in a high place for getting permission to stun by electricity, or in other ways to hasten the death [of the animal] after slaughter. You [plural] analyzed the question and for several reasons arrived at the conclusion that our Law permits [post-stunning]. Now you ask my opinion [on this matter.]"

[הגני] R. Chaim Ozer Grodzinski gives his decision right at the beginning of the responsum: he permits consumption of *post*-stunned animals in "such a great distress" (שעת הדחק גדול כזה). R. Grodzinski argues that permission of *post*-stunning is the only possible way to deal with the "terrible decree" (גזירה נוראה) prohibiting the practice of Jewish ritual slaughter, because the permission prevents Jews from eating non-kosher meat.⁷⁵

R. Grodzinski refers to the issue of ritual slaughter in Finland: after a similar decree was introduced, rabbis in Finland achieved their objective and received permission from the authorities ("להכות את הבהמה לאחר השחיטה בכדי" "to strike the animal after slaughter in order to hasten its death") ("לקרב מיתתה"). As rabbis in Poland permitted the consumption of *post*-stunned animals, ritual slaughter did not cease in Finland.

R. Mishel wrote his responsum a month later. His text clarifies stunning methods in use in slaughterhouses in Hungary in 1938:

◆ *Shu"t Mekadshei ha-Shem*, vol. 1, no. 27

Addressee: R. Shlomo (Salamon) Strasser (Debrecen)

Respondent: R. Eliezer Mishel (Turka, Galicia)

Date: עש"ק חמשה עשר באב תרצ"ח (August 12, 1938)

[ע"ד שאלתכם] The responsum testifies to the use of three stunning methods in Hungary: electric shock, striking the animal's head with a sledgehammer (קורנס) and the use of an iron spit. According to R. Eliezer Mishel either of the first two methods used *after* ritual slaughter renders the meat non-kosher. However, shooting an iron spit into the brain of the animal (Yidd. *shiss apparat*, 'shooting apparatus' שוס-אפאראט) causes immediate death, thus R. Mishel rejects its use after ritual slaughter. Though had the authorities specifically ordered the use of the iron spit, meat

⁷⁵ R. Horowitz (see later) uses that same argument.

stock still could have been consumed on condition that the meat was cut into small pieces before salting.

[אל"א] R. Mishel refers to the prohibition of the *Tevuat Shor*⁷⁶ of striking the animal's head with a sledgehammer. The reason for prohibiting this method is that it does not let the blood flow out of the body. As opposed to that R. Mishel permits the use of a sledgehammer, basing his decision on another ruling of the *Tevuat Shor*⁷⁷ and other decisors who permitted stunning followed by salting referring to "significant time of distress" (בשעת הדחק גדול כזה) .

[אל"א] The responsum cites R. Strasser who alluded to the practice of *post*-stunning in Austria: following a decree on mandatory stunning after ritual slaughter, a skewer was inserted into the neck of the animal (לנעוץ את השפוד במפרקת) followed by a blow to the animal's head (להכות על ראש הבהמה). The same method was used by Jewish slaughterers. R. Mishel refers to R. Grodzinski who states that the same practice was followed in Finland. However, R. Mishel admits that Hungarian Orthodoxy represents a stricter opinion and prohibits stunning based on the decision of the *Turei Zahav*.⁷⁸

[ואתם] Nowadays – concludes R. Mishel – as religious practice and even life of the Jews is in danger, Hungarian rabbis have the right to allow even the use of the iron spit.

R. Yehuda Leib Zirelsohn, rabbi of Kishinev, noted three possible stunning methods: stabbing the brain (נקיבת המוח), hitting the head with the sledgehammer (הכאה על הראש בקורנס) and a shot with an iron spit into the brain of the animal (שום אפאראט) causing immediate death:

◆ *Shu"t Mekadshei ha-Shem*, vol. 1, no. 28

Addressee: R. Shlomo (Salamon) Strasser (Debrecen)

Respondent: R. Yehuda Leib Zirelsohn (Kishinev, Moldova)

Date: כ"ו תמוז תרצ"ח (July 25, 1938)

[הנה] Referring to lenient decisors, R. Zirelsohn permits consumption of post-stunned animals. He refers to the *Sefer ha-teruma*,⁷⁹ which permits striking on the head after slaughter and is not concerned about the blood remaining in the meat of the animal. R. Isserles agreed with the decision, but the *Turei Zahav* opposed it and ruled strictly.

⁷⁶ *Tevuat Shor*, 23: 5.

⁷⁷ *Ibid*, 27.

⁷⁸ *Turei Zahav, Yoreh Deah*, 228: 7.

⁷⁹ *Sefer ha-truma, Hilkhos shehita*, 5.

R. Zirelsohn argues that Hungarian rabbis should no longer follow the *Turei Zahav*'s strict decision. He refers to the *Shvut Yaakov*:⁸⁰ in "time of distress" a rabbinic transgression *mi-le-khatehillah* (מלכתחלה) (in the first place) can be counted as a *be-di-avad* (after the event, *ex post facto*) act, effectively avoiding punishment ("שעת-הדחק כדיעבד דמי").

[אבל] Thus R. Zirelsohn permits consumption of *post*-stunned animals in order to avoid financial and mental damage caused by the lack of meat. He refers to new circumstances (יוצא) (להרגיל) created by the decree on stunning, which overwrites the practice that was set by the strict opinions that were based on the *Turei Zahav*.

The fourth text, the responsum of R. Abraham Jakov Horowitz, rabbi of Probezhna, adds a new theme to the debate:

◆ *Shu"t Mekadshei ha-Shem*, vol 1, no. 29

Addressee: R. Shlomo (Salamon) Strasser (Debrecen)

Respondent: R. Abraham Yaakov Horowitz (Probezhna, Ukraine)

Date: ד' תשרי ה' וילך תרצ"ט (September 29, 1938)

[הנה] R. Horowitz refers to the *Shulhan arukh*,⁸¹ that permits stunning after slaughter, with the exception of cutting the neck and stabbing the heart, which are strictly forbidden.⁸² Following the *Turei Zahav* R. Isserles permits stunning after all the blood has already left the body. R. Isserles's decision was debated by later decisors, pointing out the fact that there is no use in stunning an animal that had already lost all its blood and was dead. These late decisors who permit stunning immediately after slaughter form the majority. The *halakhic* principle "*Halakha* follows later authorities" (הלכה כבתראי) (in case of differences of opinion), also suggests following the later, permissive positions.

[אך] R. Horowitz raises the question whether the practice of Hungarian Jewry based on the prohibition of the *Turei Zahav* can be considered as a *neder mitzvah* (נדר מצויה) – a vow that is considered as a binding commandment and therefore cannot easily be absolved. R. Horowitz rejects this idea by stating that lack of a certain practice (stunning) cannot be considered a vow. And he argues that lack of stunning in Hungary had only one simple reason: in the past there was no order on stunning. A further argument supporting permission is that Hungarian Jewry had been going through hard times, and had to be saved from the transgression of eating non-kosher food. Moreover, Jewish communities are to be saved from financial breakdown.

⁸⁰ *Shvut Yaakov*, vol. 3, no. 110.

⁸¹ *Shulhan Arukh, Yoreh Deah*, 23.

⁸² *Ibid*, 23: 7.

Influenced by the four lenient decisions, and by the permission of R. Grodzinski in particular, the Central Bureau permitted post-stunning of slaughtered cattle on condition that it was not done by a shot with an iron spit (שיס-אפארט) that would cause immediate death. Had the authorities insisted on the latter method, the Central Bureau – as the Neologs – also would have permitted the consumption of the meat. In that case the meat would have to have been cut into pieces of one kilogram before salting thus allowing the checking of the meat to see if there is any remaining blood in it.

In the end, the Bureau's permissive attitude towards post-stunning did not result in the restoration of the traditional way of ritual slaughter. The Hungarian Ministry of Agriculture did not withdraw the original decree and never agreed to the transposing of stunning prior to slaughter with post-stunning.

II.G Evasion of the decree on mandatory stunning in Carpatho-Russ

It is unlikely that the initiators of the decree on mandatory stunning were fully convinced that arguments for “humanizing slaughter” would persuade Orthodox Jews not to eat ritually slaughtered cattle. Either the administration foresaw that after April 1, 1938, ritually slaughtered kosher meat was transported from Carpatho-Russ. The decree regulated ritual slaughter in Hungary and expected that it will put an end to ritual slaughter, but it did not restrict importation of kosher meat from the neighboring countries. As a consequence of this omission, the administration banned the import of ritually slaughtered kosher meat from Carpatho-Russ.

Hungarian troops invaded the northern parts of Carpatho-Russ on March 16, 1939. Almost one year after the introduction of the decree on mandatory stunning, Bereg and Ung counties, together with the Ruthenian area of Máramaros county, came under Hungarian rule.⁸³ The Hungarian civil administration, including all the discriminative laws, decrees and every administrative order, came into force in the annexed territories on July 7, 1939.

Intentions of the Ministry of Agriculture regarding ritual slaughter were not as definite concerning the peripheries as concerning the homeland. The example of the problematic implementation of ritual slaughter in Carpatho-Russ shows that Count Mihály Teleki, the Minister

⁸³ An area of 12,171 square kilometers. 78,087 inhabitants of the Jewish faith returned to Hungary.

of Agriculture was unable to settle the issue of ritual slaughter.⁸⁴ Apart from facing official Jewry and the Corporation of Butchers of Budapest, both requesting the continuation of ritual slaughter, Teleki had to fight also with the governor of the Administrative Sub-Offices of Carpatho-Russ (*Kárpátaljai Közigazgatási Kirendeltség*) who fought for the sake of a lenient implementation of the decree.

An undated document prepared by division IV/B.2 of the Ministry made it clear that it is impossible to implement the decree in Carpatho-Russ. According to the document Mihály Teleki intended to order the three governors of the Administrative Sub-Offices of Carpatho-Russ to supervise the implementation of the decree. However, the implementation was sabotaged in the first place by Government commissioner of Carpatho-Russ, Baron Zsigmond Perényi.⁸⁵

“The provision [of the supervision of implementation of the decree on stunning] has been pending for months at Baron Perényi’s desire. [...] In the territory of the Máramaros sub-office – mainly in Huszt and in its vicinity – kosher slaughter is practiced on a large scale. In spite of all regulations kosher meat is continuously being smuggled from there to the inner parts of the country.”⁸⁶

The struggle for the implementation of the decree had been a lengthy process: Mihály Teleki had also had a struggle with the lord lieutenant of Ung and Bereg counties, Endre Korláth.⁸⁷ Korláth sent a petition from Ungvár on May 27, 1939, in which he insisted on the continuation of the suspension of the decree on mandatory stunning in Ung and Bereg counties. Korláth argued that the implementation of the decree had already caused serious problems in the trade of meat stock and it also had had an adverse impact on the morale of the Jewish population living in the area. Korláth wrote the following in his letter dated on May 30, 1939:

“On February 17 [1939], when the decree on kosher slaughter was implemented [in the re-annexed territories] I was empowered by Pál and Mihály Teleky [!] to suspend the implementation of these decrees on my own authority, as long as there are no problems in meat delivery. As there were no anomalies in the administrative area falling under my supremacy, I request the right from your Excellency to suspend the implementation of the

⁸⁴ Minister of Agriculture in the Imrédy and Teleki government between November 15, 1938 and December 30, 1940.

⁸⁵ Baron Zsigmond Perényi (1870–1946) Government commissioner of Carpatho-Russ between July 1939 and 1940.

⁸⁶ “Ez az intézkedés azonban Perényi báró Öexcellenciája kívánságára már hónapok óta függőben van.[...] A máramarosi kirendeltség területén – főként Huszt és környékén – azonban ma is nagyban dívik a kóser-vágás. Onnan minden rendszabály dacára állandóan csempészik a kóser-húst az ország belseje felé.”

⁸⁷ Lord lieutenant of Ung and Bereg counties since January, 1939 and representative of Felvidéki Egyesült Magyar Párt in the Parliament (1939-1944).

ban on ritual slaughter henceforward in the re-annexed territories of Ung, Bereg and Ugocsa counties.”⁸⁸

The word Ung is underlined in red ink in the document (possibly by the Minister himself) and a note in the margin indicates: “Only Ung county was considered!”⁸⁹ Noticeably the ministry had lost control over reality, and non-official interests overtook the official policy of the administration.

The lord lieutenant of Ung and Bereg counties, Endre Korláth, did not give up his struggle for legalizing the existing practice of evasion of the decree. He submitted a petition on June 5, 1939, referring to the verbal authorization of the Prime Minister, Pál Teleki, to avoid “decrees prohibiting Jewish ritual slaughter.”⁹⁰ The document attests that the leniency of the Minister of Agriculture toward Ung county was supported by Pál Teleki. Referring to his authorization, the lord lieutenant turned a blind eye to the evasion of the decree in Carpatho-Russ.

The unclarified situation caused many problems for the administration. A memorandum of the Ministry dated on June 5, 1939, objected to the infiltration of growing quantities of ritually slaughtered, not stunned, meat stock from Ung county to Hungary proper. The memorandum states that the Ministry had no means of enforcing the implementation of the decree even in the homeland, under the present circumstances.

A further memorandum of the Ministry indicates that “experience shows that the decree prohibiting ritual slaughter did not reduce the amount of trade in [kosher] meat.”⁹¹ This note reveals ignorance concerning the difference in the composition of Jews living in the re-annexed territories and in the homeland, taking no account of the fact that a significant part of Hungarian Jewry, Hungarian Orthodoxy, could not consume kosher slaughtered cattle traded legally after the inauguration of the decree.

On the other hand, this document might support the report of R. Meisels (see above) on the fact that as a consequence of the decree a great number of Jewish people belonging to Neolog communities started eating stunned, non-kosher meat. The change in the *modus operandi* of the Shrek Lipót salami works in Budapest illustrates this. As a consequence of the decree, the company decided to sell stunned meat, and at the same time put an advertisement in the Jewish periodicals

⁸⁸ “Február 17-én, amikor el lett rendelve a kőservágások megszüntetése, Teleky [sic!] Páltól és Mihálytól felhatalmazást kaptam, hogy ezen rendelkezések végrehajtását saját hatáskörömben felfüggeszsem, mindaddig, amíg a hússzállításban szabálytalanság nem történik. Miután hatóságom területén szabálytalanság nem történt, arra kérem Nagyméltóságodat, hogy a kőservágás tilalmának végrehajtását Ung, Bereg és Ugocsa vármegye visszacsatolt területén továbbra is felfüggeszthessem.”

⁸⁹ “Csak Ung megyéről volt szó!”

⁹⁰ “Ung vármegye főispánja ismét arra tesz előterjesztést, hogy a rituális vágást tiltó rendelkezések Ung vármegyében a jövőben se hajtassanak végre. Miniszterelnökre hivatkozik, akitől biztatást kapott a rendelkezések mellőzésére.”

⁹¹ “A tapasztalat azt mutatja, hogy a rituális vágást tiltó rendelkezés a húsforgalmat nem csökkentette.”

*Zsidó Élet*⁹² and *Zsidó Újság*⁹³ in October 1938 declaring that the company is selling stunned meat in its new chain stores. The declaration lacked an unequivocal admission that the company had started distributing non-kosher meat in its shops. The company simply let the customers decide whether they consider stunned meat kosher or not. This way of conducting business caused great turbulence in Hungarian Orthodoxy and a ban (איסור) on the merchandise of the Shrek Company was declared by the principals of the Autonomous Orthodox Israelite Community in Budapest at the end of November, 1938.⁹⁴

In the memorandum the staff of the Ministry called the attention of the minister to four points: 1, Jewish ritual slaughter is considered torture that is harmful to public health; 2, It is impossible to prevent smuggling, which recently became a business of its own; 3 Consumption of kosher meat did not cease even after the inauguration of the decree in Hungary proper; 4, There would be no rise of the price of meat in Carpatho-Russ after the implementation of the decree on stunning (supposedly meat consumption of military troops stationed at Carpatho-Russ would balance the decline in meat consumption by observant Jews in the area).

A note in the margin of the memorandum shows that the prime minister himself hampered the efforts of the administration to effectively implement the decree:

“Ritual slaughter should not cease according to the MT. 939 X. 19. order. Signature: Teleki.”⁹⁵

It seems that the Minister of Agriculture, Count Mihály Teleki, intended to avoid issuing a new decree that contradicted the decree of his predecessor, but at the same time gave verbal authorization for the evasion of the decree issued by his own ministry.

Why did the minister give his silent consent to the evading of the decree that was issued under the premiership of his predecessor, Ferenc Marschall, and why did he support the continuation of ritual slaughter? It is likely that the confidential letter written by the Government commissioner of Carpatho-Russ, Baron Zsigmond Perényi, persuaded him that economic interests were more important than ideology. Perényi called Teleki’s attention to the plan to balance the anticipated decrease in meat consumption and rise of prices by state purchasing. Perényi also sent a letter to the head of the Ungvár administrative sub-office in November 1939, attesting to the Minister’s consent to the preservation of the exceptional status of Carpatho-Russ:

⁹² *Zsidó Élet* (Jewish Life), VI., nos. 39-40, p. 3.

⁹³ *Zsidó Újság* (Jewish Newspaper), XIV., nos. 42-43, p. 9 (October 25, 1938).

⁹⁴ *Zsidó Élet*, VI., nos. 43-44, p. 9 and *Zsidó Újság*, XIV., no. 44, p. 10 (November 4, 1938).

⁹⁵ “Rituális vágás továbbra is fennmarad MT. 939 X. 19. határozata alapján, aláírás: Teleki.”

“The Minister of Agriculture permitted slaughter without stunning until further regulations in Carpatho-Russ. In case of necessity meat stock slaughtered without stunning – the so-called kosher meat – can be given a transportation certificate. I order to inform the supervisors of animal health protection on these [regulations].”⁹⁶

In the end, the Minister of Agriculture, Count Mihály Teleki, clarified the uncertain situation by a decree issued on January 16, 1940,⁹⁷ in which the Minister absolved Carpatho-Russ from the obligation of stunning meat stock before slaughter. The decree was due to the efforts of Dr. Endre Korláth and Baron Zsigmond Perényi, who supported the continuation of the practice of Jewish ritual slaughter in the territories under their supremacy.

At about the same time the Minister of Agriculture took into consideration the complaints of the supervisors of animal health protection and veterinarians and prohibited the transport of kosher meat slaughtered in the territories of the Sub-Offices of Carpatho-Russ to the inner parts of the country. The decree prohibited the sale of non-stunned animals outside Carpatho-Russ and ordered its confiscation outside Carpatho-Russ. Animals imported from Carpatho-Russ had to be verified as pre-stunned animals by signatures of meat supervisors and the stamp of a veterinarian authority. (This edict did not refer to pig-transport.) It seems that by February 1940 considerations of animal health protection had been pushed to the background and the anti-Jewish character of the law had come to the forefront.

II.H Illegal ritual slaughter within the borders of Hungary proper

Both responsa and archival documents of the Ministry of Agriculture testify that the practice of Jewish ritual slaughter continued in the homeland in spite of the threat of penal procedures imposed on transgressors of the decree. The chief judge (*főszolgabíró*) of Csurgó township (*járás*) reported to the Minister of Agriculture on January 20, 1940 concerning fining two butchers (100 pengő per head), a ritual slaughterer and a cantor, for the ritual slaughter of a calf. According to the report of the deputy of count (*alispán*) of Vas county sent on June 19, 1940, the chief judge of Szombathely township fined Jews 30 pengő per head for slaughtering calves without

⁹⁶ “A Földművelési miniszter további rendelkezésig a Kárpátaljai területen a kábítás nélküli vágásokat további rendelkezésig engedélyezte. Szükség esetén a kábítás nélkül termelt húsról az úgynevezett kóser húsról is adható húszállítási igazolvány. Elrendelem, hogy a húsvizsgálókat ennek megfelelően utasítsa” (Ungvár, 1939. november 7).

⁹⁷ Decree No. 90.462/1940 (published in *Budapesti Közlöny* on January 21, 1940, No. 16.

stunning and hiding them from the supervisor. Seven local residents of Szombathely were punished: four butchers, a slaughterer, the chief cantor (*főkantor*) and a cantor (all Szombathely residents), moreover two Jews were imprisoned for three to five days. The chief judge of Szombathely township fined two butchers 20 pengő, with a threat of five days imprisonment in the event that the punished failed to pay.

A rescript signed by the Minister of Agriculture and dated on May 13, 1938, attests that the practice of ritual slaughter had not completely ceased.

“Rescript sent by the Minister to the first official of all municipalities: stunning of small meat stock (calf, foal, pig, hog, sheep, lamb, goat and kids) is [currently] not performed, so I request from the addressee to ensure compliance with the decree. A penal procedure should be imposed on transgressors of the decree and their prosecution has to be reported to the Ministry.”⁹⁸

For supervising the implementation of the decree, the Minister issued a new decree appointing the supervisor of animal health protection.⁹⁹

The following three responsa testify that despite the prohibition Jewish slaughterers continued to perform ritual slaughter outside slaughterhouses, hiding from the control of the local authorities. Continuation of ritual slaughter in secret raised *halakhic* concerns regarding the *kashrut* of the meat.

◆ R. Reuben Klein, *Shu"t Mate Reuben, Yoreh Deah*, no. 23

Addressee: –

Respondent: R. Reuben Klein (Szinna, today Snina, Slovakia)

Date: [After April 1, 1938]

Title: י"ד ס' י"ח / [*Shulhan Arukh*] *Yoreh Deah*, 18.

"במדינות שגזרו שלא לשחוט ושוחטין בביתם דאיכא בעיתותא וחרדה בשעת שחיטה שלא יתפסו עליו, וגם במקומות שצריכין לשלם אקצי"ז בשביל הבהמות הנשחטות ובהעלמת האקצי"ז איכא עונש גדול להשו"ב [להשוחט ובודק] אם יתפסו עליו, דאיכא חשש גדול לשחוט בהעלמת האקצי"ז דאיתא בש"ע ס' י"ח סעיף ט' דבדיקת הסכין צריך להיות לאט ובכוונת הלב וע' בד"ק [בדעת קדושים] שם ס"ק ג' אפשר דחמור עוד יותר מענין השחיטה במקום דאיכא טירדא עיי"ש."

⁹⁸ “A miniszter leirata valamennyi törvényhatóság első tisztviselőjének: a kisállatok (borjú, csikó, sertés, malac, juh, bárány, kecske, gödölye) kábítását nem hajtják végre, ezért felhívom Címet, hogy a rendelet betartásáról gondoskodják. A rendelet ellen vétőkkel szemben a rendőri büntető eljárást soronkívül tétesse folyamatba, és arról hozzám is jelentést tegyen. A min. rendeletéből ... [olvashatatlan név] miniszteri tanácsos.”

⁹⁹ Decree No. 50.033/1938. Decree 47.494/1939 also orders the strictest supervision.

“In those countries where ritual slaughter has been prohibited [i.e. where decrees on compulsory stunning had been introduced] many practice slaughter in private houses thus [the slaughterer] is anxious and trembles during slaughter, because he is afraid of being caught. This is even more relevant in places where it is obligatory to pay an excise¹⁰⁰ [French *accise*] [to the community] in accordance with the [number of] slaughtered animals and there is a significant punishment imposed on the slaughterer for evading [the payment of] the tax. Thus [the slaughterer] fears slaughtering without paying the tax as it is mentioned in the *Shulhan Arukh* [*Yoreh Deah*], 18:9 rules that the examination of the knife [of the slaughterer] must be made slowly and carefully. See the *Daat Kedoshim* [*Shulhan Arukh, Yoreh Deah*, sub-section 3], who rules that it is even more difficult than slaughtering whilst tired.”

The analogy taken from the *Shulhan Arukh* refers to slaughterers who perform ritual slaughter in secret in order to avoid paying tax to the community.

[אבל לזה] R. Klein elaborates on the possible dangers of performing ritual slaughter in secret. Examination of the knife is essential and proper intention is required for its full execution. Thus according to him the slaughterer must examine the knife at home before heading out to the place where he intends to do the slaughter. Examination of the knife after slaughter is also a requirement of proper slaughter. Instead of lengthening the process of slaughter at a place where the slaughterer might have been caught the author agrees on doing the examination at the slaughterer's home.

[והנה] The author elaborates on the *halakhic* judgment regarding the mental state of slaughterers that would make their slaughter ritually unfit for consumption. According to the *Darkhei Teshuva* a slaughterer who is in mourning is not capable of fulfilling his duties, because pain prevents him concentrating on his duties. This ruling refers even to slaughters done at “time of distress” (שעת הדחק). A different view can be found in tractate Yoma,¹⁰¹ which refers to the high priest who makes the prescribed sacrifice on the Day of Atonement (Yom Kippur) even if he mourns his wife. On the other hand the author of *Mishmeret Shalom*¹⁰² argues that the death of the slaughterer's wife does not have to prevent him from performing ritual slaughter.

[שוב ראיתי] Based on the latter view R. Klein decides that any slaughter performed under disputable and unsafe circumstances can be accepted as kosher despite the harsh circumstances, on condition that the slaughterer leads a pious life. Thus the author agreed to illegal slaughter performed at an illegal place and considered it as kosher even if the circumstances of the slaughter were not suitable and the slaughterer was anxious about being caught.

¹⁰⁰ An internal tax imposed on the production, sale, or consumption of a commodity; here slaughtered animals are meant.

¹⁰¹ bYoma 14a.

¹⁰² *Mishmeret Shalom, Hilkhoh avelut*, 19.

R. Yonathan Steif took it a step further. He even permitted consumption of meat of animals slaughtered by slaughterers who were not employed by any community and who slaughtered in places that were not supervised by the state or by a Jewish community. Evasion of supervision was a means of coping with the mandatory decree on stunning.

- ◆ R. Yonathan Steif, *Shu"t Mahar"i Steif*, no. 298

Addressee: –

Respondent: R. Yonathan Steif (Budapest)

Date: [After April 1, 1938]

"ע"ד [על דבר] אם אפשר להתיר האיסור שחוטי חוץ שנתקבל פה בקהלתינו מכמה וכמה שנים ועכשיו שקשה להשיג עופות כשרים מבקשים האקרו"ט [אלופים, קצינים, רבנים וטובים] והקהלה להתיר להם האיסור שיהיה היתר לכל אחד ליקח לעצמו עופות כשרים מאיזה מקום שירצו."

"Regarding the matter, whether the prohibition of slaughtering outside [slaughterhouses], that has been an established custom in our community for many years, can be lifted. Nowadays, as it is difficult to buy kosher poultry, representatives of the community and the community itself apply for lifting the prohibition and permitting everyone to take kosher poultry from any place they want."

[הנה] In his responsum R. Yonathan Steif elaborates on proper ritual slaughter of poultry. The *Shulhan Arukh*¹⁰³ rules that a community has the right to prohibit consumption of meat slaughtered without its own supervision (שחוטי חוץ). The community also has the right to proclaim a ban on any butcher and to declare that it is forbidden to consume the meat of the animals he has slaughtered. There are four different types of bans set by a rabbinic court, differing in their motives.

[אלא] R. Steif argues that in "our community," namely in the Orthodox community of Budapest, the ban on meat slaughtered without the supervision of the community was issued in order to preserve the community's economic stability (לטובת הקהלה). The ban serves as a necessary control on ritual slaughters in order to gather the gabella tax after every slaughter. The other aim of the ban was to prevent eating non-kosher food by members of the community. It seems that the community has the right to lift the original prohibition.¹⁰⁴

[אמנם] However, the ban can be lifted only by a *bet din* of an other community. The author emphasizes that it is a temporary permission, made under the pressure of circumstances (לצורך השעה). Thus according to R. Steif's decision members of the community may obtain kosher meat

¹⁰³ *Shulhan Arukh, Yoreh Deah*, 1: 11.

¹⁰⁴ The decision of R. Steif is based on the ruling of the *Shulhan Arukh (Yoreh Deah 228: 25)*: an oath taken by a community can be absolved only by the same community.

from kosher sources that are not under the supervision of the community. R. Steif emphasizes that the permission is limited in time (הוראת שעה). When redemption (ישועה) ushers in, poultry will once more be able to be purchased from the original reliable sources, and the original ban will again become effective.

- ◆ R. Yitzhak Öhlbaum, *Shu"t Sheelat Yitzhak*, no. 60

Addressee: –

Respondent: R. Yitzhak Öhlbaum (Felsőszeli, today Horné Saliby, Slovakia)

Without date

Title: במקום שגזרו על השחיטה, מהו לשחוט בבית / In places where a decree was issued on ritual slaughter, what is [the *halakhic* judgement of] slaughtering at home [of the ritual slaughterer]

"הנה נשאלתי במדינות שגזרו על ישראל שלא לשחוט שום בהמה, והשוחטים מחמת פחד שלא יתפסו שוחטין בביתם, האם אין חשש על בשר זה מחמת ביעתותא, דשמא אינם שוחטים בישוב הדעת."

"I was asked about those countries where decrees prohibiting the ritual slaughter of cattle were introduced against the Jews. Thus [ritual] slaughterers practice slaughter in their own house for fear of being caught. [The question is] whether the meat is kosher, because we were concerned that the slaughter was done maybe in anxiety, without the necessary calm and concentration."

R. Öhlbaum's responsum sums up the opinions of earlier authorities on the preferable character of the ideal ritual slaughterer. The text also refers to earlier decisions regarding secretly performed ritual slaughter and cases where the slaughterer was disturbed during the slaughter. According to the author a fearful state of mind and any other distractions caused by external conditions do not necessarily disqualify the slaughter. After dealing with the *halakhic* consequences of ritual slaughter performed in secret he gives a general permission for the extant practice. His reasoning is as follows:

[תשובה] Ritual slaughterers are comparable to witnesses. The *Shulhan Arukh* disqualifies the frightened (מובהלים) and the hasty (נחפזים) from giving testimony. The ruling is supported by the following explanation: Those who are constantly in a hurried state of mind or lead a distracted life are incapable of giving a halakhically proper testimony, so they are disqualified from being a witness. The same ruling refers to the disabled.¹⁰⁵

[וא"כ] As slaughtering an animal requires much more attention than giving testimony, a distracted ritual slaughterer cannot slaughter properly. Facing imprisonment and penalty from the local authority for his act, a slaughterer would very possibly make a mistake without noticing it,

¹⁰⁵ *Shulhan Arukh, Hoshen mishpat*, 35: 10.

even before starting the slaughter, while examining his knife. The author's reference at this point is the ruling in *Pri Toar*: Someone who is absorbed in his thoughts and troubles (טרדות), as well as those unfocused or fearful, should not be employed as slaughterers because they lack the necessary concentration to practice ritual slaughter properly.

[ועיין] A ritual slaughterer has to have a brave heart (לב אמיץ) and has to be able to confront non-Jewish butchers urging him to finish his work; moreover, he has to cope with unpredictable situations in the slaughterhouse.¹⁰⁶ (Both sources refer to cases where the slaughterer cooperates with non-Jewish butchers during the slaughter.) If the slaughterer is tired, this would also prevent him from doing his job properly.

By referring to the above examples R. Öhlbaum emphasizes the importance of the proper state of mind of the ritual slaughterer before and during slaughter. In the continuation he seemingly suggests that, based on earlier prohibitive decisions regarding secretly performed slaughter, consumption of the animal slaughtered should be also prohibited in the present circumstances.

[וכן] The responsum of *Oneg Yom Tov*¹⁰⁷ prohibits slaughter performed in secret, out of control of the local rabbi and the Jewish slaughters of the town, because the author assumes that under such circumstances the slaughter's mind and heart are surely not prepared for performing the slaughter. The *Birkhe Josef*¹⁰⁸ also prohibits slaughter by a slaughterer who is in fear of the local Jewish authority; all the more so it is forbidden to slaughter in fear of the state authority, argues R. Öhlbaum.

[וכעת] The responsum of *Zikhron Yehuda*¹⁰⁹ prohibits the wife of a slaughterer from making a living from commerce. R. Öhlbaum agrees with the decision alluding to his own negative attitude expressed in a very similar situation that arose in a community of his region. The next example taken from the responsum of *Ha-ef lekha Shlomo*¹¹⁰ prohibits slaughter without *kvitel* (קוויטל, Yid. 'note') (permission from the local authority to perform ritual slaughter) also strengthens R. Öhlbaum's prohibitive attitude towards our case.

Despite all these references to earlier prohibitions of any slaughter performed under unpredictable conditions, in the second part of his responsum R. Öhlbaum enumerates those cases which would support a lenient, even permissive decision in this case.

[אמנם] Against all the prohibiting sources mentioned above stands the author's own experience. Without locating his story and setting it in time, R. Öhlbaum refers to his own observations: following a ban on ritual slaughter, God-fearing Jews (יראים) practiced ritual slaughter in secret places and prominent men in the Jewish religious community (גדולי ישראל) ate

¹⁰⁶ R. Hayyim Halberstam, *Divrei Hayyim, Yoreh Deah*, no. 18.

¹⁰⁷ R. Halpern, Raphael, *Shu"t Oneg Yom Tov*, no. 63.

¹⁰⁸ R. Hayim Josef David Asulai, *Birkhei Yosef*, no. 1.

¹⁰⁹ R. Grünwald, Yehuda, *Shu"t Zikhron Yehuda*, vol. 2, no. 2.

¹¹⁰ R. Kluger, Shlomo, *Shu"t Ha-ef lekha Shlomo, Yoreh Deah*, no. 1.

from the meat. R. Öhlbaum found the following textual basis for this practice: *Mate Reuven*,¹¹¹ who bases his ruling on the *Tevuat Shor*,¹¹² who permits consumption of the meat slaughtered by a ritual slaughterer who cut his finger during slaughter. Seemingly the *Tevuat Shor* permits the consuming of the meat of the animal, because the pause (שהייה) during the slaughter was minimal. (A significant pause during slaughter automatically renders the meat non-kosher.) If we accept this interpretation, we cannot base our permission on the *Tevuat Shor*, – argues R. Öhlbaum, because our ritual slaughterers are supposed to be constantly worried because of the improper circumstances of the slaughter.

[אמנם] However, continues R. Öhlbaum, if we interpret the case discussed in *Tevuat Shor* as a permissive decision in the case of a slaughterer who was frightened (נתבהל) by the unpredicted (and maybe unprecedented) cut to his finger during slaughter, than we can decide leniently in the present case also. In spite of the unsuitable conditions that occurred during the slaughter, the *Tevuat Shor* permitted the meat. Following from this, we can certainly permit the slaughter carried out by the slaughterer who is well prepared for the slaughter in every respect, argues the author. Moreover, the ritual slaughterer slaughters secretly only two or three times a week, thus he can be fully focused during every slaughter he performs.

[אמנם] As opposed to unqualified slaughterers, who, according to commentaries of the *Shulhan Arukh* must be disqualified, our slaughterer does prepare himself for the slaughter each time and maintains full concentration during the slaughter.

[היוצא] The final conclusion of the responsum is that no external or internal motives disqualify well-prepared ritual slaughterers who keep the commandments. This is the norm under the present circumstances as well, when the supply of Jewish communities with kosher meat from external sources has become extremely difficult. The author argues for permission in the end, because a strict prohibition would also entail the danger of running short of kosher meat in Jewish communities. And the one who is strict with himself is blessed, adds R. Öhlbaum.

II.1 Jewish ritual slaughter performed after stunning

The following documents testify that in spite of the introduction of stunning before slaughter the practice of ritual slaughter continued even in slaughterhouses controlled by the state.

¹¹¹ R. Klein, Reuven, *Shu"t Mate Reuven*, no. 23.

¹¹² *Tevuat Shor*, 23: 14.

Stunned animals went through ritual slaughter in the countryside and in Budapest also, which was against the official *halakhic* standpoint of both communities, Orthodox and Neolog alike. In light of the following three letters attesting the supervision and assistance of Jewish slaughterers in slaughterhouses, it is likely that even animals stunned before slaughter were permitted, by some, to be slaughtered ritually.

The chief counsellor of animal hygiene (*Állategészségügyi főtanácsos*) made a complaint against Jewish slaughterers in his letter sent to division IV/B.2 of the Ministry of Agriculture on August 2, 1939. According to the complaint animals had been stunned by employees of the slaughterhouse and were slaughtered with the help of the “delegate” of the Jewish community (presumably the slaughterer himself). The Jewish slaughterer was an active participant in the slaughter: he cut the throat of the animal and supervised the whole process. The counsellor pointed out that supervision is supposed to be a task of the municipalities – doctors, veterinarians, meat supervisors – and the law does not assign any extra rights to any religious communities regarding slaughter. The counsellor requested that the Minister intervene in order to put an end to the phenomenon of the presence of Jewish slaughterers at slaughter houses.¹¹³

A letter written by the counsellor of animal hygiene of Szombathely to the Minister on April 6, 1940 also testifies to the presence of Jewish slaughterers at slaughterhouses controlled by the state:

“Waiting for your order concerning the question whether the decree of 1938 annulled the activity of Jewish slaughterers (sakterek) at slaughterhouses, or whether in the case of pre-stunning their activity is permitted?”¹¹⁴

A third document¹¹⁵ also attests the same: the chief judge of the Losonc district submitted the report of the meat supervisor of Losoncapátfalva¹¹⁶ to the Ministry:

“According to the report, stunning supposedly took place, so to the best of my knowledge the meat could not be considered as kosher. However, the Jewish slaughterer contributed to the slaughter, and presumably he had a further goal. Thus it should be clarified whether he transgressed the 2nd section of decree Nr. 21.700/1938 with his help, and whether the same decree annulling the 4th Paragraph of section 90 of decree Nr. 100.000: 1932. F.M. r. has to be interpreted that the slaughterer cannot be present during slaughtering. These questions have to be clarified, because in Losoncapátfalva there were cases of suspected ritual

¹¹³ “Az állatok vizsgálata a községek, városok feladata (orvosok, állatorvosok, húsvizsgálók) a törvény egyik felekezetnek sem biztosít külön jogokat, és mivel ilyen húsvizsgálatra nincsen szükség, kérem méltóságodat, hogy foglaljon állást az ügyben, és rendeleti úton intézkedjék”.

¹¹⁴ “Kérem szíves rendelkezését arra nézve, hogy az 1938-as rendelet hatálytalanította-e a zsidó metszők (sakterek) vágóhídi működését is, avagy előírt kábítás mellett azok működése megengedhető?”

¹¹⁵ Dated on June 10, 1940.

¹¹⁶ Today Opatová, Slovakia.

slaughters. And there was even a case when the supposedly properly stunned animal was certified as kosher by the *sakter* [*shohet*], and its front parts went through the practice of *nikkur* (!).”¹¹⁷

Decree Nr. 93.673/1940 issued by the Minister of Agriculture prohibited unauthorized personnel, including Jewish slaughterers, to enter and remain in the area of a slaughterhouse citing issues of public health care. The decree issued on June 17, 1940 shows that there were illegal ritual slaughters in slaughterhouses controlled by the state. Three years later, on August 30, 1943 representatives of the Neolog Community of Budapest sent a petition signed by Samu Stern¹¹⁸ to the Ministry. It requested modification of the decree and applied for legalization of the presence of Jewish ritual slaughterers in slaughterhouses. The initiative did not bring about any alteration in the official policy of the establishment. The Minister, Dániel Bánffy, rejected the request of the Council citing the fact that slaughterhouses are military sites, so the Ministry had to oversee the passage of those entering the area more strictly for military reasons.

These documents show that there were Jewish slaughterers who either ritually slaughtered pre-stunned animals, or paid non-Jewish butchers to stun the animals after they had been slaughtered.

II.J Halakhic views on new stunning methods developed in Switzerland

As a consequence of the war the import of kosher meat ceased in Germany and in Switzerland in the summer of 1940. Lacking kosher food for the elderly and the sick, Jewish communities put pressure on their rabbis to allow stunning prior to ritual slaughter, especially following the success of experiments on new stunning methods. In the view of some German rabbis the new method of injecting narcotics (narconal) into the veins of the animal prior to ritual slaughter did not render the stunned animal ritually unfit for consumption.

¹¹⁷ “Minthogy pedig a bejelentés szerint a kábítás állítólag megtörtént és így tudomásom szerint a hús kósernek már nem minősíthető, de ennek ellenére a zsidó metsző mégis közreműködött a vágásnál és így feltételezhető, hogy az ő közreműködésének távolabbi célja volt, tisztázandónak tartom, hogy a 21.700/1938.sz. F.M. r. 2. §-a ütközött-e a zsidó metsző közreműködése a vágásnál, illetve a most említett rendeletnek a 100.000: 1932. F.M. r. 90. §-ának 4. bekezdését hatálytalanító rendelkezését úgy kell-e értelmezni, hogy a vágásnál a metsző jelen sem lehet. Mindezeket azért tartom tisztázandónak, mert éppen Losoncapátfalván több eset került észlelésre, amikor a sakterolás gyanúja volt feltételezhető, egy esetben pedig még az is megtörtént, hogy az állítólag szabályszerűen elkábított és a sakter által kósernek minősített állat elejét a sakter ki is érezte.”

¹¹⁸ Samu Stern (1874-1946), since 1932 head of the Bureau of the Neolog Communities, and head of the Jewish Council (*Judenrat*) in 1944.

Stunning prior to ritual slaughter was rejected in principle by all Jewish authorities living in Germany and Switzerland as well as in Poland and Hungary. However, R. Yehiel Yaakov Weinberg, rabbi of the Orthodox community in Berlin and leader of German Orthodoxy, expressed his lenient view towards consuming the meat of animals that were stunned prior to ritual slaughter by the new methods of stunning. R. Weinberg's leniency was related to his generally positive attitude towards technical developments.

R. Weinberg's position provoked responses from other rabbinical authorities. Due to the experiments on new stunning methods and the increasing need for kosher meat the rabbis in Switzerland expressed their view that the stunning of animals prior to ritual slaughter should be included in the framework of Jewish law. Their main concern was that the use of narcosis does not affect the physical state of the animal, namely it does not harm the organs of the animal (the brain included). The recently developed method of injecting narcotics into the veins of the animal was considered as harmless compared to the electro-narcosis in use in non-Jewish slaughterhouses in Switzerland. Electro-narcosis was rejected by Jewish authorities for the following reasons: 1, electric current could cause internal injury (ריסוק אברים) when the animal falls to the ground with force; 2, it damages the brain; 3, it causes adhesion to the lungs so it cannot be examined afterwards; 4, blood of the animal absorbs in the muscles and does not run out and there is usually blood found in the muscle of the heart too.¹¹⁹ In 1941 rabbis living in Switzerland turned to rabbinic authorities living in Europe inquiring about the possibility of permitting stunning. Their letter gives a detailed account of the experiments.¹²⁰

Many rabbis addressed could not send their replies to the inquiry because of the war. Four Hungarian Orthodox rabbis addressed their responsa to R. Yehuda Leibush Rubinfeld, rabbi of Lugano, the leader of Orthodoxy in Switzerland, arguing for prohibiting the consumption of stunned animals. All texts were published in the second volume of the responsa collection *Mekadshei ha-Shem*. The possibility of introducing new stunning methods in Switzerland did not alter the official Orthodox standpoint towards stunning that was formulated after 1938. R. Shalom Wieder referred to the experiments carried out in Europe and unequivocally rejected all stunning methods as being inadmissible from a *halakhic* point of view. R. Wieder did not trust technical innovations concerning stunning and displayed his sceptical attitude towards these experiments.

¹¹⁹ Zimmels, *The Echo of the Nazi Holocaust in Rabbinic Literature*, p. 183.

¹²⁰ See the text in R. Jakob Breisch's responsa-collection: *Shu"t Helkat Yaakov, Yoreh Deah*, no. 1 (Tel Aviv, 1992). R. Breisch served as a rabbi in Zürich and himself opposed the introduction of the new method of stunning in Jewish slaughterhouses, arguing that 1, The experiments are not trustworthy and do not generally prove that narcosis has no effect on the animal; 2, Injection of the narcotic could cause damage to the oesophagus (נקיבת הוושט), which automatically renders the meat unfit. R. Breisch could not take the responsibility for permitting the putting of the animal to sleep before slaughter by the use of narcotics and giving permission for anyone to eat unkosher (*terefa*) meat. See the next responsum *Shu"t Helkat Yaakov, Yoreh Deah*, no. 2. Supposedly R. Breisch's view was influenced by R. Wieder who strictly opposed the use of the argument of the experiments as a basis for permission. *Shu"t Helkat Yaakov*, vol. 1, pp. 106-107.

Moreover, he did not consider the distress of Jewish communities in Switzerland and their urgent need for kosher meat as a substantial reason to alter the status quo and permit stunning of any kind, not even narcosis.

The other three rabbis: R. Yoel Teitelbaum, the hassidic rabbi of Nagykároly, and two prominent Orthodox rabbis of Budapest, R. Ephraim Fischl Sussmann Sofer and R. Yonathan Steif, only sent brief decisions to R. Rubinfeld.¹²¹

II.J.1 Responsa written by Hungarian rabbis sent to Switzerland

- ◆ *Shu"t Mekadshei ha-Shem*, vol. 2, no. 31

Addressee: R. Leibush Rubinfeld (Lugano, Switzerland)

Respondent: R. Ephraim Fischl Sussmann Sofer (Budapest)

Date: ערב ר"ה [ראש השנה] דהאי שת"א (October 2, 1940)

[כל] R. Sussman emphasizes that according to the consensus of German, Polish and Hungarian rabbis, an animal stunned by a strike on the head before slaughter is considered an unfit carcass (נבלה). R. Sussman adds that the Neolog leadership in Hungary agrees on the matter with the Orthodox.

The author heaps wrath upon slaughterers who carry out ritual slaughter after stunning, producing non-kosher meat (טרפה). Based on the ruling of the *Shulhan Arukh*,¹²² the slaughterer is considered as an apostate who transgresses with a provocative intention (מומר להכעיס). It is strictly prohibited for every Jew to eat from the meat he slaughtered.

¹²¹ A further responsum by R. Yehoshua Ehrenberg also regards stunning in Switzerland. The responsum was sent to R. Yaakov Moshe Deutsch (originally rabbi of Abaújszántó) in Basel. R. Yehoshua Ehrenberg, *Shu"t Divrei Yehoshua*, vol. 1, no. 19. R. Deutsch hesitated to express his prohibitive opinion because he was dependent financially on his community, which had an interest in continuing with ritual slaughter. Thus he addressed the question to R. Ehrenberg whether he is supposed to declare his prohibitive opinion without being asked by anyone of the community. In his answer R. Ehrenberg argues that obligation of expressing the halakhic opinion refers to this case also.

¹²² *Shulhan Arukh, Yoreh Deah*, 2.

- ◆ *Shu"t Mekadshei ha-Shem*, vol. 2, no. 32
 Addressee: R. Leibush Rubinfeld (Lugano, Switzerland)
 Respondent: R. Yonathan Steif (Budapest)
 Date: [ער"ה [ערב ראש השנה] ת"ש [תש"א] (October 2, 1940)

[אחדשו"ט] "Hungarian rabbis" (presumably R. Steif refers to Orthodox and Neolog rabbis alike) decided to prohibit stunning, and the prohibition was sent to Lugano by telegram.

- ◆ *Shu"t Mekadshei ha-Shem*, vol. 2, no. 33
 Addressee: R. Leibush Rubinfeld (Lugano, Switzerland)
 Respondent: R. Yoel Teitelbaum (Nagykirályi)
 Without date

[אחדשה"ט] In his responsum R. Yoel Teitelbaum strictly rejects the consumption of animals stunned before ritual slaughter. He argues that we are not able to tell whether stunning renders the animal ritually unfit for consumption (טרפה) or kills it. Like R. Sussmann, R. Teitelbaum also refers to irresponsible slaughterers who do slaughter animals that have gone through stunning and, as did R. Sussman, gives a general prohibition of eating from animals slaughtered by them.

In spite of evidence for the continuation of ritual slaughter in Hungary, both in secret and in public slaughterhouses under the supervision of the state, all the four rabbis unanimously report that legal ritual slaughter ceased in Hungary after the introduction of the decree on stunning.

In Hungary the decree on mandatory stunning had been in effect since April 1938, thus there had already been no legal ritual slaughter for two and a half years when R. Shalom Wieder wrote his responsum in 1940.

- ◆ R. Shalom Wieder (Nyíregyháza), *Shu"t Mashmiah Shalom, Yoreh Deah*, no. 20¹²³
 Addressee: R. Leibush Rubinfeld (Lugano, Switzerland)
 Respondent: R. Shalom Wieder (Nyíregyháza)
 Date: [צ"ג תש"א א' חשוון תש"א] (November 2, 1940)

"מכתבכם בשאלת שאלה הנשלח לי באמצעות נכדי החו"ש [החס ושולם] נ"י [נרו יאיר] המתגורר שם קראתי היום והנה הרגזתם אותי ממנוחתי ומליצתי לאמר עמך כולם צדיקים יבואר [יבואו] הלאה, ועתה הודעתם אותי כאלה כי נמצא ח"ו [חס וחלילה] שמה מתאווים לבשר תאוה ואומרים תנה לנו בשר שחוט על ידי המיית הבהמה "בעטייבונג" קודם השחיטה, כי יש מי שגילה דעתו שיש מקום להקל בזה, ח"ו ח"ו [חס וחלילה, חס וחלילה]."

¹²³ See also: *Shu"t Mekadshei ha-Shem*, vol. 2, no. 30.

“Your letter, asking a question, reached me through my grandson, may he live and God protect him, who is living there [in Switzerland]. I read [the letter] today: you upset me, as it is written: “Your people are all righteous.” And now you report to me that there are people, God forbid!, who yearn for meat with passion and say: give us slaughtered meat that went through stunning ‘Betäubung’ before slaughter, because there are some who expressed a lenient view on the matter, God forbid, God forbid!”

Without mentioning him by name, R. Wieder alludes to R. Yehiel Yaakov Weinberg who permitted consumption of meat of animals stunned by narcosis. Following in his footsteps rabbis living in Switzerland asked R. Wieder’s opinion in 1941 about injecting narcotics into the vein of the animal prior to ritual slaughter. In R. Wieder’s opinion narcosis is equivalent to those stunning methods that were strongly rejected by respected rabbinic authorities living all over Europe in the previous years; thus he expresses his agitation at being asked a question in 1941 that, in his opinion, had already been settled in 1938.

[ובעיקר] R. Wieder prohibits narcosis and makes it clear that a stunned animal is considered a *nevela*, an unfit carcass. According to him a blow on the head terminates the normal workings of the senses and turns the animal to an “inanimate rock” (אבן דומם). The consumption of a kosher animal that has not been slaughtered in accordance with Jewish law is forbidden. If there is the slightest doubt considering the *kashrut* of the animal, consumption of the meat is strictly forbidden.

[מה] The author first refers to the most widespread stunning practice in Hungary: striking the head of the animal with a club. R. Wieder argues that this method might kill the animal, so the animal does not die as an outcome of the slaughter but had already died before the slaughter had even started.

Earlier *halakha* does not refer to stunning specifically, however R. Wieder uses a *halakhic* analogy for stunned animals: the Mishnaic terminology for “sick animal”¹²⁴ (חולנית מסוכנת). The Mishnah¹²⁵ furnishes stricter provisions for supposedly sick animals in order to make sure that they die as a consequence of the slaughter and not because of their illness. By the movement of the animal’s limbs (פירכוס) during its slaughter, the slaughterer can be sure that it is not sick. Cutting meat into small pieces and salting it is not sufficient to make the meat of a stunned animal kosher.

[וע"ע] R. Wieder refers to rabbinic authorities – R. Mordechai Leib Winkler, rabbi of Mád among them – who prohibited consumption of supposedly sick animals that did not show movement of the limbs after slaughter.¹²⁶

[מלבד זה] The established custom of stunning in Hungary – hitting the head of the animal with a club (הכאה על הראש) – is rejected by R. Wieder because the blow might cause internal injury

¹²⁴ See also: *Shulhan Arukh, Yoreh Deah, 17*.

¹²⁵ MHullin 37.

¹²⁶ *Shu"t Levushei Mordechai, Yoreh Deah, vol.3, no. 56*.

to the brain (ריסוק ונימוק המוח) when the animal falls to the ground with force and the membrane of the brain would be injured

(שמא ניקב קרום של מוח).

[וגם] After this introduction R. Wieder begins dealing with the main concern of the inquiry of the rabbis in Switzerland. In the first place he expresses his negative attitude towards the new stunning method of injecting narcotics (הסם המשקר, literally 'intoxicating drug'). R. Wieder understands the role of the narcosis in slaughter as anaesthesia used for minimizing the pain of the animal.

However, from a *halakhic* point of view, argues the author, a stunned animal is considered as sick and lacking the prescribed movements of the limbs during its slaughter we assume that the animal had already died before the slaughter started. Answering the inquiry's main concern R. Wieder expresses his doubts concerning the experiments made on cattle testifying to the viability of animals after waking up from the narcosis. The prescribed condition of proper ritual slaughter in the case of a sick animal, i.e. movements of limbs during and after ritual slaughter, cannot be evaded.

[גם] R. Wieder adds that injecting the narcotics into the vein renders the meat *nevela* because sticking the needle into the neck of the animal for injecting the narcotic could cause a hole in the oesophagus (נקיבת הוושט), which immediately renders the meat ritually unfit for consumption under every circumstance.

[וגדולה] Regarding the options of anaesthetizing the animal by using an electric shock immediately after slaughter or sticking the knife in the heart to hasten the death of the animal, both are forbidden, because in both cases blood is absorbed into the muscle and does not run out. Cutting the meat into small pieces before salting is not sufficient to make the meat kosher.

[ובלי] R. Wieder definitely rejects all stunning methods and expresses his wish that all restrictive laws will be withdrawn in the near future.

"והנני לעורר עוד כי כל מי שיש לו עינים לראות ישכיל ויבין כי כל גזירות עתים הללו הן חבלי משיח הניתנים לנסיון אם ראויים לגאולה ולפי הנראה והנשמע כמעט עמדו ב"ה [בעזרת השם] בכל הנסיונות."

"Above all let me notice that all who have eyes to see will learn and understand that all decrees of our age are the Messianic pains that were given to test us whether we deserve redemption, and judging from what we experience they nearly passed all the tests."

"לראשונה הרבו במדת החסד במדתו של א"א [אברהם אבינו] ע"ה [עליו השלום], שעל ידי גזירת עבודה כבימי פרעה נמצא בכל עבר ופנה אנשים מכובדים לקיים בהם מצות הכנסת אורחים, וכן יוספר נפלאות מעניי עמינו הדרים במחוזות מקומות העבודה וגלות."

“In the beginning they increased their acts of kindness, emulating our father, Abraham, may he rest in peace: via the decree on [forced] labor – as in Pharaoh’s days – we find in every corner respected pious men who practice the *mitzvah* of hospitality according to the wonderful stories we hear from the poor who live near to [forced] labor camps in exile.”

In the author’s view the absence of kosher meat in the market hit forced laborers the most. On the other hand forced labor gives an opportunity for observant Jews to practice the *mitzvah* of hospitality.

[וכן בגזירת] R. Wieder interprets the decree on mandatory stunning as a ‘ban on ritual slaughter’ (גזירת השחיטה). The ban and its consequence, the lack of kosher meat, serves as a test for every Jew, especially for those who have been taken to forced labor. The decree on slaughter is a sort of test that is comparable to the *akeda* – the binding of Isaac by Abraham on Mount Moriah. R. Wieder also expresses his hope that ‘hard and wicked decrees’ (גזירות קשות ורעות) will be withdrawn by the authorities.

[וזאת] Summarizing the above arguments, the author clearly rejects the use of any stunning methods and adds a further crucial point to the argument. Referring to a letter he received after he had finished writing this responsum, R. Wieder clearly rejects the argument of lenient rabbinic authorities who argued for permission to stun. According to him, vitality of heart and brain after ritual slaughter does not necessarily mean that the limbs of the animal are “alive,”¹²⁷ but that the limbs had been already “died” before the end of the slaughter. If so, the slaughter itself does not make the meat proper for consumption and the meat is considered as “flesh torn from a living body” (אבר מן החי), which is strictly forbidden to eat. According to the author the last argument alone is sufficient to prohibit stunning of the animal by narcosis.

R. Wieder’s responsum is one of the few written in Hungary, which includes some theological reflection on the Holocaust. According to him the Jewish people had almost passed the test: there were respected people everywhere in the country who practiced the *mitzvah* of hosting forced laborers.

II.K Summary

Archival documents of the Ministry of Agriculture in Hungary clearly show that the introduction of decree on mandatory stunning in 1938 was a consequence of the antisemitic attitude

¹²⁷ The animal has to show vitality in his limbs during and after proper ritual slaughter.

of the Hungarian establishment and its German-oriented foreign policy. *Dvar Tzvi*, the commentary (on his own responsa) by R. Tzvi Meisels, editor of *Mekadshei ha-Shem*, also assigns antisemitic motivation to the decree by counting it among the numerous anti-Jewish “wicked decrees” (גזירות רעות) issued previously in European countries. R. Meisels rejects the official justification of the decree of being concerned with animal protection as a complete travesty, and regards stunning (שיטה ‘method’) as “nonsense” (שטות).

Different *halakhic* opinions on stunning followed from the different religious backgrounds of various rabbis and their attitude towards modern technology and new stunning methods, which became manifest in their decision making. Lenient decisors were convinced by scientific experiments that new stunning methods do not cause death of the animal, so they disregarded the fact that stunning prevents slaughterers from checking whether the animal is still alive before the beginning of their slaughter.

The decree on mandatory stunning was a crushing blow to religious life in Hungary. Besides its direct consequences, introduction of the decree was the second step (after the Numerus Clausus Law introduced in 1920) taken by the Hungarian state that shook the status of Hungarian Jewry based on the reception law issued in 1895. For the first time, after many years of emancipation of Jews and equality provided by the laws of the state, decrees of the Hungarian administration forced observant Jews to submit to regulations of the state that went against their religious conviction. The decree on mandatory stunning effectively terminated Jewish ritual slaughter. It struck Hungarian Jewry economically, though it was not fully implemented and the administration enabled its evasion by overlooking its transgression. The ban on Jewish ritual slaughter made the management of Jewish communities much more difficult; moreover, besides economic consequences, the spirit of Hungarian Jewry was also hit by the Hungarian state that claimed the right to interfere in Jewish religious practice.

As antisemitism gained momentum in Eastern Europe, the main experience of rabbis living in Germany or in Eastern European countries was that Jews were going through a period that was different from past periods of oppression. The change in the lives of Jews living in Eastern European countries, due to the growing number of anti-Jewish movements, resulted in changing attitudes of rabbis, which was often reflected in lenient decision making. On the basis of their everyday experience, rabbis in Germany, Poland or Bessarabia interpreted the decree on stunning as a threat to the lives of Jewish people, while rabbis living in Hungary were mainly concerned with the economic situation of Jewish communities. This assumption, of the rabbis living outside the Hungarian borders, was created not only by decrees of their home countries’ governments but also by physical atrocities following the same decrees.

The case of the decree on mandatory stunning illustrates that implementation of decree introduced by a central legislative power depends, as a rule, on local conditions both in the center

and the periphery. The decision-making process of the Hungarian administration in 1940 reflected these local conditions and responded to them.

Petitions of the official trade association of (non-Jewish) slaughterers requesting the cancellation of the decree show that its enactment went against their interests too. The discriminative decree on mandatory stunning in Hungary not only caused cessation of legal Jewish ritual slaughter in Hungary, thus endangering the existence of Jewish communities, but seriously hit every actor of the meat industry.

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III. Forced Labor as Reflected in the Responsa

III.A Introduction. Sources

Unarmed service in a regular army was a uniquely Hungarian phenomenon. Hungary was the only country that, during the Second World War, obligated Jews to serve on the front lines unarmed. Not only was the concept of forced labor new to Hungary, but it also lacked foreign precedents. Forced labor stemmed from the desire of the Hungarian administration to integrate into the army those who were considered politically unreliable or physically unfit for regular military service. From 1939, Germany had been utilizing forced labor and when Hungary joined World War II on the German side in 1941, they also sent forced laborers to the front lines. The responsa referred to here relate to both types of forced labor.

The Hungarian Ministry of Defense had supreme command over labor camps and, by their executive decrees, in essence regulated the lives of forced laborers. The decrees also concerned religious observance, such as regulating attendance at the synagogue on Jewish holidays as well as for the regular prayers. It even prescribed the training of rabbis who would provide religious services for forced laborers. In spite of the controlled system, the daily routine and treatment of the forced laborers depended very much on the attitude of commanding officers and guards; more so than on the official decrees.

Responsa related to forced labor share structural features of earlier responsa; they present, deliberate and judge *halakhic* cases by establishing analogies with past decisions. *Halakhic* problems related to forced labor – mostly questions related to dietary laws and Sabbath observance – were handled from the perspective of *halakhic* tradition. Responsa provide an insight into the life of Orthodox Jewry in Hungary during the period in general, and are an invaluable source about the life of Orthodox Jews serving in forced labor camps in particular. The texts do not tell stories nor construct a coherent narrative of the Orthodox experience of forced labor. Texts related to forced labor also lack information that would be useful in historical research – such as dates, places, etc. Above all, the primary importance of responsa for historical research is that they give us a glimpse into Jewish history from an Orthodox perspective and provide us sources for a better understanding of the mechanism of the persecution of the Jews. Since responsa elaborate on cases that emerged as direct reactions to the persecution, they are revealing regarding the immediate effects of anti-Jewish legislation on Orthodox society.

Forced labor service affected deeply Jewish community life and responsa show the steps of this intrusion of the Hungarian administration into the life of Jewish communities. Due to forced labor service, the situation of many communities worsened, as religious life of the communities has been disrupted by the absence of their members. The status of community members employed by the community and taken to forced labor was also debated and reflected in the responsa.

Responsa show that decrees concerning Jewish forced labor left their mark on Jewish religious practices, having an effect on the daily life of every Orthodox Jew regardless of whether or not they were taken to forced labor. In forced labor camps *halakhic* problems emerged as a consequence of conditions that were in conflict with religious law, relating mostly to dietary laws and Sabbath observance.

Apart from questions of religious observance, there are responsa referring to the credibility of local authorities issuing reports of the deaths of forced laborers or the exemption of rabbis from forced labor. The status of forced laborers was determined by the Hungarian Ministry of Defense and the Ministry of Interior in cooperation. The right of the spouses of Orthodox forced laborers to receive social allowance had been debated since 1941 (mainly after the re-occupation of territories with a high Orthodox population), because their marriage authorised by an Orthodox rabbi was not acknowledged by the administration. Furthermore, the liability of widows and orphans of forced laborers to receive the same allowances as of those who died during military service was questionable (see later).

This research on the history of observant Jewish life in the context of forced labor is based on twenty-four texts relating to forced labor by Orthodox rabbis who lived in Greater Hungary in the period. This chapter is also based on documents issued by the Hungarian Ministry of Defense.¹ The first text was written in June 1939, the last in June 1943. As research concerning responsa literature is a neglected area in scholarly research on the Shoah of Hungarian Jews, my intention is to keep the focus on this rich literature and to show facets of the life of observant Hungarian Jews during the war attested in this type of sources.

The brief summary of the history of forced labor is followed by a detailed description of the relevant decrees issued by the Hungarian Ministry of Defense, being supplied and embellished by the presentation of responsa related to forced labor.

¹ See also: Braham, Randolph L., *The Hungarian Labor Service System 1939-1945* (East European Monographs, no. 31) (New York: Columbia University Press – East European Quarterly, Boulder, 1977); Karsai Elek, Intr., ed., “*Fegyvertelen álltak az aknamezőkön...*” *Dokumentumok a munkaszolgálat történetéhez Magyarországon, I-II / Armless They Stood in the Minefields. Documents on the History of Labour Service in Hungary* (Budapest: MIOK, 1962). See also the chapter devoted to forced labor in Ungváry Krisztián’s book: *A magyar honvédség a második világháborúban / Hungarian Military Forces in the Second World War* (Budapest: Osiris, 2004), pp. 116-122.

III.B The history of forced labor

III.B.1 Introduction of the labor service system in Hungary (March 1939 – September 1940)

The Hungarian Minister of Defense, Károly Bartha, submitted a bill to the Hungarian Parliament on the 7th of December, 1938, which regulated the system of national defense and ordered every citizen between the age of 14 and 70 to take part in the defense of the country ‘with his service and his wealth’.²

The National Defense Law was adopted as Law No. II. of 1939.³ Apart from the Jews, other “unreliable” elements such as leftists, national minorities (Romanians, Serbs, Slovaks) and the sick were also excluded from regular military service and were obliged to serve in unarmed labor battalions instead of doing regular army service.⁴ On the 16th of March, 1939 Hungarian troops invaded Carpatho-Russ. The counties of Bereg and Ung and the Ruthenian area of Máramaros County (12,171 square kilometers with 78,087 Jewish inhabitants) came under Hungarian rule, so the decrees regarding compulsory labor service also came into effect in these re-occupied territories.

The law concerning the national defense system referred to Jews and non-Jews alike. However, after Hungary joined the war in 1941, executive decree No. 5070/1939 M.E. of the Council of Ministers⁵ served as a basis for the decrees introducing the compulsory labor service of the Jews.⁶ According to Braham’s data, out of the total 90,000 Hungarian recruits annually there were 20,000 assigned to labor service; one third classified as fit for industrial labor, the rest for field work.⁷ The latter worked on projects of use to the army – clearing forests, road construction,

² See Paragraphs 87-94. Following this main principle of the law, Paragraph 141 endowed the Hungarian Government with a total mandate in time of war. *Armless They Stood*, vol. 1, p. XVI. The Sztójay Government referred to this paragraph to justify the anti-Jewish decrees made after March 19, 1944. See: Karsai László, *Holokauszt* (Budapest: Pannonica Kiadó, 2001), p. 218.

³ Promulgated on March 11, 1939.

⁴ Accordingly, three corps were established within labor service: auxiliary (*kisegítő*) labor service for the Jews, military (*katonai*) for national minorities and special (*különleges*) for the politically unreliable. “Article 230 provided the legal basis for the labor service system. According to its first paragraph, all Hungarian citizens of 21 years of age or older who were classified as permanently unsuitable for compulsory military service by medical authorities or excluded from military service could be compelled to engage in ‘public labor service’ (*közérdekű munkaszolgálat*) in special labor camps for a period not exceeding three months at a time.” Braham, *The Hungarian Labor Service System*, p. 5. *Armless They Stood*, vol. 1, p. XVII.

⁵ Promulgated on May 12, 1939.

⁶ Karsai, L., *Holokauszt*, p. 219.

⁷ Cf. Braham, *The Hungarian Labor Service System*, p. 11. The older and weaker were assigned to domestic labor companies that “...were employed primarily within the country on projects initiated or supervised by the various army corps commands. In some cases, the allocations were based on the requests of factories in need of skilled or unskilled labor.” Braham, *ibid*, p. 124 note 17.

dredging and clearing watercourses, unloading freight at rail yards and building airfields. They also served in labor camps in military-organized worker units.

The number, character, internal organization and supply of the camps were determined by the Ministry of Defense.⁸ The organization of labor battalions was based on the territorial division of the military; each company had to take a military oath, and was under military disciplinary rules.⁹ Although forced laborers received the same pay, clothing and rations as regular soldiers, they were identifiable by their having a tricolored (red, white, green) armband of the national flag. The system was intended as a substitute for military service and aimed at “educating” those deemed unsuitable about national and military principles. In the beginning the service in forced labor companies was not discriminative or punitive in nature.

III.B.2 From the re-occupation of Northern Transylvania to Hungary’s entry to the War (September, 1940 – June, 1941)

Until the summer of 1940 there were 60 organized special labor companies, each consisting of 250 men, with a total of approximately 15,000 forced laborers.¹⁰ After the establishment of the Second Hungarian Army under the command of Gusztáv Jány in 1941, the number of Jewish labor servicemen in Hungary increased. From the summer of 1941 labor battalions were sent to the Eastern Front.

The opinion of the general staff was that Jews should not be totally absolved from military service at the expense of the non-Jewish population. Thus, due to the general rearmament program in the summer of 1940, a decree of the Ministry of Defense¹¹ obligated Jews specifically to serve in unarmed corps as forced laborers. The title of the decree explicitly denoted its goal: “Deployment of Jews for Labor” (*Zsidók felhasználása munkára*). It called up all Jewish men between 18 and 60 for labor and divided them into “Jewish field labor companies” (*tábori zsidó munkásszázadok*) and “domestic Jewish labor companies” (*honi zsidó munkásszázadok*).¹² Field labor companies were filled with the healthy and young. One year later in 1941: “Following the entry of Hungary into

⁸ Decree No. 5070/1939. ME. set up the framework of forced labor. The Minister of Defense had jurisdiction over matters of command, discipline and training through the National Superintendent of the Public Labor Service System (A Közérdekű Munkaszolgálat Országos Felügyelője / KMOF) who was in charge of a special division in the Ministry. Braham, *ibid*, p. 9.

⁹ “Following the usual check-up and classification, they were assigned to camps that operated within the framework of the labor battalions (*közérdekű munkaszolgálatos zászlóaljok*) under the jurisdiction of the eight army corps commands (*hadtestparancsnokságok*) in existence at the time (...). Each company was functionally attached to a labor service battalion and operated under its immediate control.” Braham, *ibid*, pp. 9-10.

¹⁰ Karsai, L., *Holokauszt*, p. 219.

¹¹ No. 441/Om. biz. 1b. 1940, promulgated on 23rd August, 1940 (For the text see *Armless They Stood*, vol. 1, pp. 281-283).

¹² “Under the secret decree, those in the 25 to 42 age group were to be called up first and were to be followed by those between 43 and 48, and eventually by those between 49 and 60.” Braham, *ibid*, p. 13.

World War II, it was mostly the field labor service companies that were sent out to the war zones in the Ukraine.”¹³ Mandatory labor service had been implemented since January 1941 in Northern Transylvania.

In September 1940 the Hungarian Army invaded Northern Transylvania. After the annexation there were 170,694 Jews living under the rule of the Hungarian administration in this territory, 90 percent of them Orthodox.¹⁴

Due to the worsening anti-Jewish climate and Hungary’s entry to the Second World War in 1941 (and Yugoslavia in April and the Soviet Union in June of the same year), conditions of forced laborers became harsher. As part of the operation of the invasion of Soviet territories in the Eastern Front, forced laborers repaired roads, bridges and railways connecting Hungary proper with the Hungarian-occupied parts of the Ukraine. Forced labor work consisted of the laying or removing of mines from farms, fields, roads, and railroad maintenance, loading and unloading of munitions, snow removal, war-related technical and fortification work, digging tank-traps and the building of trenches, bunkers, and gun emplacements.¹⁵ Later, in 1942, Jewish labor servicemen were employed in the maintenance of army posts and war heroes’ cemeteries and the building of shooting ranges in the hinterland.¹⁶

In the meantime, every commissioned and non-commissioned officer identified as a Jew was dismissed from active service, following changes in the status of Jews. Approximately 16,000 Jews, or non-Jews of “Jewish origin,” lost their rank.¹⁷

From 1941 Jews served, unarmed, in the hinterland of Hungary and on the front lines. According to Braham’s data there were 14,413 Jews among the 23,018 labor servicemen on active duty on December 15, 1941, serving in labor battalions under the direction to the nine army corps.¹⁸ Forced laborers and regular soldiers both served for two years. However, from 1941 forced laborers were deprived of the privileges granted to regular soldiers, such as uniforms,¹⁹ permanent leave and the right to postpone their service. Converts to Christianity identified as Jews by the anti-Jewish

¹³ Braham, *ibid*, p. 124 note 16.

¹⁴ According to Carmilly-Weinberger’s data based on the census held in 1941. See Carmilly-Weinberger, Moshe, *A zsidóság története Erdélyben (1623-1944) / The History of the Jews in Transylvania* (Budapest: MTA Judaisztikai Kutatócsoport, 1995), p. 45.

¹⁵ Braham, *ibid*, p. 32. At the beginning these measures lacked any legal basis, which was supplied later by an executive decree issued on the 16th of April, 1941. No. 2870/1941. M.E. For the text see *Armless They Stood*, vol. 1, pp. 309-316. For the implementation of the Decree the Ministry of Defense issued Order Nr. 27 300 of class 8 of the Ministry of Defense on the 19th of August, 1941. “This ordered that Jews, as defined in the Second Jewish Law, who were liable for military service, fulfill their duty by auxiliary labor service within the army. (...) They were not entitled to any rank, even if they had previously been commissioned or non-commissioned officers.” Karsai, *Holokausz*, p. 203.

¹⁶ *Armless They Stood*, vol. 1, pp. 547-575; vol. 2, pp. 108-115.

¹⁷ Karsai, L., *ibid*, p. 220.

¹⁸ Braham, *ibid*, p. 26.

¹⁹ Forced laborers served in a military hat and regular clothes with armbands. (In 1941 the army command forced a change to yellow armbands instead of the tri-colored armbands of the national flag.) Forced laborers deployed along the front lines had no appropriate clothing for the winter and had no possibility of obtaining new supplies.

Laws served in separate “Christian Labor Service Companies” (*Keresztény munkaszolgálatos századok*) and wore white armbands. These units mostly remained within the country during the war and most of them avoided front-line service in the Ukraine.²⁰ In principle, the age limit for front-line service was 42 for Jewish forced laborers. In fact, a decree signed by Vilmos Nagybaczoni Nagy ordered the recalling of Jews above the age of 42.²¹

III.B.3 Hungary at War (June 1941 – March 1944)

The Second Hungarian Army was deployed to the Eastern Front in the Ukraine along the River Don during the late spring of 1942. The troops were followed by 45 companies of Jewish labor servicemen.

Three years after the implementation of the National Defense Law of March 1939, a new complementary bill was prepared that included the provisions of the decree of 1941 and other matters related to labor service.²² Law No. XIV of 1942 codified the whole system of labor service of the Jews and was based on the definition of “Jewishness” proposed in the so-called Third Anti-Jewish Law passed in 1941.²³

In January, 1943 the Hungarian 2nd Army was crushed by the Soviets. By the summer of 1943, military labor servicemen served within three major labor service systems under the jurisdiction of the Hungarian army: military labor service companies (*katonai munkásszázadok*) composed of Hungarians and national minorities, public labor service battalions (*közérdekű munkaszolgálatos zászlóaljok*) and auxiliary service companies, which were Jewish labor service companies (*kisegítő zsidó munkásszázadok*).

III.B.4 Occupation of Hungary by the German Army (March 1944 – January 1945)

One month after the German army occupied Hungary on the 19th of March, 1944, the setting up of ghettos started in the countryside. Deportation of Jews from the countryside started on 15th of May. In 56 days 437,000 Jews were deported from the provinces of Greater Hungary.

A ministerial decree, issued on the 7th of June, ordered Jews to be stationed in prisoner-of-war camps, which saved the forced laborers serving in the homeland from deportation. After the end of the deportations in July, forced laborers and 200,000 Jews living in Budapest shared the

²⁰ Braham, *ibid*, p. 25.

²¹ Decree Nr. 5584. of division M. 1b of the Ministry of Defense, see *Armless They Stood*, vol. 2, p. 181.

²² The Bill was promulgated on July 31, 1942.

²³ See Katzburg, Nathaniel, *Hungary and the Jews. Policy and Legislation 1920-1943* (Ramat-Gan: Bar Ilan University Press, 1981), p. 205.

same fate. Forced laborers serving in the hinterland had a much better chance of survival than the deportees who were taken to concentration camps. “Ironically, after the German occupation on 19th of March, 1944, the labor service system, which remained under the exclusive jurisdiction of the Hungarian Ministry of Defense, emerged as a source of refuge for many Jewish men of military age.”²⁴

Five days after the Arrow Cross Party came into power on the 15th of October, the mobilization of Jewish men for “national defense service” began in Budapest. Jewish men between 16 and 60 and women between 16 and 40 were drafted into labor service. Seventy companies consisting of Jews living in Budapest were handed over to the Germans for fortification work on the western border of Hungary in death marches.²⁵

There is no consensus among historians concerning the number and losses of forced laborers. The first estimate was published by Jenő Lévai in 1948: “In the winter of 1942-1943, 40,000 Jews were working near the Don and in other parts of the Ukraine.”²⁶ The former Minister of Defense, Vilmos Nagybaczoni Nagy, recorded the number of 50,000 forced laborers deployed on the Eastern Front in the winter of 1942-1943.²⁷ According to his estimation there were only 6-7,000 Jewish forced laborers who withdrew with the Hungarian troops, so the losses were around 43-44,000. Randolph L. Braham accepted the estimation of Vilmos Nagybaczoni Nagy.²⁸ However, László Karsai estimated the number of dead to be higher.²⁹

The forced labor system allowed and even encouraged cruelty against forced laborers, but their extermination was not its main goal. According to Ungváry’s data, in 1941-1942 losses of forced laborers were 8 percent as opposed to 13 percent in the fighting corps.³⁰ The losses of forced

²⁴ Randolph L. Braham, *Genocide and Retribution: The Holocaust in Hungarian-Ruled Northern Transylvania* (Holocaust Studies Series) (Hingham-Dordrecht: Kluwer- Nijhoff Publishing, 1983), p. 15.

²⁵ In the death march from Budapest in November 1944 thousands were forced to Austrian border, accompanied by Hungarian Guards.

²⁶ Lévai Jenő, *Fekete Könyv a magyar zsidóság szenvedéseiről / Black Book on the Martyrdom of Hungarian Jewry* (Budapest: Officina, 1946) (Ed. by Lawrence P. Davis) (The Central European Times Publishing Co., Zurich; The Panorama Publishing Co., Vienna, 1948), p. 425. For the list of various types of labor companies stationed in the Ukraine in January 1943 see *Armless They Stood*, vol. 1, pp. CXXII-CXXIII.

²⁷ *Armless They Stood*, vol. 1, p. LXXV: “In the winter of 1942-1943 the number of forced laborers deployed along the Eastern Front was 50,000.” In his memoir published in 1957 he states: “Losses of the Second Hungarian Army were great. Out of 200,000 there were 60-70,000 people remained alive. Out of 50,000 forced laborers there were 6-7,000 who returned to the west. The rest fell or were captured by the Russian troops.” *Armless They Stood*, vol. 1, p. 278.

²⁸ “The number of Jewish labor servicemen in the different types of labor companies attached to the Second Hungarian Army was approximately 50,000”. Braham, *The Hungarian Labor Service System*, pp. 28; 37.

²⁹ The number of forced laborers who died in service was 50-70,000 according to him. See Karsai, L., *Holokauszt*, p. 226.

³⁰ Ungváry, *Hungarian Military Forces in the Second World War*, pp. 119-120. Ungváry’s source: Tamás Stark, *Hungary’s Human Losses in the Second World War* (Uppsala, 1995); see *Magyarország második világháborús embervesztesége* (Budapest: MTA TTI, 1989), p. 30. In 1941-1942 from the 2149 reported forced laborer there were 160 missing, wounded 319, died 1628 and 42 fell to captivity. The sources differ on the losses of 1943 between 23,308 and 25,451 (19,003 missing, 1035 wounded, 1633 fell taken captive). Ungváry interprets these data as the following: Compared to the losses of the regular Hungarian army between 1941 and 1944, chances for survival were better for forced laborers than for regular soldiers.

laborers were highest when forced labor companies were deployed as part of the Second Hungarian Army in the Ukraine.

III.C Decrees issued by the Hungarian Ministry of Defense regarding religious observance

Each forced labor company consisted of sub-units commanded by officers (*tisztes*) and deputy officers (*altiszti*). Before the deployment of the Hungarian Army in the front lines in 1941 there were still serving Jewish deputy officers. The presence of Jewish officers fundamentally eased the life of forced laborers. The officers' behavior was strictly criticized by investigators of the gendarmerie.³¹ An army report dated the 3rd of September 1940, about a forced labor company serving in the town of Gyoma in Békés county, depicts the life of forced laborers in the following way: "Working hours were between 7 and 11 in the morning and between 2 and 5 in the afternoon. During their break between 7 and 9 p.m. they go to the synagogue, walk up and down the streets, or amuse themselves in the confectioner's shop. Local forced laborers stay at home overnight."³² The report attests to the lenient attitude of Jewish deputy officers who did not urge forced laborers to work "efficiently."

Officially, religious observance of the draftees was under the control of the Ministry of Defense on the legislative level; the general staff of the army exercised its executive power. In general, in questions related to religious observance forced laborers were subject to the same orders as regular soldiers. However, the Ministry of Defense controlled religious observance of Jewish forced laborers by special decrees focusing on Jewish religious issues. For example, a decree promulgated by the Ministry of Defense on the 27th of September 1940³³ enabled the celebration of the two days of the Jewish New Year (*Rosh Hashana*) on the 2nd-3rd of October and the Day of Atonement (*Yom Kippur*) on the 12th of October by exempting forced laborers from work on those days. The same decree allowed forced laborers to attend services in the local synagogue on both

³¹ *Armless They Stood*, vol. 1, p. 211ff. See also the report of a company deployed in Vámospércs, where the company commander was Christian, but the overseer and inspector commander were Jewish, who handled forced laborers leniently (*Armless They Stood*, vol. 1, p. 214).

³² "Foglalkozási idejük 7-11 és 14-17 óráig tart. 19-21 óráig kimenőjük van, mely idő alatt vagy a zsinagógába mennek, vagy az utcán sétálgatnak, esetleg a cukrászdában szórakoznak. A helyben lakó munkásszázadbeliek az éjszakát lakásukon töltik." *Armless They Stood*, vol. 1, p. 213.

³³ Decree Nr. 516. of the 1b. class Om. For the text see *Armless They Stood*, vol. 1, pp. 231-232. "A 12 980. M. 1b. – 1940. számú rendeletem kapcsán és annak kiegészítéseképpen elrendelem, hogy az október hó 2. és 3-i zsidó újéven és az ezt követő hosszúnapon, az említett rendeletben előírt kétórás foglalkozást nem kell megtartani. Ezen ünnepeken ott, ahol zsinagóga van, a jelentkező szolgálatmentes zsidó vallásúakat zárt rendben oda kell vezetni, ahol azok estig tartózkodhatnak. A visszatérés a zsinagógából ugyancsak zárt rendben történjék."

holidays and to attend the services on any Sabbath or Jewish holiday. The decree even ordered guards to escort observant forced laborers on their way to and from the synagogue, showing that the religious observance of forced laborers required special effort by the guards.

Five days later, on the 1st of October 1940 the 1st division of the general staff of the army ordered army corps commanders to apply the same regulations on ritual observance to all draftees, regardless of their religion. Jewish forced laborers could obtain a reduction in the duration of service and could receive exemption from canteen meals on fasting days, exactly the same as religious Christian soldiers serving in the military.³⁴

Two years later, on the 9th of March 1943, a decree was signed by the Minister of Defense, Vilmos Nagybaczoni Nagy,³⁵ which summarized previous orders and decrees of the ministry and aimed to ease the life of forced laborers serving in the homeland. The decree explicitly concerned the life of Jews serving in the homeland and probably had no effect on the life of forced laborers serving in the front lines.

Order nr. 6/d of the decree allowed forced laborers to receive visitors (every two weeks for two hours) and to receive clothing, necessary goods and money from them. Order nr. 7/b allowed forced laborers to receive one package of 5 kilos every month (this included 2 kilos of food products). Order nr. 7/c allowed forced laborers to receive letters (the correspondence was censored by officers). Order nr. 8 prohibited individual food purchases and food consumption outside the camp,³⁶ which obviously made observance of dietary laws nearly impossible. Apart from uncooked vegetables there was no kosher food available in camps. Bread was also available, but its *kashrut* was questionable.

Order nr. 9 aimed to regulate religious observance in forced labor camps in general; nr. 9/b related to the religious observance of Jewish forced laborers and concerned the following topics:

- Rabbis serving in forced labor companies have the primary duty to provide religious services for Jewish forced laborers of the company: prayer services on Sabbath evening³⁷ and on Jewish holidays.
- If there is no rabbi in the company, forced laborers are allowed to visit the local synagogue on Friday evening and on “important Jewish Holidays,” namely “on Rosh Hashanah, on the first and last day of the nine-day long Feast of Booths, on the first and last day of the eight-day long Passover, and on the second day of Pentecost they are allowed to stay at the

³⁴ For the text see *Armless They Stood*, vol. 1, p. 232. The decree was implemented by order Nr. 2870/1941 on the 19th of August, 1941.

³⁵ “Összefoglaló miniszteri rendelet a hátszágban alkalmazott zsidó munkaszolgálatosokkal való bánásmód tárgyában” Nr. 110 160. szám eln. KMOF. 1943. For the text see *Armless They Stood*, vol. 2, pp. 286-298.

³⁶ “Kintékezés, külön étkezést, külön élelmi cikkek vásárlását, a közéletmezés saját költségén való feljavítását, önálló élelembeszerzést engedélyezni nem lehet” (*Armless They Stood*, vol. 2, p. 293).

³⁷ Sabbath starts on Friday evening and lasts until Saturday evening. Usually forced laborers were allowed to pray on Friday evening as it was compatible with forced labor.

place of the service until the evening. Yom Kippur starts three hours before sunset on the day before the holiday, and forced laborers' exemption from work starts at the same time (...)." Jewish forced laborers were exempted from work all day on those holidays. Guards were ordered to escort them on the way to the synagogue and back. (In the military, official holidays were Sundays, Christian holidays and military holidays.)

- Where there is no synagogue in the town, a military chaplain (*zsidó lelkész*) has to minister the service and give a speech in the camp (*elhelyezési körlet*) on Jewish holidays when authorized by a written permit and under the supervision of the deputy commander (*alosztályparancsnok*).
- Jews are prohibited to visit the synagogue individually.
- Off-duty Jewish forced laborers are permitted to pray in the morning with their "devotional object" (*kegytárgy*) any time (the reference here is to the morning prayer, which requires the use of phylacteries).^{38 39}

III.D Jewish Holidays and prayers in the forced labor camps as reflected in the responsa

III.D.1 Morning prayer of forced laborers

The responsum written by the rabbi of Edelény, R. Yisrael Landau, shows the impact of the above mentioned orders on forced laborers. They received permission from the commander to

³⁸ "Az izraelita vallású kiegészítő szolgálatosok lelki gondozására elsősorban a zsidó munkásszázadokhoz esetleg beosztott rabbi foglalkozású kiegészítő szolgálatosok hivatottak. Amennyiben ilyen az alosztálynál nem volna, vagy az Istentisztelet tartásában bármi ok miatt akadályozva lenne, úgy az izraelita vallású kiegészítő szolgálatosok a zsidó ünnepeken és péntek este – ha a helységben zsidó templom (imaház) van és a szolgálati viszonyok megengedik –, tisztes felügyelete mellett, zárt rendben vezetve, az Istentiszteleteken részt vehetnek, illetőleg a nagy zsidó ünnepeken, éspedig Újév napján, a 9 napos Sátorosünnep első és utolsó napján, a 8 napos húsvéti ünnep első és utolsó napján, a Pünkösöd 2 napján az Istentisztelet helyén estig tartózkodhatnak. Az engesztelónapnál az ünnep, illetőleg a kiegészítő szolgálatosok szolgálatmentessége az ünnep előtti nap napszállta előtt 3 órával kezdődik. Az Istentisztelet helyéről való visszatérés ugyancsak zárt rendben történjék. Az esetben, ha a munkás század elhelyezéséről szolgáló helységben izraelita templom (imaház) nincsen, s az egységhez rabbi foglalkozású kiegészítő szolgálatos nem került beosztásra, megengedem, hogy az izraelita lelkész a kiegészítő szolgálatosoknak az Istentiszteletet, beszédet vagy egyéb lelkigyakorlatot az alosztályparancsnoktól nyert írásbeli engedély alapján alapján – kellő felügyelet mellett – az elhelyezési körleten belül tarthassa meg. Az izraelita vallásúaknak az egyenkénti templombajárás nem engedélyezhető. Vasárnap, az ünnepnapokon, valamint a katonai szünnapokon munkaszünet van. A már felsorolt nagy zsidó ünnepeken az izr. kiegészítő szolgálatosoknak teljes szolgálatmentességet engedélyezek. Az izraelita vallású kiegészítő szolgálatosok kegyeszerekkel végrehajtott reggeli imagyakorlataikat a szolgálati időn kívül bármikor elvégezhetik" (*Armless They Stood*, vol. 2, p. 294).

³⁹ On a tefillin spoiled in forced labor see the responsum of R. Shmuel Grünberger, *Mirkahat besamim*, vol. 3. The responsum was sent in 1942 to R. Krappner, the rabbi of Tasnád.

participate at the *minha* service in the nearby synagogue. In the second responsum written by R. David Frenkel we see the bizarre fulfillment of a religious commandment in a forced labor camp: the commander ordered an observant forced laborer to build a *sukkah* on the Sukkot holiday.

◆ R. Yisrael Landau, *Shu"t Bet Yisrael*, no. 20

Addressee: R. Shalom Friedmann (Miskolc)

Respondent: R. Yisrael Landau (Edelény)

Date: עש"ק אה"ק תש"א (May 2, 1941)

"תוכן שאלתך הוא כי בעת שהיית אצל אנשי הצבא ולא ניתן לכם רשות ביום ב' וביום ה' בשחרית לילך לבית הכנסת להתפלל ולשמוע קריאת התורה והתפללתם כך בלא קריאת התורה ואח"כ [ואחר כך] לאחר צהריים בעת מנחה ה' [היה] לכם פנאי ורשות לילך למקום תפלה והי' [היה] לך פילפול עם שאר חבירך אנשי הצבא, שאתה אמרת שכיון שלא שמעתם קריאת התורה ביום ב' או ה' בשחרית תוכלו אתם לקרות בתורה הפרשה בעת מנחה וחבירך אמרו כי לא שמעו כזה שיקראו בתורה הפרשה של השבוע ביום ב' וה' במנחה. [...]"

"Your question is the following: During your army service you did not receive permission to go to the prayerhouse on Mondays and on Thursdays for the morning prayers to pray and to listen to the Torah reading, so you [the forced laborers] prayed without Torah reading [in the camp]. Later in the afternoon at the time of the *minha* service you received permission to go to the prayerhouse [the synagogue] in your free time and you had a quarrel with your comrades. You told them that as you did not hear the Torah reading neither on Monday nor Thursday during the morning prayer you may read the *parasha* [the weekly Torah portion] during *minha*; but your comrades said that they had not heard before such a thing, reading the *parasha* on Monday or Thursday at *minha*."

R. Friedmann suggested reading the *parasha* during the *minha* service. His comrades rejected his suggestion, so he turned to R. Landau, asking for his decision. R. Landau wrote his responsum after R. Friedmann had already returned from the forced labor camp. Still, his responsum might have been relevant for the period of his next service, or for his comrades still in service.

[הנה מכתבך] R. Landau apologizes in the beginning that he could not spend as much time on writing the responsum as he wanted, because he was occupied with preparing the manuscript of his responsa collection for printing. After presenting the question, R. Landau summarizes R. Friedmann's argument. The prophets set the order of Torah reading three times a week (on Monday, Thursday and Saturday) without determining the hour. However, according to the Talmud⁴⁰ Ezra set the time of Torah reading on Sabbath at the *minha*. The decision of R. Yehuda Aszód,⁴¹ based on this *sugya*, supports those who were unable to listen to the Torah reading during

⁴⁰ bBaba Kamma 82a.

⁴¹ R. Yehuda Aszód, *Yehuda yaaleh, Orach Hayyim*, no. 50 (Lemberg, 1873).

the morning service, so they may make up in the afternoon, during the *minha* service of the same day.⁴²

[ונחזי] R. Landau starts his answer with referring to the Rambam:⁴³ Moses appointed the exact time for Torah reading on Monday, Thursday and Saturday mornings. According to tractate *Megilla*⁴⁴ Ezra ordered the reading of the *parasha* at *minha* on Saturdays as a favor to merchants (יושבי קרנות) who could not take part in the morning service on weekdays.

[הרי לך] Rambam's ruling is based on tractate *Megilla*, which states that the Torah reading had to take place on days when villagers come to the city. In R. Landau's interpretation Rambam argued that villagers could pray in the cities only in the mornings, because they already had to leave the cities in the afternoon.

[א"י בפשטות] According to the Rambam, the purpose of Moses was to maximize the number of those who can hear the Torah reading. (There were many people in the synagogues in the mornings but not in the afternoons and evenings).⁴⁵

[א"י דע"כ] R. Landau refers to the responsum of R. Eliezer Deutsch of Bonyhád⁴⁶ who (based on *Tosafot Pesahim* 107a) had already discussed the possibility of reading the Torah during the *minha* service. R. Deutsch rejected this option, referring to the Rambam.

[אולם] R. Landau differentiates between the earlier decisions and the present case, arguing that contrary to the villagers, forced laborers are deprived of the possibility of going to the synagogue in the mornings. R. Eliezer Deutsch and R. Amram Blum of Berettyóújfalu,⁴⁷ however, both deal with cases of people who missed the Torah reading in the morning for one reason or another. R. Landau argues that their decisions cannot serve as a basis for deciding in the case of forced laborers. However, R. Yehuda Aszód – as cited by the questioner – decided *halakha le-maaseh* (i.e. his decision had practical consequence); that people who could not participate in the Torah reading in the morning are permitted to read the Torah at the *minha* service. The author adds that tractate *Baba Kamma* (82a) alludes to the possibility of hearing the missed Torah reading by the end of the day.

[ועוד] According to the same *sugya* in *Baba Kamma*, Ezra ordered the reading of the Torah on Sabbath at the *minha* service as a favor to merchants (יושבי קרנות) (see above). Rashi adds that the reason for this ruling is that merchants could not take part in the morning service on weekdays. R. Landau adds that Rashi's comment suggests that the Torah reading at the *minha* service on Sabbath was introduced by Ezra (and not by Moses) as a supplement (השלמה) for those who work in the mornings and thus cannot come to the synagogue. R. Landau adds that the substitution of the

⁴² *Tosafot Pesahim* 107a.

⁴³ *Mishneh Torah, Hilkhos tefillah*, 12:1.

⁴⁴ *bMegilla* 2a.

⁴⁵ See also *Shulhan Arukh, Oras Hayyim*, 114, *Turei zahav*, 114:2, *Magen Avraham* 114:1).

⁴⁶ R. Eliezer Deutsch, *Shu"t Pri ha-sadeh*, III, 1-2 (Paks, 1906).

⁴⁷ R. Amram Blum, *Shu"t Bet Shearim, Oras Hayyim*, no. 50 (Munkács, 1909).

missed Torah reading on the same day in the afternoon in the *minha* is not only permitted, but advisable.

[תבנא] In permitting to read the *parasha* in the *minha* prayer in the labor camps, R. Landau refers also to the responsum of the Maharsham,⁴⁸ who permitted reading the *parasha* at dawn before sunrise on Monday and on Thursday in “times of distress” (“בשעת הדחק”). R. Landau’s comment is the following: “ואין לך שעת הדחק כמו אלו אנשי הצבא” “there is no distress like the distress of forced laborers.” Namely the *halakha* that refers to people under duress is valid in the case of forced laborers. R. Landau accepts the decision of the Maharsham as a precedent. It follows that R. Landau argues that *there is a possibility* of reading the Torah in the afternoon during the *minha* service for those who were not allowed to participate in the morning service (אנוסים). Forced laborers were forbidden to attend the service at the synagogue in the mornings, so following the Maharsham and R. Yehuda Aszód’s decision, R. Landau decides that they can make it up in the *minha* prayer on Monday and Thursday afternoons.

III.D.2 Building a “*Sukkah*” on command

- ◆ R. David Frenkel, *Shu"t Beer David*, no. 17
Addressee: –
Respondent: R. David Frenkel (Berettyóújfalu)
Without date

"נשאלתי מאחד שעובד עבודת הצבא, וביום ראשון של חג הסוכות כפאו הראש הצבא שיעשה סוכה כשרה, דהיינו שיסתור הגג ולכסותה בסכך כשרה, ואחר שעשה הסוכה גזר עליו שיאכל וישתה וישן בסוכה, ושאל אם מקיים מצות סוכה בישיבת סוכה זו, ואם שרי לו לברך על מצוה זו."

“I was asked by a forced laborer: on the *first day* of the Sukkot holiday the commander compelled him to make a kosher *sukkah* [‘booth’], namely to muss the roof and to cover it with kosher branches, and after making the *sukkah* [the commander] ordered him to eat, drink and sleep in it. He [the forced laborer] asked whether he fulfills the commandment of the *sukkah* by sitting in this *sukkah*, and whether he is permitted to say a blessing on this commandment.”

The forced laborer apparently was compelled by a local commander on the first day of the Sukkot holiday to make a tent or a booth, which qualified as a *sukkah*. As the forced laborer was also ordered to sleep in this “*sukkah*” during the holiday we may assume that he was ordered to remove the roof of a shed in the camp that was not used as a dwelling place.

The order compelled the forced laborer to make the *sukkah* properly kosher by putting branches on the top of the shed. On the other hand, the forced laborer transgressed biblical law by

⁴⁸ R. Shalom Schwadron, *Shu"t Maharsam*, vol. 1, no. 158 (Jerusalem: 1974).

building the *sukkah* on the first day of the holiday (it is forbidden to do any work during the holiday). R. Frenkel's responsum elaborates on two questions that concern the *halakhic* status of the *sukkah*. The first question is whether the *mitzvah* of building a *sukkah* for the holiday was performed by the Jew by carrying out the order *on* the holiday. The second question was whether he should say a blessing on the *mitzvah* on sitting in the *sukkah*. The question revolves around the problem of performing a *mitzvah* while transgressing another (in our case resting from work on the holiday).

[ונראה לענ"ד] R. Frenkel states that the principle of a “*mitzvah* performed while committing a transgression” (מצוה הבאה בעבירה) does not refer to the case of the forced laborer, because the act of transgression (building the *sukkah*) had already been over before he transformed the *mitzvah* (eating, drinking and dwelling in the *sukkah*). It follows that performing the *mitzvah* does not contribute to transgression (איך המצוה מסייע לעבירה).⁴⁹ On the contrary, the transgression actually prepares the way for the *mitzvah* to be fulfilled.

[ועוד שהיה] According to R. Frenkel the forced laborer could have put a non-Jew in charge of building the *sukkah* – a *sukkah* built by a non-Jew is also kosher – however, by instructing the non-Jew to build the *sukkah* on the holiday, the forced laborer would have transgressed a rabbinic prohibition (שבות). However, according to some rabbinic authorities the principle of a “*mitzvah* performed while committing a transgression” does not refer to rabbinical prohibitions. The *Pri Megadim* elaborates on whether it is permitted to instruct a non-Jew to prepare a *sukkah* on Sabbath or during the holiday. The Maharam Schick permits preparing the *sukkah*.⁵⁰

[ועיין בה"ש] ; [ועוד י"ל] ; [ועוד דהכא] According to R. Frenkel building the *sukkah* on the holiday is considered as ‘work done for another purpose and not for the work itself’⁵¹ (מלאכה שאינה מלאכה עצמה). R. Frenkel refers to the *Rosh Yosef*,⁵² who suggests that one is not liable for doing forbidden activity on Sabbath if that activity was done under duress, because he does not do the work for the original purpose of the activity but to save himself from death.

[הגם] R. Frenkel adds that the above-mentioned principle taken from the *Rosh Yosef* cannot be taken into consideration in the case of the forced laborer, because he makes the *sukkah* in order to fulfill the *mitzvah* of sitting in the *sukkah*.

⁴⁹ See Tosafot Sukkah 30a.

⁵⁰ R. Maharam Schick, *Shu"t Maharam Schick, Orach Hayyim*, no. 161 (Munkács, 1880).

⁵¹ The commandment to keep Sabbath as a day of rest is repeated many times in the Torah (see Ex. 31:12-17). The Hebrew word for work (מלאכה) attests any activities that were prohibited to be done on Sabbath. The Sabbath tractate enumerates the 39 primary categories of creative activities (אב מלאכה) forbidden on Sabbath, based on the categories of work employed in the construction of the Tabernacle (bSabbath 73a) (MSabbath 7:2). The work that was done not for completion of a work itself but for another purpose is called מלאכה שאינה מלאכה עצמה (‘work done for another purpose’). Later decisors debated whether the prohibition referring to this type of work is biblical or rabbinic. (See bSabbath 141a, *Shulhan Arukh, Orach Hayyim*, 311:5).

⁵² R. Yosef Teomim, *Rosh Yosef* ([Warsaw, 1825], New York, 1983), *Sabbath*, no. 72.

[אבל] However, the author emphasizes that the forced laborer in fact did not make the *sukkah* for the purpose of fulfilling the *mitzvah* but out of fear. Even the fact that the forced laborer sat in the *sukkah* he made, does not imply that the work of building the *sukkah* was meant to be ‘work done for the work itself’.

[ועוד הא] Moreover, he desecrates the holiday to save his life, as his life would have been in danger had he not obeyed the order of the commander, and it is permitted to desecrate the holiday even it is dubious whether he can rely on the principle of saving a life.⁵³ The forced laborer could have fulfilled the *mitzvah* of sitting in a *sukkah* in any other *sukkah* in town or he could have had a non-Jew make the *sukkah*. In other words the forced laborer could have performed the *mitzvah* of sitting in the *sukkah* during the holiday in other permitted ways. It follows that the principle of a “*mitzvah* performed while committing a transgression” does not refer to his case.

[ועוד דלא] The forced laborer performed a *mitzvah* bound to time not in its proper time.

[ולענין] [ובזה] [וגם] [ועוד דהכא כיון] The author argues that it is permitted to say the blessing on sitting in the *sukkah*. He rejects the Remah (*Shulhan Arukh, Orach Hayyim*, 649), who prohibits the saying of the blessing in the case of intentional transgression. R. Frenkel argues that the forced laborer committed a transgression under duress, so he did not commit any transgression.

[הגם שבשו"ת חת"ס] The author elaborates on the *halakhic* judgment of inadvertent transgressions.

[ועוד מה] The author concludes that it is permitted to say a blessing on fulfilling the *mitzvah* of sitting in the *sukkah* that he built on the first day of the holiday under duress.

To sum up: The forced laborer was ordered to build the *sukkah* on the holiday, which is a transgression of biblical law. So if he built the *sukkah* in order to fulfill the religious commandment of building the *sukkah*, than he is not permitted to say the blessing on it, because he transgressed the law. However, if he built the *sukkah* under duress and out of fear, the principle of preservation of human life overrides virtually any other religious consideration.⁵⁴

Thus the forced laborer is permitted to say the blessing related to the *sukkah*. R. Frenkel argues for this by stating that the building of the *sukkah* is considered as a ‘work done for another purpose and not for the work itself’ (see above), so the builder of the *sukkah* is liable only for transgressing a rabbinic commandment and not a biblical one. This principle applies to the case, because the forced laborer did not build the *sukkah* in order to fulfill a religious commandment of sitting in the *sukkah*, but out of fear for his own life.

⁵³ *Pikkuah nefesh* (פיקוח נפש) ‘life-saving’: when human life is in danger, the preservation of human life overrides any other religious consideration so it is allowed to violate any law. Thus a Jew must violate any religious laws in order to preserve human life. This principle is called “transgress and do not be killed” יעבור ולא ייהרג). However, there are three prohibitions that may not be violated under any circumstances: murder, sexual misconduct and idol worship. “Let him be killed rather than transgress” (יהרג ולא יעבור) refers to the requirement to give one’s life rather than transgress the law concerning these three areas.

⁵⁴ See note 53.

III.E Clashes between Hungarian authorities and Jewish communities

III.E.1 Social allowance paid to the family of the forced laborer during his service

The question whether the status of forced labor was equivalent to military service or not arose both on the legislative and administrative level. During the debate concerning a Bill of a war levy, the Lower House pointed out the difference between armed service and auxiliary unarmed labor service performed by Jews and decided accordingly: labor service was not considered as military service, thus forced laborers were not excluded from paying income tax. The Bill was adopted by the Lower House on December 19th in 1942. In 1943 a labor serviceman applied for exemption of income tax payment for the duration of his service. Tax authorities dismissed his case on the grounds of the Bill. However, the Administrative Court (*Közigazgatási Bíróság*) decided in favor of the labor serviceman and exempted him from paying income tax.⁵⁵ Following the decision, the Upper House exempted all labor servicemen from payment of tax in its session on November 18th in 1943. “Its position was based on the fact that Jews usually performed their duties in the front line or adjacent areas, as did members of the defense forces; furthermore, even those who served nearer to their homes were – like soldiers – limited in the exercise of their civil occupations.”⁵⁶

The status of forced laborers had already been debated in 1941, in connection with social allowances, in the Hungarian Parliament. The families of married forced laborers were liable to receive social allowances (*családi segély*) during the service of the forced laborer. According to the Hungarian civil code, a valid marriage had to be contracted by the civil authorities. Civil marriage was introduced by the XXXI. Law of 1894, which came into force on the 1st of October, 1895. Civil marriage was not obligatory in the re-annexed territories, and the Hungarian authorities awarded social allowance only to families whose marriage was acknowledged by Hungarian Law. Jewish marriages, which were not authorized by the local administration did not entitle the family to receive social allowance. The families of Orthodox forced laborers received a reduced allowance and only on condition that their economic situation had been worsened due to their service as forced laborers.⁵⁷ Following ministerial attempts to ease the life of forced laborers, in September

⁵⁵ *Armless They Stood*, vol. 1, pp. LXXXIX; 2; 436-438. Nathaniel Katzburg considers the above decisions in favor of labor servicemen as result of the changing policy of the Hungarian authorities towards Jews under the premiership of Kállay due to considerations regarding foreign policy. Changes in the attitude of the administration were due to the orders of Vilmos Nagybaczoni Nagy, the Minister of Defense between 1942 September and 1943 June to stop the abuses. Katzburg, *Hungary and the Jews*, p. 206.

⁵⁶ *Armless They Stood*, vol. 1, p. LXXXIX. “This was an outstanding example of the moderate and fair attitude of the Upper Chambre on a subject pertaining to Jews”. Katzburg, *ibid*, p. 206.

⁵⁷ See Decree Nr. 143.878 of the 2. class of Ministry of Defense, 1941 and opinion of the 23rd class of the Ministry of Defense on the 7th of January in 1942. “A munkaszolgálatos zsidók részére csak akkor folyósít az osztály családi segélyt, ha t ö r v é n y e s házasságban élnek, ami egyértelmű azzal, hogy a pusztán rabbi előtt kötött házasság a magyar törvények szerint nem házasság.” (...)“Egyébként is családi segélyben a

1943 the situation was changed and widows and orphans of forced laborers were entitled to the same allowances as those who died during their military service.⁵⁸

III.E.2 Credibility of death reports of forced laborers

Orthodox marriages contracted in the re-annexed territories lacked official recognition by the Hungarian state. There was a similar clash between *halakha* and the regulation of the Hungarian military administration concerning death reports issued by army corps commands. The credibility of these reports was questioned by relatives of dead forced laborers on a *halakhic* basis. As every Jew has to be mourned after his death, the question arose whether the official report of the death of the forced laborer – without confirmation from a rabbi – was sufficient for mourning. According to *halakha* the testimony of two Jewish witnesses is required in order to confirm the death of a person; obviously this *halakhic* rule was not taken into consideration by the army corps. The three responsa related to the reliability of death reports made out by the army corps command are: the correspondence (two responsa) of R. Yoel Teitelbaum (Hassidic rebbe of Szatmár) and R. Tzvi Meisels (Vác), and the responsum of R. Moshe Hayyim Grünfeld (Sajószentpéter). All three texts were written in 1943. In his responsum written earlier,⁵⁹ R. Tzvi Meisels shared the view of those who rejected the idea of mourning for the forced laborers based on the death reports. He arrived at the same conclusion in his responsum addressed to R. Teitelbaum, who also wrote a responsum on the matter (see below).

- ◆ R. Tzvi Meisels, *Shu"t Binyan Tzvi*, vol. 2, no. 72
Addressee: R. Yoel Teitelbaum (Szatmár)
Respondent: R. Tzvi Meisels (Vác)
Date: א' דר"ח ניסן תש"ג (April 6, 1943)

In case of a *halakhically* appropriate death report closest relatives have to mourn including the recital of the *kaddish* by those obligated by Jewish law to do so.⁶⁰ *Halakhic* confirmation of the death of a husband is particularly important for the wife: in lack of a *halakhically* valid and reliable

zsidók csak csökkentett összegben részesülhetnek és csak akkor, ha anyagi helyzetük a katonai szolgálatra történt bevonulás folytán rosszabbodott.” *Armless They Stood*, vol. 1, pp. 405-406; 415.

⁵⁸ See the article published on the 2nd of September in 1943 in *Magyar Zsidók Lapja* (Journal of Hungarian Jews).

⁵⁹ R. Tzvi Meisels, *Shu"t Binyan Tzvi*, no. 1 ([1939] Brooklyn, 1997).

⁶⁰ Aramaic ‘holy’, prayers for the sanctification of the name of God. The term commonly refers to the version known as the Mourners’ Kaddish.

death report the wife is not allowed to remarry. R. Meisels begins his responsum with his observation regarding the present situation:

”אחדש”ת [אחרי דרישת שלום תורתו] כ”ק [כבוד קדושת] הדר”ג [הדרת גאונו] שליט”א [שיחיה לאורך ימים טובים אמן], הנני בזה לעורר בענין כלל, היות שהרבה מאחב”י [מאחינו בני ישראל] שבמדינה זו אשר זה כשני שנים שהובילו אותם למרחקים לעבודה קשה, והמה בשם תחת השגחת הממשלה כעבודת הצבא עם שרי הצבא בראשם וזה איזה שבועות הגיע להרבה נשים מכתב בחתימות שרי הקאמענדאנט שבעליהן מתו שם ונקברו רח”ל [רחמנא ליצלן].

והנה הנשים אין בדעתן כלל לבקש היתר להנשא לאיש בידוען שעתה אין שום סדר גם בין שרי הצבא וכבר נשמע כמה טעותים שעשו שרי הצבא וכל אחד מוכן להמתין עד כלות עבודת הצבא אשר כפי הנשמע לא יארכו הימים אשר כל אחב”י [אחינו בני ישראל] יבואו חזרה לביתם מעבודתם ואז בוודאי יתברר הרבה דברים על ידי החברים הישראלים שהי’ [שהיו] ביחד וכל אשה מחכה שבוודאי על פי איזה טעות נכתב לה הבשורה רע רח”ל.”

“After greeting your majesty, may he live a good long life, Amen, I wish to raise an issue that concerns many of our brothers, the children of Israel, who live in this country and were sent away to distant places in the past two years or so to do hard work, and they [work] under the supervision of the government as forced labor[ers] led by commanders of the army.⁶¹ A few weeks ago many women received a letter signed by the commanders of the company [=Army corps commands]⁶² stating that their husbands had died and were buried there, may the All-merciful protect us [=may such a thing not happen to us].

Behold, the women do not intend to ask for permission to remarry at all, because they know that there is no order nowadays even in the army command, and we have already heard about some mistakes that were made by commanders of the army; each of them is ready to wait until the end of forced labor as – according to rumors – the days of forced labor work left are few and our brothers, the children of Israel, will return to their homes, and then many things will become clear for sure by the Israelite comrades who were together, and all women expect that the bad news, may the All-merciful protect us, that they received, will turn out to be false.”

[אכן עיקר] The responsum deals with two problems: mourning and the saying of the *kaddish* prayer. Mourning lasts 11 months, and during this period *kaddish* is recited daily by the son(s) of the deceased. The author adds that the rabbis of Hungary had different opinions regarding the credibility of the death reports: there were towns where rabbis ruled that the family of forced laborers mourn and say *kaddish*, relying on the documents made out by the army. On the other hand there were towns where the rabbis refrained from making such a decision. In Budapest the rabbis were divided regarding this matter. R. Meisels had already written a responsum about the credibility of the death reports,⁶³ in which he shared the view of those who did not rule that the family members mourn, referring to the responsum of the Hatam Sofer⁶⁴ and the *Divre Hayyim*.

⁶¹ R. Meisels uses biblical language, שר הצבא ‘captain of the guard’, see: 1Chronicles 19:18, etc. In the responsum the term means ‘officer of any rank’.

⁶² R. Meisels uses a Yiddish word here: שרי הקאמענדאנט.

⁶³ R. Tzvi Meisels, *Shu”T Binyan Tzvi*, no. 1.

⁶⁴ Hatam Sofer, *Shu”T Hatam Sofer*, vol. 2, no. 132.

[ובפרט בנידן דידן] R. Meisels does not make a distinction between mourning and saying the *kaddish* and prohibits both practices. He refers to the *Divre Hayyim* who – in agreement with other decisors – was concerned that the laws referring to the non-Jewish authorities (ערכאות) of Talmudic times had already lapsed. According to the author the contemporary non-Jewish authorities are even less reliable than those the *Divre Hayyim* referred to. Thus, according to his decision, women should not start mourning “relying on the notification signed by company commanders” (על ידי הקאמענדאנט) of their husbands’ death.

[ויש לי הרבה הערות] R. Meisels adds that it is a holy duty of the rabbis to express their views in this issue that concerns so many people.

To sum up: The concern of R. Meisels was that saying the *kaddish* by the son and mourning the husband would be an indication of permission to remarry.

In his response to R. Meisels, R. Teitelbaum came to a different conclusion:

◆ R. Yoel Teitelbaum, *Shu"t Divre Yoel, Yoreh Deah*, nos. 105-106⁶⁵

Addressee: R. Tzvi Meisels (Vác)

Respondent: R. Yoel Teitelbaum (Szatmár)

Without date

"אחדשת"ה [אחרי דרישת שלום תורתו] כמשפט הגיעני מכתבו ע"ד [על דבר] אשר בעו"ה [בעוונותינו הרבים] בא לכמה נשים שבעליהן שהם בעבודת הצבא מתו ונקברו ר"ל [רחמנא ליצלן], ונחתם משרי הקאמענדאנט אי שרי להתאבל ולומר קדיש."

“I have received his letter concerning – may our sins be forgiven – some women whose husbands were serving in the army [as forced laborers] and died in service and were buried [there], and [the death reports] were signed by the [forced labor] companies’ commanders; [the question is] if it is permitted to mourn and [for the children] to say *kaddish*.”

[הנה] The main question is whether the wife of the forced laborer is permitted to remarry based on the report on the husband’s death made out by non-Jewish authorities. In times of war, a Jewish man has to testify that he buried the husband (קברתיו, “I buried the dead”) in order to permit the wife to remarry.

[וכאשר] After looking at the practice of the courts regarding the use of evidence, R. Teitelbaum makes a distinction between the way modern courts handle evidence and the practice of Talmudic times. He adds that those rabbis who decided leniently based their decisions on the *sugya* in tractate Gittin. R. Teitelbaum, however, would not permit the woman to remarry based only on the report of death that came from the army and when asked in the past about a similar case he

⁶⁵ See also: R. Tzvi Meisels, *Shu"t Binyan Tzvi*, vol. 2, no. 73.

refused to give a definite decision – however, if there were rabbis who decided leniently, he would not hinder a woman from remarrying either.

[והנה לא] R. Teitelbaum is not willing to give a definite answer to the question of whether the woman is permitted to remarry or not. He adds that every decisor would agree that in such a case it would be better to wait until the end of the war when things will become clear; and he assumes that the woman would not remarry until the end of the war either. However, the author focuses on two questions: 1, whether the family of the forced laborer should mourn and 2, whether his children should say *kaddish*.

[ולפענ"ד] R. Teitelbaum argues that R. Meisels acted well by not ruling that the woman should mourn. He refers to the *Turei Zahav* (who cites the Maharam Mintz) stating that in dubious cases regarding mourning, decisors should act leniently by not ordering the woman to mourn. Moreover, as it is not customary to mourn someone whose death is dubious, the act of mourning the husband indicates for the public that the husband is dead. Judging by the act of mourning someone would erroneously conclude that the husband's death is certain and even a decisor would permit for the woman to remarry based on the fact that she is mourning her husband. According to the author the danger of judging falsely legitimizes the prohibition of mourning.

[אמנם] Saying the *kaddish*, however is a different matter, and he examines the views of decisors, considering the saying of the *kaddish* prayer in dubious cases.

[ומ"ש בתשו' חב"י] The author adds that saying the *kaddish* is highly beneficial for the soul, so even when the death of the father is dubious, it is beneficiary to allow the children to say the *kaddish*. Saying the *kaddish* does not do the parents any harm, especially since the parents are not mentioned in the prayer by name – on the contrary, the prayer sanctifies God's name in public. It follows that it is permitted to say the *kaddish* even when the father's death is dubious, to ease the sorrow of the soul (לטרובת נשמתו), argues R. Teitelbaum.

[והשבו"י] In order to argue in favor of permitting saying the *kaddish*, R. Teitelbaum refers to the decision of the *Shulhan Arukh*⁶⁶ concerning the man who was thought to have drowned in the "water without end": faced with the lack of testimony confirming his death his wife is not permitted to remarry, though his heirs are liable to inherit from him. For R. Teitelbaum this ruling stands as an analogy: inheriting after the missing person does not indicate that the *bet din* would erroneously permit the wife of the missing man to remarry.

[וגם] According to the *halakha* there is a direct relationship between mourning and permission to remarry. The only testimonies that allow mourning are those that are also able to be relied upon to permit the woman to remarry. If it is so, argues R. Teitelbaum, the *kaddish* prayer has no direct connection to permitting the wife to remarry. Both the remarrying and inheritance need to be proven by clear proof, unlike the saying of the *kaddish*.

⁶⁶ *Shulhan Arukh, Hoshen Mishpat*, 284.

[עוד כתב בהב"י] The only argument against saying the *kaddish* in cases where the death of the father is dubious is that of the *Havot Yair*: judging by a son saying the *kaddish* for his father one would report the father's death, and someone who heard the report will go and falsely testify concerning the father's death at the *bet din*.

[הצרכתי] R. Teitelbaum makes a distinction between the case discussed by the *Havot Yair* and the case of the forced laborer: the *Havot Yair* decided in time of peace, when the testimony of one witness is sufficient to decide a person's death. Contrary to that in times of war – as in the present case – one's death can only be confirmed based on the testimony of a witness stating “I buried him” (קברתי). And the one who heard the son saying the *kaddish* will not testify at the *bet din* on the father's death with these words: “I buried him” but he will only say: “He [the father] is dead,” and the *bet din* will not give permission for the wife to remarry based on his testimony.

[ועכ"פ] R. Teitelbaum admits that, though there are similar opinions supporting his leniency, he would not give definitive permission that contradicts all the great rabbis who were strict on the matter.

[אמנם] However in the present case it is possible to rely on those decisors who decided leniently and permitted saying the *kaddish*, especially since the *halakha* does not permit the woman to remarry based on the recital of the *kaddish*.

[אך עדיין יש לפקפק] The author suggests to the family of the forced laborer not to act as mourners do (wearing black for example) besides saying the *kaddish*, because it is not customary to do such things when the death is uncertain. According to the author the saying of the *kaddish* does not influence the *bet din* in any way.

[אעפ"כ יעשו] In the end R. Teitelbaum gives practical advice (based on the responsum of *Knesset Yehezkel*⁶⁷): the *minyán* should gather in the house of the forced laborer and the *kaddish* prayer should be recited there. On days when it would be difficult to gather in private (as on days of Torah reading) they should say the *kaddish* in the synagogue (following *Ashrei*). The author is concerned that no one will give permission for the woman to remarry based on this permission.

[גם יאמרו להם] If it later turns out that the father is alive, their prayer will be taken as said for the “dead of the world” (other deceased Jews).

”גם יאמרו להם בפ"י [בפירושו] שיכוונו על תנאי, שאם אביהם חי וקים, יהי' [יהיה] הקדיש עבור מתי עולם, כמבואר בשו"ע [שולחן ערוך] שבמקום שאין אבל, יאמר ק"י [קדיש יתום] עבור מתי עולם, ובפרט כעת בעוה"ר [בעוונותינו הרבים] שהי' [שהיה] מה שהי' [שהיה] שאין שם אף אחד שיאמר קדיש ומצוה לאמר עבורם.”

“And they should also tell them explicitly that they should recite their [*kaddish*] on the condition that if their father is alive and well, the *kaddish* will be for the dead of the world, as it is said in the *Shulhan Arukh*, that in the lack of mourners one should say *kaddish yatom* [the mourners' *kaddish*,

⁶⁷ The responsa collection of R. Ezekiel Katzenellenbogen (1670-1749).

literally orphans' *kaddish*] for the dead of the world, especially in our time – in our great sins – when happened what happened that there is no one who would say *kaddish*, so it is a *mitzvah* [religious duty] to say it for them.”

To sum up the responsum, R. Teitelbaum, after giving a detailed description of the differing views, argues that saying the *kaddish* does not depend on a *halakhically* proper testimony on the father's death. He gives permission to practice only part of the mourning rituals, because he is concerned that no one would give permission for the woman to remarry based on his permission to say the *kaddish*.

In the appendix of the responsum R. Teitelbaum refers to the responsum of R. Yehuda Aszód, who decided to prohibit saying the *kaddish* if there is not sufficient evidence for permitting the woman to remarry. The author of the next responsum, the rabbi of Sajószentpéter, R. Moshe Grünfeld, agreed with the decision of R. Teitelbaum and argued for permission based on the evidence provided by the Hungarian army on the death of the husband.

- ◆ R. Moshe Hayyim Grünfeld, *Sefer Hayyim Bi-retzono, Orah Hayyim*, no. 16: 2

Addressee: Peretz Tuvya Stein (Diósgyőr)

Respondent: R. Moshe Hayyim Grünfeld (Sajószentpéter)

Title: ב. אמירת היתומים קדיש כשערכאות הצבא הודיעו שמת אביהם ז"ל [זכרונו לברכה] / Saying the *kaddish* for orphans, after the administration of the army informed them of the death of their father, may his memory be blessed

Date: ה' וירא תש"ג (October 29, 1942)

The first question refers to setting the alarm clock on Sabbath eve to ring on Sabbath in the morning. The second question concerns the death reports made out by the army. As opposed to the four pages (in two columns) devoted to the first matter, R. Grünfeld elaborates on the second matter on half a page:

"אודות ענין השני אם יש להתיר לומר קדיש להיתומים אשר הודיעו להם הערכאות של הצבא שמת אביהם ז"ל [זכרונו לברכה] במלחמה [...]"

“Concerning the second matter of whether it is possible to permit the saying of *kaddish* for the orphans who were informed by the administration of the army of the death of their father – may his memory be blessed – in the war [...].”

R. Grünfeld states that the *Mishmeret Shalom* has already collected the different views on the matter, and the Ktav Sofer decided that mourning and permission for the woman to remarry are inseparable, thus it is not permitted to mourn someone without his death being proven by the *bet*

din based on a testimony.⁶⁸ R. Grünfeld refers to those decisors who separated the act of mourning from permitting the woman to remarry, thus permitting mourning without definite evidence of the death of the missing person. The author disagrees with them (referring to other decisors) referring to the circumstances of the present case: the harsh conditions of the war result in mistakes by the administration:

"ולענ"ד [ולעניות דעתי] במלחמה הנוראה של זמנינו, א"א [אי אפשר] להתיר להדיא עד סוף כלות המלחמה חוץ אם יהיו עדים יהודים שיעידו מת וקברתיו, כי על עדות הערכאות א"א לסמוך עד שיתוודע שעדותם הי' בדקדוק, כי במלחמה נוראה וכבידה כזו בעוה"ר [בעוונותינו הרבים] אשר לא הי' כמותן, יוכל להיות טעויות ושגיאות כמובן, ומי יודע מתי יהי' קץ ותכלית לצרה הזו ויתבטל האמירת קדיש מכל וכל [...]."

"In my humble opinion in the present terrible war it is not possible to permit [the wife to remarry] until the end of the war, unless there are Jewish witnesses who will testify 'he died and I buried him', because it is not possible to rely on the testimony of the [non-Jewish] administration until their testimony turns out to be adequate, because in a terrible and heavy war like this – because of our great sins – that is one of a kind, it is possible that there were mistakes and errors, naturally, and who knows when this distress will end and saying of the *kaddish* will be cancelled absolutely."

The wife of the forced laborer was informed by the "non-Jewish company commander who was in charge of the camp" (ערל שר הצבא אשר היה פקיד על מחנה הזאת) that "her husband fell in the war" (בעלה נפל במלחמה). Later the clothes of the husband were sent home, and finally the woman received a notification from the army about her husband's death, confirming the day of his death and the place where he was buried. R. Grünfeld considers this evidence sufficient to release the wife from the *agunah* status⁶⁹ – however, he adds that according to the strict view one should wait until the end of the war to make the decision to permit the woman to remarry. Even so, argues the author, regarding saying the *kaddish* one can make a lenient decision.

"בפרט שהשו"ת [שהשאלות ותשובות] כנסת יחזקאל העלה דכעת שעושין שאלות ותשובות להתיר אין חשש לומר קדיש [...]."

"In particular the responsum of the *Knesset Yehezkel* raised [the issue] that nowadays when many [decisors] write responsa permitting the saying of the *kaddish*, there is no reason to worry [to permit the saying of the *kaddish* even if the dead of the relative is not testified by two witnesses]."

That is to say that no one would draw the false conclusion that his mother is permitted to remarry from hearing a son saying *kaddish* for his father. (See the responsum of R. Yoel Teitelbaum.) R. Grünfeld permits the children of the forced laborer to say *kaddish* on condition that

⁶⁸ R. Sofer, Abraham, *Shu"t Ketav Sofer, Yoreh Deah*, no. 182 (Jerusalem, 1984).

⁶⁹ *Agunah* ("chained" woman) – a woman bound in marriage by a husband who refuses to grant a divorce or who is missing and not proved to be dead.

the woman is warned that she is not permitted to remarry until the *bet din* decides on her case after the war or until two trustworthy Jewish witnesses testify to her husband's death. At the end of the responsum the author states that his permission has no binding force regarding other cases until rabbis who are experts on *agunah* matters agree with his permission.

The previous responsa concerned the question of whether it is possible to make a *halakhic* decision based on evidence that does not satisfy the *halakhic* requirements. The following responsa elaborate on the difficulties of Jewish communities following the recruitment of their employees to forced labor.

III.F The life of the Jewish communities in the shadow of forced labor

III.F.1 The “missing” employees of Jewish communities

The next three responsa written by R. Yonathan Steif (Budapest), R. Eliezer Schwartz and R. Yehuda Rosner (Székelyhíd) deal with the problem of employees of Jewish communities taken to forced labor. Being absent, the teacher (מלמד) and the *mikveh* stoker (מסיק) cannot provide the service they are being paid for. As a consequence the question was raised of whether the community is obliged to pay their salary to their family during their service in forced labor.

- ◆ R. Yonathan Steif, *Shu"t Mahar"i Steif*, no. 221

Addressee: –

Respondent: R. Yonathan Steif (Budapest)

Without date

”הקהל שכרו מסיק אחד שיסיק המקוה ואחר ב' שבועות בא פקודה עפ"י חק המדינה שהוצרך המסיק לצאת לצבא המדינה ולקחו אחר תחתיו ועברו שלשה חדשים ובא הראשון בחזרה ותבע שיחזירו אותו על מקומו, והשני מבקש שיניחו לו אותה המשרה.”

“The [Jewish] community employed a stoker to heat the *mikveh* and two weeks after [he had been employed] came an order in the name of the law of the state to recruit him into the army of the state. They [the community] employed another man instead of him, and after three months the first one returned and demanded that they take him back, but the other man requested that he be able to keep the job.”

The responsum is undated, but its reference to forced labor is obvious: the stoker returns

after three months of service (forced laborers were taken to labor for a three-month period at a time before the deployment of the Second Army at the front lines in 1941).

R. Steif decided in favor of the first stoker by referring to the *Shulhan Arukh*'s decision.⁷⁰ According to the *Shulhan Arukh* if someone could not fulfill a *mitzvah* because of compulsion (אונס), he still has the right to fulfill his *mitzvah* even if meanwhile his task was taken by someone else.⁷¹ Thus according to R. Steif's decision the community must give the job back to the first stoker and dismiss the second stoker. R. Steif compares the situation to the case discussed in *Yoreh Deah*⁷²: if someone, by mistake, asked two *mohels* to perform the *mitzvah* of circumcision, the first one has the right to perform it. R. Steif refers to the decision of the *Hoshen Mishpat*⁷³ also: the first trustee gets back the right of performing a *mitzvah* only on condition that he could not perform it because of compulsion (אונס).

R. Steif ruled that the community has to employ the first stoker again and dismiss the second one.

The following two responsa decide on the question of whether the community should pay the teacher's salary to his family during his absence as forced laborer.

◆ *Shu"t Mekadshei ha-Shem*, vol. 1, no. 98

Addressee: Yaakov Yosef Jungreis (Mád)

Respondent: R. Eliezer Schwartz (Sárospatak)

Date: א' תבוא ת"ש (September 15, 1940)

R. Schwartz refers to the Hatam Sofer who decided in a case of a teacher who could not practice his job because of the ban on Torah study ("יצא גזירה שלא ללמוד עם הנערים"). The Hatam Sofer decided in favor of the teacher and obligated the community to pay the teacher's salary regularly even during his absence: he argued that the fact that the teacher can not fulfill his duties because of the circumstances does not mean that the teacher's payment should be stopped. R. Schwartz quotes the commentary of R. Meisels, which adds that the teacher is mainly paid for supervising children, so he should have been paid by the head of the family (and not by the community) even after the ban on studying.

R. Schwartz argues that the Hatam Sofer's decision is not applicable in this case. The Hatam Sofer dealt with a case in which the decree (גזירה) had put restraint on the head of the family to take on another teacher. In our case, however, to take on someone else who has not been taken to

⁷⁰ *Shulhan Arukh, Orach Hayyim*, 153: 22.

⁷¹ R. Steif's other reference is the *Magen Abraham* (49) who decides as R. Steif.

⁷² *Shulhan Arukh, Yoreh Deah*, 264.

⁷³ *Shulhan Arukh, Hoshen Mishpat*, 149.

forced labor (literally “who has not been called to the state’s service” –

("שלא יהי נקרא לעבודת המדינה") lies in the power of the local Talmud Torah association. The decision of the Remah in the *Shulhan Arukh*⁷⁴ in favor of the teacher refers only to cases where studying is forbidden by the state. In our case, however, there is no ban on Torah studying, thus the lenient ruling due to a calamity should not be applied.

It follows that according to R. Schwartz’s decision, the Talmud Torah association is not responsible for the teacher’s distress. The teacher is responsible for his own fate alone מזל לא דמלמד (גרם). In spite of that, R. Schwartz ordered the community to give the salary of the forced laborer to his family.

R. Schwartz adds that in Sárospatak and in Sátoraljaújhely the teacher’s whole salary was regularly paid to his family every month. R. Schwartz ordered the principals of his community to act accordingly. However, he decided that the family should only get half of the teacher’s salary.

◆ R. Yehuda Rosner, *Sefer Imre Yehuda*, no. 7

Addressee: R. Yaakov Yosef (Mád)

Respondent: R. Yehuda Rosner (Székelyhíd, Transylvania, today Săcueni, Romania)

Date: עש"ק משפטים תש"ב (February 13, 1942)

The Talmud Torah association (presumably of the Mád community) employed three teachers (*melamed*). Their salary was paid in proportion to the amount of the tuition fees collected from the parents. If the community collected less money from the parents, they reduced the salary of the teachers. If the parents had paid more than their salary, the difference would have remained in the hands of the Talmud Torah association. As one of the three teachers was drafted to forced labor the following problem arose: the association divided the pupils of the teacher evenly among the other two teachers without determining a new fee. One of the two teachers asked for a higher fee from the father of a student, who was originally a student of the teacher taken to forced labor. This supplement (תוספת) was not been given to the teacher as ‘rabbi *geld*’ (רבי געלד) – but stayed in the hands of the Talmud Torah. The question is to whom does the money belong: the teacher or the society.

R. Rosner blames the questioner – the son of R. Rosner’s brother-in-law – for not giving the exact details concerning the salary of the teachers before and after their fellow was drafted, though he assumes that the two teachers did not receive a supplementary payment after their colleague was taken to forced labor.

⁷⁴ *Shulhan Arukh, Hoshen Mishpat*, 331.

The questioner referred to the permission of the *Shulhan Arukh*⁷⁵ to employ four workers instead of three if every worker received a reduced salary. Referring to the decision, R. Rosner states that the father of the student should pay the new teacher the same amount of money as the others in the class. The author does not agree with the questioner who stated that the supplement received from the father should remain with the society. R. Rosner is concerned that now, as the work of three falls on two, the teachers who remained should receive a higher salary. He would even support the request of one of the teachers for a higher salary. If the society is not capable of giving him a higher salary, the teacher should keep the supplement for himself.

III.F.2 Collecting of clothes for forced laborers

In the beginning forced laborers did their military duty in standard army uniform, both in the homeland and in the front lines. Forced laborers sent to the front lines after June 1941 wore uniforms without signs of rank and carried standard documents of identification: pay-book (*zsoldkönyv*) and dog-tag (*dögcédula*).⁷⁶ However, during 1941 several domestic and field units were gradually deprived of their uniforms and army boots and were forced to serve in civilian clothes because of “shortage of uniforms.” The yellow armband and the insignia-free military cap indicated their status as forced laborers.

Labor servicemen had no proper clothing for the winter, thus on the 24th of September 1942 the Ministry of Interior issued a two-month permit for the collection of winter clothes. Decree Nr. 110 160 KMOF, 1943 14/c permitted forced laborers to receive voluntary donations (clothing or other equipment) by Jewish communities or other Jewish organizations.⁷⁷ The Ministry of Defense communicated the needs to the Veterans’ Committee (*Hadviseltek Bizottsága*),⁷⁸ which organized a nationwide campaign for collecting clothes and called for donations. The National Bureau of the Jews of Hungary (*Magyarországi Izraeliták Országos Irodája*), the Autonomous Orthodox Jewish Community of Hungary (*Magyarországi Autonom Orthodox Izraelita Hitfelekezet*) and local communities were mobilized.

Clothes were sent on a collective basis: even individual packages sent by relatives had to be posted to the Committee, which maintained a storehouse on Síp street. Relatives could send only soap and clothes and the contents had to be identified on a label attached to the package. The right

⁷⁵ *Shulhan Arukh, Hoshen Mishpat*, 332:3.

⁷⁶ Braham, *The Hungarian Labor Service System*, p. 17.

⁷⁷ *Armless They Stood*, vol. 2, p. 298.

⁷⁸ The Veterans’ Committee (*Hadviseltek Bizottsága*) protected the rights and interests of Jewish veterans and servicemen. All individual appeals and inquiries about labor servicemen were to be submitted to the Committee, which was the major source of information on laws of labor service, and published all its information in *Magyar Zsidók Lapja* (Journal of Hungarian Jews).

of forced laborers in the front lines to receive personal packages was withdrawn from time to time. An article published in the Journal of Hungarian Jews on the 2nd of January 1943 informed the public that Jewish forced laborers were permitted to receive individual packages again.⁷⁹

“As a result of the 1942 fall campaign, 28 freight cars laden with winter clothes for the Jewish labor servicemen were shipped to the front lines.”⁸⁰

There is no evidence of how many of the clothes reached labor servicemen in the Ukraine: guards stole packages and sold the contents at high prices. In his memoirs published in 1959 General Jenő Róder claimed that

“(…) the clothing collected during 1943 was forwarded to the front by rail in the fall. (...) Of these shipments (...) the Jewish labor servicemen received nothing.”⁸¹

The permit for the collection of clothing was renewed throughout the war.⁸² In March 1943 the Ministry of Interior permitted the collection of money as well as clothes (decree Nr. 92.018/1943), and ordered Jewish organizations to organize a new nationwide campaign. Following the decree, there was a proposal to introduce a surtax in Jewish communities for supplies for forced laborers in February 1943. A decree issued in May in 1944⁸³ obligated the “Judenrat” / Jewish council (*Magyarországi Zsidók Központi Tanácsa*) to supply forced laborers with clothing. The collection of clothes had been continuous until the deportation of the Jews from the countryside. The very last ministerial permit for collection of clothes was dated on the 22th of July, 1944 after all the Jews had been deported, apart from those in the capital.

◆ R. Yonathan Steif, *Shu"t Mahar"i Steif*, no. 58

Addressee: –

Respondent: R. Yonathan Steif (Budapest)

Without date

"גבו מלבושים לצורך עניים שבארבייטסלאגער (צבא העבודה) אם רשאיין לשנות באקראי ליתן מהם לת"ח במקום אחר."

⁷⁹ *Armless They Stood*, vol. 2, p. 220.

⁸⁰ Braham, *The Hungarian Labor Service System*, p. 77. The Annual Report of the council of the Jewish Community of Pest for 1942-1943 contains a list on the items sent to the front lines: blankets, winter coats, fur coats, jackets, soap. For the text see *Armless They Stood*, vol. 2, pp. 195-197; 199-201 and Braham, *ibid*, p. 139, note 6.

⁸¹ Braham, *ibid*, p. 77. For the text see *Armless They Stood*, vol. 2, pp. 202-206.

⁸² Decree No. 98.640. 1942-V of the Ministry of Interior, for the text, see *Armless They Stood*, vol. 2, pp. 106-107; 117-120; 305; 358-361.

⁸³ Nr. 150.652 / eln. 44, 1944. For the text see *Armless They Stood*, vol. 2, p. 504.

“They collected clothes for poor [forced laborers] who are in a labor camp [German / Yid. *Arbeitslager*, ‘forced labor camp’], [the question is] whether they are permitted to take from the [clothes] randomly and give [it] to a learned man [*talmid hakham*] who is [serving in forced labor] in another place.”

A Jewish community organized a collection of clothes with the intention of supporting poor forced laborers who were lacking appropriate clothes for the winter. The responsum provides no information as to whether the donation was to be sent to the front lines in support of forced laborers deployed in the Ukraine or was meant to help out forced laborers serving in domestic labor camps. R. Steif had to answer the question of whether it is permitted to make an exception for a learned Jew (*talmid hakham*, תלמיד חכם) and support only him exclusively from the clothes that were collected for supporting the poor forced laborers.

[עייין ש"ך] R. Steif's first reference is the *Shakh*⁸⁴ in the name of the *Beit Yosef* who refers to the *Talmud Yerushalmi*. The conclusion is that it is not possible to deviate from the original purpose of an act; however, according to the *Yerushalmi* there is no need to substitute the original clothing if a change occurred during the process of collection and distribution and the clothing was given to someone else.

[מ"מ בכה"ג] If the clothes were collected specifically for the needy who are in a certain place then it is problematic to give the clothes to others, even to other needy forced laborers. Needless to say, the question of giving the clothing to a learned man needs further investigation.

It is permitted to give the clothing to the learned man if those who were responsible for collecting the clothes agreed, and if they replace the clothing with money and donate it to the forced laborers. R. Steif adds that it is a one-time permission, which takes into account the harsh conditions and that a learned man is involved in the case.

[ועייין] To give *halakhic* support for his decision, R. Steif refers to the *Mahane Efraim*⁸⁵ who strictly refused to allow the possibility of altering a pledge to help a specific poor person ("נדר לעני ידוע"), but on the other hand decided on the contrary in the case of a pledge to help an unspecified poor person.

[ואולי] R. Steif makes an analogy between collecting clothes for forced laborers and making a pledge for unspecified poor people ("עניים שאינם ידועים"). So the collectors can deviate from the original purpose of the donation, and the representatives of the community are permitted to give the clothing to the “learned man.” R. Steif refers to Maharam Schick's responsum where he makes the same distinction between specific and non-specific recipients of the donation.⁸⁶

⁸⁴ Sabbathai ben Meir Ha-kohen (1621-1662), the author of *Sifte Kohen*, a commentary on *Shulhan Arukh, Yoreh Deah*.

⁸⁵ *Mahane Efraim, Hilkhoh tzedaka*, no. 7.

⁸⁶ *Shulhan Arukh, Yoreh Deah*, 233. Rabbi Moshe Schick (Maharam Schick, 1807-1879) became rabbi of Huszt (today Chust, Ukraine) in 1868 and led his 800-student yeshiva there.

III.G Exemption of rabbis and rabbinic students from the army service

Rabbis and rabbinic students of military age were exempted from regular forced labor service by Paragraph 42 of Law II of 1939. Three years later, at the end of 1942, the directive of the Minister of Defense, Vilmos Nagybaczoni Nagy, dated the 19th of December, held out the prospect of each company having its own rabbi in charge of religious services.⁸⁷ Following the minister's attempt to regulate religious services in the army, Paragraph 5 of Law XIV of 1942 prescribed the training of exempted rabbis to serve in the army to provide religious services for Jewish forced laborers. Ministering Sabbath and holiday services became regular events both in the homeland and at the front lines. Two years later, on the 9th of March, a decree issued by Vilmos Nagybaczoni Nagy⁸⁸ aimed to consolidate all the regulations concerning forced labor service. The decree had no effect on the life of forced laborers serving on the front lines⁸⁹ but allows us to draw inferences about the circumstances in domestic field labor camps.

Rabbis possessing the certificate of Minister of Religion and Education were exempt from forced labor service.⁹⁰ Besides rabbis and rabbinic students the following were exempted:⁹¹ indispensable workers in defense plants and agricultural workers with a one-year contract.⁹²

R. Shlomo Ehrenreich's letter – which is not a *halakhic* responsum as the other letters – throws light on one of the possible ways of gaining exemption as an Orthodox rabbi from service. R. Shlomo Ehrenreich served as the rabbi of Szilágysomlyó.

⁸⁷ For the text see *Armless They Stood*, vol. 2, p. 184.

⁸⁸ 1943 Decree Nr. 110 160. KMOF 1943. For the text see *Armless They Stood*, vol. 2, pp. 286-298.

⁸⁹ The decree was implemented by a decree of the Ministry of Defense issued on the 30th of March in 1943 (*Armless They Stood*, vol. 2, pp. 319-320). The decree was transmitted to the army commands on the 17th of April, 1943. The rabbis were to be substituted by rabbis especially trained for service by the army. A ministerial decree (Nr. 34 321 of the 1b. class of Ministry of Defense, 1943) issued on the 10th of June in 1943 (*Armless They Stood*, vol. 2, pp. 325-328) listed the names of rabbis to be trained by the army. Fifty rabbis were chosen according to certain principles: they had to be young, unemployed and had to have received in the past exemption from forced labor due to their status as rabbis or trainee rabbis. The exemption was based on the certificate of the Minister of Religion and Education and supposedly referred to the Neolog rabbis.

⁹⁰ 30th of March, decree on allowance of rabbis and trainee rabbis. Nr. 17 608. eln. 16-1943.

⁹¹ (1943) *Armless They Stood*, vol. 1, p. LXXIX.

⁹² The responsum of R. Glattstein of 1943 elaborates on the case of a forced laborer who could choose to work in a defense plant instead of doing field work as a forced laborer. (See later.)

- ◆ R. Shlomo Ehrenreich, *Sefer Igrot Lehem Shlomo*, no. 147

Addressee: R. Shimon Deutsch (Nyírmeggyes) and his brother-in-law, Binyamin Czitron

Date: יום עש"ק בהעלותך תרצ"ט (June 2, 1939)

R. Shlomo Ehrenreich's letter concerns the exemption of his son from forced labor service based on his status as a teacher (מורה) in the yeshiva of R. Deutsch's community. The letter was delivered to R. Deutsch by the son, so he had not yet been taken to forced labor when the letter was written.

R. Ehrenreich had two requests: he urged R. Deutsch to discuss the possibility of exempting his son on medical grounds, and he also asked R. Deutsch to write a letter on behalf of his son attesting that he is employed by R. Deutsch's community as a teacher. The exemption would be given by the mayor of the city based on R. Deutsch's letter:

"ע"י [על ידי] זה הפראטאקאל שתחתמו לו ועי"ז [ועל ידי זה] יקבל כתב סילוק משטאט-מאזשאר שאין יכולין אותו לכופף לעבוד בעבודת שלשים, אשר חוץ שגופו לא נסה באלה, נוסף ע"ז [על זה] הוא מקושר עם חילול שב"ק [שבת קודש] וחתיכת פאות וזקן ח"ו [חס וחלילה], וגם מבטל מלימוד ומעבודתו."

"With the help of this protocol signed by them [R. Deutsch and R. Czitron] the mayor of the town will issue an exemption stating that he cannot be drafted to forced labor. Besides the fact that he is physically incapable of this, forced labor service involves the desecration of the Sabbath and the cutting off of the sidelocks and beard, God forbid, and also prevents him from his study and work."

III.H Halakhic problems regarding Sabbath observance as reflected in the responsa

The following texts elaborate on possible ways of continuing Jewish religious life according to *halakha*, despite conditions in forced labor camps that were unfit for religious practice.

III.H.1 Medical check-ups on Sabbath

The Hungarian Army made every effort to get rid of its Jewish employees. However, due to the lack of non-Jewish professionals in the army in some areas, there were constraints in implementing this policy. Jewish physicians, veterinarians, pharmacists, engineers and licensed

motor-vehicle drivers were reassigned in the army in 1940⁹³ to units in accordance with their professions. They were deployed by their rank and had to serve under the supervision of non-Jewish company commanders and served in civilian clothes with armbands.⁹⁴ Dr. Endre Szántó had served as forced laborer in Dabas, Hungary since 1940 September, and later in the Carpathian Mountains in Máramaros. Szántó sometimes performed the same hardest physical work as his fellows, sometimes was their physician.⁹⁵

The following two responsa elaborate on observant forced laborers who received leave on Saturdays to visit the doctor or the dentist. Like so often in Holocaust-responsa, R. Mordekhai Brisk and R. David Frenkel had to face the problem of “prioritizing” between transgressions, choosing the lesser evil.

◆ R. Mordekhai Brisk, *Shu"t Mahara"m Brisk*, vol. 3, no. 4

Addressee: R. Yitzhak Eizik Weiss (Beregszőlős, Carpatho-Russ, today Lohovo, Ukraine)⁹⁶

Respondent: R. Mordekhai Brisk (Tasnád, Transylvania, today Tășnad, Romania)

Without date

"בדבר שאלתך באיש א' [אחד] מאנשי הצבא אשר יש לו כאב שינים ועינים והנהוג בלגיון החונים סמוך לעיר הבירה שבכל יום שב"ק [שבת קודש] מניחים את כל הכואבים לילך אל הרופאים ומוליכים אותם ע"י [על ידי] מסילת הברזל, ושאלתי [!] היות שעבודת אנשי הצבא הוא חפירת אדמה וכיו"ב [וכיוצא בזה] מל"ט [מ-39] מלאכות דאורייתא, וא"כ [ואם כן] יותר נכון לאותם הכואב להם לילך לעיר הבירה מלהשאיר בהמחנה ביום השב"ק [השבת קודש], או דילמא כיון דעבודה שעובדים מדינא דמלכותא אף שהי' דאו' [דאורייתא] קיל יותר כיון שהוא באונס אבל ההליכה במרכבה הוא ברצון, ושאלת כדת מה לעשות."

“Concerning your question about a soldier [forced laborer] who has toothache and eye pain and it is customary in the company [forced labor camp], which is camped near the capital [Budapest], that on every holy Sabbath they let the sick [literally ‘those who feel pain’] travel to see the doctors by train [in Budapest]. You asked me, since soldiers’ work entails some of the 39 biblical prohibitions on the Sabbath, for example digging the earth and so on, might it be more appropriate for the sick to go to the capital instead of staying in the camp on the holy Sabbath. However, it could be argued that since the work they are doing is considered obeying the law of the state,⁹⁷ and falls under the category of being coerced, it is considered less of a transgression than willingly riding on a train. You asked what to do according to [our] religion.”

⁹³ Braham, *The Hungarian Labor Service System*, p. 14.

⁹⁴ *Armless They Stood* vol. 1, pp. 253-254 (January, 1941). On Jewish physicians in the Bor camp see the book of Csapody, Tamás, *Bori munkaszolgálatosok. Fejezetek a bori munkaszolgálat történetéből* (Budapest: Vince Kiadó, 2011) pp. 39-114.

⁹⁵ *The Diary of Dr. Endre Szántó, a labour serviceman* ([Budapest: 2014], Publisher: Dr. István Szántó).

⁹⁶ R. Yitzhak Weiss was born in Szaplonca (Transylvania, today *Săpânța*, Romania) in 1857. After the First World War he settled in Munkács and later in Beregszőlős, where he headed a yeshiva.

⁹⁷ According to the halakhic principle *dina de-malkuta dina* (דינא דמלכותא דינא) ‘the law of the kingdom [=state] is law’, if the law of the state is in conflict with *halakha*, then the former has priority over the latter, under certain conditions.

Forced laborers are compelled by the law of the state to work in the field on Sabbath as well as on regular days; therefore they can be considered as partly or entirely exempt from divine punishment for their transgressions. On the other hand, when traveling to the doctor on Sabbath the forced laborers are willingly transgressing a biblical law.

R. Brisk judged leniently and permitted the forced laborer to travel on Sabbath to the doctor. He argues that by taking the opportunity to travel to the doctor, the sick forced laborer avoids committing more serious biblical transgressions. The train station is inside the capital, so it lies within the Sabbath boundaries within which it is permitted to walk. Referring to the Hatam Sofer's decision,⁹⁸ R. Brisk argues that by traveling on Sabbath the forced laborer would transgress only rabbinic law (and not biblical).⁹⁹ The transgression of rabbinical prohibitions is acceptable in order to avoid transgression of biblical prohibitions concerning Sabbath observance, even if the forced laborers are compelled to transgress by the law of the state.

The responsum of R. Frenkel deals with a similar question but differs from the former in a significant detail. R. Frenkel elaborates on a yeshiva student or rabbi (literally: 'learned Jew', *talmid hakham*) who applies for sick leave issued by a Jewish physician that would release him from working on Sabbath.

◆ R. David Frenkel, *Shu"t Beer David*, no. 3

Addressee: –

Respondent: R. David Frenkel (Berettyóújfalu)¹⁰⁰

Without date

"נשאלתי מאנשי צבא שהיו עובדים עבודת הצבא, וה'י' נהוג שם שמי שיש לו מיחוש דהיינו שאינו בקו הבריאה הולך אצל הרופא והוא מבקרו ואם אמת הדבר אזי נותן לו תעודה על יום או יומים חופש ממלאכה, אם שרי לילך בשבת אצל הרופאים שהם ישראלים, כיון דבשעת הביקור מדליקים הפמוט כדי שיחזו בגרונו וכותבים כתב חרות ומחללים שבת ע"י [על ידי זה], והרבה פעמים אינם מוצאים שום מיחוש, וממילא אינם נותנים חופש, ונמצא שחילל שבת ע"י [על ידי זה] בחנם, וה'י' שם איזה ת"ח [תלמידי חכמים] אשר הרופאים נותנים להם חרות על שבת קודש אבל אך ורק בתנאי שיבואו לביקור בשבת כשאר אנשים, ומבקרים אותם ג"כ [גם כן] ע"י [על ידי] פמוט וכדומה כדי שלא ירגישו בדבר, אם נכון והגון לילך אצל הרופאים הישראלים או מוטב שילך למלאכה."

"I was asked the following by soldiers who were working as forced laborers. It was customary that if a forced laborer did not feel well or had a pain he used to visit the doctor, who examined him. If

⁹⁸ *Hatam Sofer, Shu"t Hatam Sofer*, vol. 6, no. 97.

⁹⁹ R. Brisk's other reference is the responsum of R. Yehuda Aszód (*Orah Hayyim*, no. 58).

¹⁰⁰ R. David Frenkel was taken to forced labor together with his brother-in-law, Shmuel Blum in 1944. Blum testified on his greatness under the harshest conditions. They both were taken to Russian captivity. In 1945 they arrived at Focşani (Moldavia, Romania) where R. Frenkel died. See the introduction of the responsa collection of R. Frenkel written by Shmuel Blum: *Shu"t Beer David* (New York, 2000), pp. 15-17.

the doctor found that he was ill, he would give him a note exempting him from work for a day or two. Is it permitted to visit the Jewish doctors on Sabbath, since during the examination they light up the throat lamp [literally: ‘candlestick’] to examine the throat and they write a sick note [literally: ‘document of freedom’] thus desecrating the Sabbath? Many times [the doctors] do not find any illness so as a result they do not give a sick note, and it turns out that he [the doctor] desecrated the Sabbath in vain. There were learned men [*talmidei hakhamim*, yeshiva students or rabbis] who would receive from the doctors sick notes for the holy Sabbath but only on condition that they must come to be examined on Sabbath like everyone else. They are also examined by throat lamp etc. so that they [the army officers] would not notice anything unusual. Is it right and proper to visit the Jewish doctor, thus forcing him to desecrate Sabbath, or it would be better to go to work [in the field on Sabbath].”

It is probable that the doctor examined forced laborers inside the camp where he was under the control of the commanders. The text attests that Jewish doctors sometimes were asked to give sick notes for *talmidei hakhamim*, exempting them from working on Sabbath even if it was not fully justified from a medical point of view.

According to R. Frenkel’s decision the Jewish doctor is forbidden to examine the *talmid hakham* on Sabbath. Since it is dubious whether he was ill or not, it was prohibited for the doctor to transgress any commandments because of him.

R. Frenkel refers to three general guidelines for those who try to avoid transgressing a biblical commandment. One has to employ all kinds of “tricks and actions” (תחבולות וכל התפעלות); “one is obligated to give away all the goods of his household in order to save himself from transgressing any negative commandments”; and “it is preferable to transgress a light commandment in order to avoid transgressing a more severe commandment.” The latter principle has also to be applied in favor of his fellow: “It is permitted for someone to transgress a light prohibition to prevent his fellow from transgressing a serious prohibition.”

He argues that because of compulsory labor, the work of the *talmid hakham* on Sabbath is considered as ‘work done for another purpose and not for the work itself’ ¹⁰¹ (מלאכה שאינה צריכה) (להגופה), which is a rabbinic and not a biblical prohibition. Similarly, the “law of the state” (חוק המדינה) forces the doctor to work on Sabbath and to give sick notes for the rabbis. But R. Frenkel is convinced that this principle applies only when the *talmid hakham* is truly sick. When a patient in fact is not sick and the doctor does him a “favor” (בתורת טובה) by giving him a sick note, then the check-up on Sabbath in fact has no medical purpose or justification and the above mentioned principle of ‘work done for another purpose and not for the work itself’ is not applicable to the doctor’s work, and by examining the patient the doctor would transgress a biblical prohibition.

The fact that the responsum refers to a learned man as a highly esteemed member of the Jewish community is significant. The doctor would probably have signed a certificate for him

¹⁰¹ See note 53.

without hesitation, even without doing a proper examination. If the doctor writes on Sabbath for the sake of the learned man, then it is the learned man who transgresses the biblical commandment of enticing someone to transgress the law (לפני עור). However, according to R. Frenkel's strict interpretation of the *halakha*, the doctor is forbidden to transgress the law in the forced laborer's favor. Going out and doing field work on Sabbath is considered a less serious transgression than forcing the doctor to write on Sabbath by applying for sick leave. Thus the *talmid hakham* is strictly forbidden to force the doctor to desecrate the Sabbath.

III.H.2 The choice to work in an office

R. Yoel Glattstein, the head of the rabbinic court in Királyhelmec was asked two similar questions regarding forced laborers who could choose office work instead of working in the fields.

- ◆ R. Yoel Glattstein, *Shu"t Nahalat Yoel Zeev*, no. 18
Addressee: R. Pinhas, R. Yoel Glattstein's student
Respondent: R. Yoel Glattstein (Királyhelmec, today Kráľovský Chlmec, Slovakia)
Without date

R. Glattstein's first responsum elaborates on a forced laborer who was compelled "to do agrarian work and the like for the government" (לעבוד עבודת שדה וכדומה להממשלה). However, he was offered a job in an office (להיות בקאנצלריי) instead of doing field work. In both places he would have to work on Sabbath, although as a field worker he could avoid desecrating the Sabbath from time to time – it is plausible that R. Glattstein is referring here to the possibility of receiving sick leave for Saturdays. R. Glattstein was asked which of the two jobs involves more severe transgression of the law and whether the forced laborer is permitted to choose paperwork instead of digging.

It was obvious to R. Glattstein, as it is obvious for us now, that working in the fields, as opposed to doing paperwork, involves physical labor. However, his concerns in deciding the case were exclusively *halakhic* and he did not refer to harsh conditions. His responsum concerns domestic labor service and was probably written in the earliest phase of the forced labor system when forced laborers still did not experience physical exhaustion, often torture and their lives were not endangered. Had forced labor involved danger to life, R. Glattstein would not have addressed this question at all, because it would have been obvious that the forced laborer should choose working in the office instead of working in the fields. The author decided in favor of paperwork by arguing on strictly *halakhic* grounds.

According to R. Glattstein's decision the addressee is not permitted to choose working in the factory automatically because his life is not endangered in either of the two places. On the other hand, since by digging and doing other agrarian work the Jewish man transgresses more severe religious commandments than writing on Sabbath, he should choose paperwork instead of agrarian work.

Anti-Jewish laws introduced in 1938, 1939 and 1941 aimed to set up a quota for Jews in every branch of the Hungarian economy. Due to their importance, weapons factories had the privilege of employing indispensable Jewish workers even beyond the prescribed quota. The next responsum of R. Glattstein concerns a forced laborer who could choose work in a defense plant instead of working in the fields.

◆ R. Yoel Glattstein, *Shu"t Nahalat Yoel Zeev*, 19

Addressee: –

Respondent: R. Yoel Glattstein (Királyhelmeç)

Date: עש"ק פ' ויגש תש"ג (December 18, 1942)

"ע"ד [על דבר] שאלתו הכתובה בקיצור, ע"ד שנקראים כעת בעו"ה [בעוונותינו הרבים] למאות לעבודת הצבא, ויש עצה להשכיר עצמו לעבודה בפאבריק הנקראת "האדו אוזעם" [בית חרושת שמייצרים כלי זיין להמלחמה]¹⁰², אמנם גם שם מן ההכרח לחלל ש"ק [שבת קודש], וכן הוא בעבודת הצבא, ואולי יהי' שם מוכרח גם לאכול גו"ט [נבלות וטרפות] כו', אך ההפרש הוא שאם יכנוס בפאבריק הוא תחילתו בפשיעה, ובעבודת הצבא הוא רק באונס, עכ"ד [עד כאן דברו]. וכנראה כוונתו דהא דאונס רחמנא פטריל', היינו דוקא אונס זה שאונסים אותו, אבל מה שבוחר מעצמו, הגם שזה ג"כ [גם כן] לא הוי אלא מחמת אונס, מ"מ [מכל מקום] הוא עושה זאת מעצמו מרצונו, וזה יהי' אסור. והנה נשאלתי שאלה כזו עוד בשנת תרע"ו [1915/16] במלחמת עולם, והארכת בזה, ואבוא כעת רק בקצרה לפי מיסת הפנאי."

"On his concisely presented question, concerning the matter that – because of our great sins – hundreds are being called to forced labor [literally 'army's work'], and there is an option to be employed in a factory [German / Yiddish: פאבריק] called 'hadi üzem' [Hungarian: האדו אוזעם] 'defense plant' where they make weapons for the war. However desecration of the holy Sabbath is unavoidable also there, as in forced labor. There [in the factory] he might be forced to eat non-kosher food as well, etc.¹⁰³ The difference [between the two settings] is that by joining the factory as a worker he initiates to commit a transgression willfully, whereas in forced labor he [commits transgressions] only under coercion. Here ends the question. It would seem that the questioner thinks that the Almighty absolves him for transgressions committed under coercion only when they were committed [fully] under coercion. But when his free choice is also involved, even if he is ultimately under coercion [in the broader context of his choice], then this [choice] is considered to

¹⁰² Note of the editor of the responsa-collection.

¹⁰³ *Nevelah u-terefa* is carcass of a kosher animal forbidden for consumption, because the animal was not killed in accordance with Jewish law, or for other reasons. In a wider sense the term denotes food that is unfit for eating.

be done with his free will and is prohibited. I was asked a similar question back in 1915/16 in the First World War, where I gave a more elaborate answer so now I will answer only in a short form according to my availability.”

The Army did not provide kosher food for forced laborers. As a factory worker a Jewish man could live at home and had more chance to have kosher food. It is clear that a Jew would desecrate Sabbath in both cases. Yet the question remains whether taking the option of working at the factory he is considered a willful transgressor of Sabbath prohibitions or not.

Among other things the author makes reference to the Talmudic concept of ‘work done for another purpose and not for the work itself’ and to Mordekhai Banet’s book, *Magen Avot*,¹⁰⁴ which elaborates on the thirty-nine activities that are forbidden on Sabbath and promulgates the idea that the concept of ‘work done for another purpose and not for the work itself’ is applicable only to activities which are not specifically named in the Torah. The prohibition of plowing (חורש),¹⁰⁵ which is similar to the agrarian work done in forced labor, is specifically prohibited by the Torah. Thus, following the *Magen Avot*’s opinion had he worked on the field on Saturdays as a forced laborer, he would not have been exempt from punishment.

However, the Jewish man is not forced to work in the factory, but would be employed, so he cannot claim to have acted fully under duress there at his own will. Based on this argument the Jewish man would be forbidden to choose to work in the factory, otherwise he would transgress the law by his own free will – as suggested apparently by the questioner himself.

However, R. Glattstein has a further argument that gives the right of choice for the forced laborer:

"ולפי"ז [ולפי זה] אני אומר בנידון שאלתינו, דהפחד הוא אם ילך לצבא העבודה אולי ישולה לאוקריינ"א ויש שם חשש פק"נ [פיקוח נפש] או מחמת הקור הנורא או מחמת סיבה אחרת כאשר שמענו בעו"ה [בעוונותינו הרבים] מעשים בכל יום ועכ"פ [ועל כל פנים] יש חשש ספק פק"נ, וא"כ [ואם כן] גם אם נאמר דמה שבוחר בעצמו הוי רצון, מ"מ [מכל מקום] מה בכך הלא לגבי פק"נ הותרו האיסורין כמו בחולה שמתרפא עצמו בכל איסורין שבתורה חוץ מג' עבירות, ובאמת גם ספיקו של המשנת חכמים הנ"ל [הנזכר למעלה] נפשטא דיכול להציל עצמו גם בדבר עבירה במקום סכנה וכנ"ל [וכנזכר למעלה]."

“With reference to our case, the fear is that if he goes to forced labor he might be sent to Ukraine. There is a chance that his life will be in danger either from the terrible cold weather or because of other reasons that we know happen on a daily basis, due to our great sins. In any case there is legitimate concern that his life might be in danger, and if so, even if we say that he willingly made his choice himself, nevertheless why would it make any difference, since when a life is in danger all prohibitions are permitted. This is similar to the case of a sick person who needs care ; all

¹⁰⁴ Mordecai ben Abraham Benet (Marcus Benedict) (1753-1829), Talmudist of Moravia born in Csurgó in Hungary. His work, *Magen Avot* / ‘Shield of the Fathers’ (Zolkiev, 1835) is a treatise on the thirty-nine activities prohibited on the Sabbath.

¹⁰⁵ The promotion of substrate in readiness for plant growth, and the prohibition of preparation or improvement of land for agricultural use. (Mishna Sabbath 7:2).

biblical prohibitions can be transgressed except three [incest, idolatry, murder]. In truth the doubt of the *Mishnat Hakhamim* mentioned above can be answered as follows: he can save himself even through transgressing the law in case of danger (see above).”

In conclusion, R. Glattstein allows the man to choose the work in the factory himself, even if his life is not yet in danger and it is dubious whether, without making a choice, it would be in danger in the future. R. Glattstein permits transgressing a commandment that involves a lighter punishment (even if he is not forced to transgress it) in order to save himself from transgressing a more severe commandment that he is forced to transgress. His final concerns are the following:

"א"כ [אם כן] בנד"ד [בנידון דידן] דשם בעבודת הצבא בשדה העבודה יש גם חשש אולי יבוא גם לאכילת נ"ט [נבלות וטרפות], וגם עבודת קרקע היא יותר חמורה, ולהרבה שיטות ראשונים רק אם מחלל ש"ק [שבת קודש] בעבודת קרקע נחשב למומר, א"כ בודאי יכול לבחור לעצמו עבודת הפאבריק, ומכ"ש [ומכל שכן] שיש ג"כ [גם כן] חשש סכנה ופק"נ [ופיקוח נפש] בעבודת הצבא בשדה וכנ"ל [וכנוכר למעלה] ודו"ק."

“With reference to our case regarding forced labor [literally ‘army’s work’] in the field there is also a fear that he will eat non-kosher food. Moreover, field work is more serious [transgression, compared to office work], and according to many earlier authorities he is considered an apostate only if he desecrates the Sabbath by working in the field. It is certain that he is permitted to choose, for himself, work in the factory, all the more so since in forced labor in the field his life is endangered as mentioned above, look it up and you will find it simple – consider it well.”

The responsum is followed by a short appendix by R. Glattstein that refers to the responsum of R. Eliezer Grünwald which had been written ten years earlier, and deals with a very similar case.¹⁰⁶ (R. Glattstein found the text only after finishing writing his responsum.) The Satmar Rebbe permitted one to choose between different transgressions on condition that making the choice could save him from endangering his life. R. Glattstein sums up the main references on which he based his decision: *Shulhan Arukh, Orah Hayyim*¹⁰⁷ and its commentators (*Magen Abraham*,¹⁰⁸ *Bet Yosef, Bait Hadash* and *Turei Zahav*) who all permitted committing a “lighter” transgression willingly to save oneself from committing a more severe transgression under compulsion.

¹⁰⁶ R. Eliezer Grünwald, *Keren le-David*, no. 100 (Szatmár, 1929).

¹⁰⁷ *Shulhan Arukh, Orah Hayyim*, 306; 328.

¹⁰⁸ Abraham Abele Gombiner (c.1633-c.1683), known as the Magen Abraham, born in Gabin (Gombin), Poland. Talmudist and a leading religious authority in the community of Kalisch, Poland during the seventeenth century. His commentary on the *Orah Hayyim* section of R. Joseph Karo’s *Shulhan Arukh (Magen Abraham)* was published in 1692.

III.H.3 Shaving with razor or chemicals on Sabbath

Three rabbis, R. David Frenkel (Berettyóújfalu), R. Yitzhak Yaakov Weiss (Nagyvárad) and R. Shmuel Grünberger (Tasnád), dealt with the question of observant forced laborers who were forced to shave on Sabbath. They had two options: to let a non-Jewish barber shave them with a razor or to shave themselves with chemical.

Shaving with a razor is a prohibition that is based on the rabbinic interpretation of Leviticus 19:27: “You shall not round the corners of your heads, neither shalt thou mar the corners of thy beard.”¹⁰⁹ (In short: לֹא תְקַיְפוּ, “do not round”.) Taken literally, Jews are prohibited from “destroying” the corners of the beard. The Talmud (bMakkot 20a-b) explains this as a prohibition against using a single-bladed razor (as opposed to any scissor-like device which requires two blades to cut). The Talmud interpreted the biblical prohibition of shaving the “corners of the head” as a prohibition against cutting the hair at the temples (sidelocks, Hebrew *peot*), and other places on the face (five forbidden points altogether). According to the *Shulhan Arukh*, scissors, having two blades are permitted to be used to trim the beard, since the cutting action would come from contact between two blades and not from that between blade and skin.¹¹⁰ However, Orthodox Jews traditionally refrain from cutting their beards, with the exception of occasionally trimming their moustaches.

In Germany and Italy by the end of the seventeenth century Jews had started removing beards with the aid of pumice stones and chemicals, which would leave the face smooth, as if it had been shaven. After mixing the chemical powder with water the material was put on the face and burned the hair. After a while, the material was removed using a stick. The same practice is referred to in the responsum as the other option apart from shaving with a razor.

The ultra-Orthodox population of Hungary and the re-annexed territories traditionally had beards, and considered shaving to be a “foreign custom.” The traditional rejection of shaving is expressed in the responsum of the rabbi of Makó, R. Moshe Lemberger, who prohibited the removal of the *peot* in the forced labor camp by either method.¹¹¹ R. Lemberger was asked in 1943 by R. Yehiel Brand (Makó) from the forced labor camp.¹¹² R. Brand is the addressee of the first responsum of R. Shmuel Grünberger (see below). R. Asher Goldberger was beaten in the Melk concentration camp (Austria), because he rejected to be shaven with a knife on Sabbath.¹¹³

The inmates of a forced labor camp were ordered to shave on Saturday before the prospective visit of a high-ranking officer. The method of removing the beard was optional for the

¹⁰⁹ King James Bible (Authorized Version, Cambridge Edition). See also Lev. 21:5 on the priests: “They shall not make baldness upon their head, neither shall they shave off the corner of their beard (...).”

¹¹⁰ *Shulhan Arukh, Yoreh Deah*, 181.

¹¹¹ R. Moshe Lemberger, *Kle golah*, no. 4 (New York, 1995).

¹¹² “Yehiel [Mikhal] Brand... in the camp at the moment” (“יחיאל [מיכל] בראנד ... כעת במחנה”).

¹¹³ R. Asher Goldberger, *Shu"t Minhat Asher* (New York, 1977), p. 12 (introduction).

inmates: they were permitted to use chemicals or to be shaved by soldiers with a razor. The question posed to R. David Frenkel, R. Yitzhak Weiss and R. Shmuel Grünberger considered the hierarchy of the diverse *halakhic* transgressions that the different methods involved. The following texts discussed whether forced laborers should remove their beards themselves using chemicals or whether they should let the (non-Jewish) soldiers shave them.

The three rabbis all found permission to remove the beard. R. Frenkel and R. Weiss argued for letting the barber do his job and shave the forced laborers with a razor on Sabbath – R. Grünberger opposed this view and argued for using the chemical.

◆ R. David Frenkel, *Shu"t Beer David*, no. 5

Addressee: –

Respondent: R. David Frenkel (Berettyóújfalu)

Without date

"נשאלתי מאחד שעובד עבודת הצבא ומוכרח לגלח זקנו בשבת, ויכול לעשות במשיחה בעצמו או ע"י [על ידי] עכו"ם [עובד כוכבים] בתער, מה יעשה איזה חמיר טפי."

"I was asked by a forced laborer who is compelled to shave his beard on Sabbath; he can do it with an ointment [*meshiha*] by himself or by a non-Jew with a razor with one edge (*taar*). What shall he do, which [method] involves a more severe [transgression]?"

R. Frenkel enumerates the different prohibitions that shaving by a non-Jew and using chemicals involve on Sabbath.¹¹⁴ Shaving with a razor involves the transgression of five negative commandments, even on weekdays.¹¹⁵ Both the shaver and the one who is shaved commit the five transgressions, the latter by cooperating with the shaver during shaving.

[וישוב] R. Frenkel's next reference is the responsum of the Hatam Sofer¹¹⁶ who refers to Rashi's comment to tractate Sabbath on shearing.¹¹⁷ By having his beard shaved by a non-Jew the forced laborer not only commits the rabbinic transgression of instructing the non-Jew to work on Sabbath (אמירה לעכו"ם שבות), but his act is similar to the extraction of a tooth by a non-Jew on Sabbath, which is considered a transgression committed by the Jew.¹¹⁸ The author continues with enumerating those biblical commandments that the forced laborer would transgress by removing

¹¹⁴ Shearing (גזוז) and smoothing (ממחק), i.e. scraping a surface to achieve smoothness, which belong to the 39 activities prohibited on Sabbath.

¹¹⁵ According to the rabbinic interpretation the negative biblical commandment of "do not round" (Lev. 19:27) is transgressed by shaving five points of the chin, regardless of whether the Jew cuts his beard himself or has his beard cut. There are views that the latter transgresses only rabbinic law; later R. Frenkel argues that in that case there is no rabbinic transgression either.

¹¹⁶ Hatam Sofer, *Shu"t Hatam Sofer, Orah Hayyim*, 340.

¹¹⁷ bSabbath 73a.

¹¹⁸ See *Turei Zahav, Orah Hayyim*, 328:1.

his beard with chemicals: by making the drug he would transgress the prohibition of kneading (לש) and by putting it on his face the prohibition of smoothing (ממחק).

[הנה] The author adds that if he disobeyed orders the forced laborer would endanger his life. It follows that the forced laborer is permitted to desecrate the Sabbath on the basis of the principle of “life-saving” (פיקוח נפש),¹¹⁹ which allows the transgressing of biblical commandments and can be applied to forced labor.

[והנה] Work done by the forced laborer on Sabbath under duress is considered as ‘work done for another purpose and not for the work itself’ (מלאכה שאינה צריכה לגופה) and in doing such work one transgresses only a rabbinic commandment. His references are the responsum of Maharik¹²⁰ and the commentary of *Rosh Yosef* on Sabbath.¹²¹ The forced laborer should remove his beard himself with chemicals – in this case acting under duress he would transgress only the rabbinic prohibition. As opposed to that by having his beard shaved he transgresses the biblical commandment of “לא תקיפו” (“do not round”) five times.

[אבל] However, certain decisors restricted the reference to the biblical commandment “do not round” to cases in which the Jew is active. Applying their view to the case of the forced laborer would mean that by being a passive sufferer, the forced laborer would not transgress any biblical law by letting the soldier shave him, only rabbinic.

[ועוד] [ומה] There is disagreement among decisors as to whether or not work done under duress is considered as ‘work done for another purpose and not for the work itself’. The author cites the Rambam¹²² and the Magen Abraham, who argue that work under duress does not automatically fall into this category;¹²³ acting out of fear is not covered by the above mentioned principle.

[וגם] The author refers to earlier and later decisors who expressed their views on the matter.

[ובסברא] Certain decisors take into consideration the intention of the Jew who performs the work on Sabbath and conclude that as he lacks any inner motivation for performing the work, the Jew does not transgress any commandment by performing work on Sabbath.

[הנה] [ועוד] According to the author, being shaved on Sabbath is considered ‘work of full value’ (מלאכה גמורה), unlike other work done by the forced laborer on Sabbath that are considered as ‘work done for another purpose and not for the work itself’.

[ועוד] The author repeats the opinion of Rambam and other decisors: the Jew is liable for those works that were ‘done for another purpose and not for the work itself’.

¹¹⁹ See note 55.

¹²⁰ Maharik Shoresch, 137.

¹²¹ R. Yosef Teomim, *Rosh Yosef* ([Warsaw, 1825], New York, 1983), *Sabbath*, no. 72.

¹²² *Mishneh Torah, Hilkhhot Yesodei ha-Torah*, 5.

¹²³ *Shulhan Arukh*, 334: 32.

[ועוד] Even if we say that the work of the forced laborer is considered as ‘work done for another purpose and not for the work itself’, being shaved on Sabbath is still a very serious transgression.

[ועוד] [ועוד] [ולדעתי] The author argues in favor of shaving instead of using chemicals. The reason is that the forced laborer would transgress biblical law again and again by kneading, anointing and pulling the chemical off his face. R. Frenkel suggests transgressing the law once by being shaved by a non-Jewish barber with a razor with one edge (*taar*) and warns the forced laborer not to help the soldier while being shaved.

- ◆ R. Yitzhak Yaakov Weiss, *Shu"t Minhat Yitzhak*, vol. 1, nos. 63-64¹²⁴

Addressee: –

Respondent: R. Yitzhak Yaakov Weiss (Nagyvárad, Transylvania, today Oradea, Romania)

Without date

"שאלה. פעם הזדמן שבש"ק [שבשבת קודש] בא שר גדול מאנשי צבא, ובא פקודה שכל אחד ואחד ממחנה העבודה יגלח זקנו תומ"י [תכף ומיד], ואם לא יגלח בעצמו, אז אחד מאנשי הצבא יגלח אותו בע"כ [בעל כורחו], והנה אם יגלח בעצמו, אז יוכל להסיר על ידי סם, ואם ימתין עד שיגלח אותו מאנשי הצבא, אז יגלח אותו בתער, ובזה השאלה מה עדיף אם לעבור על איסור שבת בעצמו על ידי אונס מחמת פקודה הנ"ל [הנזכר למעלה], או להמתין עד שיגלח אותו בע"כ הנכרי ובתער, ואחד המקיף ואחד הניקף עובר, ועל טו"ז [טורי זהב] וש"ך [שפתי כהן] ונה"כ [ונקודות הכסף] יו"ד [ס' קצ"ח] ואו"ח [ואורה חיים] [רס"י שכ"ח]."

“Question. Once it happened that a high-ranking commander of the army visited [the camp] on the holy Sabbath so an order came that all the inmates of the labor camp must immediately shave their beards, and if they resisted doing it by themselves, a soldier would shave them against their will. Shaving himself [the forced laborer] may use chemical (*sam*), however if he waits until a soldier shaves him than he will be shaved with a razor (*taar*). Now the question is whether it is better to do a forbidden activity on Sabbath by himself while being compelled by the order mentioned above, or to wait until a non-Jew (*nokhri*) will shave him against his will with a razor. In the latter case both the shaver and the shaved are liable, see the *Turei Zahav* and the *Sifte Kohen* and *Nekudat ha-Kesef* in *Yoreh Deah*, 198 and in *Orah Hayyim*, 328.

[תשובה] R. Weiss' first reference is to the *Rosh Yosef* who says that if a Jew is forced to choose between desecrating the Sabbath or eating non-kosher meat, he must choose desecrating the Sabbath: he may refer to compulsion and his work being considered as ‘work done for another purpose and not for the work itself’ (מלאכה שאינו צריכה לגופא) that is only a rabbinic transgression.¹²⁵ As opposed to this, by eating non-kosher food the Jewish man would have transgressed biblical law and had benefit by eating, thus he could not have referred to compulsion and would not have been

¹²⁴ See also: *Yerushat peleta*, no. 19 (Budapest: Hevrat Sasz, 1946).

¹²⁵ See the responsum of R. Frenkel above.

exempted from the punishment. R. Weiss suggests using chemicals for removing the beard instead of shaving. Doing so, the forced laborer is exempted from the punishment of desecrating the Sabbath by referring to compulsion.

[ובזה נבאר] R. Weiss refers to the Talmudic discussion on removing nails, teeth, hair and moustache on Sabbath.¹²⁶

[ובתשו' הריב"ש] A responsum of the *Ribash* renders the work of shearing as ‘work done for the work itself’ even if the man who performs the work does not need the wool. As shearing is one of the 39 major forbidden activities on Sabbath, he is liable for committing a biblical transgression.

[אך באמת גם זה אינו] [והנה בב"י] [והנה בפשוט] [ונראה לפרש] R. Weiss adds that the decision of the *Ribash* was debated by later decisors (*Mishnah Berura*, *Maharam Schick*). The decision of the *Ribash* is not relevant in deciding the present case as the *Ribash*’s decision applies to cases when the work has some benefit (for example the shearing was done for the animal’s fur or skin). R. Weiss states, however, that if the forced laborer obeyed the order of the commander he would not be liable for shearing. It follows that he should remove his beard by chemicals and refer to compulsion instead of letting himself be shaved with a razor. Thus after rejecting the reference to *Ribash*’s decision on the matter, R. Weiss states that the forced laborer is not liable for removing his beard with chemicals (though the removal of the beard is equivalent to the work of shearing). The permission is based on the principle of ‘work done for another purpose and not for the work itself’.

[והנה על פי דברי הריב"ש] R. Weiss refers to the Rambam’s comment on the work of smoothing (ממחק), which is one of the 39 forbidden activities (see the responsum of R. Frenkel).

[ויש ליישב] R. Weiss concludes that removing the beard with chemicals cannot be prohibited by referring to the prohibition of erasing.

[ולפי זה יסתר] The author refers to the decision of the Hatam Sofer, considering the woman who cut her nails before her ritual immersion in the *mikveh* on Sabbath. According to the Hatam Sofer the woman is liable for committing the transgression of erasing.

[וזולת זה] Even if we accept the Hatam Sofer’s decision, says R. Weiss, she did the work for the purpose of the immersion and not for herself. It follows that in the present case when the forced laborer obeyed the order under duress it is obvious that his work is considered as ‘work done for another purpose and not for the work itself’ and it makes no difference whether shaving falls into the category of “shearing” or “erasing.”

¹²⁶ bSabbath 72a.

- ◆ Continuation (*Shu"t Minhat Yitzhak*, vol. 1, no. 64)

[והנה עדיין] In the continuation R. Weiss elaborates on the prohibitions that shaving involves. Both the forced laborer who is being shaved and the shaver are liable for transgressing biblical law.¹²⁷ According to the *Turei Zahav*¹²⁸ the one being shaved cannot refrain from helping the shaver, thus he is liable for transgressing biblical law. Thus R. Weiss again suggests using chemicals instead of being shaved.

[ועוד יש לדון] The author deals with the question of whether the principle of “life-saving” refers to the present matter and thus it would be permitted to transgress the negative biblical commandment by referring to danger to life.

[ואולי] R. Weiss adds that the forced laborers were not intentionally compelled to desecrate the Sabbath; the commander did not compel forced laborers to transgress Jewish religious law intentionally. According to his interpretation the compulsion referred to shaving regardless of the means, so it is preferable to refer to compulsion and the principle of ‘work done for another purpose and not for the work itself’.

[ומכל מקום] The author adds that by using chemicals the forced laborer would desecrate the Sabbath with every two hairs he removes; as opposed to that, by shaving he would only transgress five times the prohibition of cutting the edges of the beard.¹²⁹ R. Weiss argues that using the chemicals involves further biblical transgressions such as kneading (גיבול, לש) by mixing the chemical with water. As the use of the chemicals involves more transgressions, R. Weiss argues in favor of shaving.

Contrary to the previous two responsa, the rabbi of Tasnád R. Shmuel Grünberger argued in his three responsa in favor of using the chemical.

- ◆ R. Shmuel Grünberger, *Mirkahat besamim*, no. 11

Addressee: R. Yehiel Brand (Makó)

Respondent: R. Shmuel Grünberger (Tasnád)

Date: ט"ו למבנ"י תש"א (April 27, 1941)

"[...] ע"ד [על דבר] שאלתו במי שהוא בצבא המלכות יר"ה [ירום הודו], וביום שב"ק [שבת קודש] ניתן צו שמחוייבים להופיע לפני שר הצבא בגילוח הזקן. ויש לפניו ב' [שתי] דרכים או להעביר שער הזקן ע"י [על ידי] עכו"ם אבל רק בתער שאיננו חפץ להסירו בשום אופן על ידי משיחה (הנקרא אוירו"ס). ומכותלי מכתבו הנמסר

¹²⁷ *Shulhan Arukh, Yoreh Deah*, 198 and *Orah Hayyim*, 328.

¹²⁸ *Turei Zahav, Yoreh Deah*, 198.

¹²⁹ *Shulhan Arukh, Yoreh Deah*, 181.

לי נראה שגיבול אפר הסם במים בודאי יעשה הנכרי רק שאינו חפץ להסיר בזה השער מע"פ [מעל פניו] או הישראל יעשה ע"י משיחה בעצמו בדרך ההיתר מכח גילוח פאות הזקן. [...]"¹³⁰

“Concerning his question of someone [a forced laborer] who serves in the army, [the Almighty] raise its glory. On the holy Sabbath came an order compelling [forced laborers] to appear in front of the commander of the army shaven. He has two options: either removing ‘the hair of the beard by a non-Jew’ but only ‘with a razor’ as he [the forced laborer] is not willing by any means to remove it by smearing [*meshiha*] (called oyrus). From his letter passed on to me it is clear that a non-Jew would do the kneading of the chemical powder with water, however he [the forced laborer] is not willing to remove the hair from his face. It is also possible for the Jew to do the smearing by himself relying on the permission of shaving the corners of the beard (*peot*).”

The description of the situation in the responsum of R. Grünberger is slightly different than the previous texts; in this case a non-Jew would help out the forced laborer by mixing the powder with water.

[אחדשה"ט כמשפט] R. Grünberger refers to the *Minhat Hinnukh* (no. 296): the transgression of biblical commandments under compulsion (אונס) is considered as life-saving (פיקוח נפש) and is thus permitted.

[הן] R. Yehiel Brand, the addressee of the responsum, turned to the rabbi of Mád, R. Moshe Lemberger before asking R. Grünberger. R. Lemberger focused on the question whether the prohibition of shearing (גיוז) should be applied, so the method of spreading of the chemical (משיחת הסם) should be also prohibited. R. Brand was concerned that the forced laborer would transgress the prohibition of shearing on Sabbath by using the chemical and argued for having himself be shaved by razor. R. Grünberger disagrees with him and gives a detailed argument in the continuation.

[דהנה] R. Grünberger's first reference is to the *Shulhan Arukh*¹³¹ on the prohibition of cutting the hair and nails using tools on Sabbath and concludes that both the *Turei Zahav* and the *Shulhan Arukh* are concerned that one is liable for shearing: his purpose is to curry the skin or improve its look, thus the work is ‘work done for the work itself’.

[הארכת] R. Grünberger asks the following question with the *Rosh Yosef*: if someone is forced to transgress any of the Sabbath prohibitions *or* to eat non-kosher food, what should he do? The answer is that he must desecrate the Sabbath: he acted under compulsion, thus his work is considered as ‘work done for another purpose and not for the work itself’ (מלאכה שאינו צריכא לגופא). He transgressed a rabbinic, not a biblical, commandment and he is not going to be punished (פטור אבל אסור). As opposed to this, while having his beard cut the forced laborer would commit a biblical transgression: the Jew who is being shaved and the shaver (if he is a Jew) are both transgressing a prohibition of the Torah five times.

¹³⁰ The insertions are in the original.

¹³¹ *Shulhan Arukh, Yoreh Deah* 198.

By using the chemical the forced laborer would also do ‘work done for another purpose and not for the work itself’ (as he does not need the hair or the skin), and would only transgress a the rabbinic prohibition.

[ובאמת] R. Grünberger’s next reference is to Rabbenu Nissim who permits to slaughter on Sabbath for a sick person in order to save him from eating non-kosher meat: by eating non-kosher food he transgresses biblical law with every mouthful the size of an olive, which is a more severe transgression than desecrating the Sabbath. The author refers to the comment of the *Turei Zahav*¹³² (quoted by R. Yehuda Aszód), that the Jew being shaved cannot refrain from helping the shaver, so he also transgresses a biblical commandment by being shaved. This reference serves the author as a support for his decision in favor of using the chemical. The author refers to the responsum of Maharam Schick on shaving¹³³ who suggests applying the chemical to the face in large quantities to remove all the beard at once.¹³⁴

The following two responsa were written by R. Grünberger as a response to R. Krapper who argued in favor of permitting the forced laborer to be shaved.

◆ R. Shmuel Grünberger, *Mirkahat besamim*, no. 12

Addressee: R. Krapper

Respondent: R. Shmuel Grünberger (Tasnád)

Date: ערב חג הסוכות תש"ב (October 5, 1941)

[נועם] R. Grünberger has already given his answer to R. Krapper verbally and now he is putting down the summary of his previous responsum and also adds some reflections on it.

[א. ספר] R. Krapper does not permit using chemicals (razol) (רזאול), which involves biblical transgressions with every two hairs the chemical removes. R. Grünberger refers again to the comment of the *Turei Zahav*¹³⁵ and explains the right way of removing the hair with chemicals: It is crucial to take a large quantity of the chemical into the hand and to smear the chemical on the face at once – thus he commits only one transgression (on the right way of smearing see the responsum of Maharam Schick.¹³⁶

[ב. וכשאני] The author elaborates on the forbidden activities on Sabbath that the use of chemicals involves.¹³⁷

¹³² *Turei Zahav, Yoreh Deah*, 198.

¹³³ *Shu"t Maharam Schick, Orach Hayyim*, no. 138.

¹³⁴ For the significance of the latter condition see the next responsum.

¹³⁵ *Turei Zahav, Yoreh Deah*, 198.

¹³⁶ See above.

¹³⁷ See the responsum of R. Frenkel.

[במש"כ] R. Krapper argued that the work of mixing the powder with water is analogous to the work of kneading (לש) and the work of building (בונה) (based on the *Minhat Hinnukh*, 25). The author opposes these arguments.

[רק] On the prohibition of dyeing (צובע).

[ו. ובצוותא] On the prohibition of cooking (בישול) .

[ז. ובגוף] The author adds some more information on how to make the mix: water is added to the chemical (סם - האויר"ס), which has to be kneaded by hand or with a stick until the material (עפרורית) becomes one.

◆ R. Shmuel Grünberger, *Mirkahat besamim*, no. 13

Addressee: R. Krapper

Respondent: R. Shmuel Grünberger (Tasnád)

Date: חמשה עשר בשבט תש"ב (February 2, 1942)

R. Grünberger wrote a second responsum to defend his opinion against R. Krapper who was concerned that by making the drug himself and using it, the forced laborer transgresses biblical commandments. R. Grünberger unambiguously opposes R. Krapper's scruples.

[ע"ד אשר ירה] R. Grünberger repeats his opinion on shaving expressed in the previous responsum. His decision to choose the chemical instead of shaving is based on the *Rosh Yosef's* opinion that every forbidden activity on Sabbath done under duress is considered as 'work done for another purpose and not for the work itself' (מלאכה שאינו צריכא לגופא), that the Maharik labels as a rabbinic prohibition. As opposed to this, by being shaved the forced laborer transgresses the biblical prohibition of shaving five times, because it is impossible not to help the shaver while being shaved. In his answer to the previous responsum R. Krapper enumerated the additional transgressions that using the chemical involves, as moving the "set aside" (*muktzeh*) items during Sabbath – the stick or the mixture itself (*tiltul muktzeh*).

[ולפענ"ד] R. Grünberger admits that he has not studied the *halakha* on the additional forbidden activities on Sabbath that using the chemical involves. R. Grünberger emphasizes again that by using the chemical the forced laborer performs the activity of shearing (גוזז), which is a biblical transgression. However the reference to 'work done for another purpose and not for the work itself' makes the transgression lighter. The author dismisses R. Krapper's argument that it is not possible to smear the material on the face at once. In the end the author adds that all the hair of the face has to be removed at once, if it is possible, and if he cannot manage that, he is still permitted to do it, as the permission does not depend on his success.

III.I Halakhic problems regarding dietary laws as reflected in the responsa

In general, forced laborers who were not deployed in the front lines and served within the Hungarian borders were luckier than their comrades serving on the front. The supplies collected by the Veterans' Committee reached the domestic labor companies more easily. Forced laborers worked ten hours a day, in the summer from five in the morning, in the winter from six. They walked from the camp to the workplace with an armed escort. Many labor servicemen whose company was stationed near their homes were allowed to stay home overnight.

Besides epidemics, lack of clothes and bad treatment from the guards, forced laborers serving in the front lines had to face starvation; the official food ration was not sufficient and officers and guards (and sometimes fellow laborers) often stole the rations of labor servicemen.¹³⁸ Clothes, cigarette, etc. had an exchange value for food: "To survive, many servicemen were consequently driven to sell their clothes either to more fortunate comrades who had some money, or to the local population for food."¹³⁹

An army report from 1940 testifies that cooperation between the army command and the local Jewish community was possible. Company Nr. 261/2-3 was settled in Töröktanya, a small farm 14 kilometers away from the town of Hajdúnánás. A kosher kitchen was established in the town for the daily servicing of 150 forced laborers, from the financial aid of the local Jewish community. A very negative report depicts the conditions as the following: "The kosher eating place is so frequented, that it outrages local residents."¹⁴⁰

Despite the harsh conditions, *halakhic* questions concerning dietary laws were raised both in the homeland and in the front lines. Observant forced laborers had to face the dilemma of consuming or not consuming non-kosher food provided in forced labor camps.

The rabbi of Királyhelmec, R. Yoel Glattstein's disciple, Shlomo Dov Oesterreicher – who survived the war as a forced laborer – published the responsa collection of his master after the war. He wrote the following in 1987 on R. Glattstein's attitude towards forced labor:

"לא אמנע מלהזכיר פה המאורע שהיה לי עם רבינו הק' [הקדוש] זי"ע [זכותו יגן עלינו]. בשנת תש"ג כשהייתי במחנה העבודה שבור ורצוף תחת עבודת הפרך, והייתי נזהר שם מלאכול מאכלות אסורות עד כדי כך שהגעתי למצב קשה מאד, אבל לא רציתי להתחיל לאכול עד שרבינו ירשה לי, וכתבתי לחברי הנאמן ר' יעקב רובין נ"י [נרו יאיר], כעת בתל-אביב, ברמיזה שיתקשר עם רבינו וישאל חוות דעתו, האם מחויב אני להמשיך להתנזר ממאכלות הנ"ל [הנזכר למעלה] או שמפאת המצב הקשה של פיקוח נפש מותר אני לאכול. ועל זה כתב לי רבינו הק' בעצמו מכתב בלשון הונגרית, שעבר את הצנזורה הצבאית, בלשון חיבה בזה"ל [בוזה הלשון]: בני יקירי,

¹³⁸ Braham, *The Hungarian Labor Service System*, p. 35.

¹³⁹ Braham, *ibid*, p. 23.

¹⁴⁰ "A 261/2-3. zsidó munkásszáza a városhoz 14 km-re levő Töröktanyán vannak elhelyezve. A zsidó hitközség támogatásával azok részére kóser konyhát tartanak fenn, ahol 150 személy étkezik. Ezek látogatása is olyan mérvű, hogy a lakosság megbotránkozik rajta." *Armless They Stood*, vol. 1, p. 215.

קראתי מכתבך, ותדע שהקב"ה [שהקדוש ברוך הוא] כביכול מנהיג אותנו, כלומר הכל מן השמים ותעשה איך שהקב"ה מנהיג עולמו, עכ"ל [עד כאן לשונו], והתם שמו ג"כ [גם כן] ברמיזה, לא בלשון "רבך" כמו שהיה רגיל לחתום שמו במכתביו שכתב לתלמידיו, אלא בלשון "רועה", כדי שהרשעים לא יבינו ממי המדובר. [...]. וגם כדאי לציין, שמאותו הזמן שקבלתי מכתבו הנ"ל, הסתדר עלי הכל לטובה, וב"ה [ובעזרת השם] שלא הוצטרתי לנגוע במאכלות אסורות.¹⁴¹

"I will not abstain from mentioning here an incident that I experienced with our holy rabbi, may his virtue stand us in good stead. In the year 1943 I was in a work camp, broken and shattered from forced labor.¹⁴² I had been careful, and had refrained from eating forbidden food, to the extent that I fell into a very poor state. I did not want to start eating [those non-kosher foods] until our rabbi permitted me to do so. I wrote to my dear friend, R. Jakob Rubin, may his light shine, who presently resides in Tel Aviv, indicating that he should contact our rabbi and ask his opinion as to whether I am obligated to continue abstaining from the foods mentioned above or, due to the difficult situation that perhaps is endangering my life, I am permitted to eat those foods. In response, our holy rabbi personally wrote a letter to me in Hungarian, which passed the army censorship. He wrote 'My beloved son, I have read your letter and you should know that the Holy One, Blessed be He, rules the world, in other words everything is [decreed] from heaven so behave according to how the Holy One Blessed be He guides his world.' He did not sign his name in as 'your rabbi' as he used to sign his letters to his disciples but rather used the term 'shepherd', so the evil ones would not understand to whom it is referring. (...) It is also worth mentioning that from the time that I received the above-mentioned letter, everything worked out well for me and with the help of the Almighty I did not have to touch any forbidden food."

By refusing to give a definite ruling R. Glattstein encouraged his disciple to make his own assessment. R. Glattstein provided the utmost he was able for his disciple: he gave support by indicating that he will be guarded by God no matter what will come. By giving his disciple this ambiguous answer R. Glattstein did not provide him a direct indication to keep the religious commandments as before, rather left it to his discretion. In his responsum below, R. Glattstein articulated a lenient view:

◆ R. Yoel Glattstein, *Shu"t Nahalat Yoel Zeev*, no. 38

Addressee: R. Abraham

Respondent: R. Yoel Glattstein (Királyhelmece)

Date: ג' פ' בהעלותך, תש"ג (June 15, 1943)

"וע"ד [ועל דבר] שאלתך, בנך היקר שליט"א [שיחיה לאורך ימים טובים אמן] הוא בעבודת הצבא, והנה הוא אינו אוכל מפת בגם, והגם שהוא כמעט מסירת נפש, ה' יהיה בעזרו, אולם אלו האנשים האוכלים מבית המבשלת שלהם, ביקשו ממנו שגם הוא יקח את חלקו המגיע לו ואח"כ [ואחר כך] יתנו להם, כי אין הקומץ משיביע. והשאלה היא אם מותר לתת להם דבר האסור. הנה שאלה גדולה היא."

¹⁴¹ R. Yoel Glattstein, *Shu"t Nahalat Yoel Zeev*, vol. 1 (New York, 1988), p. 18.

¹⁴² R. Oesterreicher uses biblical language denoting hard physical labor (allusion to the slavery of the Israelites in Egypt, Ex. 1:13).

“Concerning your question: Your son – may he live a good long life, Amen – is serving in the army, and does not eat their [the army’s] food, and it is almost considered self sacrifice, may the Almighty, save him – however those who eat from their kitchen asked him to take his food portion and to give it to them afterwards, because the handful of food [they receive] is not satisfying. And now the question is whether it is permitted to hand the prohibited food over to them. And that is a difficult question.”

[הנה] R. Yoel Glattstein elaborates on the question of whether the biblical prohibition of creating circumstances, which make it easier for others to transgress a religious law¹⁴³ (לפני עור) is applicable to the case in question. The Talmudic discussions in tractates *Pesahim* and *Avoda Zara*¹⁴⁴ restrict the prohibition of passing wine to a *nazir* (Nazirite, religious ascetic) to cases when the *nazir* is prevented from taking wine himself. Applying this decision to the present case would suggest that the observant forced laborer would have been prohibited to hand over his non-kosher portion had his non-observant fellow not have any other ways to have the extra portion from others.

Obviously there were other observant Jews in the camp, so the non-observant comrade could ask someone else to give his food to him. Thus a general prohibition of handing the non-kosher food over could not be based on this prohibition. On the other hand, by handing over his non-kosher food the observant forced laborer would have transgressed the rabbinic prohibition of ‘helping others to transgress the law’ (מסייע לעבירה), so a prohibition could be based on this prohibition. According to the *Shulhan Arukh, Yoreh Deah*¹⁴⁵ it is permitted to sell to “pagans” articles used for idol worship as long as these articles can be purchased from other sellers (there is a debate as to whether the other sellers should be Jews or non-Jews). According to the *Tosefta*,¹⁴⁶ the *Rosh*¹⁴⁷ and the *Ran*¹⁴⁸ however, the selling is prohibited in any case, because the Jew would transgress the rabbinical prohibition of “helping others to transgress the law” (מסייע לעבירה). The Shakh resolves the contradiction: the prohibition does not refer to selling articles to non-Jews (עכו"ם) and to those who transgress religious law willingly – the Shakh also calls them “apostates” (מומרים), non-observants.

[הנה] The *Dagul mi-revavah*¹⁴⁹ defines “apostates” as deliberate transgressors of Jewish law. According to him it is not a religious duty to warn them, only those who transgress the law unintentionally.

¹⁴³ Lev. 19:14: “Thou shalt not curse the deaf, nor put a stumbling block before the blind, but shalt fear thy God (...)” (King James Version).

¹⁴⁴ bPesahim 22b, bAvoda zara 6b.

¹⁴⁵ *Shulhan Arukh, Yoreh Deah* 151: 1. It is permitted to sell articles to pagans that they use for idol worship on condition that these articles can be purchased from other sellers.

¹⁴⁶ Supplement to the *Mishnah*, corresponding to it in structure.

¹⁴⁷ Asher ben Yehiel, 1250 or 1259-1327.

¹⁴⁸ Rabbenu Nissim, Nissim Ben Jacob (Rav Nissim Gaon, 990-1062), the author of the Talmudic commentary *Ha-Mafteach*.

¹⁴⁹ Commentary on the *Shulhan Arukh* by Yehezkel ben Yehuda Landau (1713-1793), rabbi of the community of Prague from 1755. The title of his main work of responsa is *Noda Bi-Yehudah*.

So R. Glattstein continues as the following:

"וא"כ [ואם כן] לפי זה בנד"ד [בנידון דידן] אותו האיש שכבר קיבל חלקו, גם אם נאמר שהוא אונס [!] בדבר דאין לו מה לאכול, אבל בנוגע לקבל גם את חלק חברו, על זה לא מקרי אונס רק שרוצה לאכול יותר, והרי שמענו בכמה מקומות הרשעים אונסים את הישראלים לאכול טריפות, אבל אין אונסים לאכול שני חלקים, וא"כ [ואם כן] על חלק הזה שנותן לו חברו הרי הוא מזיד ועובר בשאט נפש."

"With reference to our current case of the man who has received his original portion, we can say that he may be permitted to eat it since he has no choice as he has nothing else to eat. However, regarding receiving the portion of his comrade we cannot say that he has no choice: he simply wants to eat more. Even where, in some places, the evil people [company commanders] forced the Jews to eat non-kosher food, they did not force them to eat two portions, and therefore, regarding this [second] portion that he receives from his comrade he is considered a willful wrongdoer who transgresses [commandments] contemptuously."

The author adds that by eating the second portion the non-observant forced laborer commits a transgression willingly thus the observant forced laborer is permitted to hand his own portion over to him. However, the question of whether an observant Jew transgresses the rabbinic prohibition of "helping others to transgress the law" (מסייע לעבירה) by passing his portion over still stands.

[ויש] R. Glattstein refers to contradictory opinions of different decisors on the understanding of the Torah prohibition of enticing someone to transgress religious law.

[אמנם] Following earlier decisors R. Glattstein is convinced that the prohibition of enticing someone to transgress religious law is not relevant to the present case, but the rabbinical prohibition of "helping others to transgress the law" is relevant.

[אמנם] [והנה] The only kosher food in the camp was bread, thus the non-observant forced laborer could give only his bread to an observant Jew as remuneration. Had the observant forced laborer rejected the exchange, he would have had to eat non-kosher food to stay alive. So in order to avoid the consumption of non-kosher food one had to exchange his portion for bread. Referring to the rabbinic prohibition of "helping others to transgress the law", this act should be prohibited; the author however is convinced that the prohibition does not apply to the present case. The only food from his portion that the observant Jew could eat in forced labor camps was bread, which was not enough to stay alive. Seeing the difficulties of life in the camps R. Glattstein suggests that the observant Jew exchange his non-kosher portion for the bread of his non-observant comrade. He even argues that it is even the observant Jew's duty to exchange his portion for bread. If he rejects such an exchange, he would have to eat non-kosher food to avoid dying of starvation. R. Glattstein adds that the two portions suffice the comrade who does not fall back on his portion of bread.

Thus R. Glattstein decided leniently and permitted the observant Jew to hand his portion over, with the following conditions: 1. There was at least another Jewish forced laborer who could

give his portion to his non-observant comrade; 2. The non-observant comrade had not observed religious law prior to being taken to forced labor service; and 3. The observant forced laborer received bread or money (to buy bread) from his non-observant comrade in exchange for his food portion.

To sum up, R. Glattstein's responsum concerned R. Abraham's son who refused to consume non-kosher food in the forced labor camp and this attitude plunged him into a life-threatening state. As the responsum does not refer to the question directly, it is possible that it was not asked in a detailed written form. R. Glattstein's decision derives from his opinion that by eating the second portion (that he received from the observant Jew) the non-observant Jew would not only transgress the prohibition of eating non-kosher food, but his act could be considered as a willful transgression. On the other hand, if the non-observant Jew had performed his act willingly, it would have not been a religious duty for the observant Jew to restrain him from the transgression. Therefore the observant Jew is permitted to take his portion and hand it over to his non-observant comrade. (R. Glattstein's decision is based on the Shakh's decision that was questioned by many later decisors.)

It is clear from the responsum that R. Glattstein was convinced that one could survive by eating only the first portion of food, so there is no need for further lenient considerations regarding the additional portion. The author either refers to domestic forced labor units, where conditions were better, or he was unaware of the unbearable circumstances of forced labor camps, including deprivation and starvation.

R. Glattstein informs us that there were rumors concerning the "wicked" (רשעים), i.e. company commanders who had been providing Jews with non-kosher food intentionally in order to starve the observant Jews among them.

R. David Frenkel explicitly permitted observant forced laborers to consume non-kosher food in forced labor camps arguing that eating non-kosher food under compulsion is preferable than supporting others in eating non-kosher food.

◆ R. David Frenkel, *Shu"t Beer David*, no. 23

Addressee: –

Respondent: R. David Frenkel (Berettyóújfalu)

Without date

"נשאלתי מאנשי צבא שנזונים בנו"ט [בנבלות וטרפות] ויש בהם אנשים כשרים ת"ח [תלמידי חכמים] שאינם רוצים בשום אופן להתגאל במאכלם, אבל קשה מזונות אנשים הללו כקריעת ים סוף, ויש שם אנשים קלים וריקים אשר רוצים להחליף להם המזונות שמקבלים במאכלים שאינם איסורין, כי הם אינם חוששין כלל אפילו בביתם לנו"ט [לנבלות וטרפות], ואם לא יהא שרי להון להחליף אזי יהי' מוכרחים לאכול מאכלם כי הוא ממש

פיקוח נפש כידוע, אי יש לחוש על לפני עור לא תתן מכשול, כי הם יאכלו ברצון טוב הנו"ט, ואע"פ [ואף על פי] שגם הם מוכרחים בלאו הכי לאכול הנו"ט כי אינו מספיק להם המאכלים שאין איסורין, מ"מ [מכל מקום] הא על כל כזית וכזית שאוכל בלי אונס עובר ע"י בב"ש [בבית שמואל] ס"ס קכ"ג, ע"כ [על כן] מוטב שיאכלו הנו"ט כי הוא פקוח נפש ואונס רחמנא פטרי, מלעבור על לפ"ע [לפני עור] לא תתן מכשול."

"I was asked by soldiers [forced laborers] who are being fed non-kosher food,¹⁵⁰ among them there are pious people, yeshiva students and rabbis, who under no circumstances will defile themselves by their [the army's] food. They have great difficulty in obtaining suitable food. On the other hand there are non-observant forced laborers, who do not observe dietary laws even at home, who are willing to exchange some of their food [which is permitted], for the observant Jews' non-kosher food. If this food exchange will not be permitted, the observant Jews will have no choice but to eat their non-kosher food because their life is in danger. Do we also have to be concerned about the prohibition of enticing somebody to transgress religious law, [knowing] that [non-observant Jews] are willingly eating the non-kosher food? And even if it is also necessary for these [non-observant Jews] to eat non-kosher food anyway, since the permitted [kosher] food in the camp is not sufficient for them, with every bite they take without being forced they transgress the law (see *Beit Shmuel*, 123). Therefore it is more desirable for them [the observant Jews] to eat the non-kosher food than to entice somebody to transgress religious law, since their lives are in danger and that absolves them from heavenly punishment."

R. Frenkel considers carefully whether it is better to hand the portion over, which might involve transgression of the biblical prohibition of enticing someone to transgress the law (לפני עור), or eating the non-kosher food himself is preferable (as the questioner suggests). In the latter case he may be absolved from the punishment because he was compelled to transgress the law (אונס). R. Frenkel argues that the observant Jew who hands his portion over does not transgress this biblical prohibition but the rabbinical prohibition of helping others to transgress religious law (מסייע לעבירה)¹⁵¹.

R. Frenkel takes into consideration that there is a possibility of deciding leniently by referring to the obligation of saving a life:

"[...] לפי דעתי כל מה שאוכל הוא פקוח נפש, כי מי יודע מתי יכול להשיג מאכלים כשרים, אם לא יאכל די ספוקו אולי עי"ז [על ידי זה] יהא תש כח ולא יהא כח לעמוד נגד העבודה קשה וההילוך והקרירות והרעב אשר ימצא אותם במקום המלחמה, או יהי' במקום אשר לא ימצאו לאכול כי שכיח טפי כידוע, וע"כ [ועל כן] אי אפשר לידע ולאמוד, וקרוב הדבר שכל מה שאוכל הוא פקוח נפש [...]."

"In my opinion he is permitted to eat anything to save his life, because who knows when he will be able to obtain kosher food. If he does not eat enough to satisfy himself he might become weak and have no strength to face the hard physical work, marching, cold and famine that is awaiting him in the front. There is the possibility that he may come to a place where there will be no food at all, as

¹⁵⁰ Carcass of a kosher animal not killed in accordance with Jewish law and therefore forbidden for consumption and food that is unfit for eating.

¹⁵¹ Which is equivalent to the biblical prohibition of לפני עור according to the Ritva, Yom Tov ben Abraham Ishbili (1250-1330), rabbi of Seville, a disciple of the Rashba, best known for his commentary on the Talmud.

is very common; therefore, since it is impossible to know or predict, it is closest to the truth to say that he is saving his life with everything he eats.”

Still, as opposed to R. Glattstein, R. Frenkel argues that observant forced laborers are permitted to eat non-kosher food and to hand their non-kosher portion over to non-observant Jews.¹⁵²

Thus when one’s life is endangered, it is permitted for him to transgress commandments. Moreover, R. Frenkel argues that by eating non-kosher food in order to save himself the observant Jew does a *mitzvah*.¹⁵³

He adds, though (based on the Rema), that some observant Jews do not eat non-kosher food because of the fear that it would have a bad influence on their souls. R. Frenkel seemingly shares this view: he states that it is preferable for the non-observant forced laborers to eat the non-kosher food:

"והכא הקלים ופוחזים ומומרים שבלאו הכי אינם חוששין כלל על נפשם ואוכלים נו"ט [נבלות וטרפות], ורוחם ונשמתם נפגם לגמרי, מוטב שיאכלו הם הנו"ט ולא יאכלו האנשים הכשרים [...]."

“So the non-observant and [religiously] corrupt people and the apostates who are not at all concerned about their souls and eat non-kosher food anyway, and their spirit and soul are totally damaged; it is preferable that they eat non-kosher food than should the observant people.”

If the observant Jew resisted eating non-kosher food, and gave it to his comrade instead, there would be no need to deal with the prohibition “enticing someone to transgress a religious law;” and as the non-observant forced laborer transgresses the law willingly, the rabbinic prohibition of “helping others to transgress the law” does not pertain to this case either. And R. Frenkel’s last argument: had the observant forced laborer not passed on his portion, the other forced laborers would have felt hatred (איבה) – and in case of anger the prohibition of “enticing someone to transgress a religious law” should not be taken into consideration either.

¹⁵² See the *Magen Abraham*, 248.

¹⁵³ R. Yisrael Hayyim Samet referred to this principle in his question posed to R. Zeev Ginzler in 1941; whether an imprisoned Jew may eat non-kosher food in the prison. R. Ginzler rejected this argument and decided that the Jew should eat only bread in the prison – see R. Zeev Ginzler, *Shu"t Toldot Yisrael*, 33: 2.

III.J Summary

The conditions of forced labor compelled observant Jews to transgress religious law. The *halakhic* decisions referred above show that the authors of the responsa took the conditions of forced labor into consideration. Recognizing harsh conditions, however, did not automatically result in a lenient decision.

The severity of the transgressions, including the transgression of the laws of Sabbath and dietary laws, required a considerate and careful approach. Considering the problems caused by forced labor, all the rabbis referred to here took the responsibility of giving a definite decision. The vast majority of rabbis showed leniency toward observant forced laborers and the Jewish communities hit by the consequences of forced labor.

The texts reveal the life of observant forced laborers in the forced labor camps, and also show the impact that forced labor service had on the life of the Jewish communities. The experience of observant Jews in forced labor is a neglected topic in the scholarly research on forced labor service in the Hungarian army during the Second World War. The responsa cited above are also unknown in the scholarly research.

Beyond *halakhic* aspects, why are these cases and texts written in the beginning of the 1940s in Hungary important for the historical research on forced labor? First, there are very few sources concerning the implementation of the decrees on forced labor issued by the Hungarian Ministry of Defense; the responsa presented here help to fill this void. Second, the detailed analysis of the texts shows the strength of the living Jewish tradition in practice. Finding analogies between past decisions and present *halakhic* matters and the use of earlier precedents in Jewish tradition were a means of the rabbis comprehending the current situation. In my view raising *halakhic* problems and answering them *in the context* of the persecution of the Jews has a strong message: Jewish tradition continued to function even under duress and observant Jewish life was maintainable even under the harshest conditions.

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IV. Exclusion of the Jewish Population from the Hungarian Economy (1938-1944): Anti-Jewish Laws and Local Decrees Limiting Jewish Handicraft and Trade

IV.A Introduction

By the late 1930s the elimination of Jews from Hungary's political, economic, and social life was moving ahead apace. Discrimination on religious and later on racial grounds had begun much earlier than the German occupation of the country in March 1944, which introduced ghettoization, deportation, and the extermination of more than 500,000 Hungarian Jews.

The four anti-Jewish Laws, popularly known as the "Jewish Laws" (*zsidótörvények*; henceforth "anti-Jewish Laws"),¹ issued by the Hungarian government between 1938 and 1942 were aimed at controlling what was generally perceived as Jewish economic "expansion." National laws and decrees introduced by ministries or the government, as well as decrees by local municipal authorities, were embedded in the continual propaganda against "Jewish superiority." In terms of demography and statistics, the Jews in Hungary were disproportionately represented in certain sectors of the economy, mostly in commerce and in white-collar professions.² Similar facts and perceptions were increasingly often referred to in Hungarian public discourse on the social problems of the country, especially in antisemitic discourse from the late 19th century on and especially after WWI. Antisemitic propaganda ignored of course the historical factors that motivated Jews to choose certain professions. In addition, the strong (and visible) presence of Jews

¹ The literal translation of the Hungarian term *zsidótörvény* is "Jewish Law." Contemporary editions of the *American Jewish Yearbook* tended to use the term "Jew-law" (Vol. 43, 1941-1942) and "anti-Jewish law" (Vol. 44, 1942-1943). The term "anti-Jewish Law" is a more accurate rendering, and used for example by Randolph L. Braham, *The Politics of Genocide: The Holocaust in Hungary*, 2 vols. (New York: Columbia University Press, 1981). László Karsai listed twenty-one anti-Jewish Laws and 267 decrees issued between 1938 and 1944 in Hungary. László Karsai, "A magyarországi zsidótörvények és rendeletek, 1920-1944," in Judit Molnár, ed., *A holokauszt Magyarországon európai perspektívában* (Budapest: Balassi Kiadó, 2005), pp. 140–163.

² According to Kádár and Vági "(...) Hungarian Jews were overrepresented in the liberal professions, in the economy, the financial sector and trade by 5–10 times compared to their proportion of the country's total population." Kádár and Vági, *Self-financing Genocide, The Gold Train, the Becher Case and the Wealth of Hungarian Jews* (Budapest-New York: Central European University Press, 2004 (1st, Hungarian edition, 2001) transl. Enikő Koncz, Jim Tucker, András Kádár, 2004, p. 14. Yehuda Don found that Jews were concentrated mostly in three economic areas between the two World Wars: industry and handicrafts, trade and finance, and the liberal professions. Yehuda Don, "Patterns of Jewish Economic Behavior in Central Europe in the Twentieth Century," in Michael K. Silber, ed., *Jews in the Hungarian Economy, 1760-1945* (Jerusalem: Magnes, 1992), p. 256.

in urban centers served to reinforce the “myth of general Jewish affluence” emphasized in the antisemitic press.³

The relation between the economic despoliation of Jews and their physical destruction has been examined in Holocaust historiography.⁴ Gerlach and Aly present the destruction of Hungarian Jewry as an “interactive” process of team-work between the German occupying forces and the Hungarian Government. The short-term aims of the Germans, that were being realized by the occupation, matched the long-term interests of the Hungarian public administration concerning Jews, as expressed in its policies from the second half of the 30s and the first half of the 40s. Gerlach and Aly relate mass murder to the distribution of resources. The manpower demands of German military industry, the problems of currency and food shortages were intended to be solved by military and economic achievements. Scholars agree that discriminatory policies against Jews in Hungary in the late 1930s was aimed at solving political, economic, and social problems of the country. Similarly, in 1944 the Hungarian government attempted to stabilize general social conditions and to cover the deficit by the total confiscation of Jewish property. The plundering of the Jewish population helped to fulfill German demands and at the same time covered the costs of the occupation that had doubled budgetary expenditure.⁵ The discriminatory policy prepared the ground for the tacit acceptance of the majority of Hungarian society of the separation of Jews from that society and their subsequent deportation to unknown destinations.

The efficient cooperation of the Hungarian administration was essential in the implementation of the restrictive policies on Jews in the Hungarian economy as well as in the process of the extermination of Hungarian Jewry. In the summary of György Ránki:

“An image was created, particularly between 1938 and 1941, that the Germans supported the Hungarian national goals, the revision of the Trianon Peace Treaty, the menace of Bolshevism, while at the same time they disliked, hated, and persecuted the Jews. In that sense, Hungarian interests and Jewish interests became increasingly separated. To understand why the Jews became second-class citizens in Hungary long before 1944, this has to be taken into consideration.”⁶

Plans to redistribute Jewish wealth were formulated already by antisemitic organizations and parties in Hungary since before World War I. The program of structuring Hungarian society

³ According to Randolph Braham, “In 1930, for example, when Jews constituted only 5.1 percent of the population; 56 percent of them lived in urban areas.” Idem, *The Politics of Genocide: The Holocaust in Hungary*, 2nd revised ed. (New York: Columbia University Press, 1994), vol. 1, pp. 80-81.

⁴ See Christian Gerlach and Götz Aly, *Das letzte Kapitel: Der Mord den ungarischen Juden* (Stuttgart: Deutsche Verlags-Anstalt, 2002); Krisztián Ungváry, *A Horthy-rendszer mérlege. Diszkrimináció, szociálpolitika és antiszemitizmus Magyarországon* (Budapest: Jelenkor, 2012) and Kádár and Vági, *Self-financing Genocide*, especially pp. 50ff.

⁵ Krisztián Ungváry, *A magyar honvédség a második világháborúban* (Budapest: Osiris, 2005), p. 232.

⁶ Ránki György, “The Germans and the Destruction of Hungarian Jewry,” Randolph L. Braham and Vágó, Béla, eds., *The Holocaust in Hungary Forty Years Later* (NY: Columbia University Press, 1985) (pp. 77-90) p. 88.

was driven by the 1920 Treaty of Trianon, which re-allocated sixty-seven percent of Hungary's territory. The population of the country was reduced from 18.3 to 7.9 million, and Hungary became a small country with a homogeneous population and one language.⁷ The 1920s ushered in a new phase in Hungarian economic history, marked by growing state intervention in the economy and increased competition in the professions and business between Jews and Christians.⁸

The economic pressure on the Jewish communities and economic hardships of their members' are reflected in the rabbinic responsa of the period in countries where anti-Jewish laws were introduced. In Germany we can cite two cases from the pre-WWII period. The boycott of all Jewish businesses on April 1, 1933, marked the beginning of the systematic economic oppression and the Aryanization of Jewish businesses. The Hassidic Rebbe of Munkács in Carpatho-Russ (today Mukacheve, Ukraine), R. Hayyim Eleazar Shapira, was subsequently asked to declare a worldwide public fast in solidarity with the plight of German Jewry. He actually argued against the idea.⁹ In the second case, R. Yechiel Yaakov Weinberg, who before World War I, as rabbi of Pilviškiai, Lithuania, prohibited work to be done for Jewish shopkeepers by non-Jews on Sabbath, later decided differently regarding a similar question, when he was the head of the Orthodox rabbinical seminary in Berlin. He was approached by the rabbi of Barken, Germany, in 1935, regarding the use of a bill of sale (Hebrew, *shtar mekhirah*) to allow a Jewish shopkeeper to keep his shop open on Sabbath with the help of a non-Jewish partner. R. Weinberg approved the practice, referring to contemporary times as a "time of emergency and distress," arguing that prohibiting the use of a bill of sale would result in severe transgression of religious laws by the shopkeepers.¹⁰

Besides responsa, the present chapter utilizes primarily archival documents of the Hungarian Ministry of Agriculture,¹¹ documents of the Budapest Court (1938-1945)¹² and books of the House of Representatives.¹³ Responsa relating to the decrees' halakhic consequences also reflect the rabbis' approach to the era's anti-Jewish atmosphere in general. Many Orthodox rabbis regarded the anti-Jewish legislation as persecution of Jews but not as of Judaism – a religious persecution per se. This distinction was of utmost practical relevance, since religious persecution entails the obligation of martyrdom, according to *halakha*. Legislation prescribing Jewish shopkeepers to open their shops on Saturday, for example, was considered an oppressive measure

⁷ On the territorial and population losses in Hungary, see Brahm, *Politics of Genocide*, vol. 1, pp. 23-28.

⁸ Michael K. Silber, "A Jewish Minority in a Backward Economy: an Introduction," in idem, ed., *Jews in the Hungarian Economy*, (pp. 3-22), pp. 21-22.

⁹ Rabbi Hayyim Eleazar Shapira, *Minhat Eleazar* (New York, 1974), vol. 5, no. 36. For the text in English translation, see Robert Kirschner, ed., *Rabbinic Responsa of the Holocaust Era* (New York: Schocken Books, 1985) pp. 21-30. See also Zimmels, *Echo of the Nazi Holocaust in Rabbinic Literature* (Ktav, 1977), pp. 3-4.

¹⁰ *Seride Esh*, no. 155. Zimmels, *ibid*, pp. 7-8.

¹¹ National Archives of Hungary / Magyar Országos Levéltár (MOL), FM. Eln. 1940/1783; *ibid*, FM. 1940 Eln. 175; *ibid*, FM. 1940 Eln. 5765.

¹² BLF.VII.5.c.473/1944. // YV.Archives JM/34237; BLF.VII.5.c.1503/1944 // YV.Archives JM/34237; BLF.VII.5.c.5824/1944 // YV.Archives JM/34240; BLF.VII.5.c.10202/1944 // YV.Archives JM/34242.

¹³ *Képviseelőházi Napló* (Book of the House of Representatives), 1935-1939, vol. 2; 1939-1944, vols. 5-6.

lacking a specifically anti-religious motive by the majority of rabbis who ruled on this matter, which made it possible for them to decide leniently and to find accommodations to the mentioned administrative decrees.

From 1938, political, social, and economic segregation prevented many Jews from practicing their professions in Hungary. Contemporary responsa reflect not only the detrimental effects of discriminatory legislation on the livelihood of Jews, but also close cooperation between, and – in some areas of the economy – interdependence of, Jews and non-Jews in the shadow of anti-Jewish legislation.

Responsa of the period also reveal that implementation of the anti-Jewish Laws depended to a large extent on local factors. Municipal considerations often took precedence over “national interests.”

Responsa usually relate to concrete cases requiring *halakhic* deliberation. Our texts elaborate on problems related to Jewish shopkeepers who continued their business in this way or the other, but do not relate to shopkeepers, craftsmen, or tradesmen etc. who simply lost their livelihoods or had to close down their enterprises, since such cases usually did not pose *halakhic* problems. Still, our responsa reflect circumstances generated by anti-Jewish economic discrimination, and experiences of hundreds of thousands of Orthodox Jews who suffered from these policies.

IV.B The first and second anti-Jewish Laws¹⁴

The preliminary goal of the two anti-Jewish Laws was to upgrade the socio-economic status of the non-Jewish middle class by reducing the Jews' share in the economy. The aim of the legislators was to break down a perceived Jewish economic supremacy. This aim was only partially fulfilled; the discriminatory laws hit the Jewish lower middle class and the poor more than the economic elite, including the relatively poorer Orthodox communities. Orthodox Jews were most badly affected by regulations concerning the operators of small enterprises and the revision of trade licenses. The general obligation to renew licenses hit the Jewish population hardest, because licenses of Jewish tradesmen and craftsmen were not extended by the Trade Authorities and the

¹⁴ For a summary, see Nathaniel Katzburg, *Hungary and the Jews: Policy and Legislation 1920-1943* (Ramat-Gan: Bar-Ilan University Press, 1981), pp. 212-235; Yehuda Don, “Economic Implications of the Anti-Jewish Legislation in Hungary”, Cesarani, David, ed., *Genocide and Rescue, The Holocaust in Hungary 1944* (Oxford – New York: Berg, 1997) pp. 47-76; László Gonda, *A zsidóság Magyarországon, 1526-1945* (Budapest: Századvég, 1992), pp. 276-279.

municipalities, due to the quota system introduced by the anti-Jewish Laws. Nor could Jews start up new enterprises, unless they gravitated towards occupations traditionally not plied by the Jews (such as breeding angora, see below) and where their sector in the economy was not circumscribed by the law.¹⁵

The title of the first anti-Jewish Law “For the More Effective Protection of the Social and Economic Balance” (“*A társadalmi és a gazdasági élet egyensúlyának hatályosabb biztosításáról*”) spoke for itself. The law intended to fulfill the “national interest” by nullifying the Jews’ “advantage” by putting them at a disadvantage.¹⁶ To meet this aim the law introduced the principle of proportionality, limiting the proportion of Jews in certain segments of the Hungarian economy to twenty percent.

Since the proposed goal of this Law had not been reached, further steps had to follow. The second anti-Jewish Law, issued a year later, bore the title “Concerning the Restriction of the Participation of the Jews in Public and Economic Life” (*A zsidók közéleti és gazdasági térfoglalásának korlátozásáról*).¹⁷

According to the ruling in Paragraph 12 of the second anti-Jewish Law,

“Jewish tradesmen were doomed to exclusion or banishment from all businesses that required professional licenses, the appropriation of which depended upon the discretion of the authorities. Thus, trade in tobacco and liquor [state monopolies] had to be free of Jews within two years ... Jews were to be excluded from trade in heating fuel, the operation of taxi cabs, peddling, and newspaper selling. Jews were also to be banned from trading in wine and wine products (vinegar, etc.)”

The official interpretation of the Law makes clear that the aim of the Law was to banish Jews from the profitable businesses where competition was limited.¹⁸ Also, Jews were not eligible for licenses, the appropriation of which depended upon the deliberations of the authorities. In addition, the licenses held by Jews for the operation of a variety of types of businesses were to be withdrawn within a limited number of years and no new licenses were to be issued until the percentage of Jews in local commerce and industry was reduced to six percent and in certain branches of commerce to twelve percent.¹⁹

¹⁵ Kinga Frojimovics, “Angórányúl-tenyésztés orthodox szemmel: zsidóellenes törvények, zsidó önszegélyezés és a halakha,” in Bányai, Viktória and Koltai, Kornélia, eds., *Rabbinikus források a Holokauszthoz* (Ma’amakim, Holocaust Studies, vol. 2) (Budapest: ELTE-BTK, Program in Holocaust Studies, 2006), pp. 5-25.

¹⁶ The first anti-Jewish Law was promulgated in May 1938 as Law No. XV of 1938. On this topic, see Braham, *Politics of Genocide*, vol. 1, p. 122ff.

¹⁷ The second anti-Jewish Law was promulgated as Law No. IV of 1939 on May 5, 1939.

¹⁸ Vértes, Róbert, ed., *Magyarországi zsidótörvények és rendeletek 1938-1945* (2nd ed, Budapest: PolgART, 2002), p. 55.

¹⁹ Braham, *Politics of Genocide*, vol. 1, pp. 154-155.

As a consequence of the withdrawal of licenses, Jews have lost about 40,000 jobs.²⁰

According to Yehuda Don, “In Hungary [in 1938] there were 80,507 Jewish shopkeepers, of whom 65,113 would have to be replaced by members of the new guard in four years. There were 73,887 independent Jewish artisans, of whom 47,948 were to be replaced by gentile successors.”²¹ He suggests that this second Law might have been ignored, more often than not, in the countryside.²² Don suggests that had the second anti-Jewish Law been fully implemented, 55% of the Jewish economically active population would have lost their jobs in Budapest, leading “the employment structure of the Jews to a complete collapse.”²³

During the first three years of the anti-Jewish legislation (1938 – March 1942) only the public sector – judiciary, civil service (including taxi drivers, tobacconists, newspaper vendors), public communication, employees of the Municipal Electricity Company, Municipal Gasworks and Municipal Waterworks fulfilled the instructions of the law. Don enumerates examples of “sloppiness,” where the law was not put into order and the companies still employed Jewish employees in the capital.

The most popular way of evading the law was to Aryanize “Jewish” enterprises using fictitious contracts — namely to transfer the enterprises formally to Christian owners (“straw men,” *Strohmann*, *stróman*), who contributed their name and non-Jewish pedigree to the company but in effect did not actually work in the given business.²⁴ The legal way of making partnerships with non-Jews was to be the silent, ‘sleeping’, partner of the non-Jewish partner. This practice and the illegal way of making partnership with non-Jews (the *stróman*) both were reflected in the responsa. Both practices were approved by the rabbis although running a business together with a non-Jew involved some form of religious transgression in most cases.

The deliberations of the responsa elaborating on the *halakhic* consequences of the anti-Jewish legislation attest to the fact that these “solutions” were widespread in the Orthodox population. Those who managed to land on their feet after the introduction of the decree were mostly owners of large enterprises who could evade the laws by formally passing ownership onto non-Jews. The responsa show that evasion of the laws was also a common practice in small retail enterprises, in the service sector and also in agriculture.

Yehuda Don categorizes those professionals who, according to the anti-Jewish legislation, were not regarded as essential for the national economy and lost their income. Small retailers,

²⁰ See Katzburg, *Hungary and the Jews*, p. 142.

²¹ Don, “Economic Implications,” p. 57. Don suggests that had the second anti-Jewish Law been implemented, fifty-five percent of working Jews would have lost their jobs in Budapest.” *Ibid.*, pp. 64-65.

²² *Ibid.*, pp. 66-67.

²³ *Ibid.*, pp. 64-65. “In the provinces the employment damage would have been no lighter.” (p. 65) „... Due to the distance from the centre, control was difficult, and the random factor of arbitrary enforcement by local strongmen was great. ... On the whole, employment losses in the provinces were also within the range of sixty percent to two-thirds.”

²⁴ See below.

peddlers, artisans working in a workshop with a couple of assistants, salaried professionals who worked as employees (particularly in the public sector), semi-educated clerks, tradesmen, craftsmen, and journeymen were “most liable to be deprived of their livelihood through withdrawal of licenses, dismissal, or the evaporation of business.”²⁵ The following examples show the *halakhic* problems of those small entrepreneurs who did continue with their business in trade and craft, in transportation or even in agriculture.

IV.C Sunday “day of rest” and decrees concerning opening shops on Saturday

The topic of municipal decrees that compelled shopkeepers to open their shops on Saturday has, to date, received no scholarly attention in the study of the Shoah in Hungary. One possible reason for this oversight is that usually we find no clearly and unequivocally antisemitic motives behind the municipal decisions. Local municipal authorities regulated trade hours without direct discriminatory motivations; they simply had consideration only for the way of life of the majority and the Christian calendar. Responsa testify that in some cases these local decrees caused serious turbulence in observant Jewish communities, but labeling the decrees as purely antisemitic or anti-religious would be baseless. Besides responsa, the protocols of the Hungarian House of Representatives serve as primary sources for researching this subject.

Law no. 45.268, introduced in 1935 by the Ministry of Trade and Transport, set Sunday as the national day off, with the exception of food trade. The law also authorized local municipal authorities to regulate opening hours of trade by decrees and even allowed the prohibition of business on specific days. As the implementation of the law was difficult and imperfect, ongoing debates aimed at stricter regulation took place almost every year in the late 1930s and early 1940s in the House of Representatives. The increasingly antisemitic atmosphere influenced the tone of the debates, which did not lack anti-Jewish diatribes.

A mandatory day of rest on Sunday for industrial workers had been introduced in 1891 but, lacking proper implementation, the law did not generate a real change. In the mid-1930s the debate on the mandatory day of rest gathered fresh momentum, culminating in the introduction of a law by the Ministry of Trade and Transport in 1935.²⁶ Neither the persistent will of legislators to legislate a national day of rest on Sunday nor the intent of local municipal authorities in their introducing of decrees on mandatory opening on Saturday had directly anti-Jewish motives. However, antisemitic

²⁵ Don, Yehuda, “The Economic Dimensions of Antisemitism: Anti-Jewish Legislation in Hungary, 1938-1944,” *East European Quarterly*, 1987/4, pp. 459-460.

²⁶ Law no. 45.268.

incentives together with social and Christian religious motives aimed at a change in the status quo. Frustration deriving from the poor implementation of the first and second anti-Jewish Laws resulted in a plethora of antisemitic speeches given in the House of Representatives on the matter of Sunday as a day of rest.

Instead of introducing a general national prohibition on trade on Sunday, the law authorized local municipal authorities to introduce a local general day of rest provided that the consent of two-thirds of the city's local tradesmen and craftsmen had been garnered. On June 12, 1940, Lajos Kabók argued in the House of Representatives for the introduction of a mandatory day of rest on Sunday in the capital, citing the successful introduction of the day of rest in many cities in the countryside.²⁷ Seventy-five percent of the tradesmen in Debrecen and Szeged voted for a Sunday day of rest, but the tradesmen of Nyíregyháza voted against the motion, and a continuing debate on the matter in Miskolc never resulted in a decision.²⁸ It is possible that the vote in the last two cities was a result of the higher rate of Jewish population in northeastern Hungary, who might have been interested in maintaining the status quo and opening their shops on Sundays.

Despite local successes in implementation, by 1940 chambers of commerce and the Ministry of Trade and Transport were still involved in a continuing struggle to introduce the general day of rest for grocery stores. In Budapest, bakers and milkmen objected to a general day of rest on Sunday; in 1940 there were still 7,000 grocery stores open on Sundays, affecting the livelihood of 25,000 people.²⁹ By that year the only fields of trade where the day of rest was not introduced were food trade, bakeries, and confectioneries. For the traders of food, trade was allowed on Sundays in the morning hours, generally until ten o'clock, both in Budapest and in the countryside.

Imre Palló said on June 12, 1940, in the House of Representatives, that Jews still wielded power in the economy and political life of Borsod County despite the anti-Jewish Laws that had been introduced in the previous years. According to him, all the innkeepers, doctors, pharmacists, and the notary in the town of Szikszó were Jews:

“What happens in business? Out of twenty-six vintners in Miskolc there are only four Christians. The poor shoemaker must go and buy from the Jews. He did so until now, but before the [anti-]Jewish law, he received goods on trust. So what is happening now? The Jew has revoked the trust. Moreover, he demands immediate payment thus many artisans are going bankrupt and cannot pay their debts.[...] The newest manipulative Jewish trick of getting into the markets and sales is the following: the Jew owns a trade license. He takes on [Jewish] partners, so they can go to markets and sales together. They open four tents. In

²⁷ *Képviselőházi Napló* (Book of the House of Representatives), 1939-1944, vol. 6, pp. 256-257.

²⁸ See the speech of Ferenc Reisinger in the House of Representatives on June 12, 1935, *Képviselőházi Napló* (Book of the House of Representatives), 1935-1939, vol. 2, pp. 523-524.

²⁹ Speech of Kálmán Mosonyi in the House of Representatives on May 1, 1940, *Képviselőházi Napló*, (Book of the House of Representatives), 1939-1944, vol. 5, pp. 472-473.

one of the tents this Jewish licensee makes the sales, and in the other three his partners make sales, trading with goods on commission. It has certainly resulted in the multiplication of Jewish tradesmen in the markets, destroying the business of Hungarian retailers.”³⁰

The debate did not reach its peak in the following years, either. Two years later, Imre Tatár Jr. raised a question in the House of Representatives regarding Jewish shopkeepers opening their shops on Sundays:

“Considering the issue, I have to relate to the Jews’ conduct of business. Here in Hungary the situation is quite special. Jews keep a full day of rest on Saturdays, but they are allowed to open their shops on Sundays. Thus, I apply to the highly honored Minister to elaborate on this matter in his proposal, namely, if a Jew closes of his own will on Saturdays then he should be prohibited from selling in his shop on Sundays.”³¹

The possibility of a partnership with non-Jews as a solution to mandatory work on Sabbath had already been discussed in earlier centuries, so rabbis deciding on the matter in the 1940s were able to rely on diverse *halakhic* precedents.

IV.D Earlier halakhic discussions on partnerships

In Judaism it is permitted to disregard all religious requirements and transgress all religious commandments in order to preserve a life in danger, with the exception of three cases: when a Jewish person is being forced to commit murder, or engage in sexual misconduct (incest or adultery), or practice idolatry. When a Jew is being compelled to commit any of these acts, he must

³⁰ “Mi történt a kereskedelemben? Miskolcon van 26 bőrkereskedő, ebből 4 keresztény. A szegény cipészkisiparos kénytelen a zsidóhoz menni vásárolni. Eddig is azt tette, eddig azonban nem volt zsidótörvény és a zsidó adott neki hitelbe árut. Ma mi történik? A zsidó megvonta a hitelt, sőt tartozását követeli és igen sok kisiparos a tönk szélén van, nem tudja adósságát megfizetni. (...) Egy újabb szomorú zsidófondorlat, amellyel a zsidóság ellepte a piacok és a vásárok életét, a következő: A zsidó kereskedői iparigazolvánnyal rendelkezik. Erre szerez magának [zsidó] társakat. Ezek a társak együttesen mennek a vásárookra, piacokra. Négy sátort nyitnak. Az egyikben van az, akinek megvan az iparigazolványa, a többiben pedig a társak mint bizományi árukat árúsítják a cikkeket. Ezzel természetesen megszorodtak a vásárok és piacok zsidó kereskedői és tönkretették a magyar kiskereskedőket.” June 12, 1940, *Képviselőházi Napló* (Book of the House of Representatives), 1939-1944, vol. 6, pp. 258-259.

³¹ “Ezzel kapcsolatban meg kell említenem a zsidók üzleti szokásait. Egészen különleges a helyzet itt Magyarországon. Szombaton a zsidók teljes munkaszünetet tartanak, vasárnap azonban nyitva szabad tartani nekik üzleteiket. Arra kérném tehát az igen t. miniszter urat, hogy ezzel a kérdéssel is méltóztassék foglalkozni a javaslatban, hogy ha az a zsidó szombaton becsuk a maga akaratából, akkor vasárnap ne engedjék meg neki azt, hogy ő üzletében árúsíthasson.” February 6, 1942, *Képviselőházi Napló* (Book of the House of Representatives), 1939-1944, vol. 13, p. 23.

not comply, but to suffer martyrdom if there is no other choice. This obligation of martyrdom is referred to as “let him be killed but do not transgress.”³²

If the persecutor’s sole (or main) purpose is to have the Jew transgress a religious commandment, than the Jew is obligated to suffer martyrdom in order to avoid desecrating God’s name by publicly transgressing even the slightest among the religious precepts.³³ If a Jew is being forced to transgress the Sabbath laws for the sake of the persecutor’s personal profit, for example, he would not be required to give up his life. During a time of general persecution of the Jewish religion, however, Jews are obligated to suffer martyrdom rather than violating any negative or positive commandment – including religious customs of relatively minor importance, such as tying “sandal straps” in the traditional Jewish manner.³⁴ Sacrificing one’s life in accordance with the obligation of “let him be killed but do not transgress” under such circumstances, is considered to be *Kiddush Hashem* (“sanctification of God’s name”).

Main codifications of the Jewish religion and law (such as Maimonides’ code from the 12th century or the *Shulhan Arukh* by R. Yosef Karo from the 16th century) confirmed this ancient (Talmudic) obligation of martyrdom in times of religious persecution rather than transgressing even the slightest commandment.³⁵ The 17th century rabbi known as the Shakh (Shabtai ben Meir HaKohen) limited the force of the ruling to cases when oppressive legislation refers exclusively to Jews.³⁶

In light of the latter 17th century distinction, even the decree concerning the opening of shops on Sabbath does not fulfill the criterion of religious persecution. Even though in practice the decree to open the shops was relevant obviously mostly to Jews, formally it did not distinguish between Jewish and non-Jewish shopkeepers. Furthermore, it determined opening hours but did not directly force those Jewish shopkeepers who had the choice of employing a non-Jew for Saturdays to work themselves on Saturdays.

Changing living conditions, due to the migration of the Jews from the countryside to the cities in the sixteenth to eighteenth centuries, opened up new sources of income for them, and many became shopkeepers. In order to continue observing the Sabbath under the new circumstances, Jews had to adapt to the new conditions. *Halakhic* decision-making found the proper solution in

³² See the Talmudic discussion in b*Sanhedrin* 74a-b. This rule is based on the verse in Leviticus 18:5: “You shall keep my decrees and my laws that a person will do and *live by them*, I am God,” which has been traditionally interpreted to mean that one should transgress the religious commandments rather than risk death.

³³ See Maimonides, *Mishne Torah, Hilkhos Yesodei HaTorah* 5.

³⁴ See b*Sanhedrin* 74a.

³⁵ *Shulhan Arukh, Yoreh Deah* 157:1.

³⁶ Shabtai ben Meir HaKohen (Shakh) in *Siftei Kohen on Shulhan Arukh, Yoreh Deah* 157:1:6.

developing ways of cooperating with non-Jews – the institution known as the Sabbath Gentile or in Yiddish, *Shabbes Goy*.³⁷

For the permission to pass on Jewish businesses to non-Jewish partners for Sabbath we find an antecedent in the ruling of R. Meir of Rothenburg who, in the thirteenth century, allowed lessors of tax-collecting rights to substitute a non-Jew on Sabbath. *Halakha* prohibits benefiting from work done on Sabbath regardless of whether the agent is a Jew or a non-Jew, so the non-Jew had to take all the benefit of the work performed on Sabbath.³⁸ The *Shulhan Arukh* permits Jewish tax collectors and coin minters to employ a non-Jew to work on Sabbath on the condition that he is paid in accordance with the work he has done at his own will.³⁹ This provision aims to make the employee interested in making a profit by making sure that the profit he generates will belong to him and not to his Jewish employer.

Later permissions for Jewish shopkeepers and others to make partnerships with non-Jews were all based on the precedent of the *Shulhan Arukh*. In the sixteenth century R. Moshe Isserles⁴⁰ added a further condition: Jewish employers should not be present while their non-Jewish employees work on Sabbath. His ruling was aimed at preventing Jewish shopkeepers from sitting in their shops on Sabbath. However, such an arrangement carried the risk that the non-Jewish employee will harm the business or steal. So, in order to prevent financial loss, a 17th commentary on the *Shulhan Arukh*, the *Turei Zahav* by R. David HaLevi Segal, allowed Jewish shopkeepers or their trustees to sit in the shop on Sabbath and supervise the work of their non-Jewish employees on condition that the shopkeepers refrain from talking.⁴¹ This later became a common practice. However, there were *halakhic* authorities, among them the Hatam Sofer, who did not permit Jewish shopkeepers to be present in the shop on Sabbath under any circumstances.

In 1835 the Hatam Sofer prohibited any “fictitious sale” of shops or fields as a solution for operating businesses on Sabbath.⁴² In his responsum⁴³ he strictly prohibited any regular commerce on Sabbath. The rabbi of Nagyvárad (Transylvania, today Oradea, Romania), R. Pinhas Zimetboim, quotes the responsum of the Hatam Sofer in his responsum on opening the shops on Sabbath⁴⁴:

"ומסיים בזה שאסור לשום אדם לפתוח חנותו בשבת ואם לא שמע לזה הרי הוא מובדל ומופרש מעדת ישראל ואין לו דת כלל ופסול לעדות ולשבועה ולכל דבר ושחישתו אסורה וכל מאכליו ומשקיו בחזקת איסור כי אבד נאמנות שלו ואין חילוק בין פותח חנותו מקצתו או כולו או חלונותיו וכדומה עיי"ש [עיינן שם] שדבריו בוערים כאש על מי שפותח חנותו בשבת."

³⁷ See Jacob Katz, *The "Shabbes Goy": A Study in Halakhic Flexibility* (Philadelphia and New York: The Jewish Publication Society of America, 1989).

³⁸ *Ibid*, p. 233.

³⁹ *Shulhan Arukh, Orach Hayyim* 244:6.

⁴⁰ The Remah (1520–1572). His fundamental work, *Ha-Mapah*, is a collection of normative, complementary glosses to the *Shulhan Arukh*.

⁴¹ David HaLevi Segal, *Turei Zahav, Shulhan Arukh, Orach Hayyim* 244:6:7.

⁴² Katz, *The "Shabbes Goy"*, pp. 165-166.

⁴³ Moshe Sofer, Hatam Sofer, *Sheelot u-teshuvot Hatam Sofer, Hashmatot le-Hoshen Mishpat*, no. 195.

⁴⁴ See the responsum of R. Zimetboim later.

“And he [the Hatam Sofer] concludes that it is forbidden for everyone to open his shop on Sabbath. If he did not obey, he would be separated and excommunicated from the community of Israel, and considered unfit for giving testimony and taking an oath and for everything else, and his slaughter is forbidden [= the meat of the animal he slaughtered is unfit for consumption], and all his food and drink is considered prohibited [= observant Jews are forbidden to eat and drink at his place], because he lost his credibility, regardless if he opened his shop partly or fully or opened only its windows [to sell] – see there [in the mentioned responsum of the Hatam Sofer], where his words burn as fire on everyone who opens his shop on Sabbath.”

The shopkeeper who opens his shop on Sabbath in any way, should lose his status in the Jewish community according to the Hatam Sofer. The rabbis in Hungary who grew up in the tradition of the Hatam Sofer faced the worrying question how to meld realities of the 1930s and 1940s with this stringent norm of their revered master.

More lenient opinions expressed by the Hatam Sofer in his other responsa made the life of the rabbis easier. For example the Hatam Sofer decided leniently regarding a Jew who had “leased the sale of salt from the authorities for a period of three years” and wanted his Gentile partner to do the selling on Sabbath. He wrote, “They are to sell everything on Friday to their Gentile foremen to such and such an extent [...] and whatever is left over is to be returned to the Jew who will buy it back from the Gentile after the Sabbath.”⁴⁵ This permissiveness of the Hatam Sofer was not followed by his successors.

The first rabbinic authority who gave his approval to the practice of passing Jewish businesses to non-Jews before Sabbath by a bill of sale was the founder of the Sanz hassidic dynasty in Galicia, R. Hayyim Halberstam.⁴⁶ He approved this – then already quite widespread – practice as an emergency measure and a compromise.⁴⁷ Most *halakhic* authorities living in Hungary rejected the use of the bill of sale authorized by R. Halberstam, despite the pressure by tradesmen who called for the adoption of this practice in Hungary. According to Jacob Katz, in spite of the general rejection of the use of the bill of sale in Hungary there were rabbis who agreed to its use.⁴⁸ Rejection of the bill of sale in Hungary reflected the ultra-Orthodox agenda in the second half of the nineteenth century, and was motivated by the fear that leniencies in religious practice in general, and in a major issue like this in particular, would lead to a decline of traditional Jewish life.

Two generations later, in the 1930s and 1940s, Orthodox rabbis did consider permitting shops to operate on Sabbath by making partnerships with non-Jews and passing on the business to them, following *halakhic* precedents in using the bill of sale.

⁴⁵ Moshe Sofer, Hatam Sofer, *Sheelot u-teshuvot Hatam Sofer, Orach Hayyim*, no. 58. See Katz, *The “Shabbes Goy,”* p. 186.

⁴⁶ R. Hayyim Halberstam of Sanz (1797-1876), the *Divrei Hayyim*, Hasidic rebbe and halakhic authority in Galicia.

⁴⁷ On the use of the bill of sale, see Katz, *The “Shabbes Goy,”* pp. 159-180 and its use in Hungary, see p. 185.

⁴⁸ *Ibid.*, p. 209. Katz argues that the practice existed in Hungary, though in a limited form.

IV.E Responsa regarding local decrees on opening shops on Sabbath

Local decrees ordering shops to be kept open on Saturdays mostly affected the lives of the Orthodox, who strongly opposed conducting business on Sabbath and Jewish holidays. Five of the seven rabbis who elaborated on the matter were from the re-annexed territories with a dense Orthodox population: R. Yoel Glattstein (Királyhalmec, today Kráľovský Chlmec, Slovakia) from Upper Hungary; R. Ephraim Billitzer (Bethlen, Transylvania, today Beclean, Romania); R. Menahem Sofer (Marosvásárhely, Transylvania, today Târgu Mureș, Romania); R. Pinhas Zimetbaum (Nagyvárad, Transylvania, today Oradea, Romania); and R. Yoel Teitelbaum (Szatmárnémeti, Transylvania, today Satu Mare, Romania). The other two rabbis, R. Yonathan Steif (Budapest) and R. Yisrael Landau (Edelény) represented communities in Hungary proper. The majority of the rabbis unequivocally permitted the opening of shops on Sabbath but their opinions differed in the conditions they set. R. Sofer, R. Landau and R. Teitelbaum were reluctant to come out with a definitive answer.

R. Menahem Sofer began his responsum by enumerating those arguments that could serve as a basis for prohibiting the opening of a shop on Sabbath. Still, he refrained from taking a definitive standpoint.

- ◆ R. Menahem Sofer, *Shu"t Menahem Meshiv, Orah Hayyim*, no. 39

Addressee: Issar Salamon Wolf

Respondent: R. Menahem Sofer (Marosvásárhely, Transylvania, today Târgu Mureș, Romania)

Without date

"ע"ד [על דבר] הגזירה החדשה הנוראה במדינתנו שמכריחים בעו"ה [בעונותינו הרבים] אחינו בני ישראל שומרי שב"ק [שבת קודש] לפתוח חנותם ביום המנוחה, ונתיעצו אתי איזה רבנים גדולים שליט"א כדת מה לעשות, והנה לדעתי כי אין ליתן שום היתר, משום דגזירה עבידי דבטלי בקרוב בעזה"ת [בעזרת השם יתברך], ויאמרו התירו הפרושים ויהי היתר של איסור, כידוע ממרן ח"ס ז"ל [זכרונו לברכה] [...]."

“Regarding the new and terrible decree [*gezerah*] in our country that – due to our great sins – our brothers, the children of Israel, who observe the holy Sabbath, are compelled to open their shops on the day of rest [on Sabbath]. Some respected rabbis consulted with me – may they have a good long life, Amen – about what to do. And my view is that it is not possible to give them [the shopkeepers] any permission, because the decree will be canceled soon, with the help of the Almighty blessed be He. They will say that the Orthodox rabbis [literally ‘Pharisees’] permitted [opening the shops on Sabbath] so the prohibited thing will now be permitted – as we are warned by our rabbi, the Hatam Sofer of blessed memory.”

R. Menahem Sofer bases his strict view on the responsum of Maharam Schick⁴⁹ concerning a carter. R. Schick did not permit the carter to sell his horses and cart to a non-Jew before Sabbath to transport the passengers from the train station to the city and labeled this practice as “trafficking by deception” (מכירת הערמאות), i.e. public violation of the laws of the Sabbath.

The author refers to the widespread practice of shopkeepers to sit in their shops on Sabbath, supervising their non-Jewish employees (following the permission of the *Turei Zahav*). He also refers to the Hatam Sofer, who consistently and strictly forbade doing business on every Sabbath with the help of a non-Jew.⁵⁰ The author also suggests that if the intention of the decree was to force the Jews to transgress the commandments, then every shopkeeper should give up his business, even if it leads him to endanger his life.

However, according to R. Akiba Eger,⁵¹ in these “times of distress” (בצוק העתים) there is no religious obligation to give up all one’s livelihood in order to observe all the commandments. So R. Sofer concludes as follows:

"ואם כן ה' החיוב להגיד לכל אחד דמעיקרא צריך לבזבז כל הוננו ולא יפתח החנות, אבל בצוק העתים הללו שחיי ישראל תלויין לו מנגד ואין לך היום וכו', ה' ישמרנו, ומי ישמע לנו, ומוטב שיהי' שוגגין וכו'."

“If so, it would be obligatory to instruct everyone to keep his shop closed even [at the price of] wasting all his money. However in these needy times when the life of the Jews depend [entirely] on [this livelihood] and there is no [greater distress than today] may the Almighty save us. Also, who would listen to us? It is better for them to transgress the religious law inadvertently [than to transgress it advertently].”

The author is unable to take an unequivocal stance on the permissibility of operating Jewish businesses on Sabbath by arrangements with a non-Jewish partner – and this hesitation becomes his final word:

"[...] אם כן עכ"פ [על כל פנים] הדרינן למה שכתבתי שכל מה שאפשר למנוע שלא לומר שום דעה בענין זה, מה טוב."

“If so, we get back to what I wrote before, that we should do everything to avoid expressing any opinion in this matter.”

As we will see below, the responsum of R. Yoel Teitelbaum of Szatmárnémeti concludes on the same note.

⁴⁹ R. Moshe Schick, *Sheelot u-teshuvot Maharam Schick, Orah Hayyim*, no. 104. The responsum was written in 1873 and sent to R. Yekuthiel Yehuda Teitelbaum, Máramaroszi get.

⁵⁰ Moshe Sofer, Hatam Sofer, *Sheelot u-teshuvot Hatam Sofer, Hashmathot le-Hoshen Mishpat*, no. 195.

⁵¹ R. Akiba Eger, *Hiddushei Rabbi Akiba Eger, Yoreh Deah*, no. 157.

- ◆ R. Yoel Teitelbaum, *Shu"t Divre Yoel, Orah Hayyim*, no. 16

Addressee: R. Moshe Yisrael Feldmann (Dragomérfalva, today Dragomirești, Romania)

Respondent: R. Yoel Teitelbaum (Szatmárnémeti)

Without date

"[...] הגיעני מכתבו ע"ד [על דבר] הגזירה של פתיחת החנויות בש"ק [בשבת קודש] אשר לפי דעתו הוא בכלל יהרג ואל יעבור, והנה אשתקד כאשר קבלתי מכתבו בענין זה, מלבד מה שהוא נגד רצוני לכתוב בזה כאשר אזכיר להלן, גם הייתי מוטרד מאד בגוף הענין לטכס עצה לבטל הגזירה שלא יהי' צורך לפלפל בכאלה, ות"ל [ותודה לאל] נתבטלה הגזירה אח"כ [אחר כך] ובעירנו בע"ה [בעזרת השם] אין פותחין החנויות בשבת, ובי"כ ובי"כ נאבד מכתבו הנ"ל [הנזכר לעיל] וכעת אין בזכרוני כלל מה שכתב שם, עכשיו כאשר קבלתי מכתבו עוד הפעם ראיתי להשיב עכ"פ [על כל פנים] בקיצור נמרץ מחמת כבודו של כהדר"ג [כבוד הדרת גאונו] נ"י [נרו יאיר]."

"[...] I have received your letter regarding the decree of opening shops on the holy Sabbath, which in your opinion falls under the category of 'let him be killed rather than transgress'. When I received his letter last year concerning the same matter, besides the fact that I did not want to write about this topic as I will explain further on, I was also very troubled with the issue itself and was very busy with the matter of having the decree repealed so it would not be necessary to discuss the matter any further. Thank God, the decree was eventually repealed and in our town, with the help of God, shops are closed on Sabbath. Besides, the above-mentioned letter got lost and now I cannot recall at all what you wrote in it. Now after receiving your letter once again I see that I must answer you, albeit in short, in order to bestow upon you your due honor of excellence."

The addressee of the responsum, R. Feldmann, argued that the obligation of martyrdom applies in this case, so the Jewish shopkeepers must keep their shops closed even if they lose their livelihood. It becomes clear from the correspondence that R. Teitelbaum had long been resisting giving a definite opinion on this matter. (From a historian's point of view it is to be lamented that R. Teitelbaum does not clarify the circumstances and motives of the repeal of the decree in Szatmárnémeti.)

[Referring to the Talmud⁵²] R. Teitelbaum unequivocally states that the obligation of martyrdom does not apply here, because the legislators did not intend to force Jews to violate the Sabbath. The Jewish shopkeepers are not compelled to work on Sabbath and may employ a non-Jew:

"וכל אמירתו הוא שאינו נותן רשיון לחנויות אלא באופן שיהי' פתוח בכל יום בשביל תועלת העם שימצאו צרכם בכל עת, וזה מבואר בלשון הגזירה מקום הגבו', והוא ממש כלשון הש"ס ברישא שאומר בפ"י שדי לחיותא, וגם הכוונה נראה ברורה שלא איכפת להו כעת כלל עניני הדת כמו שהי' מלפנים כ"פ [כל פנים] ר"ל [רחמנא ליצולן] גזירות שמד או כוונה להעביר על הדת, ועכשיו הכופרים והמשומדים שוים לכלל ישראל בכל

⁵² bSanhedrin 74a-b.

הגזירות, ואין הכוונה אלא על זרע ישראל שיפסידו הפרנסה וכדומה, וחושבים שיען שצריך לחלל שבת יפסידו איזה מהם הרשיון של העסק או טעמים אחרים שאין לפורטם, אבל עניני הדת אין נ"מ [נפקא מינה] להם כלל."

"It seems from your words that the licenses to run the shops are given on condition that the shop will be open every day so the people can benefit and satisfy their needs at any time. This is clear from the wording of the decree from a highest place, and is identical to the wording of the Talmud in the beginning [of the sentence] when it says explicitly, 'throw [the grass] to the animal' [bSanhedrin 74a-b]. The intentions [of the legislators] are also quite clear. They are not concerned with religious matters at all, heaven forbid, as in the past they forced [Jews] to convert or transgress, because now the decree treats atheists (*kofrim*) and converts (*meshumadim*) equally together with all Jews. Their intention is to have the Jews (*zarah Yisrael*) lose their livelihood, and they think that since they must violate the Sabbath, some of them will rather lose their licenses – or for other reasons that I cannot describe now. However, religious matters do not concern them at all."

R. Teitelbaum makes a direct connection between the decree and the Talmudic discourse in Sanhedrin where the text discusses the situation of a non-Jew ordering a Jew to tear up the grass the Sabbath. If his intention was to have the Jew feed an animal, it would be permitted for the Jew to fulfill the order. However, if the non-Jew ordered him to tear up the grass and to throw it into the river (for example), then it is clear that his intention was to force the Jew to violate the Sabbath – and in such a case the Jew is obligated to resist. R. Teitelbaum finds the decree on opening the shops analogous to the first possibility described in the Talmud: as the non-Jew (and the animal) had benefit from the work of tearing up the grass by the Jew, the local population would also have a benefit from the shopkeeper opening his shop on Sabbath.

The author finds a substantial difference between the present and past persecutions of Jews. The fact that the second anti-Jewish Law defined Jewishness as a race strengthens R. Teitelbaum's argument. If converting to Christianity meant one was still regarded as being Jewish, then this decree referred to Jews and converted Jews alike, regardless of whether they were observant or not.⁵³ R. Teitelbaum takes into account that the general aim of the anti-Jewish Laws was that Jewish licensees would lose their livelihood – and he sees the particular local decree he is dealing with in a similar light.

[גם לפי] According to Rashi's commentary to Sanhedrin, the reason behind the duty to suffer martyrdom rather than transgressing even the slightest commandment, in times of religious persecution, is that yielding to oppression only invites further oppression. Similarly, if local

⁵³ This is a clear indication that the responsum was written after the promulgation of the second anti-Jewish Law (May 5, 1939), which defined the term "Jewish" predominantly on racial grounds, disregarding religion and thereby making conversion an unsatisfactory escape from the law. A person was considered as a Jew if at least two of his grandparents were members of the Jewish community, considered as Jews. Exemptions: 1, anyone baptized before August 1, 1919 and whose ancestors had settled in Hungary before January 1, 1848. 2, anyone with mixed parents was exempted, provided they had both been members of a Christian denomination since at least January 1, 1939.

authorities see that they succeed in taking away licenses from Jews, it would only increase their efforts and the economic oppression of Jews.

[שעת R. Teitelbaum argues that the category of [period of] “religious persecution” (עוד יש) applies only if discriminative measures refer only to Jews. If the decrees target also non-Jews (עכו"ם, אומות), the obligation of martyrdom would not apply.

"וא"כ [ואם כן] בנ"ד [בנידון דידן] במקום שגזרין שיהיו החנויות פתוחים אין מזכירין שם אלא שכל החנויות יהיו פתוחים בשביל שיהי' מצוי להקונים וגם העכו"ם [העובדי כוכבים ומזלות] בכלל, אלא שאין העכו"ם מרגישין זה דבלא"ה [דבלאו הכי] הם פתוחים, ובכה"ג [ובכהאי גוונא] שאין מיוחד לישראל לאו שעת השמד מיקרי שיהיה צריך למסור נפשו."

“So in our case in places where they decree the keeping open of the shops [on Saturday/Sabbath], [the decree] is directed to all shops in order to supply the customers. This includes the non-Jewish [shopkeepers] too, though it doesn't make much difference for them, since their [shops] are open anyway. So, since the [decree] does not refer to Jews specifically, it can not be regarded as religious persecution proper, in which he is obliged to suffer martyrdom [rather than transgress].”

R. Teitelbaum sees in the case a “financial matter” (ענין ממון) [אמנם] and warns against permitting opening the shops on Sabbath (and approving thereby violation of the Sabbath), by referring to financial loss. The author mentions the rabbinic permission given in the past to innkeepers and tobacconists to keep open on Sabbath,⁵⁴ but he makes a distinction. In the past innkeepers and tobacconists could transfer the business to a non-Jew on Friday and make a settlement of account to avoid the Jewish tradesman's involvement in the business on Sabbath. Today, however, Jewish shopkeepers, tradesmen or craftsmen would need a non-Jewish helper in the business on a permanent basis (and the Jewish owners of the business surely cannot make an account for every Sabbath). Second, today the lack of proficiency of non-Jews in the business would make the presence of the Jewish shopkeeper or craftsmen necessary, which results in the Jewish tradesmen supervising their non-professional workers during Sabbath. It is true that the *Turei Zahav*⁵⁵ permitted the Jewish shopkeeper to sit in his shop on Sabbath and watch his employee, however:

"[...] אבל רובא דרובא אם הישראל יושב שם הוא מדבר ג"כ [גם כן] בהעסק כי הדור פרוץ בעוה"ר [בעונותנו הרבים], והנסיון הוא גדול שיראה העכו"ם עושה חסרונות או מחסרון הבנה או מחמת הטעות בחשבונות וכדומה והוא ישתוק ואין לשער גודל המכשולות בזה, ואנכי הרואה גם אצל מוכרי יי"ש [יין שרף] מכשולות גדולות, אבל כבר התירו פרושים את הדבר וגם אינו אלא ביחידים ואין הנסיון גדול כ"כ [כל כך], אבל בכל החנויות הוא ענין נורא. גם יראתי להגיד איזה היתר באיזה אופן, כי אם יצא קצת היתר שוב יתפשט בכולו, וגם אחר שיתבטל

⁵⁴ An undated responsum of Rabbi Mordechai Brisk of Tasnád (*Sheelot u-teshuvot Maharam Brisk*, vol. 1, no. 71) sent to Nagyvárad (present Oradea, Romania) refers to the rabbinic permission of keeping inns open by a non-Jew (שבת שענקער, *Sabbath Schenker*). Contrary to lenient decisions of the past, R. Brisk does not permit keeping open of the inn on Sabbath.

⁵⁵ *Turei Zahav, Orach Hayyim* no. 244: 7.

הגזירה לא יהי' אפשרות להחזיר עטרה ליושנה, כי רוב המוני עם אינם מחזיקים אלא במה שהורגלו, ואם יורגלו ח"ו [חס וחלילה] בפתחת החנויות יהיה ח"ו פירצה גדולה. וראיתי בענין זה אחריות גדול משני הצדדים, כי להקל באיזה אופן הוא אחריות גדול של חילול שבת ברוב ישראל, ולעומת זה להחמיר בהחלט להפסיד פרנסתן של כל ישראל הוא ג"כ אחריות גדול, ובצוק העתים הללו יוכל לפעמים לצמוח מזה גם ענין פק"נ [פקוח נפש] ח"ו, ובעניי לא יכולתי ליקח עלי אחריות גדול, ובצוק העתים הללו יוכל לפעמים לצמוח מזה גם ענין פק"נ ח"ו, ובעניי לא יכולתי ליקח עלי אחריות גדול כזה לא להתיר ולא לאור לכן הייתי כמחריש, ואמרו חכמז"ל [חכמינו זכרונום לברכה] (שבת דף קמ"ה ע"ב) אמור לחכמה אחותי את אם ברור לך כאחותך שהיא אסורה אמור ואם לאו אל תאמר. ואת זה דרשתי בפירקא וגם צווחתי ככורכי' שזה ודאי שחלילה לשום בר ישראל לדבר מאומה בהעסק, אך נזהרתי בלשוני שלא ישמעו ממני דבר ברור אם הותר ע"י [על ידי] עכו"ם. [...]"

"[...] In most cases, if the Jewish [shopkeeper] sits there, he will surely talk about business matters, because the generation is [religiously] corrupt, due to our many sins, and it would be the greatest challenge for the Jew to remain silent when he sees the non-Jew causing [financial] loss, whether in lack of proper understanding or because of mistakes he makes with the bills and so on. It is difficult to imagine all the possible pitfalls in such [situations]. I have also seen serious problems [of this sort] with sellers of spirit. However the Perushim [the Orthodox] have already permitted this [conduct] in individual cases, and the challenges were relatively limited. However to permit this for all the shops would be a terrible thing. I would also refrain from discussing more specific permissions under certain circumstances, because if such partial permissions are given it would be extended to every case [so people will think that the act is permitted in general]. And after the decree will be withdrawn it will be not possible to 'return the crown to its place' [to restore the religious norms applicable in normal times] as the majority of the people will stick to what they got used to, and if they get used to opening the shops, God forbid, there will be a great breach. I see great responsibility on both directions. To be lenient in some way is a great responsibility, because it involves violating of Sabbath for many Jews. On the other hand, to be stringent is also a great responsibility, as it would cause the loss of livelihood of all Jews. In these needy times it may even, God forbid, involve the principle of saving of life [*pikkuah nefesh*]. In my opinion, I could not take upon myself this great responsibility, neither to permit nor to prohibit, so I remain silent. As our sages [of blessed memory], said, [The verse says] 'Say to wisdom: You are my sister'⁵⁶ it teaches that if [a matter of law] is as clear to you as [the fact that] your sister is forbidden to you, you may promulgate it; – but if not, you may not (bSabbath 145b). I have already preached about this in detail and have screamed like a crane, that certainly every Jew ['son of Israel'] is forbidden to talk about anything in the shop, however I was very careful with my words so they would not hear from me any clear standpoint regarding the permission [of opening the shop] by a non-Jew."

To sum up: R. Teitelbaum suggests waiting until the repeal of the decree. Although he had been asked by many of the great rabbis of his generation about the matter, he apparently did not arrive at a definite conclusion and he consistently resisted giving a definitive answer.

R. Ephraim Billitzer also avoided giving a general permission for the opening of shops on Sabbath. Nevertheless, he advised the shopkeeper to keep both to the local decree and to *halakha*.

⁵⁶ Proverbs 7:4.

- ◆ R. Ephraim Billitzer, *Yad Ephraim*, no. 15

Addressee: Nahum

Respondent: R. Ephraim Billitzer (Bethlen, Transylvania, today Beclean, Romania)

Date: ז' סיון תש"ד (May 29, 1944)

"אודות הגזירה החדשה לפתוח חנות בשב"ק [בשבת קודש] כבר כתבתי בזה [...] והנה לא האמנתי שישראל נאמן יאמר בזה דינא דמלכותא דינא שאין לו שום שייכות לזה רק קצת בדיני ממונות אבל ח"ו [חס וחלילה] להפר התורה הקדושה יתבטלו כל האומות ודבר אלקינו יקום לעולם ואבות אבותינו מסרו נפשם לשמים ולא רצו לעבור ח"ו על התורה כי היא חיינו ואורך ימינו וקיים דתנו ואמונתנו באורך הגלות ואתם הדבקים בה' חיים כולכם היום."

"I have already put down my opinion concerning the new decree on opening the shops on the holy Sabbath [...]. I never thought that a faithful Jew would apply the principle 'the law of the state is law'⁵⁷ for this case, as [it is clear that] this [principle] does not apply to our case, which only partly touches on monetary law. So we must not breach the holy Torah, God forbid. All the nations will perish while our Almighty's word will still exist forever. Our forefathers sacrificed themselves for God and refused to transgress [the commandments of] the Torah, God forbid, as 'the Torah is our life and lengthens our life' and sustains our religion and faith in the diaspora, throughout [its history] 'and you the adherents of the Almighty are alive today [due to that]'."

R. Billitzer argues that no-one should decide leniently in this case, referring to the *halakhic* principle *dina de-malkhuta dina* in cases involving the transgression of Torah law. Violating Sabbath cannot be justified by this principle.

[והנה] However, R. Billitzer suggests to disobey the decree at any price in order to avoid transgressing Sabbath. The reason is that Hungarian legislators of the local decree did not intend to force Jews to violate their religious commandments in public, but to serve certain economic interests. Therefore, no-one is obligated to sacrifice his life, but everyone should sacrifice his livelihood and wealth in order not to violate a prohibition of the Torah.⁵⁸

"ומעתה בגזירה זה אם לא יפתח חנותו יקנסו אותו בקנס ממון או שיקחו ממנו האיפאר - רעכט - היינו רשיון מכירה שלו ובוודאי בשביל ממון אסור לעבור על ל"ת [לא תעשה] ולהלל ש"ק [שבת קודש]."

"So the decree regulates that if he does not open his shop, he will be fined or his *ipar - recht*, that is, his trade-license will be withdrawn and it is obvious that for doing business it is forbidden to transgress a negative [Torah] commandment and violate the holy Sabbath."

[ועיין] [וימה] The author argues, in the footsteps of the Hatam Sofer, that the shopkeeper who stays in the shop on Sabbath, while his partner works in the shop, violates Sabbath-laws, by

⁵⁷ According to the halakhic principle *dina de-malkhuta dina* (דינא דמלכותא דינא) "the law of the kingdom [=state] is law", that if the law of the state collides with *halakha* on a given issue, then the former takes precedence over the latter, under certain conditions. According to most *halakhic* authorities, the principle can be applicable only in monetary matters.

⁵⁸ *Shulhan Arukh, Yoreh Deah* 157.

“erasing” (מוחק) while he puts his notes down in his account book and erases,⁵⁹ and for “measured cutting” (חותך) cutting the goods (possibly textiles) to size, etc.

[והנה] The responsum of the *Havot Yair*⁶⁰ argues that one should give up his living even to avoid transgressing a rabbinical (!) commandment; see also the commentary of *Pithe Teshuva* on the *Shulhan Arukh*.⁶¹

[ישתקע] The addressee, R. Nahum raised the possibility of women replacing men in doing business in the shop on Sabbath. The author opposes this idea and argues that this would involve Sabbath-violations no less than if [Jewish] men do it. The Jewish shopkeepers should follow past examples in order to obey the decree (to keep open on Sabbath) and avoiding transgressions of Sabbath-laws by renting out the shop to a non-Jew:

"והנה חכז"ל [חכמינו זכרונם לברכה] אמרו גזירה עבידא דבטלה והרבה גזירות גזרו האומות העולם עלינו והם וגזירותם בטלו ואנחנו חיים וקיימים בעזרת השי"ת [השם יתברך] ולא נתבטלה התורה הקדושה. וכבר אמרתי שבאם ח"ו [חס וחלילה] ישאר הגזירה יעשו בדרך היתר כמו שעושים בבית מציגות שישכיר הישראל חנותו לעכו"ם [לעובדי כוכבים ומזלות] על שבת ויעשה שטר עמו שמשכירו לכל שבת ויו"ט [ויום טוב] בעד איזה סכום ויתן לו ערבון דראנגאבע ושכירת קרקע נקנה בכסף – ואגב קרקע ימכור לו כל הסחורה הנמצא בחנותו במחיר בזול קצת ממה שרגיל למכור – והיינו בעת הזאת שמחויב כל בעל חנות לעשות לו רשימה מכל מין סחורה שיש לו ונפרט שם מחיר כל סחורה וסחורה אשר מוכר להקונים ויחשוב להערל הזאת בקצת מחיר בזול שיה' להערל ריוח כדי שיעשה אדעתא דנפשי' – ויכול הישראל לעמוד שם שומר בכל השבת כמו במכס המבואר בש"ע [בשולחן ערוך] רק שיזהיר השומר שלא ידבר שום דבר רק שישגיח על הערל שלא יגנוב ואם אולי לא ידע הערל מקום הסחורה המבוקש יוכל להראות לו."

“Behold, our sages, may their memory be blessed, said that the anti-Jewish decree (*gezerah*) will be eventually canceled;⁶² the people of the world have implemented many decrees against us in the past, but these people and their decrees ceased to exist and we live and exist with the help of the Almighty, and neither has the holy Torah been annulled.

And I have already said that if, God forbid, the decree will remain in force, they [the shopkeepers] should act according to the permission given to innkeepers. So the Jew should rent his shop to a non-Jew for the Sabbath and make a contract with him that he rents [his shop] for all the Sabbathot and Jewish holidays for a fixed price. [The shopkeeper] should also give a deposit (*Drangabe*, *Dreingabe*); renting out the ‘land’ [his real estate, the shop] should be done by money, and as ‘incidentals to the land’, he [the shopkeeper] should sell him all the wares to be found in the shop at a somewhat lower price than the regular prices [in his shop]. In other words, nowadays, when shopkeepers must always have a detailed price list of all what they sell, he [the shopkeeper] should sell all his wares to this non-Jew [who will sell in the shop on Sabbath] at a somewhat reduced price, in order to make him interested in working for his own benefit. And the Jewish [shopkeeper] may stand there [in the shop] to supervise him every Sabbath the same way as the tax-collector, as regulated in the *Shulhan Arukh*. The supervisor only has to keep himself from talking [to the non-

⁵⁹ Moshe Sofer, Hatam Sofer, *Sheelot u-teshuvot Hatam Sofer, Hashmathot le-Hoshen Mishpat*, no. 195.

⁶⁰ R. Bacharach, Yair, *Sheelot u-teshuvot Havot Yair*, no. 183.

⁶¹ *Shulhan Arukh, Yoreh Deah* 157:4.

⁶² Cf. bKetubot 3b.

Jew] about anything; he may only supervise the non-Jew to prevent him stealing, and also if the non-Jew does not find the requested item, [the Jew] may show him [its place].”

R. Billitzer gives a detailed list of requirements, which such a Sabbath-arrangement needs to fulfill. A written contract between the partners has to be made, and the profit of the trade should go to the employee.

The author gave this permission, because he considered the time as a “time of distress” (שעת הדחק). His decision is tentative and an assembly of Hungarian rabbis or outstanding rabbinic authorities abroad should decide on the matter.⁶³ The shopkeeper may open the front door facing the street but not the inside door – possibly to obey the decree but to avoid customers entering the shop. (The author also encouraged the owner of the shop to open on Sabbath but to send away potential buyers saying that his shop lacks the desired goods.)

In the responsum discussed next, R. Yisrael Landau did not intend to give a definitive ruling either in theory or in practice but set down the main points for future discussion. His responsum on the issue of opening shops on Sabbath gives a most detailed argumentation.

◆ R. Yisrael Landau, *Shu"t Bet Yisrael, Orah Hayyim*, 37

Addressee: R. Yehuda Gottlieb, head of the rabbinic court of the Hassidic community in Miskolc

Respondent: R. Yisrael Avraham Alter Landau (Edelény⁶⁴)

Without date

"[...] ונוגש עלי להשיב על אתר עוד קודם שבת על מה שנתהוה בעוה"ר [בעוונותינו הרבים] שנתפשט השמועה שהממשלה יתנו דת שמוכרח כל איש ישראל לפתוח חנותו ולמכור בשבת וכן כל אומן ואומן מוכרח לעבוד אומנותו ביום השבת ואם לא יפתח החנות בשבת או לא יסע הבעל עגלה ברכבו ובפרשיו בשבת ואומן באומנות אז מלבד שיענשו אותו עונש גדול יקחו ממנו גם הרשיון הנקרא "איפאר" ועתה נפש כל בר ישראל בצרה גדולה ואין יודעין למצא עצה בנפשם מה יעשו כל בעלי חניות ואומנים שהם שומרי שבת ונפשם בשאלתם ודופקים על פתח המורה בכל עיר למצא עצה להם מה לעשות כי אם יקח מהם הרשיון "איפאר" אז ח"ו [חס וחלילה] אין להם מחר מה לאכול ולמצוא טרף לבייתם והשאלה של כהד"ג [כבוד הדרת גאונן] נ"י [נרו יאיר] עלה בכפילא וכפלי כפליים ראשית האם לא נאמר בזה יהרג ואל יעבור שיתנהו בחזרה הרשיון להממשלה וימותו ברעב ח"ו [חס וחלילה] שנית את"ל [אם תמצא לאמר] שלא אמרינן בזה יהרג ואל יעבור מחויבין הרבנים למצא איזה עצה לפתוח חנותם ע"י [על ידי] עכו"ם [עובדי כוכבים ומזלות] להעמיד העכו"ם בחנותם על ידם בשבת, איזה דרך ישכון בו האור של שבת שלא נבוא לידי מכשול בהעצה והיתר שנמצא להם תקנה עפ"י תורה להציל פרנסתם ולחיותם ברעב ובצמא, ועלה ונסתפק בכמה פרטים ופרטי פרטים הנמצאים

⁶³ R. Yisrael Landau also urged the gathering of Orthodox rabbis to discuss the matter; see the next responsum. R. Pinhas Zimetbaum of Nagyvárad also suggested a general decision be made by the leading rabbis of the country. See Zimmels, *Echo of the Nazi Holocaust in Rabbinic Literature*, pp. 297-298.

⁶⁴ The town in Borsod-Abaúj-Zemplén County in northeast Hungary, twenty-five kilometers from Miskolc to the north.

בענין זה כאשר אברר לקמן ומחמת שהוא בעיר גדולה וכל אחד נוגש עליו למצוא לו איזה היתר עוד קודם שבת זה שאל דעתי מה לעשות והאריך בזה בחריפות ובקיאות ורוצה לשמוע דעתי עוד קודם שבת זה.

“It is imperative that I answer before the Sabbath [enters] about what is happening, due to our many sins, that the rumor is spreading that the government is imposing a decree that every Jew must have his store open on Sabbath and conduct his business accordingly. In addition, every craftsman will be compelled to work on Sabbath. If the Jew fails to open his store on Sabbath and if the carter and his horseman will not travel⁶⁵ or the craftsman will not do his craft, the punishment will be twofold. First, a large fine will be imposed upon him, and second, he will lose his license, called *ipar* [*iparengedély*; license, literally craft license]. Currently, every Jewish soul is in great distress and does not know where to seek counsel. What shall all those Sabbath-observant shopkeepers and craftsmen do? They knock on the doors of the great teachers in every city to receive advice about what to do. For if, heaven forbid, they lose their license, they will have no means of feeding their families.

The question of your honored excellence is extremely complex. First, does the rule of “Let himself be killed but not transgress” refer to this case too? Should the shopkeeper forfeit his license and starve to death? Second, even if we were to say that it does not apply, the rabbis are obliged to think of some way that the shopkeepers can keep their stores open on Sabbath, perhaps employing a non-Jew. The rabbis must advise on ways to help the storekeepers avoid transgressing and yet keep the store open based on Torah regulations, thus preventing them from starvation. Let us confine ourselves to clarifying some details pertinent to this matter. And this is what I will do below, since he [R. Gottlieb] is in a big city and everybody is asking for his advice even before the Sabbath [enters], and he asked for my opinion on the matter and would like me to answer him before this Sabbath.”

To sum up, the problem is how far one must go (including loss of livelihood, starvation, martyrdom) in order to avoid violating the Sabbath. The text refers to the local decree discussed above concerning all the shopkeepers, though R. Landau refers to it as a measure taken specifically against Jewish shopkeepers.

[ואען] All the Jews in the country were expecting the decree to be repealed, reports the author. The Central Bureau of the Autonomous Orthodox Jewish Community of Hungary⁶⁶ was to gather and intervene at the Ministry of Trade to bring about the repeal of the decree. At the same time, the need to organize a nationwide rabbinic assembly became urgent, in order to formulate an agreed *halakhic* opinion on the conditions appertaining to the giving of permission of opening the shops on Sabbath. R. Landau alludes to the fact that the city mayors had not yet received the text of the decree. He argues that if a decision on mandatory trade on Sabbath would depend on local municipalities, there is no need yet to render a general sanction allowing the opening of shops on Sabbath throughout the whole country.

It seems that the law in the making had already caused turbulence in observant Jewish circles. R. Landau gives a detailed description of those who had eagerly sought the rabbis' advice:

⁶⁵ Rabbi Landau wrote a separate responsum concerning the carter, see below, Yisrael Landau, *Sheelot u-teshuvot Bet Yisrael, Orah Hayyim*, no. 39.

⁶⁶ *Orthodox Kanzlei* in Yiddish; *Központi Iroda* in Hungarian.

In the first place people who did not have a business and gloatingly wished for a prohibitive decision that would result in the withdrawal of their neighbors' licenses. The religiously corrupt were also rushing to the rabbi, because they had always wanted to open their shops on Sabbath but did not dare, and the decree gave them a good excuse to do business on Sabbath. They had come to the rabbi smiling and asking for immediate permission, even before the decree of the mayor came out. R. Landau cautions the rabbis not to decide irresponsibly and not to yield to pressure.

[והאמת] The author does not intend to give a definite decision neither *le-halakha* (on a theoretical level) nor *le-maaseh* (ruling on actual practice) but aims to set the main points of a future discussion on the topic by writing his responsum. He would not express a definite *halakhic* opinion prior to the planned gathering of the Central Bureau in Budapest. His main purpose is to disprove the arguments of the questioner, R. Yehuda Gottlieb, who argued for considering tradesmen who open their shops on Sabbath as "idolaters" with all the *halakhic* implications of this category.

[יעתה] First, referring to the principle "let himself be killed but not transgress", which obligates a Jew to sacrifice his life rather than commit idolatry, R. Gottlieb suggested that every shopkeeper return his license and keep his shop closed on Sabbath.⁶⁷ Later he changed his mind and followed the ruling of the *Shakh*⁶⁸ and limited the validity of the obligation of martyrdom to cases of oppression that refer only to Jews.

[על זה] Violating Sabbath is not considered idolatry by R. Landau. He summarizes the Talmudic discussion on the obligation of martyrdom, arguing that if the local authority acted for the locals' benefit by ordering shopkeepers to keep their shops open on Sabbath, the obligation of martyrdom would not apply, and Jewish shopkeepers would not be obligated to close their shops and lose their livelihood.⁶⁹

[ומה שרצה] A discussion on whether the present time is considered a "time of religious persecution." When Judaism itself is persecuted, the obligation of martyrdom applies in defense of the religion. R. Gottlieb advocates labeling the period as a "time of religious persecution." R. Landau presents the arguments in favor of this position and against it in fine detail:

"ומה שרצה לדמות גידון דידן להא דנפסק ביו"ד [ביורה דעה] סי' קנ"ז סעי' א' וז"ל [זוה לשונו] המחבר ואם הוא שעת הגזירה אפילו על אערקתא דמסאנא יהרג ואל יעבור עכ"ל [עד כאן לשונו], וה"נ [והכי נמי] דהוה שעת הגזירה על שבת נאמר ביה יהרג ואל יעבור דהיינו שכל בר ישראל יתן בחזרה הרשיון "האיפאר" להממשלה מחנות שלו ואל יפתח חנותו בשבת, כבר דחה בעצמו זה לפי דברי הש"ך שם ס"ק ו' דדוקא אם הגזירה על ישראל לבד אז נאמר ביה יהרג ואל יעבור אבל אם הגזירה הוא על כל מדינת מלכותו אעפ"י [אף על

⁶⁷ Referring to bSanhedrin 74b. See also *Shulhan Arukh, Yoreh Deah* 157:1.

⁶⁸ Shabtai ben Meir HaKohen, the *Shakh*.

⁶⁹ Rashi on bSanhedrin 74b. The obligation to sacrifice one's life (besides idolatry, forbidden sexual relations, murder) refers only to Jews who are forced to transgress the law in public or it is a "time of persecution" (שעת גזירת המלכות). Cf. *Shulhan Arukh, Yoreh Deah* 157:1.

פי] שהישראלים בכלל לאו שעת השמד מקרי וכן מבואר ברמ"א ג"כ וז"ל על ישראל לבד עכ"ל ובנידן דידן שהגזירה על כלל מדינות מלכותו בין חנות ישראל ובין חנות של עכו"ם [עובד כוכבים ומזלות] ובין אומן ישראל ובין אומן עכו"ם יוכל הממשלה להכריח לפתוח חנותו או אומנתו בכל עת ובכל זמן וא"כ [ואם כן] לא שייך בזה דין דיהרג ואל יעבור ועוד דהא אין כופין את ישראל לפתוח חנותו בשבת ולהלל שבת דהא נותנין לו הברירה לחזור הרשיון "והאיפאר" מהחנות שלו [...]."

“Moreover, [R. Gottlieb] intended to refer to the ruling of the *Shulhan Arukh* as analogous to our case (see *Yoreh Deah* 157:1) as the author [Yosef Karo] said, ‘[...] at the time of religious persecution even for his sandal straps’ [the obligation of martyrdom applies]. At the time of religious persecution the same – ‘let himself be killed but do not transgress the law’ – applies regarding Sabbath, i.e., every Jewish man should return his *ipar* license for his shop to the government and not open on Sabbath. [R. Gottlieb] himself has already rejected this idea, referring to the *Shakh* (loc. cit., section 6), namely that the principle ‘let himself be killed but do not transgress the law’ is applicable if the decree refers to the Jews only, but if the decree refers to the entire [population of the] country, even if the Jews are included, we cannot talk about a time of religious persecution. (Similarly, it is remarked in the Remah: [the decree is considered a religious persecution] ‘only if it [targets] specifically Jews’⁷⁰).

So in our case, since the decree is in force in the whole country and applicable to shops of Jews and non-Jews alike, and the government orders Jewish and non-Jewish craftsmen and businessmen alike to open his shop or to do his craft at any time – the principle ‘let himself be killed but do not transgress the law’ does not apply in this case. Moreover, the Jew is not forced to open his shop on Sabbath and desecrate the Sabbath as he is given the choice to return the *ipar* license for his business.”

[לענ"ד נראה] The author emphasizes that the local municipal authority did not personally force Jewish shopkeepers to work on Sabbath, but ordered the shop to be open. This difference is crucial, as the shopkeeper may hire a non-Jew to work in the shop on Sabbath.

"אולם אנו דנין על בר ישראל [...] דהא יש לו עצה לעשות כמו שאיתא בש"ע או"ח [בשולחן ערוך אורח חיים] סי' רמ"ד סעי' ו' וז"ל [וזה לשונו] המחבר שם יהודי הקונה מכס ושוכר לו עכו"ם לקבל המכס בשבת מותר אם הוא בקבולת דהיינו שאמר לו לכשתגבה ק' דינרים אתן לך מהם כך וכך [...]."

“However, we think that a Jew [...] may act according to the ruling of the *Shulhan Arukh* (*Orah Hayyim* 244:6) as the author [Joseph Karo] says: ‘A Jewish tax collector is permitted to employ a non-Jew who would collect the tax on Sabbath if he pays the non-Jew according to the work he has done, i.e. he [the Jew] says to him: if you will collect a hundred dinars I will give you such and such [money].’”

[אולם אנו] Thus it is suggested that the Jewish shopkeeper employ a non-Jew to work on Sabbath and give a ten percent share of the profit to his employee, or rent the shop to him in advance for all the Sabbathot in a year, and the non-Jew will work at his own will. Problems of

⁷⁰ R. Moshe Isserles.

“appearances”⁷¹ can be ignored, because everyone is aware of the decree, thus shopkeepers do not have to close just to prevent the suspicion that they are violating the Sabbath by opening their shops.

[אולם] The author found a responsum written by his predecessor R. Yehezkel Landau⁷² elaborating on a very similar case: a Jewish shopkeeper was threatened by the authorities with losing his license if he kept his shop closed on Sabbath.

[...] הרי לן בפירוש בנוב"י [בנודע ביהודה] דמדמה פתיחת חנות בשבת במקום שיש חשש שיקחו ממנו הרשיון למכס דמותר ע"י [על ידי] קבלנות שהעכו"ם יקבל מכל מאה כך וכך."

“Indeed, the *Noda bi-Yehuda* explicitly draws an analogy between opening the shop on Sabbath where there is fear of losing the license, and tax collecting. [Employing a non-Jew] is permitted if he pays the non-Jew according to the work he has performed, so the non-Jew would receive from every hundred [dinars] such and such [money].”

R. Yehezkel Landau permitted the Jewish shopkeeper to open his shop by renting it to a non-Jew (not only for Sabbathot), paying him a monthly fee plus an additional sum according to the work he did on Sabbath, to encourage him to work for his own profit. The non-Jewish worker also had to work on weekdays without the Jewish owner helping him out. The Jewish shopkeeper was prohibited even from appearing at the shop, both on weekdays and on weekends.

[ועוד] In the author’s understanding, R. Yehezkel Landau’s strict ruling was due to the fact that he took the problem of “appearances” into consideration. R. Yisrael Landau opposed this view, arguing that when the avoidance of great financial loss is involved, the issue of “appearances” can be overlooked.⁷³ In his opinion, the decision and arguments of R. Yehezkel Landau are not relevant in the present case because he elaborated on a case where a non-Jewish worker was hired, from the beginning, to work on weekdays and an additional condition of paying him for his work performed on Sabbath was added. As the latter condition was not known by the town’s inhabitants, it was forbidden for the Jewish shopkeeper to step into the shop even on weekdays – apparently because then it would “appear” to others as if he violated Sabbath.

[ועוד] Yehezkel Landau had to take the problem of appearances into consideration, because at that time there was no nationwide decree compelling every merchant to open their shops on Sabbath. In the matter that he addressed, R. Yisrael Landau permitted a Jewish shopkeeper’s

⁷¹ *Marit ayin* (‘appearances’), a concept that can lead to the prohibition of certain, otherwise permitted, acts in order to avoid doing something that may raise suspicion that one had violated *halakha*.

⁷² R. Yehezkel Landau (1713–1793), rabbi of Prague, also known as the *Noda bi-Yehuda*, which is also the title of his most famous work. For the responsum referred to here, see: *Noda bi-Yehuda ha-shalem, Mahadura Tinyana, Orah Hayyim*, no. 29 (Jerusalem, 1994).

⁷³ See the commentary *Magen Avraham* by Avraham Gombiner on *Shulhan Arukh, Orah Hayyim* 244:18.

attendance in his shop on workdays, because the decree of mandatory opening on Sabbath was commonly known:

"[...] כי יהי נתפשט הדבר למסור החנות בשבת לנכרי ע"י קבלנות ואין בו משום מראות עין וחשד כי ידוע הדבר לכל וכמו שעד עתה הי' ג"כ [גם כן] נוהגים בעלי "הווירצהייזער" למסור לעכו"ם בקבלנות על שבת "הווירצהויז" מהאי טעמא היתרו האחרונים בזה משום שאם לא יפתח "הווירצהויז" בשבת אז יקחו לו הרשיון ואופני ההיתר של "ווירצהויז" הוא ג"כ נלמד מדין מכס הנ"ל [הנזכר למעלה]."

"As the practice of handing the shop over to a non-Jew for Sabbaths and paying him according to the work he has performed spreads, the issue of "appearances" or any other suspicion does not have to be taken into consideration, because the matter is well known to everyone. Exactly the same way as until now the *virtshayzer* ['innkeepers'] subcontract the *virtshoyz* ['inn'] to non-Jews on Sabbaths. On these grounds the later *halakhic* authorities approved this practice, for if the innkeeper were not to open his inn on Sabbath his license would be forfeit. Conditions of permission regarding [keeping] the inn [open on Sabbath] derive from the *halakhic* decision concerning the tax collector cited above."

[והנה] R. Landau clarifies that he wrote his responsum opposing those rabbis who argued for the surrender of the licenses of Jewish tradesmen and craftsmen. He emphasizes that his decision is relevant only in theory and does not entail a change in practice. The reference to R. Yehezkel Landau's responsum supports his own leniency as Yehezkel Landau also intended to ease the life of the shopkeeper, though he did not argue for unconditional permission.

[אבל מצאתי] [ומה שכתב] The addressee of the responsum, R. Yehuda Gottlieb, suggested that in tailors' shops (שניט) or shoe shops (מנעלים), where certain skills are essential for the business, Jewish shopkeepers should not employ a non-Jew. R. Gottlieb assumed that in these businesses Jewish shopkeepers would meddle in the business and thereby violate the Sabbath. R. Landau rejected this argument by suggesting that shopkeepers may train their workers during the week, regardless of the difficulty of the work. Moreover, nowadays selling is simpler than it was in the past.

"[...] ובפרט לפי מה ששמעתי שכעת הדת שעל כל סחורה וסחורה צריך להיות נרשם המחיר ממילא לפי"ז [לפי זה] אפילו עכו"ם בן יומו יוכל למכור לפי מה שרשום המחיר על הסחורה."

"Especially regarding what I heard that these days the law prescribes marking the price of all merchandise, thus even a completely inexperienced non-Jew is able to sell according to the price marked on the merchandise."

Moreover, following the permission of the *Turei Zahav*, even supervision of the employee is possible on Sabbath.⁷⁴

⁷⁴ *Shulhan Arukh, Orach Hayyim 244:7.*

[ומה שרוצה] R. Gottlieb suggested that the shopkeeper appoint his wife or his daughter as supervisor. His point was that if the shopkeeper himself was sitting in the shop on Sabbath he would be more likely to interfere with the business than would his wife or daughter. R. Landau rejects this view:

"[...] ועוד אני אומר אדרבא אם נתיר לעמוד אשה שם אצל העכו"ם יש חשש יותר שתתערב לדבר עם העכו"ם מן העסק כי נשים דעתן קלות ותבוא יותר לחילול שבת מן האיש ועוד דיבוא הדבר לידי זלזול שבת אצל נשים דנאמר לעם שאיש אסור לעמוד רק אשה ויאמר העם כי נשים מותרין לחלל שבת ע"כ [על כן] אני אומר כלך מדרך זה ואין עצה רק כמו שכתב הח"ס [החתם סופר] שם בס' ג"ח לענין "ווירצהוויז" וכמו שכתב השע"ת [השערי תשובה] בשם שערי ישועה שימכור בערב שבת להעכו"ם כך וכך סחורה ומה שישאר לו ביום א' יקנה בחזרה ואז אין צריך להיות יושב ומשמר כל זה כתבתי להלכה אבל לא למעשה וכי מפני שאנו מדמין נעשה מעשה בדבר שנוכל לצמוח ח"ו [חס וחלילה] חילול שבת מזה ולא נאמר בזה היתר עד שירחם השם ויבטל הגזירה ונראה מה נשמע בכל המדינה בזה."

“And I also say — to the contrary! — if we permit a woman to stand beside the non-Jew, there [in the shop] the fear that she would interfere in the business and talk to the non-Jew about business would be greater, because women are light-minded and more likely to desecrate the Sabbath than men. Furthermore, this practice will lead to disrespect of the Sabbath by women. The people will be told that it is forbidden for men to stand [in the shop] and only women [would be permitted] so the people will think that women are permitted to desecrate the Sabbath. Thus, I suggest to abandon this path and follow the decision of the Hatam Sofer (in responsum [Orah Hayyim] no. 58)⁷⁵ concerning the inn; see also what the *Shaare Teshuvah* wrote citing the *Shaare Yeshuah*⁷⁶ suggesting that the [shopkeeper] sell the merchandise to the non-Jew on Sabbath eve and buy back what is left on Sunday. Then there would be no need to sit [in the shop] and supervise. All this I wrote *le-halakha* and not *le-maaseh* [as a theoretical – *halakhic* inquiry without practical application]. We find analogies, but could we establish practical decisions [based on them], which may lead to desecration of the Sabbath, God forbid? We will not decide permissively until the Almighty will have mercy on us and cancel the decree and then we will see the [religious] reactions all over the country.”

In my view R. Landau decided in favor of opening the shops on Sabbath because of the analogy he found in the responsum of the Hatam Sofer regarding the leaser of salt who was permitted to have a non-Jew work for him on Sabbath.

R. Yehezkel Landau was the first who dealt with the case of a shopkeeper who was compelled to keep his shop open on Sabbath. He relied on the precedent of the tax collector who was permitted to have a non-Jew working for him by R. Meir of Rothenburg. R. Yisrael Landau's other major precedent was the custom of innkeepers passing on their inns to their non-Jewish partners for Sabbathot and Jewish holidays.

⁷⁵ Moshe Sofer, Hatam Sofer, *Sheelot u-teshuvot Hatam Sofer, Orah Hayyim*, no. 58.

⁷⁶ *Shaare Teshuvah* (Dubno, 1820) by R. Hayyim Mordecai Margolioth is a commentary on *Shulhan Arukh, Orah Hayyim*. *Sheelot u-teshuvot Shaare Yeshuah* by R. Yeshua Shababo Zayin, member of the rabbinical court of Cairo (17-18th century).

R. Yisrael Landau's responsum explicitly and unambiguously decides leniently in the specific case, but refrains from giving a general permission to open shops on Sabbath. His reluctance to issue such a decision of practical relevance is understandable in view of his view on the religiously corrupt Jewish shopkeepers of his time.

R. Yehuda Gottlieb also asked R. Landau whether the Jewish shopkeeper is permitted to hire a non-observant Jewish employee (סעביעקט) to keep the shop open on Sabbath.⁷⁷ The questioner is inclined to reject such an arrangement, since by doing so the shopkeeper would “put a stumbling rock before the blind [the non-observant Jew]”.⁷⁸

R. Landau prohibited the hiring of a Jewish worker, referring to the *Magen Abraham* who considered non-observant Jews (מומרים) as “Jews” in this respect (מומר דינו כישראל).⁷⁹

R. Shemaya Löw, the rabbi of a small town in Transylvania, had to face a similar problem: an observant Jewish man (ישראל כשר) who lost his livelihood as a consequence of the “disasters of the period” (מחמת פגעי הזמן ירד עשר מעלות אהורנית) and could not start up a new business. So he asked R. Löw whether he could join the business of a “religiously corrupt man who violates Sabbath on a regular basis” (הוא מקלי הדעת ומומר לחלל שבתות), a leather merchant who keeps his shop open on Sabbath.⁸⁰ The observant man would not have to work on Sabbath.

R. Löw focused on three main issues: Whether the observant Jew would be helping the non-observant in transgressing the law (מסייע ידי עוברי עבירה); whether the problem of “appearance” (מראית עין) is relevant to the case; and whether the observant Jew would have a share in the profit made on Sabbath. R. Löw permitted the observant man to work for the enterprise. He admits at the end of the responsum that he was looking for arguments that would serve as a basis for a permissive decision “to save the life of the observant.”

The next responsum by R. Yoel Glattstein refers to shopkeepers who continued with their business and provided financial support to the needy in their family or community. The author argues that the local decrees on opening the shops on Saturday were not directed against Judaism. He draws the same conclusion as R. Yisrael Landau and gives a detailed survey of the situation of the shopkeepers and of the people taken to forced labor.

⁷⁷ R. Yisrael Landau, *Sheelot u-teshuvot Bet Yisrael*, no. 38.

⁷⁸ Leviticus 19:14

⁷⁹ *Magen Avraham, Orah Hayyim* 304: 8.

⁸⁰ R. Shemaya Löw, *Sefer Benei Shemaya*, vol. 3, *Shu"t le-halakha*, no. 9 (New York, 1960).

- ◆ R. Yoel Glattstein, *Shu"t Nahalat Yoel Zeev*, no. 15

Addressee: –

Respondent: R. Yoel Glattstein (Királyhelmeč, today Kráľovský Chlmec, Slovakia)

Date: ה' פ' ונתנו ה' א' בידיך, תרנ"ן לפ"ק (September 12, 1940)

Title: [בעת צרה רח"ל (רחמנא ליצלן), בשנת ת"ש, איך לנהוג אם ח"ו (חס וחלילה) השעה יהי' צריכה לכך שעפ"י (שעל פי) חוק הממשלה יהיו מוכרחים לפתוח החנות ביום ש"ק (שבת קודש), שאם לא יפתחו את חנותם יקחו מהם את הזכות של החנות.]

[In this time of distress, may the Almighty protect us, in 1939/1940, how to act if, God forbid, as it happens nowadays, they will be forced by the law of the government to open the shop on the holy Sabbath, because if they do not obey, their licenses will be withdrawn.]

"בימינו אלה, לעתות בצרה, אשר לא שערום אבותינו, כלל ישראל נתונים לבזו ומשיסה, ואין לך יום כו', ד' ירחם במהרה. והנה כמעט כל ענפי הפרנסה סגורים וחומים מלפנינו, ונלקחו רשיון של המו"מ [המשא ומתן] לרובא דרובא מאחינו בני"י [בני ישראל]. וכעת יצא חוק מהממשלה אשר אלה אשר קיבלו הרעכ"ט [רשיון] יוכרחו לפתוח חנותם בש"ק [בשבת קודש], ודבר זה תלוי בבהערד"ע [שילטון] של כל עיר ועיר אם יראו שנצרך לתושבי העיר אז יכריחו לפתוח חנותם גם בש"ק. וכעת לבבנו מלא פחד, כי גם אלה המעטים אשר קיבלו הרעכ"ט יגזרו עליהם ח"ו לחלל ש"ק, ואם לא ישמעו יקחו מהם הרעכ"ט, כי זה כל מגמתם ליקח אוכל מפינו ח"ו. ונשאלתי מה לעשות בזה, אם יש למצוא אופן היתר עפ"י [על פי] דתוה"ק [דתורתנו הקדושה], כי הוא דבר שאי אפשר אשר הכל יסגרו לגמרי חנותם וישארו בלי פת לחם ח"ו, ועוד זאת הלא אלה המעטים אשר עוסקים במו"מ המה מחזיקים אחיהם לבל יוכלו ח"ו בחרפת רעב, וכעת יהי' כושל עוזר ונפל עוזר ח"ו. לזאת אמרתי לעיין בזה. וד' יעזרנו לבל נצטרך לשום היתרים.

ואמרתי עפ"י הירושלמי המובא בב"י או"ח [בית יוסף אורח חיים] רס' תרי"ח וז"ל: ר' חנינא הוה יתיב קמי דרבי חגאי ביה"כ [ביום הכיפורים] א"ל [אמר ליה] צחינא טובא, א"ל זיל שתי, בתר שעתא אשכחיה א"ל מהו צחותא עברא, א"ל מכיון דשרת לי אזלת לה, עיי"ש [עיין שם]. לזאת כיון דחזינן בעו"ה [בעוונותינו הרבים] גדול כח הסיטרא אחרא ובע"ד [ובעל דבר] להכשיל ישראל, וכיון שנמצא היתר יהי' נסוג אחור, ולא נצטרך לבוא להיתרים. והנה לכאורה שמעתי אומרים כי זה הוא רח"ל כגזירת שמד וצריכין למסור נפש אפי' על ערקתא דמסאנא. אך זה ליתא, דמבואר בשו"ע יו"ד [שולחן ערוך יורה דעה] ס' קנ"ז סעיף א' דדוקא אם העכו"ם מכיון להעבירו על דת, אבל אם מכיון להנאתו גם אם הוא בפרהסיא א"צ [אינו צריך] למסור נפש אפי' אם הוא שעת הגזירה רח"ל, וע"ש [ועיין שם] בטו"ז [בטורי זהב] ס"ק ג' ובש"ך ס"ק ז'. ובימינו אלה אין שעת גזירת השמד ח"ו, כי אינם רוצים שישתמדו ח"ו, ואין חפצים בקרבתנו בשום ענין, כידוע. וגוף הפקודה חושבין לטובתם, ולא להעבירנו על דת. תדע, שהרי תלוי זה ברצון הבהערד"ע של כל עיר ועיר אם יצטרכו לזה, שהמון עם צריכין לקנות בחנותם. ובלא"ה [ובלא הכי] הלא ראינו בעו"ה כמה אלפים אנשים מישראל לקחו לעבודת פרך לשווקים ולרחובות, לבנותם ולתקנם, וכמה יראים ושלמים מדקדקים במצות ביניהם ומחללים ש"ק בעבודת האדמה ובפרהסיא רח"ל, ולא עלה על דעת שום אדם כי הוא בכלל יהרג ואל יעבור, כי אינם מכוונים רק לטובתם ולהנאתם, ולא להעבירנו על דת וכנ"ל [וכנזכר למעלה], וכ"ז [וכל זה] פשוט. לזאת החיוב עלינו לחפש בחפש מחופש למצוא דרך סלולה, כי הוא בכלל חיי נפש של כללית ישראל.

והנה להושיב נכרי בחנות בש"ק, ועל החפצים יכתב עליהם המחיר, והנכרי יקבל למשל חמשה פענג"א מכל מאה אשר יפדה [ימכור] וכדומה, והישראל לא יתערב בשום מכירה ולא בשום דבר. יש לדון מהרבה דברים, הגם דשייך לומר נכרי אדעתא דנפשי קעביד, יש לדון בזה, א' הא הו"ל [הוה לי] בפרהסיא, החנות פתוח ועליו שם ישראל, ובכל ימי השבוע עומד שם ישראל, ויש כאן חשש מראית-עין גדול; ב' החנות הוא בביתו של ישראל, וזה אחד מכללי האיסור; ג' מכיון מלאכתו בש"ק, שלוקח הנכרי רק על ש"ק לבד; ד' הלא הישראל ג"כ

גם כן] ירויה בסחורה שמוכר העכו"ם ויש כאן שכר שבת; ה' כל החפצים הם של ישראל ולא מכר אותם הישראל להעכו"ם, וכל מלאכת העכו"ם הוא בחפצים של ישראל; ו' אולי יש איסור אשר ישראל יהי יושב ומשמר שם ביום ש"ק.⁸¹

“These days, in this time of distress not foreseen by our fathers, the Jewish people are victims of robbery and plundering and ‘there is not a day’ etc., the Almighty may have mercy on us in the near future. Almost all ways to make a living are closed before us as trading licences have been taken away from the majority of our brothers, the sons of Israel. And now the government introduced a law that forces license holder tradesmen to open their shops on the holy Sabbath. This depends on the [local] authority (*Behörde*) of every city: if the authority comes to the conclusion that it is necessary for local residents, they would force [tradesmen] to keep open on holy Sabbath. And now our heart is full of anxiety, as even the few who received the license (*Recht*) will be forced, God forbid, to violate the holy Sabbath. If [shopkeepers] will not obey the decree, their license will be withdrawn, as the only goal [of the legislators] is to make us starve, God forbid, so they asked me to express my opinion whether there is a way to give permission [to keep shops open on Sabbath] based on the Holy Torah, as it is impossible to close every shop completely so the shopkeepers will remain without bread [= source of living] God forbid! Moreover, these few who still work as tradesmen sustain their brothers and save them from the shame of hunger, God forbid, and the aide and his aidee will fail and collapse together.⁸² So I said this problem needs further examination. May the Almighty help us so we will not need any [*halakhic*] permission.

And I said based on the [Talmud] Yerushalmi [Yoma 6:4] quoted in Beit Yosef (*Shulhan Arukh, Orach Hayyim* 618): ‘R. Hanina met R. Haggai on Yom Kippur. He said to him: ‘I am thirsty’. He said: ‘Go and drink!’ An hour later they met again. He asked him: ‘How did you overcome your thirst?’ He answered: ‘You permitted me to drink, so thirst abandoned me’’, see there. The same applies here as we have seen how great the power of Evil is, may our sins be forgiven, which is capable to hinder Israel. So we will find a way to permit and then [Evil] will retreat so we will not need to give permissions. I have heard views that, may the All-merciful protect us, we find ourselves in a ‘time of religious persecution’, so we will have to suffer martyrdom even for the slightest commandment.⁸³ However, this is not so, since it is clarified in the *Shulhan Arukh, Yoreh Deah* (157.1) that [this duty applies] only if the non-Jew tries to force him [the Jew] to transgress religious commandments, but if he [the non-Jew] aims at his own benefit – even if [the transgression] happens in public – the Jew does not have to suffer martyrdom, even if it is a ‘time of religious persecution’, may the All-merciful protect us, see the TaZ [*Turei Zahav*] (157.3) and the Shakh (157.7). But our times are not a ‘religious persecution’, God forbid, because they do not want [Jews] to convert, God forbid, and they are not interested in bringing us closer [to them] in any ways, as is well known. And the decree is meant basically to serve their own interest only and do not aim to force us to transgress norms of our religion. Be aware that it all depends on the will of the local authorities (*Behörde*) and their desire to fulfill the needs of the people who need to buy in the shops [of the Jews]. Have not we seen, may our sins be forgiven, thousands of Jews being taken to do hard physical work⁸⁴ to the markets and roads for building and repairing works, and many God-fearing observant Jews punctilious in observing the commandments among them, who do violate the holy Sabbath by working on the fields in public, God forbid? And no one was

⁸¹ The Hebrew translations of foreign words in square brackets are from the editor of the responsa collection.

⁸² From the commentary of *Metzudat David* on Yeshaya 9: 10.

⁸³ A reference to bSanhedrin 74a-b.

⁸⁴ Shemot 1.13

concerned that the principle of ‘Let him be killed rather than transgress’⁸⁵ applies to them, because the [local authorities] only look for their favor and benefit and do not force us to transgress religious law, as I have already said, and all this is clear and simple. So it is our duty to thoroughly investigate [this issue] until we find a path, because it concerns the life of all Israel.

So [I rule] to seat a non-Jew into the shop on the holy Sabbath, and the price will be written on the wares, and for example the non-Jew will receive five *pengő* after every 100 *pengő* he gets [as an income] from his sales and so on. And the Jew should not interfere with the business and anything else. The matter requires further examination from many points of view, for example if ‘the non-Jew works at his own will’ in our case. [And concerning this issue] we have to examine [the following problems]: 1. This [selling on Sabbath happens] in public while the shop is open and the name of the Jewish [owner] is written on the sign-board, and as the Jewish [shopkeeper] works in the shop every weekday, so the ‘problem of appearance’ stands. 2. The shop is located in the house of the Jew, and [selling in Sabbath under such circumstances] is generally prohibited. 3. The non-Jewish worker will be paid only for the work he has done on Sabbath. 4. The Jew also makes profit from the business done by the non-Jew on Sabbath, so the problem of benefitting of work done on Sabbath stands. 5. All wares of the shop belong to the Jew who did not sell them to the non-Jew [before Sabbath], and all the work done by the non-Jew is performed with wares of the Jew. 6. There may be a prohibition for the Jew to sit in the shop and supervise [the work of the non-Jew] on the holy Sabbath.”

As did R. Yoel Teitelbaum and R. Yisrael Landau, R. Glattstein argues that the obligation of martyrdom applies only when the decree or measure aims at religious oppression per se. However, if its aim is practical or economic, then the Jewish shopkeeper is not obligated to keep closed on Sabbath and lose his living. The three rabbis realized that the legislators of the decree had primarily economic objectives. The example of forced laborers in the responsum of R. Glattstein stands as an example supporting the author’s view: as forced laborers work for the benefit of the state, the decrees imposed on shopkeepers serve a similar purpose.

R. Yoel Glattstein refutes all the arguments in favor of prohibiting the Jewish shopkeeper from opening on Sabbath. He also argues that doing business on Sabbath involves only the rabbinic transgression of instructing a non-Jew to work on Sabbath. He considers keeping the shop closed as necessarily leading to the shopkeeper’s loss of his license and livelihood. Indeed, according to him, avoiding great financial loss of many people justifies making a lenient decision:

"והנה בנד"ד [בנידון דידן] לית מאן דפליג דלא ישוער עוד הפסד גדול מזה, א' שיאבדו כל מחייתם גם בימי החול, שיקחו מהם הרעכ"ט [הרשיון של מסחר בחנות], ב' אשר עניי ישראל אשר עיניהם נשואות לאלה אשר בידם עוד מסחר לתמוך בידם וגם הם יאבדו את מחייתם, ג' אין באפשר לומר שיבקשו להם מסחר אחר, כי הכל נסגר לפני אחינו בני"י [בני ישראל] ולא יקבלו עוד מקום פרנסה בנד"ד הכל מודים להיתרו של השו"ע [השולחן ערוך], ואין מי שיפקפק כלל."

⁸⁵ Reference to bSanhedrin 74a-b, namely that at a “time of religious persecution” it is required to give one’s life rather than transgress the law.

“So in this case there is no-one who would doubt that there is no greater financial loss than this: 1, [the shopkeepers] would lose all their living even on weekdays if their license were withdrawn; 2, the Jewish poor who looked to those who were still license-holders to support them, will now lose their living too; 3, it is impossible to advise them to seek [starting up with] another business, because everything is closed to our brothers, sons of Israel and they will not obtain any other source of living. So in this case all agree on the permission of the *Shulhan Arukh*, and no-one should hesitate [to agree].”

The author used, as a basis for his leniency, the responsum of R. Yehezkel Landau who argued that the benefit of the work done on Sabbath in any case belongs to the non-Jew, because he works for his own profit on Sabbath.⁸⁶

The author’s final conclusion is that by employing the non-Jew on Sabbath the Jewish shopkeeper only transgresses the rabbinic prohibition of ordering the non-Jew to perform work on Sabbath (which counts as *shvut de-shvut*). The shopkeeper does not transgress any biblical commandments.

However, even those acts that involve the transgression of rabbinic prohibitions of the above category (*shvut de-shvut*) would be permitted for the sake of doing a *mitzvah*. The *mitzvah* in this case is supporting the poor from the shopkeeper’s income. So if the shopkeeper obeys the order of the authorities and keeps his license and is open on Sabbath, he can continue to fulfill the *mitzvah* of supporting the poor. The author’s last argument: in “great need” (צורך גדול) and in “times of distress” (שעת הדחק) it is obvious that one must give permission.

The responsum of R. Pinhas Zimetbaum, rabbi of Nagyvárad⁸⁷ uses the same arguments expounded in the previous responsa. In the end of his responsum he warns legislators to rule leniently in the matter because of the religiously corrupt generation:

א"כ [אם כן] מכ"ש [מכל שכן] בנ"ד [בנידון דידן] האיך יכולין להתיר איסור דרבנן לפתוח חנות בשבת מכה אונס, דהא איכא פרוצים ויעשו ברצון וימכרו בשבת בעצמן או אפי' ע"י [על ידי] עכו"ם אפי' שאין להם אונס שיש ביכולתם לפרנס עצמם מעסק אחר וכדומה אף שלא יהי' להם חנות, וגם חזינן דתקנתא דרבנן לא עקרינן מכה גזירה, משום גזירה עבידא דבטלי, מכש"כ [מכל שכן] שאין יכולין להתיר איסור דרבנן מכה גזירה משום טעם זה ושמא כשיהי' בטל הגזירה יעשו ג"כ [גם כן] כן ויהי' החנות פתוח כמקדם (ועיין במג"א בס"ס ש"ו בשם הב"ח מה שהביא ראי' מש"ס הנ"ל לענין אונס חילול שבת עייש"ה) ובפרט בדור פרוץ כזה שחילול שבת קיל בין הרבה אנשים צריך לגדור גדר שלא יפרצו עוד כשיעשו באונס יעשו אח"כ [אחר כך] גם ברצון [...]

“If so, all the more in this case how should we permit a rabbinic prohibition of opening the shop on Sabbath referring to compulsion, as there are [religiously] corrupt people, who will sell by themselves on Sabbath willingly or even by a non-Jew or even without compulsion or even when they have another source of living from another business and so on so they do not need to have the

⁸⁶ R. Landau, Yehezkel, *Noda bi-Yehuda ha-shalem, Mahadura Tinyana, Orach Hayyim*, no. 38.

⁸⁷ R. Pinhas Zimetbaum, *Divrei Pinhas*, no. 13. See also *Yerushat peleta*, no. 5.

shop. And we all saw that a rabbinic decree cannot be uprooted by [reference to] a decree [issued by the authorities], because 'every decree [of the latter kind] will eventually be canceled,'⁸⁸ and for this reason we can even less permit a rabbinic prohibition, referring to the decree [of the authorities], because when the decree will be withdrawn, they will perhaps still open their shops [...], especially in this corrupt generation, where the Sabbath is desecrated by many, so we must make a fence so they will not make more transgressions; they do it now because of compulsion but later they will do it willingly [...]."

Nonetheless, the author set the conditions of a possible, quite comprehensive permission in the future to open shops on Sabbath. The shopkeepers must commit themselves (תקיעת כף) in front of a *bet din* or a rabbi that they will not be engaged in selling the wares in the shop. The shopkeepers would be strictly prohibited from partaking in the profits made on Sabbath. As soon as the decree would be repealed, the original prohibition of opening the shops on Sabbath would be in force again. R. Zimetbaum also urges *halakhic* authorities to consult and take a stand on general permission or prohibition:

"וצריך לעשות בזה הוראה כללית לכל המדינה הן לאיסור והן להיתר שלא יהי' מקצתן מורין כן ומקצתן כן [לא] וליתן כאו"א [כל אחד ואחד] היתר הוראה כרצונן רק כאשר יסכימו הגדולים בזה כן יעשו כנלע"ד [כנראה לפי עניות דעת]."

"And it is necessary to make a coordinated ruling for the entire country either to prohibit or to permit [opening shops on Sabbath] to avoid a situation when some [rabbinic authorities] permit what others prohibit, and every [rabbi] rules according to his own opinion. [No ruling should be issued] unless the respected rabbis would agree on it; that is my humble opinion."

R. Yonathan Steif, rabbi in Budapest gave brief instruction for those shopkeepers who were forced to open their shops on Sabbath:⁸⁹

"נראה פשוט לנהוג כמו שנוהגים במכירת חמץ דהיינו להשכיר חנות בעד סכום מה "להנכרים" על שלשה ימים או יותר שיהי' בכלל "ערב שבת, שבת, ויום א' בשבת", "ואגב" השכירות מוכרים להנכרי הסחורה שיש בתוך אותה חנות כמו קמח כל קיל"א בעד כו"כ [כך וכך] עד למדידה, או סחורה אחרת כל מעטער בעד כו"כ עד למדידה ולקבל אנגאבע מיד השוכר והקונה הן עבור השכירות והן על קנין הסחורה והיתר ישאר חוב עד יום ב' בשבת ואז ישלם הקונה בעד אותו הסחורה שמכר ויתר הסחורה יקה המוכר בחזרה כמו שנוהגין במכירת חמץ ממש.

ובכל שבוע אם ח"ו [חס וחלילה] השעה צריכה לכך יעשו כן מחדש בכל ערב שבת, ולא יהיה בתוך חנות רק הנכרי ומשרתים "שלו" ובמקום צורך "גדול" לפי ראות עיני הדיינים ינתן רשות "לאחד" מאנשי הבית של המוכר לבוא לפעמים להחנות לראות ולשמור."

⁸⁸ Cf. bKetubbot 3b.

⁸⁹ R. Yonathan Steif, *Sheelot u-teshuvot Mahar"l Steif*, no. 256. Title: 'חס וחלילה] השעה צריכה לכך' On the matter if, God forbid, due to the circumstances one has to find a way to permit opening the shops [on Sabbath] due to the law [of the state].'

“It looks the best to act as in selling the *hametz*, namely [the Jewish shopkeeper] should rent the shop for a fixed sum for ‘the non-Jews’ for three days or more in the following way: the period would include ‘Friday evening, Sabbath and the first day of the week, Sunday.’ ‘Though’ it is a rent, [the shopkeepers] should sell all the wares of the shop to the non-Jew, for example every kilo flour costs such and such [money] according to its measure, or the other type of wares every meter costs such and such [money] according to its measure. [The shopkeeper and the non-Jew] would write a contract (*Angabe*) on the rent and on the transaction, and the rest [the wares that were sold on Sabbath] would remain a debt until the second day of the week [Monday] when the buyer [the non-Jew] pays for the wares he sold [on Sabbath]; and the [Jewish shopkeeper] buys back all the wares that are left, the same way as they sell the *hametz* and buy it back. And every week if, God forbid, it is needed they should do the same every Sabbath eve [on Friday evening], and only the non-Jew should be in the shop [on Sabbath] and ‘his’ servants and if there is a ‘significant’ need the rabbis should give a permission according to their judgment to ‘one’ family member of the shopkeeper to come occasionally to the shop and supervise.”

IV.F Revision of licenses in Upper Hungary, Carpatho-Russ and Northern Transylvania

Carpatho-Russ is the southern part of the North-Eastern Carpathians. As an independent and administrative unit it came into existence after the First World War as part of Czechoslovakia.⁹⁰ During the Second World War it was annexed by the Hungarian Army, and became part of the Soviet Union after World War Two. Today Carpatho-Russ is the most western part of the Ukraine.

Upper Hungary (Felvidék in Hungarian, meaning literally ‘Upland’, the northern part of the Kingdom of Hungary; after WWI, the term was restricted to Slovakia and Carpathian Ruthenia) and the southern parts of Carpatho-Russ (the whole Ung county and parts of Bereg and Ugocsa counties) were annexed on November 2, 1938, by the Hungarian Army after the partition of Czechoslovakia by the First Vienna Award. The Second Vienna Award, issued on August 30, 1940, reassigned the territory of Northern Transylvania from Romania to Hungary. Northern Transylvania officially became part of Hungary on the 2nd of October.

The first and second anti-Jewish Laws set a limit on the proportion of Jews in certain unions (physicians, lawyers; the membership was obligatory) and professions as employees of small retail businesses, in civil service and on the board of directors of big enterprises. There was a revision of licenses of trade and craft implemented by Trade Authorities aimed at regulating the market based on the “trustworthiness” of the applicant. The revision was exercised on the basis of

⁹⁰ Komoróczy Géza, *Zsidók az Északkeleti-Kárpátokban. Kárpátalja. A 16. századtól a 19. század közepéig* (Budapest: Aposztróf Kiadó, 2013) / *Jews in the North-Eastern Carpathians (Subcarpathian Ruthenia / Carpatho-Rus) from the 16th to the mid-19th Century* (Hungaria Judaica, 31), p. 7.

the “Hungarian nation’s interests;” typically the licenses of Jewish tradesmen and craftsmen were not renewed.

The revision of industry and trade in Upper Hungary was ordered by decree no. 1100/1939 M.E. The revision was obligatory; every licensee, regardless of their religion had to apply for extension of their licenses at the industrial authority. This process in the re-annexed territories was regulated by ministerial decrees.

A later decree (decree No. 9150/1939 M.E.), introduced on October the 1st, 1939, ruled that those tradesmen and craftsmen whose licenses were not renewed could also continue with their professions in the annexed parts of Carpatho-Russ – the revision of licenses was not fully implemented in Upper Hungary.

The article on the title page of *Orthodox Zsidó Újság* (Orthodox Jewish Newspaper)⁹¹ reported that the process of revision in Upper Hungary affected 80,000 people living in the region.⁹² An article published on July 20, 1939 reported that there were no Jews in Kassa who had their licenses renewed.⁹³ A report published on October 27, 1939,⁹⁴ informed the readers that in Dunaszerdahely 300, out of 400, licenses of Jewish licensees were canceled. There were four kosher bakeries working before the revision in the town: three had to close their businesses in October and only one received permission to work until December. The Jewish community had to arrange a place to bake bread according to the *halakhic* requirements. The article also reports on the municipality of Kőbölkút (today Gbelce, Slovakia), which reopened the shops of Jewish owners that were closed by the same municipality, in order to supply the people of the village.

The first Jewish settlers arrived in the North-Eastern Carpathians in the middle of the 17th century, and starting from the 18th century the Jewish population settled in Carpatho-Russ became more and more hassidic.⁹⁵ The right to settle was given to the Jews by the landowners and the rights and duties of the Jewish settlers were arranged by contracts.⁹⁶ Jews could rent fields from landowners, and be leasers of quarries, salt-pits, forests and sawmills or meadows.

Carpatho-Russ had no significant industrial plants; in the 1930s its inhabitants still made a living from forestry and agriculture.⁹⁷ Jewish tenants typically rented fields from the landowners

⁹¹ The *Orthodox Zsidó Újság* (Orthodox Jewish Newspaper) was published weekly between January 1939 and March 1944 in Budapest. The chief editor was Jenő Groszberg, former editor of *Zsidó Újság*. The periodical received its licence from the central organization of Orthodox Jewry in Hungary, the Central Office, after the implementation of the first anti-Jewish law that also limited the share of the Jews in the press.

⁹² *Orthodox Zsidó Újság*, vol. 1, no. 20 (June 10, 1939).

⁹³ *Ibid*, vol. 1, nos. 25-26.

⁹⁴ *Ibid*, vol. 1, no. 39, p. 2.

⁹⁵ Hasidism is a mystical stream of Judaism in which the “rebbe”, a leader and a spiritual master, played an important role. On the life and customs of the hassidic Jewry of Munkács, the hassidic center of Carpatho-Russ, see Rékai, Miklós, *A munkácsi zsidók “terített asztala”* (Budapest: Osiris Kiadó, 1997).

⁹⁶ *Ibid*, pp. 51-53.

⁹⁷ On the economic conditions of the Jews in Carpatho-Russ, see the essay of Zima, András and Glässer, Norbert, “Gazdasági helyzet, foglalkozási összetétel”, Bányai Viktória, Fedinec Csilla, Komoróczy Szonja

and leased the land to local peasants. The majority of Jewish workers worked in the wood industry. Another typically Jewish profession was transportation (of people and goods). According to the census of 1930 there were 35,000 Jews who worked in trade, in the banking sector and in transportation in Carpatho-Russ.⁹⁸

The revision of licenses in Carpatho-Russ was regulated by decree No. 3380/1940. M.E. The applications for renewal had to be submitted to the industrial authority (*iparhatóság*) by June 30, 1940. All the licenses were valid until March 31, 1941. The revision of licenses in Carpatho-Russ was under the surveillance of the Government commissioner (*kormányzói biztos*) in Carpatho-Russ. Tradesmen and craftsmen whose licenses were not renewed lost their licenses after March 31, 1941.⁹⁹ In Transylvania the applications for renewal of the licenses had to be submitted to the Chamber of Industry or the Chamber of Trade by October 31, 1942.¹⁰⁰ The *Orthodox Zsidó Újság* reported that there were 1,700 Jewish tradesmen and craftsmen who lost their licenses in certain areas of Bereg, Ung and Ugocsa county.¹⁰¹

The memorandum written for the Ministry of Agriculture (1940) gives the following statistics: in Carpatho-Russ 81.7 % of trade and 53.7 % of industry was “in Jewish hands.”¹⁰² The revision of licenses aimed to facilitate the rise of a new Christian middle class in Upper Hungary and in Carpatho-Russ at the Jews’ expense.¹⁰³

However, the same phenomenon that characterized the ban on ritual slaughter (see Chapter Two) defined the process of the revision of licenses in Carpatho-Russ. The unified regulation that was meant to be implemented in the whole country (including Upper Hungary) could not be implemented in Carpatho-Russ. Obligatory stunning was also not fully implemented there – in both cases because of the rejection by the Orthodox population. For the same reason the revision of licenses could not be fully implemented as there was no viable plan to replace the great number of Jews living in the area who were engaged in industry or trade.

Ráhel, eds., *Zsidók Kárpátalján. Történelem és örökség a dualizmus korától napjainkig / Jews in Carpatho-Russ. History and Heritage from the Mid-19th Century to the Present* (Hungaria Judaica, 30) (Budapest: Aposztróf Kiadó, 2013), pp. 148-155.

⁹⁸ Ibid, p. 151.

⁹⁹ See the unsigned memorandum of the Ministry of Agriculture: National Archives of Hungary / Magyar Országos Levéltár (MOL) FM. 1940. Eln. 175 (Title: Revision of licenses in Carpatho-Russ. No. 42.669/1940). On the Revision of Licenses issued in Sub-Carpathia see *ibid*, FM. 1940. Eln. 175 and *ibid*, FM. 1940 Eln. 5765.

¹⁰⁰ Dr. Groszmann, Frigyes and Dr. Vári, Rezső: *Megengedett és színleges iparüzés. Érdekeltség és munkavállalás a zsidótörvény korlátai között* (Bp, MS, [1942/43]), pp. 61-65.

¹⁰¹ *Orthodox Zsidó Újság*, vol. 2, nos. 23-24 (June 10, 1940), p. 5.

¹⁰² National Archives of Hungary / Magyar Országos Levéltár (MOL) 1940. Eln. 175 (Title: Revision of licenses in Carpatho-Russ. No. 930/1940).

¹⁰³ On the statistics of Jewish and non-Jewish licensees in Carpatho-Russ see the appendix. On the revision of licenses in Carpatho-Russ, see Frojimovics, Kinga, “Visszacsatolás, iparrevízió, földbirtok-kisajátítás,” Bányai, Fedinec, Komoróczy, eds., *Ibid*, pp. 229-239.

The following documents of the archive of the Ministry of Agriculture show that economic realities overwrote political considerations. The documents concern both the revision of licenses in Upper Hungary and the preparation of the revision in Carpatho-Russ.¹⁰⁴

A list dated on June 23, 1939, clearly indicates the ratio of Jewish and Christian applicants for the renewal of licenses in Ungvár. Out of the 1483 applicants in Ungvár there were 1014 Jewish and 469 non-Jewish applicants. Out of the 1006 applicants whose applications were submitted by the industrial authority to the Ministry there were 557 Jewish and 449 non-Jewish applicants. Data on the ratio of the rejected applicants clearly shows the discrimination against Jewish applicants: 457 out of 477 rejected applicants were Jewish.

The figures of the revision of licenses in Munkács are even more telling; out of 1557 applications by Jews only 701 applications were submitted to the Ministry by the industrial authority for approval and 834 were rejected. (There were 22 applications in progress). However, out of the 417 Christian applicants only 18 were rejected; 399 were accepted. The local authority listed 26 “trustworthy” Jewish tradesmen and craftsmen in Munkács county whose licenses had to be renewed due to “public interest,” i.e. the firms gave work to a large number (between 20 and 30) of Christian employees.¹⁰⁵

In October, 1939, a committee visited the cities in Carpatho-Russ on behalf of the Ministry of Commerce. The task of the committee was to write a report on the impact of the decree concerning the revision of industry and trade on the local economy in Upper Hungary and to survey the changes in the share of the Jewish population in the local economy. It also estimated the impacts of a future revision in the entire Carpatho-Russ. The 43 pages long report, signed by Dr. Ervin Hidvégi, the ministerial secretary, was dated on October 28, 1939.

The committee had talks with the chief judges (*főszolgabírók*) of the administrative districts and city mayors and provided the ministry with reports on the impact of the revision. The concern of the mayors of the administrative centers in Carpatho-Russ (Ungvár, Munkács, Beregszász) was that the cessation of Jewish enterprises would lead to the collapse of the local economy and would cause serious unemployment. The report attests that the local committees usually decided in favor of the Jewish licensees.

The *Orthodox Zsidó Újság* reported on June 10, 1939,¹⁰⁶ that the Jewish applicants received negative evaluations from the local committees during the process. The report also suggests the repeal of the decree that postponed the implementation of the decree on the revision in Carpatho-Russ, arguing that it kept the Christian population from entering trade and craft and even

¹⁰⁴ Cf. the documents of the archive of the Ministry of Agriculture: National Archives of Hungary / Magyar Országos Levéltár (MOL) FM. Eln. 1940/1783; *ibid*, FM. 1940 Eln. 175; *ibid* FM. 1940 Eln. 5765 and the lists on the number of Jewish and non-Jewish applicants in the Appendix.

¹⁰⁵ National Archives of Hungary / Magyar Országos Levéltár (MOL) FM. 1940 Eln. 5765.

¹⁰⁶ *Orthodox Zsidó Újság*, I., no. 20.

those Christians who considered starting new businesses, lost their willingness. According to the report the postponement of the implementation “disappointed” the Christian tradesmen:

“In those areas we visited – besides a few rare exceptions – the Christian self-awareness is completely missing. There is only one Christian textile-tradesman in Ungvár; he has only poor Rusin and Slovak customers and the Hungarians – especially the educated ones – do not buy anywhere else but at Jews since October the 1st [1939] when the Jewish tradesmen, reassured by the decree on the postponement [of the implementation of the revision on licenses in Upper Hungary], stocked their shops with winter wares. Therefore Christian tradesmen and craftsmen will have customers only if the Christian [Hungarian] customers will have no choice but to buy in their shops, due to the closing of Jewish shops or the dwindling of their numbers.”¹⁰⁷

The report also touches upon the problem of the location of shops owned by Jewish tradesmen:

“In towns of Upper Hungary and in villages in Carpatho-Russ the real estates of a central location are owned exclusively by Jews. The Jews use every means in their struggle against Christian trade and craft and do not hire out any premises for Christians even if empty. The more established Christian tradesmen and craftsmen try unsuccessfully and despair of gaining any premises in a better location. So the Jewish tradesmen and craftsmen are located in the center and the Christians on the outskirts or in the periphery.”¹⁰⁸

The authors of the report argued for the renewal of licenses of those Jewish tradesmen and craftsmen who were politically reliable and those who employ Christian workers. The report includes a list with the names of all the indispensable Jewish tradesmen who should be given their licenses back. The authors of the report also suggested giving financial support to “reliable” Christians¹⁰⁹ who will replace Jewish merchants so the local population will not suffer from any lack of supplies. The report also gives the numbers of the Jewish and Christian tradesmen and craftsmen in Ung, Bereg and Máramaros counties.

¹⁰⁷ “[...] Az általunk bejárt vidéken a magyar társadalomban a keresztény öntudat ritka kivételektől eltekintve teljesen hiányzik. Ungvár egyetlen keresztény rőföskereskedőjének vevői a kispénzű ruszin és szlovák lakosságból kerülnek ki, a magyarság, különösen az intellektuális elem október 1.-je óta, amikor a zsidó kereskedők a halasztó rendelet alapján raktárukat a téli árukkal kiegészítették, nem vásárol másnál, csak zsidónál. Ennekfolytán a keresztény kereskedők és iparosok csak akkor tehetnek vevőközönségre szert, ha a keresztény fogyasztók kénytelenek lesznek náluk vásárolni azért, mert a zsidó üzletek megszűntek vagy számuk megcsappant.” National Archives of Hungary / Magyar Országos Levéltár (MOL) FM. 1940 Eln. 5765. Report, pp. 7-8.

¹⁰⁸ “A felvidéki városokban és a kárpátaljai községekben a központi fekvésű házingatlanok kizárólag zsidók tulajdonában vannak. A zsidóság a keresztény kereskedelem és ipar elleni harcában minden eszközt felhasznál, ehhez képest keresztény részére üzlethelyiséget nem ad bérbe még akkor sem, ha a helyiség üres. A nagyobb keresztény kereskedők és iparosok kétségbeesett erőfeszítéseket tesznek kedvezőbb fekvésű üzlethelyiség megszerzésére minden eredmény nélkül. Ilyen módon úgy alakul a helyzet, hogy a központban vannak a zsidó kereskedők és iparosok, a keresztények pedig a külvárosban vagy a periferián. (...)” Ibid, pp. 8-9.

¹⁰⁹ Christians who supposedly would have rejected to be the *strómans* of Jewish tradesmen.

The memorandum of the Cabinet Council accused Jewish tradesmen whose licenses were not renewed of intentionally causing a shortage of goods by not selling their wares to those whose licenses had been renewed:

“According to experiences gained during the completed revision of industry and trade in Upper Hungary and the revision in Carpatho-Russ, which currently takes place, those Jewish tradesmen and craftsmen who are deprived of practicing their profession due to the regulations on the revision of licenses retain their stock. This state of affairs is deleterious from a financial point of view, because it results in a shortage of goods in certain fields, and on the other hand it makes the situation of new [i.e. non-Jewish] tradesmen starting up with a new enterprise difficult.”¹¹⁰

The Ministry found an administrative solution to the problem: a decree¹¹¹ ordered the tradesmen to draw up an inventory and hand it in to the industrial authority (*iparhatóság*) of Upper Hungary and to the Government commissioner (*kormányzói biztos*) in Carpatho-Russ. The goods of tradesmen whose license was not renewed could be sold only to craftsmen or tradesmen, who were holders of licenses in the same profession. (The authorities even could appoint the buyer.) The penalty for violators of the order was six months imprisonment.

In Upper Hungary local committees were appointed to consider the requests of the tradesmen or craftsmen, because only local people had the necessary information concerning the applicant's reliability and familiarity with local circumstances. The memorandum pointed out that the committees were not reliable and their members were bribed. As a consequence, in Carpatho-Russ the industrial authority was appointed to fulfill the task.

The industrial authority considered the data provided by the applicant on a questionnaire,¹¹² which consisted of 29 questions, including the applicant's name, place and date of birth, citizenship, religion, marital status, number of children, the exact description of his profession and his qualification and skills. The applicant also had to answer questions about how long he had been practicing his profession, if he had a shop in another settlement, how long he had been living in the city, where did he live previously, if he had another occupation and how much his yearly income from it was. There were questions concerning the applicant's affiliation with any social organization, association or political party under foreign rule (this question relates to active participation in the Hungarian Republic of Councils, *Tanácsköztársaság*, that existed between

¹¹⁰ “A már befejezett felvidéki iparrevízió során, valamint a most folyamatban lévő kárpátaljai iparrevízió során szerzett tapasztalatok szerint azok a zsidó kereskedők és iparosok, akik az iparjogosítványok felülvizsgálatára vonatkozó jogszabályok értelmében foglalkozásukat nem folytathatják, árukészletüket visszatartják. Ez az állapot gazdasági szempontból nem kívánatos, mert alkalmas arra, hogy a mondott területeken áruhiányt idézzon elő, másrészt pedig mert megnehezíti a most létesülő új kereskedelmi ekzisztenciák (!) helyzetét.” National Archives of Hungary / Magyar Országos Levéltár (MOL) FM. 1940 Eln. 5765, No. 74.439/1940.

¹¹¹ See the draft of the decree, *Ibid.*

¹¹² National Archives of Hungary / Magyar Országos Levéltár (MOL) FM. 1940 Eln. 5765.

March and August, 1919). If the applicant had such affiliations, he was supposed to provide information on when he joined it, whether he joined voluntarily or not, and who inspired or ordered him to do so. The applicant had to answer the question whether he was a member of any national (i.e. Hungarian) organizations in 1918 and after, and if so which ones. The applicant had to give the names, ages and religion of his employees, assistants, male and female workers and apprentices. He had to declare which authority issued his license and when, in which regiment he had served in the First World War, how much time he had spent at the front, was he wounded, and if he was honored. The applicant had to answer the question whether Paragraph 2 of the law 1939:IV (that lists the exemptions from the scope of the second anti-Jewish Law) or decree no. 7.720/1939 M.E. (the decree on the implementation of the law) paragraph 66 was applicable to him. According to the latter paragraph Jews who lived in the re-annexed territories after 1920 and expressed their trustworthiness toward the Hungarian nation and had risked their life or security – also the life and security of his wife or children – were exempted from the scope of the law.¹¹³ The applicant had to answer the question of whether he had any other profession, shop or yard and how much his income was in 1939 (in Czech korun), and how much rent did he pay for his shop/yard per year. He also had to give an account of the location and size of his properties; and the names, citizenship and religion of members of the board of directors in public companies or co-operatives.

The applicants had one month to hand in the questionnaire and the requested documents to the local municipal notary, between February 15 and March 15, 1940. The following documents had to be supplied: the original license of trade, the birth certificate and marriage certificate of the applicant and his certificate of baptism. The notary handed in the documents to the industrial authority who then passed them to the Ministry. The decision about the renewal of licenses was made by the minister and there was no opportunity to appeal.

In short, the questionnaire was meant to survey the financial situation of the applicant, his religion and his political activity in the past and present. Also it attempted to estimate the impact of the cessation of his business on trade or industry in the area. Jewish employees, Zionist or Communist attitudes, “irresponsibility or untrustworthiness” (from the point of view of “national Hungarian interests”), the label “usurer,” cooperation with the Czech authorities after 1920 and anti-Hungarian sympathies would automatically lead to the rejection of the license’s approval.

¹¹³ Vértés Róbert, *Magyarországi zsidótörvények és rendeletek 1938-1945*, p. 139.

IV.G Evasion of the Laws by making false partnership: “strawman” and “aladár”

The licenses of trade and craft were issued in a limited number by the Trade Authority; and the number of Jewish tradesmen and craftsmen holding licenses had to be proportional, according to law, to the total Jewish population within the entire population of the country. As the number of Jewish professionals in trade and craft was higher than the proportion of Jews in society in general, the licenses of the majority of Jewish tradesmen and craftsmen were withdrawn and they could not start up new businesses. The revision of licenses of license holders practically excluded the renewal of licenses of Jewish applicants. Losing all legal opportunities to make a living, Jewish tradesmen and craftsmen chose to make partnerships with non-Jewish licensees and operate a business under their names.

The most widespread way of evading the law was to aryanize “Jewish” enterprises by false contracts and to transfer the enterprises formally to Christian owners (“aladár” or “stróman” method, from German *Strohmann*, ‘strawman’). Making fake partnerships with non-Jews aimed to evade nationwide or local regulations that put Jews at disadvantage. “[...] The companies concerned were either formally transferred to the name of Christian owners, or Christian managers without real decision-making powers were given positions on the board of directors or managerial board, or Christian employees were hired to formally replace the skilled Jewish labor force, while the latter were kept, only in lower positions. The term ‘aladár’ was used for Christians who contributed only their name and (proper) genealogy to the company but never effectively did any work.”¹¹⁴

A Hungarian legend tells the story of Aladár, the traitor son of Attila the Hun (the ruler of the Huns in the 5th century) who conspired with the Germans against his brother, Csaba. The title “aladár” clearly expresses contempt against those Hungarians who conspire against their nation by cooperating with Jews.

Paragraph 26 of the second anti-Jewish Law prohibited the practice of making fake partnerships, attesting the extent of the evasion of the law. The penalty for transgressing this regulation was imprisonment of maximum one year.¹¹⁵

The large number of responsa that refer to this practice attest that making false partnerships was common evasive behavior in the Orthodox camp too. A flourishing “secondary economy” was created, based on spurious contracts and fictional partnerships. Neither the government nor the

¹¹⁴ Kádár and Vági, *Self-financing Genocide*, p. 63. “In business, some of the difficulties were skirted; a titular director (who of course drew a salary) was appointed to head a firm or an enterprise, while the actual direction of affairs remained in the hands of the former Jewish director.” Katzburg, *Hungary and the Jews*, p.163.

¹¹⁵ Groszmann and Vári: *Ibid*, p. 30.

local authorities could afford the total exclusion of Jews from trade and industry, and subcontracting occurred with the silent approval of the authorities.

IV.G.1 Proceedings at the Budapest Criminal Court between 1938 and 1944

The second anti-Jewish Law issued in May 1939 limited the proportion of Jews in certain professions, and also cut back the number of Jewish licensees in business and trade. The *stróman*-method allowed Jewish craftsmen and tradesmen to continue with their professions under the screen of non-Jewish licensees.

The documentation of the Budapest Court attests to the practice of evasion of regulations by making partnerships with non-Jewish licensees. The restrictive measures that aimed to limit Jewish presence in the Hungarian economy lead to the flowering of the well-established *stróman*-method, as shown by the massive presence of Jewish professionals in the economy as investors and beneficiaries of businesses of non-Jewish licensees. The restrictive laws promoted Jewish craftsmen and tradesmen who had lost their living as a consequence of the anti-Jewish legislation to invest in businesses of non-Jews.

The documentation of the Budapest Court provides information about the trials of non-Jewish licensees who were accused of illegally making partnerships with Jews. The introduction of Decree No. 5.010/1942 reflected the extent of this practice. The first paragraph of the decree attempted to reduce the phenomenon by authorizing the Chamber of Trade to withdraw licenses from those who operated their businesses in cooperation with Jews.

Making false partnership, i. e. cooperating between the *stróman* and his Jewish “partner” was beneficial for both parties. The Jewish partner usually maintained the business by his investment, thus assuring a secure income for himself and for his non-Jewish partner. Every case differed regarding whether the licensee had any real role in running the business or not.

The legal practice of making silent partnership was strictly regulated by the authorities. The silent partner could not have a greater share of the business than 49 percent, and he was not allowed to influence the course of business. Dr. Frigyes Groszmann, a lawyer, started his weekly column in *Orthodox Zsidó Újság* on December 10, 1940,¹¹⁶ to interpret the anti-Jewish Laws and help the Jewish public find its way around the regulations. Dr. Groszmann dedicated his first article to clarifying the regulations concerning “silent partnership”. The partners did not have equal rights in the business. There were two types of silent partners (Hungarian “csendestárs”): one who cooperated in the running of business and one who did not.

¹¹⁶ *Orthodox Zsidó Újság*, vol. 2, no. 50, p. 3.

The proceedings of the Budapest Court attest that many Jewish tradesmen were denounced for not reporting their Jewish employees to the Commissioner of Intellectual Workers (*Értelmiségi Kormánybiztosság*). To avoid such omissions Dr. Groszmann gave a list of those type of employees who had to be reported to the office – almost every employee, except physical workers. The silent partners had to be reported to the Commissioner of Intellectual Workers as “partners.” However, in the businesses of new licensees the silent partner was considered as an intellectual employee, and the law permitted only the employment of one Jewish intellectual employee. The law intended to filter out those former Jewish license holders who made fake partnerships with non-Jews in order to continue with their business.

In the Budapest Court 19 proceedings were processed from 1938 until 1944 regarding the evasion of Paragraph 26 of the second anti-Jewish Law. In nine proceedings the charges were made against non-Jewish licensees who failed to report their Jewish employees to the authorities¹¹⁷ or started employing a Jewish worker despite the prohibition. Evasion of this kind resulted in the closing down of the business by the municipality and the violators of the law had to face a penalty or prison sentence.

In eight of the trials processed in the court the non-Jewish licensees were charged with passing on the right to operate their businesses to their silent Jewish partners. I will present three cases out of the eight.

- Textile trade. Ármin Hermann Lipschitz¹¹⁸

According to the indictment of the public prosecutor’s office, Ármin Hermann Lipschitz illegally operated a business in the textile trade under the name of the licensee, Béla Vanczák. Lipschitz was born in the village of Gemzse in Szabolcs county. At the time of the trial he was a cantor by profession and lived in Király str. in the 7th district of Budapest. His background and profession indicate his belonging to the Orthodox community.

The locksmith Béla Vanczák had his own business, assigned by license, of trading in furniture and toys in Csányi str. In February 1942 Vanczák received his second license, in the textile and small-goods trade. According to the charges this license was used by Lipschitz, who sold textiles in a parlor in Dob str. (7th district) without keeping any accounts.

Vanczák defended himself by stating that his wife, Margit Einzig, operated the textile business and the task of Lipschitz was to do the physical work; to deliver and pack the stock.

¹¹⁷ This transgressed Paragraph 12 of the law that limited the number of Jewish intellectual workers in companies to 12 percent. All the intellectual workers had to be reported the Commissioner of Intellectual Workers (*Értelmiségi Kormánybiztosság*). Every position that did not involve physical work was considered intellectual work.

¹¹⁸ BLF.VII.5.c.473/1944. // YV.Archives JM/34237.

Vanczák declared that he himself invested in the business. The court did not accept his defense and registered the fact that Lipschitz sold the goods in another place as an additional offence. Lipschitz also denied the charges.

The Royal Penal Court of Justice in Budapest sentenced Béla Vanczák and his “partner,” Ármin Hermann Lipschitz, to jail. On the 5th of May, 1944, the court sentenced Lipschitz to four months in prison and Vanczák to two months in prison.

- Textile trade. Mihály Fodor and László Rosenberger¹¹⁹

The investigation in the case of Mrs. Lajos Kiss Illés started after denunciations had been made against her. Mrs. Lajos Kiss Illés received her license for textile trade in October 1941. She started up her textile business, located in Báthory str. in Budapest, in December of the same year and reported to the Chamber of Trade that the Jewish László Rosenberger was the “intellectual worker” of the company. According to the testimony of Mrs. Lajos Kiss Illés, Rosenberger operated the business in the first half of 1942 when Mrs. Lajos Kiss Illés was absent due to illness.¹²⁰

Mrs. Lajos Kiss Illés made a legal partnership with the Jewish Fodor Mihály as a silent partner in October 1942. Paragraph 115 of Law Nr. 1930/V. and the verdict of Kuria C.II.2100-1942 set the conditions of the partnership: the silent partner was not permitted to actively take part in operating any business but as an investor might have had a share in the business.

The contract of the cooperation between Mrs. Lajos Kiss Illés and Fodor Mihály set the following conditions: Mrs. Kiss added Fodor into the business as a silent partner, namely as the financier of the business who invested 25,000 pengő in the business. The contract split the net profit between Mrs. Kiss and Fodor in the following way: 51 percent of the profit belonged to the licensee and owner of the business and 49 percent to the silent partner, who took the profit out in cash every month. Fodor was authorized to enter the shop any time and examine the books. The contract obligated the owner of the business to pay the investment back to Fodor if she quit the business. At the same time, the silent partner, Fodor, was permitted to quit and require the return of his investment only if the owner of the business had given notice to Rosenberg.

The report of investigation attests that the owner of the business, Mrs. Lajos Kiss Illés, had no professional background regarding operating a business, therefore it is possible that she received a sum from Rosenberg to start up a business under her name and pass on the right to operate it to him. Mrs. Kiss could not provide any evidence to the investigators concerning the

¹¹⁹ BLF.VII.5.c.1503/1944 // YV.Archives JM/34237.

¹²⁰ Report of the Commissioner of Intellectual Workers (*Értelmiségi Kormánybiztosság*) dated on the April 29, 1943.

source of the seed fund. The fact that the bank account of the business was on Rosenberg's name did not help to support her claims. The investigators claimed that Fodor had a large-scale share in the business, and the 51-49 division of the share (prescribed by the law) was only a facade: in reality the partners shared the profit in a 50-50 ratio. The testimony of Mrs. Kiss affirms that she herself and her silent partner took out 800-800 pengő profits from the business.

Contrary to the regulation of Law Nr. 1930/V the silent partner, Fodor, influenced the course of business through his emissary, Rosenberg, who worked in the shop every day and was responsible for all the payments of the business. The future of the business depended on the silent partner as Mrs. Kiss herself had no authority to deal with the account.

Following the investigation and the verdict Mrs. Lajos Kiss Illés closed the business in May, 1943.

The indictment of the public prosecutor's office dated January 25, 1944, put down the following charges: as Mrs. Lajos Kiss Illés could not provide evidence of the source of the seed fund it is likely that she applied for a license only for the use of Mihály Fodor and László Rosenberg. According to the claim of the prosecutor, the seed fund was invested by Fodor and Rosenberg who led the business independently, thus they were actually the real owners of the business. The two deceived the Office of Commissioner of Matters of Intellectual Unemployment by reporting Rosenberg as an "intellectual worker". The fact that Fodor had a right to quit if the employment of Rosenberg ceased also served as a proof that the two operated the business.

- Fuel trade. Sándor Kohn and Mrs. Lajos Ripsz nee Adél Pollák¹²¹

The case of Mrs. József Schmidt nee Ruttner Róza differs from the previous cases in two significant points. Firstly, she operated a wholesale business in the fuel trade where licenses depended on a special permit of the authorities. Secondly, the profit of the business was 80,000 pengő a year, which was much higher than in the other cases.

The indictment of the public prosecutor's office dated May 5, 1944, accused the partners of deceiving the authorities. According to the charges the actual owners of the business were Kohn and Pollák, and Mrs. József Schmidt was only their employee.

According to the charges, Mrs. József Schmidt received a license for wood trade but the business was operated by the "real owners" of the company: Sándor Kohn (an inspector of wooded property / forestry by profession) and Mrs. Lajos Ripsz nee Adél Pollák. Jews were forbidden to trade in *retorta* charcoal (hard and clean charcoal made in *retorta*), because its trade was much more profitable than trading with *boksa* charcoal (charcoal made in charcoal kiln). Kohn and Pollák

¹²¹ BLF.VII.5.c.5824/1944 // YV.Archives JM/34240.

were accused of trading with retorta charcoal and making extra profits under the name of Mrs. József Schmidt.

Mrs. József Schmidt made a declaration in December, 1943, attesting that in the beginning of 1940 Kohn himself persuaded her to apply for a license for the retail and wholesale fuel trade. According to their verbal agreement Kohn and Pollák shared all the profit, and Mrs. József Schmidt received a monthly fee of 200 pengő in exchange of the use of her license. The wholesale business was operated by Kohn, while Mrs. József Schmidt sold coal in the retail market. She passed all the income on to Kohn, the owner of the stock. Mrs. József Schmidt testified that she had no share in the annual profit of 80,000 pengő.

IV.H The practice of making false partnerships as reflected in the responsa

The practice of cooperating in running businesses as silent partners had *halakhic* consequences. Observant Jews became partners in businesses which made profits on Sabbath, an act that was strictly prohibited by Jewish religious law, because the former Jewish owner of the business – characteristically the silent partner of the new business – could no longer conduct the business in accordance with the *halakha*.

The following responsa reflect on silent partnership and provide *halakhic* understandings of this practice. The authors expressed different views regarding the question of whether or not the Jewish silent partners could participate in conducting the course of business. Much depended on actual circumstances; every case was different. It is important to note that the 49% -limitation on Jewish silent partnership in the state regulation fit into rabbinic efforts to find a *halakhic* arrangement for silent partnership. The rabbis could argue in such a case that the Jewish silent partner had no significant impact on the course of business. Therefore the rabbis could give permission for the Jewish partners to cooperate with a non-Jew who ran his business on Sabbath. On the other hand, the non-Jewish partner being a real partner (and not merely an employee) is a prerequisite for considering the profit made on Sabbath as belonging to the non-Jewish partner alone.

The responsum of R. Mordekhai Brisk of Tasnád deals with the phenomenon of Jewish silent partners cooperating with non-Jews and sharing the profit in the proportion of 49/51 percent:

- ◆ R. Mordekhai Brisk, *Shu"t Mahara"m Brisk*, vol. 2, no. 80

Addressee: R. Yisrael Weiss (Kolozsvár, Transylvania, today Cluj-Napoca, Romania)

Respondent: R. Mordekhai Brisk (Tasnád, Transylvania, today Tășnad, Romania)
Without date

"בדבר שאלתו בשותפות ישראל עם נכרי הנעשים בעתים האלה באופן שהישראל נותן כל המעות המצטרך להעסק והנכרי הוא העוסק הן בקניית הסחורה והן במכירתה וגם אצל הערכאות נקרא העסק על שם הנכרי מכל וכל ואין איש יודע מזה שיש לו שותף ישראל רק אצל הערכאות נעשה שטר אשר בו נאמר הכל כפי חוק ונימוס המדינה ממילא הרייח ג"כ [גם כן] מתחלק כפי שמרשה החוק, מ"ט [49] אחוזים להישראל והמותר להנכרי, מובן ממילא שאין הנכרי רוצה לשבות ממלאכת מסחרו בש"ק [בשבת קודש] כי למה יפסיד הרייח מיום השבת גם אי אפשר לו לשבות כי אז יחשדוהו שכל העסק של ישראל והוא רק שכיר אצלו כי מי שמע ומי ראה כזאת שעסק עכו"ם ישבות ביום השבת, וממילא יטלו ממנו זכות הנהלת העסק, ועתה נפשו בשאלתו אם מותר לישראל לעשות השותפות באופן זה שלא יהי' נרשם בשטר כלל משבת ויו"ט [ויום טוב] ואם הן, אם מותר לו ליהנות משכר שבת [...]."

"Answering your question regarding a Jew and the partnership he made with a non-Jew in these days according to this method: the Jew gives all the money that is required for the business and the non-Jew buys and sells the goods. Officially the business runs under the name of the non-Jew and no-one knows that he has a Jewish partner, except that they make a contract for the authorities according to the laws and norms of the state. Of course the profit is also shared according to the law: 49 percent goes to the Jew and the rest goes to the non-Jew. Obviously the non-Jew does not intend to cease working on the holy Sabbath, arguing that he does not want to lose the profit he could make on Sabbath. Also, he cannot stop working, because then people would think that the whole business is the Jew's and the non-Jew is only an employee, as who heard or saw that a business in non-Jewish possession would cease working on Sabbath? They would certainly withdraw his [the non-Jew's] right to manage the business. So now you [the addressee, R. Weiss] ask whether it is permitted for the Jew to make a partnership [with the non-Jew] in a way that the contract would not refer to the Sabbath and the Jewish holidays, and if so, whether it is permitted for him [for the Jew] to enjoy the profit made on Sabbath."

So it was the non-Jew who represented the business in public, and the partnership made by the observant Jew and his non-Jewish partner conformed to the laws of the state. The *halakha* requires the ceasing of trade on Sabbath and on Jewish holidays, however by doing that the non-Jewish partner would endanger his and his Jewish partner's livelihood by the possibility of losing his license, because closing on Saturdays would be a clear indication that the shop is owned by a Jew.

[הן] R. Brisk refers to the regulation of the *Shulhan Arukh* that makes a distinction: if the non-Jew intends to work for the Jew on Sabbath, the Jew is forbidden to benefit from his work. However, if the non-Jew works for himself, the Jew is eligible to enjoy the profit of his work.¹²² He

¹²² *Shulhan Arukh, Orach Hayyim 276.*

also cites two responsa of the *Noda bi-Yehuda*¹²³ and Maharam Schick¹²⁴ who permitted the work of the non-Jew on Sabbath arguing that he works at his own will and does not make any profit for his Jewish partner. R. Brisk finds in these decisions a close analogy to the case he has to deal with.

However, the *halakha* forbids accepting a remuneration for any work performed on Sabbath (even if the work itself is permitted), and R. Brisk argues that the Jewish partner is getting paid by the non-Jew partly from the money that the non-Jew earned on Sabbath, so the “permitted” and the “forbidden” profit are getting mixed.

[אמנם] [שוב] If the work performed on Sabbath does not necessarily have to be performed on that day then the fact that it was performed on Sabbath could be overlooked. In other words, if the non-Jew was charged with doing something that he can do at any time and he happened to do it on Sabbath, it is permitted to enjoy the profit made by him. Therefore, if the goal of the non-Jew was to perform a task irrespective of the Sabbath, the work and the benefit from the work become permitted even if it was performed on Sabbath.

Thus the author argues that in silent partnership too, the profit made on Sabbath is gained without any particular reference to Sabbath, so the Jewish partner is also permitted to enjoy the profit, on condition that they make the accounts at the end of every week or every month and share the profit as set out in the contract.

- ◆ R. Yonathan Steif, *Shu"t Mahar"l Steif*, no. 240
Addressee: R. Yonathan Steif (Budapest)
Respondent: R. Yisrael Bleier (Nyírbátor)
Date: (תש"ב) ג' בשלה שב"ת (June 2, 1942)

R. Yisrael Bleier turned to his son-in-law, R. Yonathan Steif, in this responsum and asked for his decision concerning the benefit of work performed on Sabbath. Three Jewish tradesmen made a partnership with a non-Jewish licensee in cloth trade. It seems that the one license served to make a livelihood for three Jewish families. This practice was a clear transgression of the law that permitted making a partnership with only one Jewish silent partner.

"[...] היות שבצוק העתים אין יכול איש יהודי להשיג רשיון לעשות מסחר על שמו, עשו שלשה ישראלים שותפות עם נכרי אחד בעסק חנות של בגדים ולפי שטר השותפים הישראלים מחוייבים ליתן להעסק תשעים אחוזים ממה שצריך להעסק וכנגד זה אינם צריכים לעסוק במלאכה אפילו בימי החול ורק הכל מוטל על השותף נכרי, רק רשאים לשכור לו פועלים שיעזרו אותו בכל ענינים ומשכורתם מן השותפות ורק מה שנשאר אחר כל ההוצאות יתחלקו שוה בשוה. החנות הוא על שם הנכרי והוא המוציא והמביא בכל ענין העסק כי להשותפים הישראלים אין רשות גם מטעם הממשלה לקחת חלק בהעסק והם רק שותפים בלאט כלפי פנים (שטילע

¹²³ R. Landau, Yehezkel, *Noda bi-Yehuda ha-shalem, Mahadura Tinyana, Orah Hayyim*, no. 38.

¹²⁴ R. Moshe Schick, *Sheelot u-teshuvot Maharam Schick, Orah Hayyim*, no. 95.

שותפים) ובשטר השותפות יש תנאי שהישראלים יכולים לחזור מהשותפות אחר שנה אם לא הוטב בעיניהם. דהיינו שאינו נושא פירות כחפצם, אבל הנכרי אינו יכול לחזור רק אחר זמן השותפות וזמנו לחמשה שנים. הפועלים אשר הנכרי משכיר הם לא שכירי יום רק לחודש או לשנה. ועתה השאלה אם מותר להנכרי לעסוק בשבת וגם כן ע"י [על ידי] פועלים אשר שכרם לעסקי השותפות ומשם יקבלו שכרם."

"[...] Since in the current time of crisis no Jew can obtain a license to run a business under his own name, three Jews made a partnership with a non-Jew to run a cloth shop. The contract of the partnership obligates the Jewish partners to provide 90 percent of the money needed for the business and in exchange they are absolved from doing any work even on weekdays, so all [the work] falls on the non-Jewish partner. They [the Jewish partners] can only employ workers who will help him [the non-Jewish partner] in every matter; they will get paid by the partners. The partners should share the profit, left after covering the expenses, in equal shares. The shop runs under the name of the non-Jewish partner who manages the business, because the Jewish partners have no right – the government prohibits them – to take part in business management, so they are only *blatt* partners (silent partners, *shtile shutafim*). The contract on partnership sets the following condition: the Jewish partners are able to withdraw from the partnership after a year if they think that the business is not profitable; however the non-Jewish partner can withdraw [from the partnership] only at the end of the five-year partnership. The workers employed by the non-Jewish partner are not day-laborers, but are hired for a month or a year. And now the question is if it is permitted for the non-Jewish partner to work on Sabbath himself or [to keep the shop open] by workers employed by the partners, from whom they receive their salary."

A written contract was made between the partners in accordance with regulations of the state, but the regulations allowed the cooperation with only one silent partner.

[ונראה] [ונלע"ד] R. Bleier argues for permitting the cooperation in the same way as tractate *Avoda Zara* mentions renting a field together with a non-Jew. He suggested the partners declare that the profit made on Sabbath belongs to the non-Jewish partner alone.

[אך] [והנה] The author argues that as the Jewish partner does not do any work, he should be classified as a tenant (אריס) and not a partner (שותף). Moreover, as all the work is done by the non-Jew on Sabbath, the profit made on that day automatically belongs to him.

[אך] However R. Bleier notes that the workers employed by the non-Jewish partner are paid from the shared funds of both (Jewish and non-Jewish) parties. If the Jewish party pays their salary, the workers become his emissaries also on Sabbath and on Jewish holidays. The problem is that the non-Jewish employees of the common business would not be permitted to work on Sabbath.

The author argues that as the non-Jewish licensee does all the work (organization, purchasing, accounting, etc.), then employing workers also falls under his responsibility, thus the workers would work only for him. Also, the non-Jewish partner has an interest in his partner's profiting from the business because if it operates at a loss, the Jewish partners would break the contract and withdraw all the funds they had invested. To sum up, as the non-Jewish partner is interested in making the profit, the profit made on Sabbath would also belong to him.

[ייעוד] [ובאמצע] The author sums up his arguments in favor of permitting the business. First, the non-Jewish partner cannot do all the work on his own, so he has to hire people. Second, it is clear that the workers are not employed as day-laborers but hired for a month or a year and all the work is done by the non-Jewish partner and his employees, without being the emissary of the Jewish partner.

In his brief answer to R. Bleier's responsum, R. Yonathan Steif sets the *halakhic* conditions for the partnership:

- ♦ R. Yonathan Steif, *Shu"t Mahar"l Steif*, no. 241
Addressee: R. Yisrael Bleier (Nyírbátor)
Respondent: R. Yonathan Steif (Budapest)
Date: (תש"ב) ה' יתרו שב"ת (February 5, 1942)

[אחדשה"ט] The author argues that normally the non-Jewish partner should employ the workers and he alone should pay for the lease of the shop. (So the workers are not regarded as emissaries of the Jewish partner.) As in this case the Jews are only silent partners (שטיללע קאמפאניאן) (*shtile kompanien*) and do not work in the shop on any day of the week, they are not responsible either for the work done on Sabbath or for the work done on weekdays and all the workers are the emissaries of the non-Jewish partner.

[ובעיקר] The nature of “silent partnership” needs consideration.

"ונ"ל [ונראה לי] עוד שענין שותף בחשאי אפילו אם נחשב שהמה שותפים גם בסחורה המונחת בחנות ולראי' [ולראיה] שאם חולקין ומבטלין השותפות רשאי כל אחד ליטול חלקו בהסחורה שמונחת שם א"כ [אם כן] מוכח שאינו הלואה גמורה מ"מ [מכל מקום] י"ל [יש לומר] דחשוב כאילו נותן הישראל הסחורה להנכרי העוסק בחנות בתורת קאמיסיאן, וזה ג"כ [גם כן] מותר אפילו אם הנכרי עושה מלאכתו בשבת ברשותו [...], וכאן ליכא מראית העין דהחנות הוא של עכו"ם [עובד כוכבים] וברשות העכו"ם, וכבר קודם שישראל השתתפו עמו כבר עסק הנכרי באותו החנות א"כ נראה דמותר מכל צד. אמנם העיקר ההיתר הוא שחשוב כנותן המעות בהלוואה ושכר הריוח שמקבל הישראל הוא בתורת ריבית עבור מעותיו [...]. ובודאי שהנכרי מה שעוסק במלאכה בשבת אדעת' דנפשו לבדו עביד."

“It seems to me that [the partnership is a] secretly managed partnership even if [it is public that] they own the goods in the shop together. The proof is that if they are going to divide up and cancel the partnership, then each partner is permitted to take his share from the goods that are deposited there. Therefore it is proven that it is not fully a loan, and in any case it is regarded as if the Jew would have given the goods to the non-Jew who works in the shop on trust (*komission*) and it is also permitted even if the non-Jewish partner performs work on Sabbath in a house owned by the Jew [...]. The problem of ‘appearances’ does not apply here, because the shop itself is owned by the non-Jew and it is in his possession and even before the Jews made partnership with him the non-Jew had already worked in the same shop. Therefore it seems that it is permitted from every

aspect. However, the main cause for permission is that [the transaction] is regarded as if he [the Jewish partner] would have given the money as a loan and the profit that he receives would have regarded as interest on his money [...]. Certainly if the non-Jewish partner works on Sabbath he works only at his own will.”

In sum, “silent partnership” can be regarded as a sort of loan transaction; the Jewish partner has no share from the profit of the business made on Sabbath or Jewish holidays but he receives interest on the money he “loaned”, invested, to his non-Jewish partners.

- ◆ R. Moshe Hayyim Grünfeld, *Sefer Hayyim bi-Retzono, Orah Hayyim*, no. 9

Addressee: The brother of the author living in Nagyszőlös (Carpatho-Russ, today Vinohragyiv, Ukraine)

Respondent: R. Moshe Hayyim Grünfeld (Sajószentpéter)

Date: אור ליום עש"ק משפטים תש"ג (February 5, 1943)

"נשאלתי בב' או ג' יהודים שעשו שותפות עם ערל אחד אשר קיבל רשיון מהממשלה לעשות מכונה (פאבריק) שעושים בו כלי עצים שונות ע"י [על ידי] מכונות (מאשיענעריען) המיוחדים לזה, וגוף השותפות נעשה באופן זה שהיהודים צריכים ליתן סך מסויים אשר צריך להעמדת המכונה ולהנהלתה ובימי החול צריכים כל השותפים להיות עוסקים בהנהלת העסק, אבל בימי השבת הי' [היה] רצון היהודים לשבות מכל וכל, אבל השותף הערל אינו רוצה בשביתת העסק, ורוצה לנהל העסק ביום השבת ביחידי בלי תביעה כלל שהשותפים ישראלים יתחייבו להשלים עבודתם תחת ימי השבת בימים אחרים, ולענין חלק הרווחים וההפסדות הושוו ביניהם שהערל יהי' [יהיה] לו חלק רביעי 25%, וזהבדיל השותפים ישראלים יהי' להם חלק ג' רבעים 75%, ונפשם בשאלתם אם צריכים לעשות איזה תקנה שיהי' המלאכה בהעסק הנ"ל [הנזכר למעלה] בשבתות ויו"ט [וימים טובים] בהיתר גמור עפ"י [על פי] דתוה"ק [דין תורתנו הקודשה], יען שבעסק הנ"ל צריכים לשכור קצת שכירי חודש ושכירי יום."

“Two or three Jews made a partnership with a non-Jew who received a license from the government for setting up a factory for producing wooden objects with special machines. The partnership was made in the following way: the Jews had to invest a certain sum needed for setting up the machines and operating them. On weekdays all the partners had to be involved with managing the business but on Sabbath the Jews wanted to stop working. However, the non-Jewish partner is not interested in the cessation of work and intends to conduct the business on Sabbath alone without requesting the Jewish partners to do make-up work on weekdays for Sabbathot [when they do not work]. While making the partnership they set the conditions for sharing the profit and loss in the following way: the non-Jew would receive a quarter (25%) and the share of the Jewish partners would be three-quarters (75%). And they are anxious to know whether they should make any further provisions that the work done in the above-mentioned business on Sabbathot and on Jewish holidays would be permitted beyond any doubt, according to laws of our Holy Torah, taking into account that the business partners need to employ a few month- and day-laborers.”

The Jewish entrepreneurs made a partnership with a non-Jewish partner to run the factory together. The non-Jewish partner would work on Sabbath, and the partners would share the profit in equal shares.

[תשובה] According to the regulation of the *Shulhan Arukh*¹²⁵ making a partnership with non-Jews requires that the profit made on Sabbath belongs to the non-Jewish partner alone. According to the comment of Remah this provision is not needed in cases when the partners work together on weekdays and the non-Jewish partner works on Sabbath alone, because the non-Jewish partner works at his own will on Sabbath. Thus by sharing the profit with him every week or month after making a weekly or monthly account the Jewish partner does not violate the prohibition of enjoying the profit made on Sabbath. R. Grünfeld argues that the same applies in this case, so there is no need to set the above condition.

[אמנם] [אבל] The responsibility of employing and paying the workers falls on all the partners, but the Jewish partners are responsible for the employment only on days when they [the partners] work with their non-Jewish partner. On Sabbath, when they do not work, the responsibility falls on his partner, so the problem of employing a worker (an “emissary”) on Sabbath is solved.¹²⁶

[אכן] [עכ"פ] Rabbinic authorities in previous centuries (including the *Neta Sorek*, Maharam Schick, *Divrei Hayyim* and *Keren le-David*), all permitted the non-Jewish partner to employ workers to work on Sabbath in a business shared by Jewish and non-Jewish partners.

[אמנם] The non-Jewish partner supervises the employees on Sabbath, thus he is responsible for them and the work they perform. Jewish partners must make it clear to the non-Jewish partner that they do not intend to do any work on Sabbath and on Jewish holidays. The non-Jewish partner then may employ workers at his own will.

"ובפרט דבנדון דידן י"ל [יש לומר] כיון שהרשיון מהממשלה הוא על שם הנכרי וא"כ [ואם כן] הוא עיקר בעל העסק, ובפרט בזמנינו בעוה"ר [בעוונותינו הרבים] שאין נותנים רשיון ליהודים וידוע הוא לכל אפ"י [אפילו] להפועלים שעיקר המוציא והמביא הוא הנכרי והישראל אינו רק בעל המעות, וא"כ דומה גם להא דמבואר (בסי' רמ"ה ס"ה) דמותר לישראל ליתן מעות או סחורה לנכרי שיעסוק בה באיזה זמן שהוא הפץ, ובלבד שלא יאמר שיעסוק בשבת, והגם דצריך להיות שלא יהי' העסק ניכר לשל מי הוא דאל"כ [דאם לא כן] יש בו משום מראית עין, אבל כאן דבאמת יש בו גם משום צד שותפות ובשותפות קיימ"ל [קיימא לן] [שם ס"א ומג"א סק"ה] דליכא משום מראית עין וק"ל [וקיימא לן]."

“Especially in this case we can say that as the license given by the government is for the non-Jew, therefore he is the principal owner of the business – and specially in our times, may our sins be forgiven, when no licenses are given to Jews and it is well known to everyone, even the workers, that it is the non-Jew who manages the business and the Jew is only the investor. Therefore [the situation] conforms the ruling of the *Shulhan Arukh* (245:5) that permits the Jew to give stock or

¹²⁵ *Shulhan Arukh, Orach Hayyim* 245: 1.

¹²⁶ Referring to Moshe Sofer, *Sheelot u-teshuvot Hatam Sofer, Orach Hayyim*, no. 84.

goods to the non-Jew in order to trade with them any time he wants, on condition that [the Jew] does not instruct him [the non-Jew] to work on Sabbath, and [his] ownership of the business is not known [in public] – otherwise the problem of ‘appearances’ would arise. However, in this case where there is a real partnership, we hold that the problem of appearances does not exist.”

[לענ"ד] [והנה] The author elaborates on the need to prevent financial loss in this time of restrictive measures against Jews:

"לענ"ד [לעניות דעת] חומרא גדולה היא לוותר על רווח של שבתות, דהרי ביום א' אינם עוסקים מפני יום אידם וא"כ [ואם כן] יום השבת הוא חלק הששי מכל הרווחים והוא לערך 18% שהוא עולה לסך גדול בעסק גדול קצת, ולמה יפקיר זה ביד נכרי אם מדינא מותר להנות מהשכר, הלא התורה חסה על ממונם של ישראל¹²⁷ ומצוה להציל ממון שלו מידם ולא ח"ו [חס וחלילה] לבזבז בידם ובפרט בזמנינו בעוה"ר שפרנסות ישראל דחוקות מאוד, ולהנצל שלא יכשל באיסור אמירה לנכרי יהי השותף ישראל זהיר ברוחו שלא לעשות כן, וכדי שלא ידקדק על הנכרי הנה אם עשו שטר שותפות הרי הנכרי לא יוכל לבטל תנאי השותפות [...]. עכ"פ [על כל פנים] מהיות טוב אם אפשר בנקל להשוות עם השותף נכרי באופן המבואר (בראש סעיף רמ"ה) דיום השבת יהי' כולו שלו וע"כ [ועל כך] יקח בעד זה 18% דהיינו חלק הששי בראש ועוד 7% עבור עסקו בכל ימי החול, ויהי' סה"כ [סך הכל] 25% כמו השואה הראשונה שלהם וודאי ראוי לתקן כן שיהי' ההיתר בלי פקפוק כלל, אבל אם יש לחוש שע"ז [שעל ידי זה] יחזור הנכרי מתנאים הראשונים ויתבע חלק גדול יותר מבראשונה אז אין צריך לעשות תקנה כלל, רק שיגלו השותפים ישראלים לשותף הנכרי שרצונם וחפצם שישבתו בהעסק ביום ש"ק [שבת קודש], אמנם אם הנכרי ירצה לעשות אדעתא דנפשי' אז ישכור הפועלים לעצמו ולאחריותו וכן שכיר החודש יהי' [יהיה] ביום ש"ק על אחריותו לבד, ויען שהעסק הולך על שם הערל והוא שותף גמור ע"כ ליכא משום מראית עין כלל כנלענ"ד, בתנאי שהרב מרא דאתרא הגאון שליט"א יסכים למה שכתבתי, אבל בלעדי זאת דברי בטלים ומבוטלים ואינם כלל כמובן."

“In my humble opinion it would be a great stringency [to force the partners to close the workshop] and give up the profit of every Sabbath, as they do not work on Sunday since it is their holiday, therefore [the profit made on] the Sabbath is the sixth of all the profits, which is approximately 18%, a large amount of money in a sizeable business. So why would the Jew leave this sum for the benefit of the non-Jew if the *halakha* permits him to enjoy this profit, ‘does not the Torah have pity on the money of the Israelites?’ It even orders the rescuing of money out of their hands and not, God forbid, to waste it for their benefit. Especially nowadays, may our sins be forgiven, when the Jews’ economic position is weakened. In order not to make any mistakes and violate the prohibition of instructing a non-Jew [to perform work on Sabbath for the benefit of the Jew] the Jewish partner should be very cautious to avoid it. And in order not to be too strict with the non-Jew, if they signed a partnership contract then the non-Jewish partner would not be able to cancel the conditions of the partnership [...]. In any case for easing the matter he should make an agreement with his non-Jewish partner in the following way [Shulhan Arukh, Orach Hayyim 245]: All profits made on Sabbath would go to the non-Jew who should take 18% of the [weekly] profit – the sixth part – and an additional 7% for his work done on the workdays, that makes a sum of 25% according to their initial agreement. It is certainly advisable to make such an arrangement in order to remove any doubt concerning the permission [for the cooperation with the non-Jew]. However, if there is concern that the non-Jewish partner will not adhere to the original conditions and will request a larger share than agreed upon, then there is no need to make a regulation at all, except that the Jewish partners should tell the non-Jew that they intend to stop working in the workshop on the holy Sabbath. However, if the non-Jewish partner works at his own will, than he may employ

¹²⁷ bMenahot 76b.

workers by himself, on his own responsibility, and all the monthly workers would be under his responsibility. As the business will run under the name of the non-Jew and he is a real partner, then the problem of ‘appearances’ should not be taken into consideration, according to my humble opinion. [This ruling is valid] if the rabbi of the town, the great rabbi, may he have a good long life, amen, will agree to this, but without his consent my words are null and void.”

The addressee of the next responsum, R. Grünwald, rabbi of Nagyszőlős, expressed his objection to this permission in his responsum sent to R. Grünfeld. The text of the responsum itself was not published in the responsa collection of R. Grünfeld, but the main lines of its argumentation is reproduced in the following responsum:

- ◆ R. Moshe Hayyim Grünfeld, *Sefer Hayyim bi-Retzono, Orah Hayyim*, no. 10
Addressee: R. Shmuel Grünwald (Nagyszőlős, Carpatho-Russ, today Vinohragyiv, Ukraine)
Respondent: R. Moshe Hayyim Grünfeld (Sajószentpéter)
Date: יום ב' לס' ויקרא שנת תש"ג (March 15, 1943)

[שוב] The addressee of the responsum, R. Grünwald, brought the attention of R. Grünfeld to the fact that the Hatam Sofer expressed contradictory attitudes towards the partnership. The Hatam Sofer in one of his responsa¹²⁸ argued that if the partners work together on weekdays, and on Sabbathot the non-Jew works alone, there is no need to set the condition about the profits made on Sabbath. In another responsum, however, he gave a stricter ruling.¹²⁹

R. Grünfeld cites an opinion that solves the contradiction by pointing out the different contexts of the two decisions: The second responsum did not refer to an individual case, but to shopkeepers of Várad (Nagyvárad, Transylvania, today Oradea, Romania) who opened their shops on the basis of partnerships with non-Jews. But since the provisions of these partnerships were flawed, they violated the Sabbath. This is why the Hatam Sofer had to speak up and to rule strictly against this practice.

[יב"ש] The author argues that the Jewish partner should clarify that he does not want to allow his workers to work on Sabbath. So when the non-Jewish partner pays salaries to the workers from the money of both partners, the non-Jewish worker will not be his emissary and the work done on Sabbath does not fall under his responsibility.

[אכ"ן] The addressee of the responsum, R. Grünwald, argued that such a declaration does not work in the present case, since it is in the interest of the Jewish partners to keep the workshop open on Sabbath; if the workshop is closed on Sabbath, the partners lose their livelihoods.

¹²⁸ Moshe Sofer, Hatam Sofer, *Sheelot u-teshuvot Hatam Sofer, Orah Hayyim*, no. 58.

¹²⁹ *Ibid, Hashmathot le-Hoshen Mishpat*, no. 195.

He suggests that the Jewish partners declare before three Jewish men that despite compulsion by the government (לולי הכרח הממשלה) (i.e. its anti-Jewish Laws) the Jewish partners object to running the business on Sabbath, and it is the non-Jewish partner who is responsible for all work done on Sabbath.

[והנה] In a later letter sent to the author, R. Grünwald agrees that the non-Jewish workers would be paid according to the work they had done (קיבולת), thus they work for their own benefit, and their work does not concern the Jewish partners.

[בפרט] R. Grünwald suggested calling the non-Jewish partner a tenant (אריס) arguing that he has no real share in the business; he only receives a share from the profits. R. Grünfeld opposes this view:

"לענ"ד [לעניות דעתי] בנדון דידן לא שייך לפקפק כלל, דכאן אדרבה עיקר בעל העסק הוא הנכרי אשר קיבל הורמנא מהממשלה להעמיד העסק שהוא היסוד והראש לכל דבר עסק, והיהודים שנתנו ממון להעמדת העסק ולקניית כלי המכונות המה רק טפלים להעסק ואינם מקבלי רווחים רק עבור ממונם, והרי אם רוצה הנכרי לסלק היהודים מהעסק ע"י חזרת ממונם בכל עת ושעה יוכל לעשות כן, משא"כ [מה שאין כן] היהודים אינם יכולים לסלק הנכרי מהעסק בשום אופן כידוע, וא"כ [ואם כן] איך שייך לומר אפי' בס"ד דהנכרי לא הוי שותף הרי הוא עיקר בעל העסק, ועוד ידוע שההורמנא דמלכא על עסק מכונה הוא שוה כסף ובימים קדמונים שהי' אפשר למסור ולמכור ההורמנות היו משלמין עבור זה דמים יקרים [...]. וא"כ אם הנכרי נתן ההורמנא שלו בתוך העסק הרי נתן דבר חפץ גדול בתוך השותפות, ומה לי אם נתן מעות או כלי אומנות שלו בתוך השותפות או שאר דבר חפץ אשר הוצרך אל העסק, וע"י [ועל ידי] נתינת מעות וכלי אומנות וודאי נגמר השותפות כמבואר בחו"מ (סי' קע"ו ס"א) הכי נמי בנדון דידן, ולבר מן דין בלי ספק נעשה כן שחלק המעות אשר הי' צריך הנכרי ליתן על חלקו, למשל שהיהודים נתנו מאה אלף כסף או כ"ה אלפים אשר הי' צריך הנכרי ליתן הווקף עליו במלוה וצריך הוא לשלם מחלק רווחים שלו, וכיון דהווקף עליו במלוה הרי הוא כאלו כבר נתן המעות דוקיפה במלוה חשיבה כאלו כבר שילם וניתן לו המעות בחזרה במלוה [...], וא"כ גם בנדון דידן אם נעשה באחד מאופנים הנ"ל [הנזכר למעלה] אין לפקפק כלל בקיום השותפות."

"In my humble opinion in this case we do not have to hesitate at all, as the head of the business is the non-Jew who received the license from the government to start up the business. He is the boss and he manages the business; and the Jews who invested the money for starting up the business and to buy the machinery, have a secondary role only and they do not receive any profit but [the interest] from their money. Indeed, if the non-Jew intends to dismiss the Jews from the business he can do it by giving them their money back at any time. The Jews, however, cannot dismiss the non-Jew from the business in any event, as is well known. If so, how could you think that the non-Jew is not a real partner? Indeed, he is the head of the business, and everybody knows that the license of the state in the cutting business is worth money. In the past when it was possible to transfer the license and to sell it, people used to pay a lot for it. [...] If so, by giving his license to the business, the non-Jew has given a valuable thing to the partnership, so why is it different than giving money or his machinery or any other object needed for the business? By giving the machinery he certainly became a partner; see the regulation in *Hoshen Mishpat* (176:1) – and similarly in this case. Furthermore, he certainly became [a partner], since the money he is supposed to give for his share [in the business] – for example, the Jews gave 100,000 and the non-Jew had to pay 25,000 – is considered as given to him as a loan and he had to pay it back from his share of the profit. And since [that sum] is considered as a loan, it counts as if he has already paid the money back, because

conversion of an obligation into a loan counts as if the money has been already paid back as a loan. [...] If so, also in this case if [making the partnership] was carried out in any of the ways mentioned above, there would be no need to doubt the existence of the partnership.”

Thus the Jewish entrepreneurs of Nagyszőlös were deprived of starting up a new business, made a partnership with a non-Jewish licensee on the following way: the non-Jewish “partner” did not invest money in the business but borrowed money from his Jewish partner and planned on paying the loan back from the profits of the business.

[ועפ"י] The permission for making the partnership was given on the following three conditions: 1, The non-Jewish partner should hire the workers and the Jewish partners should declare before three Jewish men that they intend to cease running the workshop on Sabbath. 2, The Jewish partners should not enter the business at all on Sabbath to supervise the work of the non-Jewish employees. 3, The Jewish partner’s share of the profit made on Sabbath should be absorbed into the profit made on weekdays.

[ומובן] R. Grünfeld finishes his discussion with a general reflection on current social realities:

"ועל הכלל גלענ"ד [נראה לעניות דעתי] דבזמנים הקשים האלה א"א [אי אפשר] להחמיר כל כך ולבטל ח"ו [חס וחלילה] פרנסות יהודים אשר כעת הוא ביקר המציאות [...]".

“Generally, in my humble opinion in this difficult era it is not possible to make strict decisions and, God forbid, to deprive the Jews of their livelihood, which today is barely available [...]”

The *halakhic* discussion of the problem of making a partnership with non-Jews shows that according to R. Grünfeld the cooperation in the given specific case implied a real change in the course of business. The author of the responsum considered the non-Jewish *Strohmann* as the principal manager of the business, with real rights and responsibilities.

- ◆ R. Mordechai Brisk, *Shu"t Mahara"m Brisk*, vol. 2, no. 49
Addressee: R. David Horowitz (Nagyvárad, Transylvania, today Oradea, Romania)
Respondent: R. Mordechai Brisk (Tasnád, Transylvania, today Tășnad, Romania)
Without date

"הנני לתשובה בדבר פאבריקאנט טעקסטיל אשר לפי נימוסי המדינה אין נותנים ראה מאטריאל לפאבריקאנט ישראל, ומפאת זה לקח שותפים עכו"ם להפאבריק, וממילא לא אפשר שהפאבריק תשבות מעבודתה בש"ק [בשבת קודש] חוץ ממה שהשותפים עכו"ם לא יסכימו לזה, שהרי אם יראו שהפאבריק שובתת בש"ק אז יאמרו בגויים אשר ממונים ומשגיחים על שמירת חוק המדינה שהשותפות עם העכו"ם הוא ערמה ומאבד הישראל כל

זכות הפאבריק ויעץ עמי כ"ת [כבוד תורתו] כדת מה לעשות, והיות שבענין זה כבר דשו [דנו] כמעט כל הנני בקצרה במה שנוגע לעיקר ההלכה בעזהש"י האחרונים בתשובותיהם, וגם אין הזמן גורס לטייל בארוכה [בעזרת השם יתברך]."

“Here is the answer regarding the owner of a textile workshop (*fabrikant textil*). Because of state regulations the Jewish owners of textile workshops cannot get raw material (*roh material*), so he made a partnership with a non-Jew. The non-Jewish partners would not agree [to close on Sabbath], so the workshop has to operate on the holy Sabbath – also because if the workshop would be closed on the holy Sabbath, the non-Jewish officials who are appointed to supervise the implementation of the law of the state would say that the partnership with the non-Jew is fictitious. [As a consequence] the Jew will lose all his right [for keeping] the workshop. So your honored excellence consulted with me what to do, as required. As almost all the late decisors have already decided this question in their responsa and also as there are time constraints, [I give only] a short opinion regarding the essential *halakhic* matters involved in this case, by the help of the Almighty.”

This responsum written by R. Mordechai Brisk is the only one that refers explicitly to the danger of closing down the shop by the authorities if they find it closed on Saturdays.

[הן] R. Brisk refers to the *Arukh ha-Shulhan*:¹³⁰ The Jewish renter of a field is allowed to make a partnership with a non-Jew on condition that he stipulates in the beginning that the profits made on Sabbath belong solely to his non-Jewish partner. However, if the Jew had already operated the same business before he made the partnership, his non-Jewish partner would become his employee who would work for him on Sabbath from which it would be forbidden to benefit. So R. Brisk argues that this condition concerning the profit made on Sabbath is effective only if the partners became owners of the business at the same time.

The textile workshop had already been in the possession of the Jewish partner before he made the partnership with the non-Jew, so one might think that the following step should be made:

"[...] רק דעדיין יש תקנה כמו שכ' [שכתב] המחבר הנ"ל [הנזכר למעלה] שימכרהו לאיש אחר ויחזור ויקנהו בשותפות ויתנו כן בשעת עשיית השותפות מחדש [...]"

“There is still a solution as the author, cited above, wrote: The [Jewish owner of the workshop] should sell it to another [a third] man and buy it back together with his partner and at the same time they should set the conditions of making the new partnership.”

These conditions would refer to the profit made on Sabbath and on Jewish holidays. However, according to the *Shulhan Arukh*,¹³¹ the above condition has to be set in those enterprises where every partner works on a specific day. However, in shops where the Jewish and the non-Jewish partners work together during the week, and only the non-Jewish partner works on Sabbath,

¹³⁰ No. 245. Compiled and written by R. Yechiel Michel Epstein. His work is a summary of the sources of the *Shulhan Arukh* and its commentaries (1884-1893).

¹³¹ *Shulhan Arukh, Orach Hayyim* 245: 1.

they are allowed to share the profit made in the week equally, because the non-Jewish partner works at his own will on Sabbath.

[אָ] The author adds that in this case the day-workers employed by both partners also work for the benefit of both partners on Sabbath, which is forbidden.¹³² The solution to the problem was found by the *Divrei Hayyim*,¹³³ who suggests that the non-Jewish partner should employ the workers who would work for him alone. R. Brisk adds that the Maharam Schick in his responsum¹³⁴ permits the Jewish owner of a mill to have his non-Jewish tenant-miller hire day-workers for working on Sabbath.

In sum, R. Brisk rules that the Jewish owner of the workshop should write a written contract with his non-Jewish partner that he (the non-Jewish partner) is responsible to hire the workers and the non-Jewish partner should pay their wages. R. Brisk argues that operating the business on Sabbath should not be forbidden on account of the problem of appearances, because everyone in the country is familiar with the *stróman*-system. So no-one should prohibit the work of the non-Jewish workers performed on Sabbath as it is clear that the Jewish tradesman could not work without the help of his non-Jewish partner.

The next responsum of R. Yonathan Steif is extraordinary as it seems that the addressee, R. Shmuel Jungreis of Fülek, is a concerned party in the business that the *halakhic* decision concerns:

- ◆ R. Yonathan Steif, *Shu"t Mahar"i Steif*, no. 226

Addressee: R. Shmuel Benyamin Halevi Jungreis (Fülek)

Respondent: R. Yonathan Steif (Budapest)

Date: ה' ויקרא ת"ש (March 14, 1940)

"ע"ד [על דבר] שאלתו שע"י [שעל ידי] חוקי המדינה רוצה להשתתף עם נכרי, וה"פירמא" ע"ש [על שם] הנכרי ובכל שבוע עוסקים שניהם יחד רק בשבת יעסוק הנכרי לבדו, ודעת ה"ג [הדרת גאונו] שאעפ"י [שאף על פי] שעד עתה היה החנות לישראל מ"מ [מכל מקום] אין בו משום מה"ע [מראית העין] כיון שה"פירמא" עתה של נכרי וגם הסחורה היא חדשה ומשונה משל הראשונה ויעשו כתב שהישראל הוא אנגעשטעלטער."

“Regarding his question of his intention to make a partnership with a non-Jew according to the laws of the state; the firm (*firma*) would run under the name of the non-Jew. They would do business together on weekdays, but on Sabbath the non-Jew would work alone. The opinion of your honored excellence is that though the shop belonged to the Jew until now, the problem of appearances should not be taken into consideration, because the firm now belongs to the non-Jew

¹³² Ibid, 276.

¹³³ R. Hayyim Halberstam, *Divrei Hayyim*, vol. 2, no. 34. See above, subsection IV.D (Earlier *halakhic* discussions on partnerships).

¹³⁴ R. Moshe Schick, *Sheelot u-teshuvot Maharam Schick, Orah Hayyim*, no. 98.

and the merchandise has also been changed and differs from the original. The partners will make a contract stating that the Jew is an employee (*Angestelter*) [in the business].”

The first words suggest that the addressee, R. Jungreis himself, wanted to make a partnership with a non-Jew and asked advice from R. Steif regarding the matter. The firm would run under the name of the non-Jew.

R. Steif is concerned that the business belongs to its Jewish owner even after he makes partnership with a non-Jew so he first did not endorse the partnership.

[אמנם] According to R. Steif, the reality did not reflect the approach of R. Jungreis: [הנה]

"אמנם כיון שבאמת הישראל נותן המעות להסחורה והישראל מקבל האחריות ורק מפני חוקי המדינה עושה הכתב וה"פירמא" על שם הנכרי א"כ [אם כן] הישראל הוא בעל החנות והנכרי העוסק בשבת מקבל שכרו בתורת שלוהו ופועל של הישראל ומקבל השכירות מהחנות א"כ הכל נעשה בשליחותו של ישראל ואז אסור מן הדין [...]."

“However, in fact the Jew gives the money for the merchandise and it is he who takes responsibility and the laws of the state force him to write a contract stating that the firm (*firma*) runs under the name of the non-Jew. If so, the Jew is the owner of the shop and the non-Jew who works on Sabbath is paid as the emissary and worker of the Jew and receives his wages from [the profit made on Sabbath in] the shop. If so, the [non-Jew is considered] as an emissary of the Jew, which is forbidden by the *halakha*.”

The only way to evade transgressing the *halakha* while making the partnership under these conditions is to act according to the regulation of the *Shulhan Arukh*:¹³⁵ the partners should divide the profit gained on weekdays and on Sabbath to make sure that the Jewish partner does not receive any of the profits made on Sabbath. R. Steif rules leniently:

"אמנם אין אנו נוהגים ליתן היתר בזה בחנות מפני כמה טעמים מה גם עתה שא"א [שאי אפשר] לעשות כן מפני חוקי המדינה ע"כ [על כן] אין להתיר אלא אם האמת הוא שכל האחריות על הנכרי אלא אם אין לנכרי מעות רשאי הישראל להלוות לו מעות ויקבל רווחים כמו שיקצב לעצמו ובכה"ג [ובכהאי גוונא] כשימצא לנכון להתיר יש לצדד להקל כשאין חשש שח"ו [שחס וחלילה] יקילו בעצמם ע"י [על ידי] כן בענין פתיחת חנות בש"ק [בשבת קודש] בשותפות נכרי וכפי שיבין ה"ג [הדרת גאונו] לאשורו לעשות יהי ד' עמו."

“However, we do not tend to give permission regarding [making partnership with non-Jews to run the] businesses, because of several reasons, so why [would we do it differently] now, when it is forbidden by the laws of the state. For this reason we must not give permission, unless the non-Jew is really responsible for everything. But if the non-Jew has no money, the Jew is allowed to lend him money and to receive profits as he sees fit. So if you think such an arrangement is [applicable and] permitted, indeed there are good reasons to be lenient, provided that there is no suspicion, that God forbid, they will act leniently by themselves regarding opening the shops on the holy Sabbath

¹³⁵ *Shulhan Arukh, Orach Hayyim* 244.

in partnership with non-Jews. And whatever clear understanding of what should be done your honored excellence will arrive at [in the given case], the Almighty will approve it.”

- ◆ R. Menahem Sofer, *Shu"t Menahem Meshiv, Orach Hayyim*, no. 34

Addressee: Wolf Issar Solomon

Respondent: R. Menahem Sofer (Marosvásárhely, Transylvania, today Târgu Mureș, Romania)

Without date

The addressee of the responsum is a Jewish shopkeeper who lives in a village where he is the only Jewish resident. He has a non-Jewish partner and the shop runs under his partner's name. As the single Jew living in the village, he asks R. Menahem Sofer if the prohibition based on the problem of 'appearances' pertains also to his case.

R. Sofer argues that this circumstance does not make the case an exception, as visitors may come to the village any time,¹³⁶ who would suspect that the Jew opens his shop on Sabbath. As there are no other Jews in the village, the visitors cannot even get any information about him.¹³⁷ The author suggests persuading the non-Jew to keep the shop closed on Sabbath or to spread the word about the agreement between the partners in the village.

IV.I The ban on working in the bakeries on Sunday

According to the Jewish *halakhic* tradition, it is forbidden to consume baked goods baked by a non-Jewish baker except certain circumstances.¹³⁸ The consumption of bread baked by non-Jews is permitted in “times of distress” (שעת הדחק) on condition that there is no doubt about the *kashrut* of the dough. Also, the dough made by professional non-Jewish bakers and baked by them automatically becomes permitted if the Jew takes part in the process of baking or in making the fire (even if he threw only a stick on the fire).

At the beginning of the 1940s all bakers and confectioners – Jewish and non-Jewish alike – worked on Sundays. However, local decrees issued in the same year ordered bakers to cease working on Sundays and forced them to work on Sabbathot. The following responsa relate to the nationwide decree and the response of the observant Jewish bakers to the emerged situation.

¹³⁶ See the Remah, *Shulhan Arukh, Orach Hayyim* 244: 1.

¹³⁷ The ruling is based on R. Moshe Schick, *Sheelot u-teshuvot Maharam Schick, Orach Hayyim*, no. 25.

¹³⁸ *Shulhan Arukh, Yoreh Deah* 112.

The following texts report on Jewish bakers who, as the owners or renters of ovens, baked the goods or provided kosher ovens for Jewish and non-Jewish women to bake the dough they brought from home. The five responsa indicate that the decree was nationwide but its implementation depended on the local authorities. Three texts are addressed to communities of Hajdúsámson, Komárom and Szendrő. The other two responsa were sent to unknown addressees.

◆ R. Yonathan Steif, *Shu"t Mahar"l Steif*, no. 89

Addressee: Gabriel Yehuda Ilovits (Hajdúsámson)

Respondent: R. Yonathan Steif (Budapest)

Date: ב' והי' ברכה תש"ג (September 20, 1943)

A Jewish licensee, the owner of an oven, was compelled by a local decree to make bread on Sabbath.

"[...] ובעיקר הענין כיצד יש למצא היתר בענין מי שיש לו תנור שאופים בו פת ועד עתה שבת ביום ש"ק [שבת קודש], וכעת בא פקודה מהמושל שצריכין לאפות גם ביום שבת והקימו שותף נכרי והנכרי רוצה לאפות בשבת וקיבל התראה שאם לא יניח להסיק התנור ולאפות בשבת יקחו ממנו לגמרי אותו הזכות שיש לו בהתנור. והג' [והגאון] מדמה הענין למכס ומטבע שהתירו מפורש בשו"ע סי' רמ"ד. עוד כתב שע"י [שעל ידי] שהוציא כמה הוצאות על התנור חשוב כל יום כהפסד מכיסו. הנה על סברות כאילו אין לסמוך שא"כ [שאם כן] בכל עסק ובכל מלאכה יש להמציא היתר כזה, אלא שזה אמת שבצוק העתים הללו שקשה להמציא פרנסה חדשה וכל פרנסתו של הישראל תלוי בהתנור וגם חשוב כמציל מידם ע"כ [על כן] צריכין לטרוח להמציא איזה היתר בזה שלא יצטרך הישראל למחות להנכרי מלהסיק התנור גם בשבת ולאפות פת גם בשבת."

"The essence of the matter is how to find permission for the owner of an oven where [the Jewish locals of the town] bake their bread. Until now he ceased working on the holy Sabbath, and now the ruler [the mayor of the city] issued an order compelling him to bake bread on Sabbath. They even appointed a non-Jewish partner for him who intends to bake on Sabbath. [The Jewish owner of the oven] was warned that if he does not allow the heating up of the oven and baking on Sabbath, his license for operating the oven will be withdrawn. And your honour compares the case to [the case of the] tax-collector and coin minter who were explicitly permitted [to employ a non-Jew to work on Sabbath] by the *Shulhan Arukh* (244). He also wrote that he [the Jewish owner of the oven] invested in the oven, so the cessation of work causes him financial loss.

You should not rely on these arguments; otherwise you would similarly permit [work on Sabbath] in every trade or business and every type of handicraft. However, it is true that in our time of necessity when it is so difficult to start up a new business and the livelihood of the Jewish baker comes exclusively from operating the oven, [operating the oven] is considered as "save it from their hands" [i.e. save at least the oven for the Jews and not let a non-Jew take on the business, cf. bAvoda Zara 6b and parallels], thus we should make an effort to find a way of giving permission so the Jew will not have to hold the non-Jew back from heating up the oven on Sabbath and making bread."

R. Steif rejects granting general permission for all license holders based on the ruling of the *Shulhan Arukh* regarding tax-collectors and coin minters. However, he takes the poor financial situation of the baker into consideration in the discussion.

[והנה] The addressee, R. Ilovits, addresses the non-Jewish operator as a *shutaf* ‘partner’ (הגוי who works at his own will. It follows that he would not be considered as the emissary of the Jewish baker. The problem of appearances also does not apply here:

"ועפ"י [ועל פי] ציווי המושל וממילא גם אין כאן משום מראית העין או חשד שהכל יודעים כן שגזירת המושל עליהם וכמעט יש פירסום בכל המדינה בזה, א"כ [אם כן] גם בהאורחים אין לחוש למה"ע [למראית העין]."

“In accordance with the decrees of the ruler [that are spread nationwide] in any case the problem of appearances or any other suspicions should not be taken into consideration as it is well known that the decree issued by the ruler [the mayor of the city] struck them [the Jewish bakers] and [the decree] is well-known in the entire country, thus the problem of appearances does not apply, even for visitors.”

[אמנם] R. Steif’s main concern is to make sure that the profit made on Sabbath will only belong to the non-Jewish partner.

[לדעת] According to R. Steif the non-Jew made, on Sabbath, profit for the partnership and not for himself alone. It follows that the profit made on Sabbath is considered as joint income, and the Jewish licensee has a share in it, therefore the reasoning of R. Ilovits is false and the non-Jewish partner would count as an emissary (שליח) of the Jew. So the money the Jew receives for the rent of the oven on Sabbath when the non-Jew makes a profit means that the Jew is benefiting from work on Sabbath.

[אמנם] R. Steif provides another solution to the problem of the profit made on Sabbath. The Jewish partner should sell his share of the profit made on Sabbath to his non-Jewish partner for a previously defined sum. So the Jewish partner will not gain from the profit made on Sabbath.¹³⁹

[והנה] [אלא] R. Steif adds another condition: The work should not be performed in the house of the Jew, so he should rent the house where the oven is to a non-Jew.

[וע"כ] [ועיין] The author rules that the non-Jewish partner has to rent the oven for three days every week – for Thursday, Friday and Saturday or for Friday, Saturday and another day of the week – and pay to the Jewish baker a previously defined sum (בתורת אנגאבע). The rent would be agreed to the benefit of both partners. The non-Jew would receive all the income of the three days and the income of the other three days would be shared by the two (there is no income on Sundays). Following this method the Jewish partner would not be affected by the work done on Sabbath by the non-Jew. The three-day-solution makes certain that the Jew has no share in the

¹³⁹ See the decision of the *Magen Abraham, Shulhan Arukh, Orach Hayyim* 244: 8.

profit of the work done on Sabbath, because it is merged with the profit gained on the other two days and it belongs to the non-Jewish partner alone.

[וע"ד] [ומה] [וע"ד] [ולענין] At the end R. Steif relates to another concern of R. Ilovits; the author argues that non-observant Jews should not receive permission to open the bakery under the above mentioned conditions, because they will probably say that the Orthodox (פרושים) permitted opening all the bakeries regardless of the circumstances of the case, and they will open their bakeries.

◆ R. Yoel Glattstein, *Shu"t Nahalat Yoel Zeev*, no. 14

Addressee: R. Yehoshua Lefkovits (Komárom)

Respondent: R. Yoel Glattstein (Királyhelmeec, today Kráľovský Chlmec, Slovakia)

Date: ב' בלק תרנ"ן (July 8, 1940)

"יקרתך הגיעני, וע"ד [ועל דבר] שאלתך, מה נאמר, הלא כעת לעתות בצרה יולדו שאלות חדשים אשר לא שערים אבותינו. והגם שרבינו מרן הז"ס ז"ל [זכרונו לברכה] בתשו' או"ח ס' נ"ט כתב שם בסוף תשובתו, דמה שאנו מתפללים שתהי' [שתהיה] פרנסתינו בהיתר ולא באיסור, אין הכוונה שתהי' בלא גניבה וגזילה, שזה אינו בידי שמים, אלא הכוונה דברים האסורים יצטרך להתירם משום הפסד פרנסתינו, עכ"ל"ק [עד כאן לשונו הקדוש]. אמנם באמת בעת נורא, גם זה נשתנה, כי בימיו הי' [היתה] ברירה לבחור פרנסתינו בדרך ההיתר אשר יהי' [יהיה] בלי חששות, אמנם כעת אשר ידינו אסורות ורגלינו לנחושתינו הוגשו, וכל ענפי הפרנסה סגורים וחתומים מלפנינו, ואם יעזוב פרנסתו, חייו תלויין לו מנגד, כי אין מבוא לפרנסה אחרת, ד' ירחם במהרה על שארית עמו ב"י [בני ישראל] אכיה"ר.

שאלתך, ע"ד [על דבר] אופים ישראלים כשרים אשר קבלו (הרעכט) [זכות] מהמשלה, אמנם נתחדשה גזירה אשר ביום ראשון בשבוע שהוא יום אידם אסרו האפי' [האפיה], ממוש"ק [ממוצא שבת קודש] בערב 8 אוהר אסור לאפות עד ערב של יום ב' [בית], ואנשי העיר צריכין למעשה אופה, ואשר יאפו בעש"ק [בערב שבת קודש] כבר הוא ישן ומיושן ביום א' כמו (קיפ"ל וזעמי"ל) [עוגות וגלוסקאות קטנות] ומוכרחים המה לאפות בש"ק. ואין ספק כי אם לא יהי' להם ביום א' מעשה אופה הנאפה מחדש, אזי יקחו כל הזכות מהם, כי זה מגמתם ליקח אוכל מפינו, עכ"ד [עד כאן דברו]."

"I received your kind letter, and considering your question, what to say nowadays, when time of necessity has brought forth new questions that our forefathers could not even think of. Did not our rabbi and our master, the Hatam Sofer, may his memory be blessed, write at the end of his responsum (*Orah Hayyim*, no. 59) that 'we are praying that our livelihood should be in a permitted way and not in a prohibited way. And not stealing and robbery is meant [which we should pray to avoid] – since these things do not depend on heaven – but forbidden things are meant that we would need to permit in order to [prevent] losing our livelihood,' end of quote of his holy words. However, truly, in these horrible times it has also changed, because in his days it was possible to make a living in a permitted way, without fears [that the work involves religious transgressions]. However, nowadays when our hands are bound and our feet are put into fetters,¹⁴⁰ when all branches of business are closed to us, and if one ceases working for a living then one's life would

¹⁴⁰ Cf. Samuel II, 3:34.

be in danger, because one cannot enter any other profession – the Almighty may have mercy on the remnants of his people, Israel's sons, soon.

Your question concerns Jewish kosher bakers who received a license from the government, however a decree was issued that on the first day of the week [on Sunday], on their holiday, they banned baking; starting from 8 p.m. after the end of the Sabbath [on Saturday night] it is forbidden to bake until the eve of Monday [Sunday evening]. And the local population needs baked goods, because the bread as the crescent roll (*kifli*) and the roll (*zsömlé*) baked on the eve of the Sabbath [on Friday evening] is stale by Sunday so they are compelled to bake on the holy Sabbath. There is no doubt that if they will not have fresh baked goods on Sunday, their license will be withdrawn, as their [the government's] purpose is to take the food out of our mouths, end of quote.”

R. Glattstein refers to problems unfamiliar to the previous generations – still, he builds on earlier responsa that deal with similar matters. The reference to the responsum of the Hatam Sofer helps the author to distinguish between his and the Hatam Sofer's era and to argue for permission that possibly would have been rejected by the Hatam Sofer.

[הנה] The baker intended to sell the flour and the utensils to his non-Jewish partner on Friday afternoon. According to R. Glattstein the baker does not have to sell anything as the non-Jew works at his own will on Sabbath. The non-Jewish partner should not be employed as a day-laborer (שכיר יום). As for the problem of appearances, reference is made to the *Magen Abraham* and the *Turei Zahav* who both are lenient when it comes to avoid financial loss for the Jewish baker.

[אמנם] The responsum of the Riva¹⁴¹ prohibited a Jewish baker from renting out his oven and utensils before every Sabbath, arguing that by receiving the rent from his worker the Jewish baker would benefit from work performed on Sabbath.¹⁴² The Riva ruled that the baker should lend his oven and utensils for free but sell the flour for money.

However the *Teshurat S'y*¹⁴³ argued that renting the shop out for Sabbath is accepted, because the profit made on Sabbath is absorbed in the profit made on other days. R. Glattstein argues that the same applies to the case of the baker who should rent the place out to the non-Jew. R. Yehuda Aszód opposed this solution.¹⁴⁴ (מהרי"א א"ח ס"ב). However, in the present case the livelihood of the baker totally depended on the *halakhic* decision, thus the stringent view should not be taken into consideration.

The author's next responsum also refers to a baker and the problem of mixing cooked potatoes with flour:

¹⁴¹ R. Yoseph Messing (rabbi of Gostyn, Poland, 1812-1892), *Teshuvot Riva*, vol. 1, no. 11

¹⁴² *Shulhan Arukh, Orach Hayyim* 246.

¹⁴³ R. Shlomo Tabak (rabbi of Máramarosziget, 1832-1908), *Teshurat S'y*, no. 325.

¹⁴⁴ R. Yehuda Aszód, *Sefer teshuvot Mahar"l Aszód, Orach Hayyim*, no. 2 (1873).

- ◆ R. Yoel Glattstein, *Shu"t Nahalat Yoel Zeev*, no. 35

Addressee: –

Respondent: R. Yoel Glattstein (Királyhalmec, today Kráľovský Chlmec, Slovakia)

Without date

Title: בעת נורא ואיום, אשר שונאי עם בני [בני ישראל] נשאו ראש, ועם בני המה כחומר ביד היוצר,¹⁴⁵ ולחמנו נאכל במדה קצובה מעט מן המעט, ועפ"י [ועל פי] הרוב אין קמה, והננו מוכרחים לקבל הלחם מבית-האופים של נכרים אשר לא הורגלנו בזה מימות עולם, כי האופה הישראל איננו מקבל קמה ואין ביכלתו לאפות.

"In this terrible era, when haters of the Jewish people ascended to power, and the sons of Israel are 'as raw material in the hands of the creator', and our bread is rationed and is less than a minimum, and there is hardly any flour available,¹⁴⁶ we are forced to buy bread from the bakeries of non-Jews that we are not used to do since ancient times, because the Jewish baker does not receive flour so he cannot bake [bread]."

"In this terrible era, when haters of the Jewish people ascended to power, and the sons of Israel are 'as raw material in the hands of the creator', and our bread is rationed and is less than a minimum, and there is hardly any flour available,¹⁴⁶ we are forced to buy bread from the bakeries of non-Jews that we are not used to do since ancient times, because the Jewish baker does not receive flour so he cannot bake [bread]."

[והנה] The consumption of bread made by a non-Jew is permitted on condition that a Jew puts the bread into the oven.¹⁴⁷ However, in "times of distress" (שעת הדחק) the consumption of bread that has been put in the oven by a non-Jew is also permitted. Based on this regulation of the *Shulhan Arukh* R. Glattstein argues that in the present, unprecedented crisis (אין שעת הדחק גדול מזה), when there is no bread baked by Jewish bakers available, the bread of non-Jews is permitted.

[אמנם] However, the law of the state (חוק המלכות) orders every baker to add cooked potatoes (ערד-אפפע"ל) (*erd-afpel*) to the flour mix in the proportion of one to four. As eating food – also potatoes – cooked by a non-Jew is prohibited, the permission given above becomes problematic. The potatoes were cooked in the vessels of non-Jews, so theoretically it is forbidden for a Jew to consume them.¹⁴⁸ But the prohibition refers to food that is consumed by the 'nobles', and as potato nowadays is considered as simple and cheap food, its consumption should not be limited according to the *Shulhan Arukh*'s prohibition.

[ובאמת] [ושלישית] If we prohibit the consumption of the bread, there would be no other bread to consume, and humans live on bread ("ועל הלחם יהי האדם"). "In this time of distress, may the Almighty have mercy on us, we do not have to be concerned with the matters mentioned above."¹⁴⁹

¹⁴⁵ Yermiah 18:6.

¹⁴⁶ Reference to the bread tickets.

¹⁴⁷ See the regulation of the *Shulhan Arukh*, *Yoreh Deah* 112: 2.

¹⁴⁸ *Shulhan Arukh*, *Yoreh Deah* 113: 1.

¹⁴⁹ "בשעת הדחק כמו שהיא כעת, ד' ירחם, אין שום חשש בכל הנ"ל [הנזכר למעלה]".

- ◆ R. Moshe Hayyim Grünfeld, *Sefer Hayyim bi-Retzono, Orah Hayyim*, no. 24

Addressee: The rabbi and *av bet din* of Szendrő, may he live a good long life, Amen

Respondent: R. Moshe Hayyim Grünfeld (Sajószentpéter)

Without date [After April 1943]

Title: אופן היתר אפיית לחם בפסח בגזירת הממשלה במאפיה של ישראל / The way to permit baking bread on Pesah in the bakery of a Jewish baker after the decree of the government

"[...] הגנה יקרת מכתבו קבלתי, ומה שביקש ממני להודיע לו איך אני מתנהג בענין האופים יהודים דפה בימי הפסח הבע"ל [הבא עלינו לטובה] בעתים קשים האלה שהמה מחוייבים בגזרת הממשלה לאפות פת חמה בכל יום [...]"

"I received his honored letter, and he asked me to inform him how I rule regarding the local Jewish bakers during Pesah, that will come for good, in these difficult times when the decree of the government forces them to bake bread every day."

The decree on baking every day of the week (except Sunday) was in force both in Szendrő and Sajószentpéter, in Borsod county in Hungary. The Jewish baker would transgress biblical prohibitions by owning *hametz* (leaven, wheat, grains, etc.) during the holiday of Pesah.

Along with his answer, R. Grünfeld sent the rabbi of Szendrő the copy of a contract made the previous year on the selling of *hametz* before Pesah.

[אהרי] R. Grünfeld rules that the Jewish baker should rent out the oven and the rooms involved in the business (storage rooms, bakery, the shop itself) to a non-Jewish baker for all the days of Pesah. He should also transfer his license (זכות האפייה אשר קיבל מהממשלה) to the non-Jew for Pesah and write the transfer in a contract. The contract should also ensure that the Jewish baker does not lay any claim to receiving the profit made during Pesah with the *hametz* and he does not intend to receive any remuneration for the use of the oven and the rooms. However, he is allowed to receive payment for a lease of eight days for the rooms or utensils that are not connected to the *hametz*. All the responsibility and profit should belong to the non-Jewish baker during Pesah, and the Jewish baker should sell all the *hametz* to him before Pesah.

R. Grünfeld argues that this way the Jewish baker will keep his right to bake bread and at the same time fulfill all the *halakhic* obligations.

[והנה] The responsum of the *Zikhron Yehuda*¹⁵⁰ elaborating on a similar problem permitted the Jewish baker to rent his oven for a non-Jew to bake bread on the intermediate days of Pesah. The permission, though, did not refer to the days of the holiday and the Sabbath in Pesah. However, R. Grünfeld was concerned that this time was different:

"אמנם בזמנים הקשים האלה בעוה"ר [בעוונותינו הרבים] אשר הממשלה מקפידה מאד שיהי' לבני היישוב לחמם לפי הטף כסדרן בלי מפריע ומי שמבטל מענישים אותו בעונש חמור ולוקחים זכות פרנסתו [...], ומכח זה

¹⁵⁰ R. Yehuda Grünwald (Bonyhád, 1848-1920), *Sheelot u-teshuvot Zikhron Yehuda*, no. 124.

נלענ"ד [נראה לעניות דעתי] דיש להתיר שילך הישראל כפעם בפעם אל הנכרי האופה ולראות מעשהו אם עושה מלאכתו כפי פקודת הממשלה, ויכול ג"כ [גם כן] להשגיח עליו שלא יגנוב מהקמח דהיינו שיעשה בחוה"מ [בחול המועד] עמו חשבון על הפתקאות בלאקען שמכר עליהם הלחם [...]"

“However, in our difficult era, due to our many sins, when the government strictly insists on the proper supply of bread to the locals and their children without any hindrances, those who stop working [baking bread] get punished by a great punishment and their licenses are withdrawn [...]. Thus in my humble opinion permission should be given to the Jew to visit the non-Jewish baker from time to time and check whether he is performing his work according to the order of the government; he can even supervise him so he will not steal flour, for example [the Jewish baker] could make calculations based on the receipts (*bloken*) used in selling bread.”

Had the bakers not made bread on the last two days of the holiday (on Monday and Tuesday in that year),¹⁵¹ the residents of the town would have lacked bread for four consecutive days.¹⁵²

[ועפ"י] The bakers of the town of the addressee, Szendrő, would rent their bakeries to non-professional non-Jews, concerned by the possibility that professional bakers would want to stay in the business even after the end of the holiday.

[יהנה] R. Grünfeld affirms the right of the Jewish baker to sit in the bakery and supervise the baking process.

[אמנם] The author argues for renting the business to a professional and the signing of a contract as follows:

"ולענין הנכרי המסיק יכתוב בשטר המכירה שעושה עמו להדיא שהישראל מקבל על עצמו מלאכת דביקת הפת בתנור בחנם בלי שום החזקת טובה כלל [...]"

“And as for the non-Jewish fire stoker, [the Jewish baker] should write in the bill of sale (*shtar mekhirah*) that he himself will undertake the job of putting the bread into the oven, without asking for any remuneration.”

To sum up: As the time is considered as “time of great distress” (שעת הדחק גדול), and because the Jewish baker was threatened with losing his permit, he was allowed to rent his bakery to a non-Jewish baker.

¹⁵¹ In 1943 the last two days of the Holiday fell on Monday-Tuesday (April 26-27).

¹⁵² This implies that there was a Sunday ban on baking in force in the town, so the bakers could not bake from Sabbath evening until Monday.

- ◆ R. Mordekhai Vorhand, *Shu"t Beer Mordekhai, Yoreh Deah*, no. 13

Addressee: –

Respondent: R. Mordekhai Vorhand (Nyitra, today Nitra, Slovakia)

Date: מוש"ק פ' ובירך את "לחמך" (ולא פת עכו"ם) ואת מימך תש"ב (February 14, 1942)

Title: בלא נמצא אופה ישראלי. שו"ע יו"ד סי' קי"ב סעיף י"א / Missing a Jewish baker. *Shulhan Arukh, Yoreh Deah* 112: 11

"בהיות כי עת צרה היא ליעקב, ולא נמצא אופה ישראלי, ואופין הישראלים רק אצל עכו"ם, כי אינם מקבלים לחם כדי חיותם ומוכרחים לקנות קמח ביוקר וכו', ופלוטר נכרי אינו מניח להשליך קיסם בתנור."

“As it is a time of trouble for Jakob [for Jews]¹⁵³ and there are no Jewish bakers to be found, and the Jewish customers make their dough baked at non-Jews’, because [the Jews] do not receive bread for living,¹⁵⁴ they are forced to buy expensive flour etc. And the non-Jewish baker does not allow the Jews to throw a sliver to the oven [in order to cooperate in making the fire, which makes the cooked food or bread permitted for Jews].”

The local authority did not provide flour for the Jewish bakers, so they were forced to close their small family businesses. However, the option of taking their dough to the non-Jewish owner or renter of an oven still existed, but this option raised *halakhic* questions.

[והנה] The *Shulhan Arukh* prohibits the consumption of bread or similar baked goods baked by either a non-Jewish, professional baker (פלוטר), or by a private individual in his house (בעל בית) due to concerns of socializing (קירוב), which may lead to intermarriage (חתנות). However, in the case of professional bakers the *halakhic* authorities were more lenient.

[והנלפענ"ד] R. Vorhand argues that in this era it is also permitted to consume bread baked by a non-Jewish professional baker.

[ועייניח] Rashba and R. Sheshet¹⁵⁵ referred to an order that forced all the bakers to bake in *forni*;¹⁵⁶ these Sephardi authorities permitted the consumption of the bread on condition that the bakers were professionals and worked in a place that was set up for baking in a public place (רשות) (where there was no danger of social intermingling with non-Jews).

[אולם] The *Yeshuot Yaakov*¹⁵⁷ in the Ashkenazi community of Lvov permitted the members of the community to consume bread baked by the non-Jewish baker on the first day after Pesah, when there was no bread baked by Jews available. In his time it was a widespread custom not to consume bread baked by non-Jewish professional bakers (פת פלוטר).

¹⁵³ Reference to Yermiah 30:7 (with the continuation): “(...) and it is a time of trouble unto Jacob, but out of it shall he be saved”.

¹⁵⁴ Reference to the bread tickets.

¹⁵⁵ R. Isaac ben Sheshet, *Teshuvot Rivash*, no. 514.

¹⁵⁶ In the Roman oven called *forni* a wood stand was used for baking the dough. The *Avoda Zara* tractate (bAvoda Zara 38) considers the bread baked in *forni* as unwanted, detested food eaten by non-Jews.

¹⁵⁷ R. Orenshtein, Yaakov, *Yeshuot Yaakov* (on the *Shulhan Arukh*), no. 3.

[האיידנא] R. Vorhand argues that the same permission can be applied to the present situation where there are no Jewish bakers to be found:

"האיידנא הוה כל העיר בכלל זה והותר, כי עיקר הגזירה משום חתנות, ועתה שכל העיר כן הוא, ואין שום קירוב הדעת אצלם, הוא ממש כעניינא דישועות יעקב הנ"ל [הנזכר למעלה] שהתירו שהוה במקום שאין פלטר ישראל מצוי."

"Now [those circumstances mentioned by the *Yeshuot Yaakov*] apply to the entire city, so it is permitted [to consume bread baked by non-Jewish bakers], because the rabbinical decree aimed at preventing marital connections [between Jews and non-Jews]. But now as all the city [is lacking Jewish bakers], and they do not intend to socialize with us, the situation is exactly that described by the *Yeshuot Yaakov* quoted above, who permitted it in places where there are no Jewish bakers to be found."

R. Vorhand adds that the commentators on the *Shulhan Arukh* suggested that if someone had made the oven kosher once and it had been run continuously since then, the consumption of bread would have been permitted. If Jews who brought their dough and gave it to the baker were prevented from throwing a stick to the oven, they were still permitted to eat the bread if at least one of them did throw a stick into the fire.

IV.J Lorry drivers and carters

Paragraph 13 of the second anti-Jewish Law (1939: IV) regulated the share of Jewish employees in the public transportation service. The law explicitly prohibited the issuing of a transportation license to non-Jews who attempted to obtain the license in order to pass it on to their Jewish partners; the legislators were well aware of this widespread evasive practice.

The following responsum of R. Mordekhai Brisk elaborates on the *halakhic* consequences of Paragraph 13 of the law and the *halakhic* problems of making a partnership in the transportation business.

- ◆ R. Mordekhai Brisk, *Shu"t Mahara"m Brisk*, vol. 2, no. 36

Addressee: R. Naphtali Hertzko Bernstein (Kraszna, Transylvania, today Crasna, Romania)

Respondent: R. Mordekhai Brisk (Tasnád, Transylvania, today Tășnad, Romania)

Without date

"[...] בנדון מרכבת משא לאסט אויטא שמצד חוק המדינה לא יקבל ישראל רשיון על עסק זה רק בשותפות עכו"ם וכן נעשה אצלך שנכתב ונחתם על שם העכו"ם והוא מקבל עבור חלקו סך ידוע לחודש, ומצדך אתה רוצה שישבות בש"ק [בשבת קודש] רק העכו"ם ממאן בדבר באשר הוא חושש שיאבד זכותו מצד הממשלה וע"כ [ועל כן] עובד עבודתו גם בשב"ק ושאלת אם מותר לך ליהנות ממה שירויח העכו"ם בשב"ק. [...]"

“Regarding trucks [Yidd. *last oyto*], as according to the law of the state Jews cannot get a license for this business unless they make a partnership with non-Jews and it was carried out accordingly, namely that the [business] was issued to the non-Jewish [partner] [the business runs under his name] and he [the non-Jew] receives a fixed price every month for his contribution; and you want him to stop working on the holy Sabbath but the non-Jew refuses [to stop working], because he is concerned about losing his license received from the government, and therefore works on the holy Sabbath. Your question is whether you are permitted to enjoy the profit the non-Jew makes on the holy Sabbath.”

It is possible, that the addressee himself, R. Bernstein, intended to run a transportation company and turned to R. Brisk to ask permission to make a partnership with a non-Jew. The text of the responsum does not refer to the fact that the partnership came into being in order to evade the law of the state.

[השאלה] In the view of the author the problem concerns the following three questions: 1, whether the non-Jewish driver is permitted to work for a fixed monthly fee; 2, whether the Jewish partner's share of the profit made on Sabbath was absorbed in the profit made on weekdays, in other words how to avoid the Jewish partner benefiting from work done on Sabbath; 3, whether it is permitted to perform any work on Sabbath with the vehicle of the Jew.

[א] Answering the first question, R. Brisk validates the argument that having a day of rest on Sabbath is a clear indication to the authorities that the Jews stand behind the business. Losing the license would cause the collapse of the business and the loss of the livelihood of both partners:

"וא"כ [ואם כן] ודאי מקפיד שאם יבא איזה שר מהשרים המושלים וישכירוהו לשאת משא ביום השבת שיעמוד הכן לשרתו [...]."

“If so, the Jewish partner certainly insists that if a top officer comes and hires him to transport a load on Sabbath, he will be at his service.”

Obviously the loss of livelihood of the Jewish partner would directly cause the loss of livelihood of his non-Jewish partner too. Had the non-Jewish partner not worked, he would have lost his livelihood. It follows that he works at his own will on Sabbath, argues R. Brisk. The problem of “appearances” (מראית העין) should not be taken into consideration despite the fact that the Jewish partner owned the truck from the beginning. The reason is the following:

"מ"מ [מכל מקום] כיון שנתפרסם שאין ישראלים מקבלים רשיון ע"ז [על זה] אם לא שישתתף עם העכו"ם, א"כ הכל יודעים שיש לעכו"ם חלק בהשותפות, ובאמנה הוא שותף כפי הצעת השאלה רק לפי שאין העכו"ם יודע לחשב חשבונות הוא מקבל עבור חלקו סך ידוע לחודש [...]"

“In any case as it is well known that Jews do not receive a license [for operating a public transportation business] without making a partnership with a non-Jew. Therefore everyone knows that the non-Jew has a share in the partnership and according to the suggestion of the question he [is mentioned as] a partner in the agreement. And as the non-Jew is not proficient in calculating the accounts, he receives a fixed sum every month in exchange for his work.”

[ב] אמנם) The most important question is how to avoid the Jewish partner benefiting from the work performed on Sabbath. Maharam Schick¹⁵⁸ permitted the Jew to enjoy the profit made on Sabbath, arguing that the non-Jewish partner who works on weekdays and on Sabbath merged the money earned on Sabbath with the money earned on weekdays. R. Brisk adds that this permission refers only to cases where the partners are equal in the business. (Benefiting from the profit made by the non-Jew on Sabbath would be prohibited if he was only the employee of the Jew without any responsibilities in the business.)

The *Shulhan Arukh*¹⁵⁹ [בענין] [אשר] [והן] prohibits the performance of any work with tools owned by a Jew to avoid making noise on Sabbath. The author admits that there is no bigger noise than the sound of the truck transporting goods. However, he does not prohibit the work of trucks on Sabbath, referring to the Remah who disregarded the problem of noise in order to avoid great financial loss.

As it is permitted to continue the transportation business with the help of a non-Jewish partner who works on Sabbath, it is also permitted to let him use the truck of the business (which was originally of the Jew alone) to retain his license.

In the appendix to the responsum R. Brisk states that he did not decide in the matter *le-maaseh*, namely he arrives at a theoretical conclusion and not for practical application. He wrote his responsum in a discussion of a *halakhic* problem with the addressee, R. Naphtali Hertzko Bernstein.

¹⁵⁸ R. Moshe Schick, *Sheelot u-teshuvot Maharam Schick, Orah Hayyim*, no. 96.

¹⁵⁹ *Shulhan Arukh, Orah Hayyim* 252.

The next responsum, by R. Yisrael Landau refers to a carter, the owner of a cart and horses who was forced to transport goods on Sabbath:

- ◆ R. Yisrael Landau, *Shu"t Bet Yisrael, Orah Hayyim*, no. 39

Addressee: R. Yehuda Gottlieb (Miskole)

Respondent: R. Yisrael Landau (Edelény)

Without date

According to the *Shulhan Arukh*, making animals work on Sabbath is a transgression of a biblical law.¹⁶⁰ The *Magen Avraham* permitted the renting of the horses and cart to a non-Jewish partner (and not to an employee) on condition that he would not transport goods belonging to the Jew.

R. Landau refers to authors who prohibited this practice, but argues that this case is different, because the authorities threaten to withdraw the Jewish carter's license. So he relies on the decision of the *Shvut Yaakov*¹⁶¹, who permitted the Jew to sell his cart and horses to a non-Jew before Sabbath.

However, R. Landau is reluctant to give permission, and refers to his own experiences:

"[...] וכן בזכרוני שבימי בחרותי בעת שבא הגה"צ [הגאון הצדיק] ז"ל [זכרונו לברכה] לאב"ד [לאב בית דין] לוואלאווע הי' "השטילריכטער" מכריח את בעלי "פיאקער" שהי' להם "איפאר" ורשיון על זה לנסוע עם בני אדם ואמר להם שאם לא יסעו עם הפיאקער שלהם בשבת יקח מהם הרשיון האיפאר ועשה להם אז היתר ע"י [על ידי] שטר מכירה שימכרו סוסים "ופיאקער" שלהם לעכו"ם אבל סוף לאחר זמן הרבה נתחרט כי ראה המכשולה שיצא מזה והחזיר את ההיתר ואסר להם כן בזכרוני ע"כ [על כן] יש ליישב בדברים כאלה ובכל ההתרים לשבת מקודם שנותנן ועל כן לא יאמר שום היתר בשמי אם לא ח"ו [חס וחלילה] בעת שיהי' מוכרח נדבר עוד הפעם מה נעשה וגם נשמע מה נגמר באסיפה של הרבנים בפעסט יצ"ו [ישמרם צורם ויחים] ואז נעייין עוד הפעם להלכה ולמעשה אבל לדעתי הואיל ואידחה אידחי שהשי"ת [שהשם יתברך] יעזור שיהי' נדחה הגזירה כי זכות שבת ימליץ בעד ישראל למעלה שידחה גזירה זו וכל שאר גזירות ונוכה בקרוב לישועה קרובה ולגאולה שלימה בבי"א [במהרה בימינו אמן] [...]"

"I remember when I was young, in the same year when the wise and righteous rabbi of blessed memory was elected to the *bet din* of Volove¹⁶² the magistrate of town (*stilrichter*) forced the *fiaker* (*fiaker*) owners who had trade licences (*ipar*) and permits to transport people [to work on Sabbath]. [The magistrate] told them that if they will not work on Sabbath he will withdraw their *ipar*-license, so [the rabbi] gave permission by using the bill of sale (*shtar mekhirah*) to sell their horses and the *fiaker* to a non-Jew. However, after some time he [the rabbi] regretted this, because he saw the obstacles, so he revoked his permission and prohibited it for them, as fas as I remember. If so, we should thoroughly discuss this matter and all the problems concerning Sabbath before giving permission. I will, therefore, not give any permission until – God forbid! – we will be forced to

¹⁶⁰ Ibid, 246: 16.

¹⁶¹ Responsa of R. Yaakov Reischer (1661-1733), rabbi in Galicia.

¹⁶² Volove is a small town in the Lvov district, Ukraine.

discuss again what to do [in the future], and until we know the outcome of the rabbinic assembly in Pest, may the Almighty keep them in good health, and then we should consider again both the *halakhic* and practical results.¹⁶³ However, in my view, with the help of the Almighty, the decree (*gezera*) will be withdrawn as the Almighty will cause the repeal of this decree and all the other decrees, thanks to the Jews who observe the Sabbath, may we reach salvation and complete redemption in the near future – speedily in our own days, Amen! – in accordance with his [the addressee’s] and his comrade’s desire. (...)”

IV.K Agriculture – Making a partnership with non-Jews in businesses related to field work

For Jewish tradesmen and craftsmen whose licenses were not renewed, three choices remained: to give up the idea of making a living legally, and to evade the law by making a fake partnership with non-Jewish licensees; or to start up a new business in agriculture. The third option: operating of a cottage industry (*háziipar*) was also open to Jews, as its practice did not require a license. The regulation concerning a cottage industry was very strict: it had to be practiced at home, manually, without using machines, and only in sectors that did not require any qualifications.

According to law this job could serve only as a secondary source of income, and on condition that they worked independently or with family members and sold the goods to tradesmen. The crafts included rug weaving by knotting, washing clothes, knitting or crochet work (without a machine), making ties, candles or slippers. Knitting of angora wool was also permitted on condition that it was not done by using any weaving machines.¹⁶⁴

The other area of financial activity that did not require a license was gardening. Also the selling of farm produce was allowed, even in shops owned by Jews who grew the fruits and vegetables themselves. (They were not classified either as tradesmen or craftsmen by the law.)

The Jewish population was entitled to possess landed property since 1860 in Hungary.¹⁶⁵ Jews had a dominant role in establishing modern, well-equipped estates and by 1916, 11 percent of the cultivated areas in Hungary belonged to Jewish owners;¹⁶⁶ the Jews living in Hungary commonly participated in this process as tenants of landed property owners.

¹⁶³ On the gathering of Hungarian Orthodox rabbis see the responsa of R. Ephraim Billitzer and R. Yisrael Landau in subsection IV.E.

¹⁶⁴ On the regulation of cottage industry see the article of Dr. Frigyes Groszmann in *Orthodox Zsidó Újság* (Orthodox Jewish Newspaper), vol. 3, nos. 5-6 (February 1, 1941).

¹⁶⁵ A summary of the implementation of the law and its consequences: László Csősz, “Földreform és fajvédelem: a negyedik zsidótörvény végrehajtása”, Judit Molnár, ed., *A holokauszt Magyarországon európai perspektívában* (Budapest: Balassi, 2005), pp. 176-192.

¹⁶⁶ *Ibid.*, p. 177.

According to the estimation of László Csósz, in the 1940s there were thousands of Jews who made a living based on landed property or directly from agriculture. The second anti-Jewish Law subjected the acquisition of landed property by Jews to the permission of the authorities (15. §.). The law also made it legal “to let the authorities use the landed property” of Jewish owners, i.e. made possible for the authorities to confiscate Jewish landed property (16. §.).

The fourth anti-Jewish Law (Law 1942: XV), implemented on September 6, 1942, compelled the Jewish owners and enterprises “of Jewish possession” (1. §.) to “lend” their landed properties to the authorities (3 §.). In order to secure the continuity of production the law treated Jewish tenants more leniently than the Jewish owners of landed property. Paragraph 13 of the law subjected the right to lease landed property by Jews to the permission of the Ministry of Agriculture but endowed the Ministry to abrogate the contracts of Jewish tenants.¹⁶⁷

The following two responsa written by the rabbi of Tasnád, R. Mordechai Brisk, attest that the *stróman* method, that was so effective in businesses of trade and crafts, also successfully served the Jewish tenants of land property. The threatened Jewish tenants made a partnership with non-Jews in order to secure their livelihood.

The observant Jewish tenants had similar problems to their fellow Jewish craftsmen or tradesmen. Their problems were unique in one aspect: the agricultural plants mostly employed non-Jewish day-workers (or seasonal workers), which made operating a “Jewish” business difficult after making a partnership with non-Jews.

- ◆ R. Mordechai Brisk, *Shu"t Mahara"m Brisk*, vol. 1, no. 75

Addressee: –

Respondent: R. Mordechai Brisk (Tasnád, Transylvania, today Tășnad, Romania)

Without date

"נשאלתי בדבר שותפים ישראלים ששכרו מדי שנה בשנה את הארענדא והי' שובתים בש"ק [בשבת קודש] מחרישה וזריע' ומכל מלאכות האסורות, ועתה בשנה זו לא הי' באפשר לשכור השדות בעצמם והוכרחו ליקח שותף אינו יהודי והוא אינו רוצה בשום אופן לשבות בשבתות וימים טובים, ושאלו כדת מה לעשות כי זה עיקר מחייתם ואין להם עסק אחר."

“I was asked regarding the case of Jewish partners who rented the right to cultivate the land (*árenda*) every year and ceased plowing and sowing and performing any other forbidden work on the holy Sabbath. Now, this year it was not possible for them to rent the fields alone so they were forced to take a non-Jewish partner, but he absolutely does not want to cease working on Sabbath and on [Jewish] holidays. Therefore they [the Jewish partners] asked what they should do as it is their only source of income.”

¹⁶⁷ Cf. Paragraph 13 of the law 1942. XV and the decree on the implementation of the law 3600/1943. ME 68–69. §. See Csósz, *ibid*, p. 187.

The partnership of the two Jewish partners was made before the anti-Jewish Laws were introduced.

[הנה] The author lists the *halakhic* problems related to the case as follows: 1, whether it is permitted to make a partnership with the non-Jew; 2, whether it is permitted to benefit from his work performed on Sabbath; 3, whether the workers employed by the partners are permitted to perform any work on Sabbath; 4, whether there is permission to make the horses and oxen partly owned by the Jewish partners work on Sabbath; 5, whether performing work on Sabbath should be prohibited because of the problem of “appearances”.

The partners should make an agreement about the division of the profits when they make the partnership, argues R. Brisk, referring to the decision of the *Shulhan Arukh*.¹⁶⁸ The non-Jewish partner would take his share of the profit he makes on Sabbath, and the Jewish partners for the work they perform on weekdays. The non-Jewish partner would be responsible for the work performed on Sabbath both by the workers and the animals.¹⁶⁹ As the Jewish partners had owned the animals before the beginning of the new partnership, the method explained below has to be followed:

"אין תקנה אחרת רק להקנות לאיש אחר ולחזור ולקנותו ממנו כמו בקרקע, ולדעתי עצה היעוצה בזה הוא שימכרו הישראלים את שלהם ויקחו מחדש עם שותף הגוי בהמות הנצרכות כי בדור הפרוץ הזה צריך לעשות גדרים וסייגים למען לא ילמדו להתירא בכגון דא [...]".

“There is no other way but to transfer the ownership [the animals] to someone else and to buy them back from him as [in the case of] the field. I think the best thing to do is that Jews should sell their [animals] and buy back the animals with the non-Jewish partner, because in this [religiously] corrupt generation we must put protective barriers and fences so they will not learn to permit for example in this case.”

The responsum suggests that the partnership was made legally. R. Brisk anticipates that everyone knows that until the making of the partnership with the non-Jewish partner there was no work performed on Sabbath and it is the non-Jewish partner who employs the workers who work on Sabbath.

¹⁶⁸ *Shulhan Arukh, Orach Hayyim* 245.

¹⁶⁹ *Ibid*, 246.

- ◆ R. Mordekhai Brisk, *Shu"t Mahara"m Brisk*, vol. 2, no. 95

Addressee: R. Yitzhak Kropper

Respondent: R. Mordekhai Brisk (Tasnád, Transylvania, today Tășnad, Romania)

Without date

"לתשובת יקרתו בדבר אחיו הגדול החו"ב [החרוף ובקיא] החסיד מו"ה [מורינו הרב] אברהם פרץ שיחי' אשר זה הרבה שנים מתפרנס משכירת גינות ופרדסים, אשר יתעבדו ע"י [על ידי] שכירי יום פועלים עכו"ם, והיא עבודה רבה שיצטרך לזה כלים מכלים שונים ומשונים סוסים ושורים להוליך הפועלים וכלי אומנתם מגן לגן וכל אלה של אחיו, ועתה בימים האחרונים מפאת החקים החדשים אשר נתחדשו נאלץ להתחבר עם שותף נכרי אשר משכורת הגינות יכתבו על שמו בערכאותיהם והריוח לחצי היינו אחר נכיון כל ההוצאות של השותפות ובין ההוצאות יחשב גם מה שמשלם השותפות לאחיו בעד הכלים והבהמות, ועתה רוצה שותף הנכרי לעבוד עבודתו גם בש"ק [בשבת קודש] ושואל אם יש אופן היתר לזה [...]."

“Answering to his honored question regarding the matter of his sharp and learned older brother, our righteous teacher and rabbi, Avraham Peretz, let [the Almighty] lengthen his life, who has been making a living for many years now from renting fields and orchards that he cultivates by [employing] non-Jewish seasonal day-workers. This extensive work requires many different and diverse tools, and horses and oxen to transport the workers and the working tools from field to field and all this [the tools and the animals] belong to his brother. Recently, as a consequence of new legislation, he was forced to make a partnership with a non-Jew who will rent the fields and the business will run under his name in their courts and the profits will be shared between the two after calculating the expenses of the partnership. The money his brother receives from the enterprise for the tools and the animals is also taken into consideration. And now, the non-Jewish partner intends to work also on the holy Sabbath and he [the addressee of the responsum] asks whether it is permitted.”

The responsum refers to the case of Avraham Peretz, the brother of the addressee, R. Yitzhak Kropper. The non-Jewish partner represents the enterprise to the authorities; the presence of the Jewish partner, the original owner of the enterprise, remains hidden. The Jewish “partner” has an income from renting out the tools for the enterprise and he is getting paid from the income of the enterprise.

The author’s first reference is the *Shulhan Arukh*. The regulation on setting a condition about sharing the profit applies only when the Jewish partner works on weekdays and his non-Jewish partner only works on Sabbath. In the case where they work together all the week, and on Sabbath the non-Jewish partner works alone, there is no need to set such a condition, because the non-Jewish partner works at his own will on Sabbath.

[אכן] However, this case is different, argues the author, because there are day-workers who perform work on Sabbath for the benefit of both partners. The solution to the problem was discussed by the *Divrei Hayyim* who argued that the non-Jewish partner has to employ the workers, who always work for the benefit of those who hired them.¹⁷⁰

¹⁷⁰ R. Hayyim Halberstam, *Divrei Hayyim*, vol. 2, no. 34.

This solution would not work in this case as the non-Jew was only a ‘fictitious’ partner who did not take part in managing the business. He was even not present in the orchard, so it was the brother of the addressee, R. Avraham Peretz, who had to hire the workers day-by-day, therefore the workers performed work on Sabbath for the benefit of both the Jewish and the non-Jewish partner.

[והיות] The problem is that the Jew was the sole owner of the business. Therefore, even if the contract made by the partners stated that it was the responsibility of the non-Jewish partner to hire the workers, the non-Jew became the emissary of his Jewish partner so all the income accrued by the workers hired by him was forbidden to the Jewish partner. However, the author manages to prove that this argument has no relevance to this case: the Jewish partner is not the owner of the land, but a tenant, so he has to renew his contract every year with the owner of the land. It follows that he can easily set the conditions with his non-Jewish partner regarding the day-workers while making the new yearly contract.

[הארכת] The ownership of the horses and oxen remains problematic. The animals were already in the possession of the Jewish partner before the partnership was made. The decision in any other case would be to sell the horses to a third party and to buy them back in the name of the partnership. However, as the case involves the very observant R. Avraham Peretz, whom the author respects, he suggests another solution that would surely not raise the suspicion of the addressee: Peretz should sell the horses and the carts to his non-Jewish partner and pay a monthly fee to him, in proportion to his share in the business, for using them on the weekdays.

IV.L Breeding angora hares as a new Jewish occupation

A few Jewish tradesmen and craftsmen living in the countryside, who had lost their licenses, undertook the task of starting up a new agricultural business of breeding angora hares. The fur of the angora was very valuable, and the living conditions of Jews of the countryside made operating this business possible. There were no legal obstacles to starting up a business in breeding angora as the numbers of Jewish applicants for new licenses in agriculture was not limited.

The Hungarian Jewish Welfare Bureau (MIPI – Magyar Izraeliták Pártfogó Irodája), the relief organization of Hungarian Jewry that came into existence in 1938 with the participation of every religious stream and the Zionists, subsidized the retraining of Jews who had lost their living due to the discriminatory policy of the establishment. The aim of the organization was to provide

financial aid for those Jews who chose to make a living in the agricultural sector.¹⁷¹ The occupation that received most of the funds from the organization was the breeding of angora hares, because there was relatively small opposition from the Hungarian countrymen, who were not interested in entering this relatively new field of animal husbandry.

The angora hare is a non-kosher animal, so the observant Jews had to cope with the *halakhic* problems that the breeding of this animal involved. The responsa referred below deal with trading and castrating. The responsa of R. Moshe Lemberger of Makó, R. Joseph Asher Pollák of Verpelét, R. Shimon Altmann of Paks and R. Zeev Ginzler of Fehérgyarmat relate to the problem of trading in non-kosher animals. The responsum of R. Mordekhai Brisk deals with the question of whether it is permitted for the Jewish owners of angora hares to have a non-Jew castrate the hare.

- ◆ R. Mordekhai Brisk, *Shu"t Mahara"m Brisk*, vol. 2, no. 57

Addressee: R. Yisrael Bleier (Nyírbátor)

Respondent: R. Mordekhai Brisk (Tasnád, Transylvania, today Tășnad, Romania)

Without date

Castration is in the category of a biblical prohibition; the Hatam Sofer and the Maharam Schick both prohibited castration of animals owned by Jews, however, according to the responsum of *Beth Shlomo* there were contemporary rabbis who argued for permission.¹⁷²

R. Brisk argues that castration is problematic even if it was performed by a non-Jew, because if the Jew paid for the castration the non-Jew would be considered his emissary. Selling the hare to the non-Jew before the process would be considered a devious practice that would not help.

In the end R. Brisk states that castration of a hare in Jewish possession by a non-Jew could be permitted only if it is done in order to avoid great financial loss. As in this case the Jewish owner of the hare does not lose money by not letting the hare being castrated, it is better to avoid castration.

The *halakhic* problem of breeding angora hare is clearly worded in the responsum of R. Joseph Pollák sent to R. Shimon Altmann.

¹⁷¹ On the historical background see the article of Frojimovics, Kinga, "Angórányúl-tenyésztés," pp. 5-25. The article gives a summary of the responsa of R. Shimon Altmann, R. Yehuda Altmann, R. Moshe Lemberger and R. Mordekhai Brisk.

¹⁷² *Sheelot u-teshuvot Beth Shlomo*, vol. 2, no. 147.

- ◆ R. Shimshon Altmann, *Shibbolet ha-Nahar*, 58

Addressee: R. Shimon Altmann (Paks)

Respondent: R. Joseph Pollák (Verpelét)

Date: [1939]

"ובדרך אגב הנני בזה לשאול את חו"ד [חוות דעתך] הטהורה להלכה ולמעשה בענין אשר נשאלתי מת"ח [מתלמיד חכם] ירא ד' אחד אשר פרנסתו נתמעטה ר"ל [רחמנא ליצלן], ובצוק העתים קשים האלו קשה מאד ואולי אי אפשר להשיג רשיון על מסחר חדש, ע"כ [על כן] יעצו לו היות שהתחילו במדינתנו הרבה להתעסק בגידול ארנבת "אנגרא", והוא מין ארנבת שיש לה צמר גדול צה ונקי מאוד, אשר דמי שוי' עולה להרבה והרבה יותר מדמי צמר רחלים, וגוזזים אותו הרבה פעמים בשנה ומתפרנסים מדמי צמרו, ועיקרי הארנבת אינם עומדים לאכילה כלל כי אם לגדל צמר, רק מאחר שפרים ורבים מאוד מוכרחים למכור מהם ורוב הקונים קונים אותם ג"כ [גם כן] לגדל צמר, אולם יש גם מעוט הקונים אותם לאכילה, ועיקר השאלה כאן אם אין כאן חשש איסור סחורה בדבר האסור וגידול דבר טמא, והאם מותר גם לאיש אשר רוצה לצאת י"ש."

"By the way, I ask your opinion, on a theoretical as well as a practical level, regarding a problem I was asked by a God-fearing *talmid hakham* [a learned man] whose income was reduced, may the Almighty protect us, and in these difficult and needy times it is very difficult or even impossible to gain a license for a new business. If so, he was advised to breed angora hare as many in our country have been doing. Angora has thick, pure and very clear fur, fur that is much more valuable than that of the lamb. They shear him many times a year and make a living from the fur. The meat of the hare is generally not consumed, and they breed [the hare] for its fur. They must sell them because they multiply at a great rate; most of the clients buy them for growing the fur, however there is a small minority [of the clients] who buy them for consumption. The question is if there is concern for [transgressing] a prohibition of trading with a forbidden thing and breeding impure [non-kosher] animals, and if [the latter] is permitted for a God-fearing Jew."

R. Pollák argues in the responsum that trading in angora hares is permitted, because the clients who buy the angora intend to breed them for their fur and not for consumption.

In his answer written on the 1st of August, 1939, R. Shimon Altmann approved the permission of R. Pollák, arguing that the decisors all agreed that trading in non-kosher animals kept for work is permitted.¹⁷³ The same permission applies for the angora hare, because the majority are kept for their fur and not for their meat.

¹⁷³ R. Shimon Altmann, *Sheelot u-teshuvot Mei Yehuda, Yoreh Deah*, no. 54.

- ◆ R. Moshe Lemberger, *Shu"t Ateret Moshe*, no. 64

Addressee: R. Aharon David of blessed memory, *av bet din* of Mezökovácsháza (Békés county)

Respondent: R. Moshe Lemberger (Makó)

Without date

R. Lemberger starts his responsum with the citation of the question:

"באתי לבקש חו"ד [חוות דעתו] הטהורה. בנדון שנשאלתי מכמה בע"ב מפק"ק [בעלי בית מפה קהילה קדושה]. מאחר שמחמת גזירת הממשלה יושבים בידי חבוקות ר"ל [רחמנא ליצלן] עלה בדעתם להתעסק בגידול ארנבים (המכונים ארנבי אנגורא) והתכלית צמרם הנגזז כמ"פ [כמה פעמים] בשנה ודמיהן יקרים ובערכם דמי הבשר הוי מועט."

"I ask for your pure opinion regarding the following issue: I receive questions from Jewish men of our community [Makó] who sit at home unemployed because of the decree (*gezerah*) of the government, God forbid; and they think that they should breed angora hare for their fur and shear them a few times a year. [The fur] is expensive, but the price of the meat [of the hare] is low."

[וכ"כ] R. Lemberger does not see any reason to make a prohibition. The Talmudic regulation suggests (see Tosefta Baba Kamma 82b) that it is prohibited to trade in non-kosher animals, which are being sold for consumption. Rashba argued (*Shu"t Ha-Rashba*, vol. 3, no. 223) that the prohibition was a rabbinic decree (*gezera*) made to avoid Jewish merchants eating from the merchandise. However, donkeys and camels are bred for their work and not for consumption.

[אך] The author raises the question of whether the angora hare belongs in the category of the donkeys and camels. It is true that the angora is bred for its fur and not for consumption (that makes it similar to the donkey and camels), however, its meat can be consumed after its death. So should we prohibit the keeping of angora? He concludes that the fact that the meat of the angora is consumable should be disregarded, because the farmers keep them for the fur. (Unlike pigs that are kept for consumption by non-Jews, so their breeding is forbidden for Jews; see the responsum of the Rashba.)

[והרי] The author argues that the case of Jewish tradesmen discussed by R. Yehezkel Landau serves as an analogy for this case.¹⁷⁴ These tradesmen traded in dead hare for their fur. The author adds that in a few cases the merchants also sold the meat of the hare. Indeed there were Jews in the 19th century who traded with hare's skin. As there were no *halakhic* objections back then against their practice, breeding angora should also be permitted, argues R. Lemberger.

¹⁷⁴ R. Yehezkel Landau, *Noda bi-Yehuda ha-shalem, Mahadura Tinyana, Orah Hayyim*, no. 62.

R. Zeev Ginzler, rabbi in Fehérgyarmat, also refers to the above sources in his responsum¹⁷⁵ sent to R. Yisrael Hayyim Samet and concludes that it is permitted to keep non-kosher animals for purposes other than consumption.

IV.M Summary

Economic restrictions on Jews in the Hungarian economy in the WWII period are carried out without taking into account the well-established common interests of Jewish and non-Jewish actors in the economy. Interestingly, the discriminatory measures that were intended to separate “Hungarian” and “Jewish” economic interests, in some respects resulted, as a side effect, in actually strengthening cooperation. Jewish tradesmen and craftsmen employed non-Jews to work on Sabbath and made contracts of doubtful legality with them in an effort to evade the regulations of the anti-Jewish Laws and decrees.

The texts referred in the present study regarding the practice of “strawmanship” show that the general discriminatory agenda of the anti-Jewish Laws that restricted the Jewish presence in certain professions went against the primary economic interests of the country. The original aim of separating “Jewish” and “Hungarian” interests and put a stop to their cooperation within the Hungarian economy could not be fully achieved. In the long run the results of the discriminatory laws could draw the two groups closer in certain cases depending on the local circumstances: for example unemployed non-Jews who were eligible to gain licenses were thrown back on Jews who were deprived of their licenses but had the capital to run a business. In practice the Jewish “partner” provided the capital to start a new business and received a monthly fee according to the income of the business.

The first anti-Jewish Law in 1938 defined Jewishness by religion. However, neither the first nor the second laws had explicit religious motives, and in fact the latter, following the German example, defined the term “Jewish” predominantly on racial grounds, disregarding religion and thereby making conversion an unsatisfactory escape from the law. R. Teitelbaum also remarked that the laws did not differentiate between Jews who had always belonged to Jewish communities and Jews who had converted to Christianity, and that the decree concerning the opening of shops on Sabbath encompassed all Jews, observant as well as non-observant. Many rabbis (R. Yoel Teitelbaum among them) realized the “unreligious character” of the laws and decrees. This

¹⁷⁵ R. Zeev Ginzler, *Sheelot u-teshuvot Toldoth Yisrael, Even ha-Ezer*, nos. 71-72. Date: ז' מנחם אב תש"א (31/07/1941).

assessment of the current persecution, instead of defining it as a “religious persecution” (*shmad*) had significant *halakhic* ramifications, and enabled some rabbis to adopt a lenient position in some issues. Nonetheless, from a historical point of view, there is no doubt that part of the aims of the anti-Jewish legislation was to destroy the infrastructure of Jewish religious observance.

Our responsa tell us that observant Jewish life was sustainable even after the promulgation of extensive anti-Jewish legislation. The inherent logic of *halakhic* decision-making in concrete problems – looking for precedents and analogies in earlier Jewish legal literature – also creates a sense of historical continuity, more than a sense of uniqueness. By making analogies with past cases and interpreting the reality of the 1940s by the traditional Jewish historical approach, the rabbis transformed the external threat into an internal Jewish problem, making it a challenge to be faced within the *halakhic* framework. The anti-Jewish legislation in Hungary placed a great responsibility on *halakhic* authorities. As a response to the crisis many rabbis preferred to avoid definitive wording that if applied in practice could be to the detriment of the community. The previous stringency regarding the “bill of sale”¹⁷⁶ expressed by rabbis in Hungary was followed by more lenient decision making, probably because the rabbis took into consideration the already harsh economic impact of the anti-Jewish legislation in the country.

Transgression of Sabbath prohibitions was always considered a severe matter from a religious point of view – also in the period when the responsa cited above were written. Many Hungarian rabbis were of the opinion that there is a need to take a united rabbinic stand regarding Jewish enterprises that stayed open on Sabbath, so they preferred to give only more or less tentative opinions or decisions, until the formulation of a common *halakhic* position is reached by a “synod” of *halakhic* authorities. The responsa give no evidence that such a common position was ever reached by the leading rabbis of the country.

¹⁷⁶ See subsection IV.D (Earlier *halakhic* discussions on partnerships).

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V. Reconstruction of Jewish Life. The Jewish Communities: *Halakhic* Perspective

V.A Problems

In 1945, immediately after the war was over, those who returned started to re-establish destroyed communities. The first step was to provide the basic living conditions, i.e. to establish soup kitchens and to solve the housing problems. At the same time, observant survivors made extra efforts to create proper conditions for living a Jewish life according to religious norms. This chapter elaborates on *halakhic* issues and principal problems of observant survivors in the post-war years.

The perspective of observant Jews has been completely ignored in the historiography of Jewish communities in Hungary in that period. In order to rectify this lack this chapter adds previously unknown sources to the discussion. Contemporary responsa written by Orthodox rabbis living in Hungary after World War II directly reflect on contemporary *halakhic* problems related to the revival of Jewish religious life in Hungary. Besides their importance as historical sources, the responsa referred to below represent the last stage of significant Hebrew literary production in Hungary. Neolog rabbis of that period expressed their views on *halakhic* issues mostly in local periodicals, in Hungarian.

Memoirs written by observant survivors, and responsa, all mirror realities of the post-war years in Hungary. However, their focuses are substantially different. Memoirs were mostly written and published after 1956, when hopes for re-establishing Jewish Orthodox life in Hungary were already ruined. The authors testify to the spiritual and material destruction of the Jewish communities that took place after the deportations in 1944. The decline and disintegration continued until the last wave of Orthodox emigration from Hungary in 1956. According to the general picture, which emerges from these memoirs, the attempt to re-establish Jewish religious life in Hungary was a failure.

However, the responsa reflect the reality of rabbis who worked industriously to provide the religious framework for the survivors. Having themselves survived the war in Hungary, or having returned after 1945, they focus on current issues of religious needs concomitant with the re-establishing of the Jewish communities. Their aim was to fulfill both the material and spiritual needs of their communities, e.g. to solve problems of survivors whose spouses disappeared in the war and were unable to remarry for *halakhic* reasons, to stop further deterioration of the buildings of the re-

established communities, and establishing communal-institutional forms of commemoration of the victims. These three *halakhic* issues were central for observant Jews, in the Orthodox as well as in the Neolog communities.

The preservation of the communities' property and the commemoration of the victims were closely related to each other: due to the almost total destruction of Hungarian Jewry, physical spaces that were under the supervision of Jewish communities in 1944 were liable to serve a commemorative function after the war. In most of the villages and small towns of the countryside in Hungary only the synagogues and the Jewish cemeteries were left as memories of the Jewish communities destroyed in 1944.

The victims killed in Auschwitz and in other concentration camps lacked individual gravestones. Consequently they were deprived of the rites of individual mourning either because their relatives were also killed or because the relatives were simply not aware of their deaths. These victims – men, women and children – were commemorated only collectively, by their local Jewish community, i.e. by those survivors who created communal forms of commemoration after the war, within the framework provided by the Jewish institutions. The custom of gathering every year in the local Jewish cemetery on the day of the deportation of the community to Auschwitz (or on the presumed day of its destruction) is in practice until the present day. The locus of commemoration was “Jewish” from the first post-war years; no one could commemorate his dead in non-Jewish public spaces.

Erecting monuments in Jewish cemeteries or putting marble plaques in the synagogues in the memory of the deceased was the most prevalent form of communal commemoration in the post-war years in Hungary. Influential rabbinic authorities, however such as R. Yonathan Steif (Budapest) or R. Yitzhak Yaakov Weiss (Nagyvárad) rejected these “alien” practices from a *halakhic* point of view. The revitalized tradition of the burial of torn and desecrated Torah scrolls was not opposed by any of the *halakhic* authorities. The new custom of the post-war years, of burying desecrated objects (Torah scrolls, prayer books etc.) and human remains in the same grave together on the other hand, did induce a *halakhic* discussion. Burying the ashes of human bodies brought from the death camps together with the notorious R.I.F. soap ("בוריית בשם רי"פ")¹, regarded falsely as human remains in those years became a widespread practice developed by Jewish communities of the countryside.

Apart from the problems of commemoration, Orthodox and Neolog rabbis discussed the problem of maintenance of buildings owned by the Jewish communities. Most of the re-established local Jewish communities in the countryside counted only a few dozen survivors who had no financial

¹ Interpreted by some as *Reichs-Juden-Fett*. R.I.F. in fact stood for *Reichsstelle für industrielle Fettversorgung* (“National Center for Industrial Fat Provisioning”), the German government agency responsible for wartime production and distribution of soap and washing products.

means of renovating the destroyed buildings. In the post-war years hundreds of synagogues, including dozens of the main synagogues in populous cities of the countryside, as well as houses of study (*bate midrash*), ritual baths (*mikvaot*) and slaughterhouses, in possession of Jewish communities, stood empty.

The rabbis explicitly supported the selling of synagogues due to the difficulties of maintenance. They preferred to save the buildings from total destruction by selling them, on condition that each community would maintain a “house of prayer.” In most communities an apartment served this purpose. According to the prevailing idea of the post-war years, selling the synagogue could have helped to maintain other properties of the local communities, such as the cemetery or the “house of prayer.” In reality, after the unification of the Orthodox and Neolog nationwide organizations in 1949 (see below), local Jewish communities lost their spiritual and financial independence and their budget was financed by the central Jewish organization.

The responsum² of R. Hayyim Shlomo Horowitz, sent to Temesvár in 1946, elaborated on the question of whether it was permitted to buy ritual objects brought by soldiers from places where Jews had been killed, in order to repair them and use them for their original religious purposes. However, along with the deconsecration of out-of-use synagogues, holy objects – Torah scrolls, phylacteries, *mezuzoth* etc. – were mostly divested of their religious significance and became mementoes of the dead.

Releasing *agunot*³ (in single form: *agunah*) from the bonds of wedlock was a major concern for rabbinic authorities in the post-war period. Rabbis made every effort to allow survivors to remarry after the war. The re-established Orthodox Office in Budapest set up a special *bet din* (*bet din le-takkanat agunot*), which released 3408 men and 1385 women from the “chains” of marriage.⁴ It became clear quite soon after the war that Jewish men and women taken to Auschwitz who had been sent to the “left side” there at the “selection” had suffered immediate death.⁵ Accordingly, the prevalent *halakhic* opinion that crystallized after the war permitted the religious courts to declare the death of a missing person (a step necessary for the spouses to remarry) in such cases, also in lack of two Jewish witnesses required by the *halakha*. R. Yitzhak Yaakov Weiss in his “*Kunteres agunot*” argued that the

² R. Hayyim Shlomo Horowitz, *Kunteres sheelot u-teshuvot Darkhei Noam* (Brooklyn, 1955) no. 11. Date: יום ה' (ערב ג' כסליו תש"ו) / December 6, 1945.

³ *Agunah* is a *halakhic* term for a woman whose husband has disappeared, or refuses or is unable to give her a bill of divorce (*get*). As there was no direct evidence of the death of the husbands who were killed in the war, many women were unable to remarry.

⁴ Schück Jenő: “Az ortodoxia a felszabadulás után” / “Hungarian Orthodoxy after the deliberation”. *Új Élet Naptár*, 1959 (Budapest: MIOK, 1959), p. 157.

⁵ In Auschwitz-Birkenau concentration camp the selection of Jews deported from Hungary in 1944 took place on the ramp immediately upon arrival. Those selected to be killed in the gas chambers had to go to the left side of the ramp. (Left – from the perspective of the victims standing on the ramp.)

rabbinic court should be empowered to declare the death of the missing person by having one witness testifying that he/she was taken to the “left side” in Auschwitz.⁶

This chapter will not relate to the problem of *agunot*. Arguably it was one of the most burning issues in the post-war years. However, after a few years this issue mostly lost its relevance for Jewish communal life. The issues of commemoration and the maintenance of material goods in the possession of the Jewish communities on the other hand have continuously influenced Jewish public life since the post-war period. This chapter will focus on these latter two issues.

A centralized financial structure evolved in the post-war years in the Hungarian Jewish community, which still characterizes Jewish community life. The problem of maintenance of the material goods of the local Jewish communities shows clearly their economic dependence on the nationwide Jewish organizational bodies. Commemoration of the victims of the Shoah did not develop and was not formulated on a common, Jewish-Hungarian platform, neither in the post-war years nor subsequently, and has remained mostly an internal “Jewish issue” until now. In summary, the present chapter aims to explore the history of the communities in Hungary with an emphasis on the *halakhic* issues that were central in the post-war years and continue to influence Jewish community life in present-day Hungary.

V.B Background

The territories annexed by the neighboring countries in 1920 (Treaty of Trianon), and partly returned to Hungary in 1938-1941, which at the same time had most densely populated Orthodox centers were the Upper Lands, Carpatho-Russ and North-Transylvania.⁷ In 1944, Jews living in these reannexed territories shared the same fate as Jews living within the Trianon borders. The loss of these regions again in 1945 did not make impossible the communication between them and Hungary proper within its new-old borders. Intensive correspondences between rabbis of this geographical area in postwar years across the borders, preserved in responsa literature, shed light on efforts to rebuild Jewish life in this period, and the eminent role rabbis played in them.

⁶ A great number of responsa written by him on the *agunah* issue can be found in his responsa collection, R. Yitzhak Yaakov Weiss, *Sheelot u-teshuvot Minhat Yitzhak*, vol. 1, nos. 1-6.

⁷ See Kinga Frojimovics, *Szétszakadt történelem. Zsidó vallási irányzatok Magyarországon, 1868–1950* (Budapest: Akadémiai Kiadó, 2008), pp. 260–261. In Hebrew: idem, *Ha-zeramim ha-datiim be-yahadut Hungaria* (Ramat Gan, 2003) pp. 254-257.

Jewish communities were hardly able to function after the deportations began in 1944, but their legal status remained unchanged. This served as a legal basis for their renewed activities in 1945. The first step of re-establishing the communities was setting up a *minyan*; all the rest came afterwards. Jewish reconstruction and religious rehabilitation started with prayer, and – depending on the financial situation of the community – continued with the reconstruction of the *mikve* and the *beit midrash*. In Hungary, centralized leaderships of the three religious streams respectively – Neolog (לשכה ארצית), Orthodox (הלשכה המרכזית) and Status Quo – presented the Jewish claims vis-a-vis the state, and worked as intermediaries between the state and the Jewish communities. After the war all three Jewish religious streams in Hungary succeeded in re-establishing their nationwide organizations and the elected leaders of each community continued fulfilling their tasks immediately after the war. The system was in force until 1949, when the Jewish communities were compelled to unite into a single organization. Generally speaking, Neolog rabbis had less authority and influence within their own communities than their Orthodox colleagues, who had much power, especially concerning religious matters.

Eighty years before, a separate Orthodox organization came into being as a result of the effort of rabbis who fought for the existence of autonomous communities and rejected the new nationwide (Neolog) organization that was set up after the Congress of 1867/68. The Orthodox also formed a nationwide organization a few years later. However, due to the traditional, community-based power structure, the central Orthodox leadership was not endowed by the communities with the same power as the Neolog leadership. Through the 80 years of existence of the autonomous (Orthodox) communities their primary aim was to save their autonomy in opposition to the Neolog establishment.⁸

The Orthodox communities that were re-established after the war maintained this separatist tradition until the Communist takeover in 1949, when they lost their autonomy due to the forced unification of the nationwide organizations,⁹ which led to the Neolog takeover of Jewish community life. The regulation of the new “unified” organization put an end to the diverse organization system and required the establishment of only one Jewish community in every administrative district. The Orthodox stream was represented by the Orthodox section of the unified organization after 1949, that was officially under the control of the “unified” Budapesti Izraelita Hitközség.¹⁰

⁸ See Katzburg, Nathaniel, “Hanagat ha-kehilot”, in Guttman, Yisrael and Vágó, Béla and Rothkirchen, Livia, eds., *Hanagat yehudei Hungaria be-mivhan ha-Shoah* (Jerusalem: Yad Vashem, 1976) (pp. 77-86) p. 80.

⁹ The new statutes / charters were accepted by the nationwide assembly on February 20, 1950. A symbolic act of losing the independence of the Orthodox communities was the moving of the Orthodox Office (previously located on Eötvös street, Budapest) to the center of the Neolog Office on Síp street.

¹⁰ Officially, the head of the Orthodox rabbinic council had the same rank as the head of the Neolog rabbinic council even after 1949. The head of the Orthodox Office (לשכה) before and during the war, Shmuel Kahan Frankl, stayed in his position after 1945. See Schück Jenő, “Az ortodoxia a felszabadulás után”, pp. 156-161.

A decree issued by the Government in 1946 did not recognize those Jewish communities, which had no legitimate leadership elected after the war.¹¹ The decree commanded the nationwide Orthodox and Neolog offices to make a survey of all the communities in Hungary and at the same time endowed the nationwide offices with power over the property of defunct communities. In order to sell a synagogue the local community had to obtain the approval of the nationwide office; obviously this regulation was meant to avoid members of the local communities exercising a free hand with the property of the community.¹²

Two years later, the Government took over the financial management of the Jewish communities in the “agreement” made on December 7, 1948, between the Jewish nationwide organizations and the Communist Government.¹³ The conditions of selling synagogues were regulated by the decree, but in practice until the end of the 1950s the secular leadership of the local Jewish communities was in charge of selling the property of the community.¹⁴ The responsa cited below should be read against the backdrop of this power of the secular leadership of the communities to sell synagogues.

According to the survey organized by the Joint in 1946 and published by the Jewish World Congress a slight majority of the 263 communities re-established after the war were Orthodox (146).¹⁵ More than half of the communities had fewer than 100 members. There were a few re-established *yeshivas* in the countryside (Hajdúhadház, Nyíregyháza, Paks, Soltvadkert, Makó) and also two newly established *yeshivas* in Budapest: one at the orphanage on Domonkos street and one on Hidegkúti street in Hűvösvölgy.¹⁶

Jewish religious life was concentrated in centers where the necessary conditions for leading an observant life were provided. Both in Budapest and in the countryside the lack of rabbis was the biggest problem: reporting on the Neolog communities of post-war years in Hungary, R. Sámuel Löwinger stated that even communities with 500-1500 members remained without a rabbi. In his article R. Löwinger gave the list of the Neolog communities in the country together with the number of their members and rabbis serving in the communities. The list includes 84 Neolog communities re-

¹¹ 10.400/1946. M. E. sz. See Komoróczy Géza, *A zsidók története Magyarországon II. 1849-től a jelenkorig*. (Pozsony: Kalligram, 2012) p. 912.

¹² See the article of Ernő Munkácsi on the property of the Jewish communities after the war in the periodical *Új Élet*, 3., no. 11. (1947 March 13), p. 5 “Aktuális kérdések” (‘Actual matters’).

¹³ Komoróczy, idem, p. 998.

¹⁴ The central nationwide organization (the MIOK) took over this task at the end of the 1950s. See Komoróczy, idem, p. 1022.

¹⁵ Katzburg, Nathaniel, “Bein shihur le-mahpekha – yehudei Hungaria mul mishtar mishtane 1945-1948”, in Guttman, Yisrael and Dreksler, Adina, eds., *Sheerit ha-peleta 1944-1948* (Jerusalem: Yad Vashem, 1991) (pp. 103-126), p. 105. The rest of the communities were Neolog (102) and Status Quo (15).

¹⁶ Schück, “Az ortodoxia a felszabadulás után”, pp. 159.

established after the war and the names of 10 Neolog rabbis.¹⁷ Neither the Neolog community in Békéscsaba with its 840 members, nor Győr with its 600 members, had a rabbi; Nagykanizsa (320) and Pécs (850) and Újpest (1500) also lacked rabbis. There were three Neolog rabbis working in the capital and another three working near Budapest. The lack of Neolog rabbis resulted in the establishment of a *Central Bet Din* in Budapest by the Neolog Rabbinic Council, especially for solving problems related to marital law.¹⁸

Orthodox communities often also lacked rabbis. The addressees of the responsa were not all rabbis (as before 1944), and several functions that had been fulfilled exclusively by rabbis before the war were passed on to other learned and respected members of the communities. For example, *halakha* requires that witnesses make their testimony before a rabbinic court (*bet din*) consisting of three rabbis, or in the absence of rabbis in the presence of three Jewish men. After the war, according to the responsum of R. Akiba Sofer addressed to Menahem Mendel Mark, in a settlement of Máramaros district (Transylvania) the ritual slaughterer himself alone took testimony concerning those who were killed in the concentration camps because there were no additional two Jews to complete a *bet din*.¹⁹ The question was addressed to R. Sofer of whether the testimony taken by the slaughterer was acceptable in the process of releasing the survivors from the bonds of wedlock or should they have insisted on the presence of three Jewish men for taking such testimony.

Generally speaking, religious observance was weakened in the Neolog communities. R. Miksa Löwenheim addressed the religious laxity of members of Neolog communities in his article written in April, 1947. He turned to the Neolog Rabbinic Council in Budapest and requested the publication of leaflets encouraging Jewish couples to circumcise their sons, as “many Jewish couples dispense with the circumcision.”²⁰

The traditional Orthodox attitude toward those who did not circumcise their sons was complete rejection. In the second half of the 19th century the general concern of the ultra-Orthodox rabbis was that any “major” change in religious practice would lead to the total destruction of traditional Jewish

¹⁷ There were 47 Neolog communities with fewer than 100 members. *Az Országos Rabbi Egyesület Értesítője* (Budapest, 1946 August), pp. 5-6. The name of the Neolog rabbi serving in Budapest and in the countryside after the war: Benoschofsky Imre (Buda) (5744 members); Morgenstern Benő (Gödöllő) (30); Krausz Henrik (Kaposvár) (518); Schindler József (Kecskemét) (393); Berg József (Kispest) (700); Kálmán Ödön (Kőbánya) (1700); Neumann József (Óbuda) (1200); Kriszháber Béla (Pesterzsébet) (700); Frenkel Jenő (Szeged) (2198); Horovitz József (Szombathely) (400).

¹⁸ See the article of Róth Ernő in *Az Országos Rabbi Egyesület Értesítője* (Budapest, 1947 Június), pp. 21-22.

¹⁹ R. Akiba Sofer, *Sheelot u-teshuvot Daat Sofer, Orach Hayyim* (Makhon Yerushalaim, 1993), no. 25.

²⁰ From the article entitled “Kórházi lelkigondozás” (pp. 12-14). „Fontos feladat újszülött gyermekek szüleit meggyőzni a berisz megtartásának szükségéről, sajnos, az utóbbi időkben sokan mellőzik fiúgyermekeik circumcizálását.” *Az Országos Rabbi Egyesület Értesítője* (Budapest 1947 April), p. 13.

life. R. Joseph Saul Nathansohn, in his responsum,²¹ prohibited a man who did not circumcise his son from reading from the Torah and being part of the *minyan*; thus he practically declared a ban on the father.

The Orthodox agenda in Hungary in the post-war years was in accordance with this attitude: the rabbi of Debrecen, R. Moshe Stern, alluded to R. Nathansohn in the beginning of his responsum, written in 1949 and sent to the rabbi of Királyhelmeç, R. Chananya Yom-Tov Lippa Deutsch.²² According to both the Neolog and the Orthodox viewpoints those “transgressors” facilitated, even generated, the disappearance of Jewish life in Hungary by not circumcising their sons. Thus R. Deutsch argued for the symbolic exclusion from the community of those who did not keep the *mitzvot*. However, R. Stern rejected this idea and argued for bringing these men closer to the community. In his comment to the responsum 25 years later he attributes his leniency to the circumstances, namely to the weakness of the community of Debrecen in 1949:

"כל זה כתבתי בהיותי בדעברעצין שנת תש"ט שגזרת הממשלה הי' על הקהלות ולא הי' ביד הקהל לדחות את המחלל שבת מקרב הקהלה." (...)²³

“I wrote all this in Debrecen in 1949, when the government issued a decree (*gezera*, ‘edict’) on the [Jewish] communities, so the community was unable to exclude those who violate the Sabbath from the community.”

By the term “edict of the Government” R. Stern refers to the forced unification of the religious streams by the Hungarian establishment (see above).

R. Deutsch suggested not allowing those who did not circumcise their sons to read from the Torah. Considering this issue R. Stern agreed with him:

"גם אני כבר נשאלתי בזה מהכפרים סביב לקהלתי שנמצא כזה בעוה"ר [בעוונותינו הרבים] אחר החורבן הנורא במספר זעיר בהסביבה והשבתי להלכה ג"כ [גם כן] שאסור לאב כזה לעמוד לפני התיבה ביום היאהר"צ [יארצייט] או לקרותו לס"ת [לספר תורה] וגם לענות אמן אחר קדיש או ברכה שיאמר בע"כ [בעל כורחם] נגד רצון הקהל כי אסור להניחו לומר קדיש וכל דבר שבקדושה בביה"כ [בבית הכנסת]."²⁴

²¹ Responsa collection of the Polish rabbi, R. Joseph Saul Nathansohn (1808-1875) published in Lemberg. *Sheelot u-teshuvot Shoel u-meshiv, Tinyana*, vol. 3, no. 64.

²² R. Chananya Yom-Tov Lippa Deutsch lived in Cleveland-Brooklyn from 1951 and died in 1990. R. Moshe Stern, *Sheelot u-teshuvot Beer Moshe*, vol. 5 (Brooklyn, 1978) nos. 90-94. The date of the responsum (published in four parts): א' לס' חיי תש"ט לפ"ק / 27.11.1948. The responsum was written in Debrecen.

²³ R. Moshe Stern, *ibid*, p. 147.

²⁴ *Ibid*, no. 90 (p. 140).

“I have been already asked about this by a few [Jewish] people living in the villages surrounding my community that still exist – may our sins be forgiven – after the terrible destruction. I also gave them an answer of practical relevance that it is forbidden for such a father [who did not circumcise his son] to lead the community prayers [in the synagogue] on his *Jahrzeit* [German, anniversary of the day of a dead relative] or to call him up to the Torah-reading, and also to say *amen* after a *kaddish* or blessing, which he says against the will of the community, because it is forbidden to let him say the *kaddish* and every prayer, which requires a quorum in the synagogue.”

However, R. Stern mentions the traditional principle that in times of a “non-observant generation” (דור פרוץ) it is preferable not to expel the “transgressors” from the community, which may lead to their total alienation from Judaism.

The responsum implies that religious laxity was a phenomenon not unknown within the Orthodox communities and difficult circumstances forced even their leaders to settle religious problems in a lenient way. The responsum of R. Yisrael Welcz²⁵ testifies that in a re-established Orthodox community they read the Torah from an improper (non-kosher) Torah scroll. It seems that the need to save the basic commandment of Torah reading overrode some basic *halakhic* regulations.

The newspaper of the Orthodox Community²⁶ of Budapest listed the successfully re-established institutions maintained by the Orthodox Community in the capital: synagogue, *beit midrash*, rabbinate, schools, kindergarten, *mikve*, *sofer*, kosher kitchen, Hanna soup kitchen (*menza*) for children, health centers, center for family care, registry office, social committee, community office, and four slaughterhouses in the Vth, VIIth and VIIIth districts of Budapest. The Community aimed to keep, or build the Orthodox “network” and urged every observant person to keep buying from observant tradesmen only and to employ craftsmen who observe Shabbat.²⁷

The revival of religious life in Hungary continued until the forced unification in 1949, when Jewish religious life suffered a serious breakdown, which anticipated the almost total collapse of Orthodox Jewish life in Hungary after the revolution in 1956. Some figures clearly indicate the crisis and the decline which characterize Jewish life in this period: between 1945 and 1956 there were 59 Orthodox ritual slaughterers working in Hungary, after the revolution in 1956 only 10 remained.²⁸

²⁵ R. Yisrael Welcz, *Sheelot u-teshuvot Divrei Yisrael, Orah Hayyim* (Jerusalem, 1980) no. 52.

²⁶ *Orthodox Hitközségi Értesítő*, published by the Budapesti Autonom Orthodox Izraelita Hitközség (Autonom Orthodox Community of Budapest) between the years 1947-1950, ed. by József Halpern. (Budapest, September-October, 1947) p. 7.

²⁷ “Szombattartó kereskedőnél vásároljunk és szombattartó iparosoknál dolgoztassunk!” *Orthodox Hitközségi Értesítő* (Budapest, September-October, 1948) p. 6.

²⁸ Schück, “Az ortodoxia a felszabadulás után”, p. 161.

V.C The Beginnings

The deportation of the Jewish population of the countryside by the Hungarian administration caused an almost total destruction of Jewish life there. War conditions and the continual destruction by the local population caused serious deterioration to the property of the Jewish communities. The plundering of synagogues and other abandoned Jewish communal properties was accompanied by deliberate desecration of Jewish religious institutions (synagogues, study houses, ritual baths, etc.) and sacred objects (Torah scrolls, prayer shawls, etc).

The memoir of R. Yehoshua Grünwald, the rabbi of Huszt, testifies that plundering of Jewish houses and apartments in Huszt had already started before the deportation of the local Jewish population.²⁹ In many places in the countryside the furniture and valuables of the local Jewish population were collected in the synagogues. The memoir of Shraga Schermann reports on the condition of the synagogue of Sátoraljaújhely (Hungary) in November 1944, before the occupying Russian troops arrived in the town. Schermann succeeded in hiding from the Germans and remained in the town, witnessing the looting of Jewish property by locals.³⁰ In 1946 there were approximately 550 Jews living in Sátoraljaújhely and until 1949 there were still two functioning congregations: the Status Quo and the Orthodox.³¹

R. Yehoshua Blau was the first survivor who returned to his hometown, Paks, in 1945. In his memoir he gives account on the destruction and looting of the ghetto in 1945, before the re-establishment of the Jewish community took place.³²

In Paks the ghetto was set up in the area that consisted of the synagogue and nearby houses that belonged to the Jewish community.³³ Together with 20 survivors who returned to Paks, R. Blau started to clean the ghetto: they put the torn Torah scrolls and holy books in a clean basement and arranged suitable dwellings for the returning survivors. Some of the remaining property of the Jewish population of Paks might have survived the lootings but did not survive the deliberating Russian soldiers' acts:

"מהמקוה שלנו עשו הרוסים בית-מרחץ לחילים, והיות שלא ה' להם עצים להסיק תחת הדוד, לקחו את הרהיטים של היהודים העזובים לחמם את המרחץ, משכלו הרהיטים התחילו לבער את ספסלי בית-הכנסת שלנו. הבית הכנסת

²⁹ *Kunteres ein dimah* ('Booklet of shed tears') published in his responsa collection. R. Yehoshua Grünwald, *Sheelot u-teshuvot Hesed Yehoshua* (New York, 1953).

³⁰ Davidovits, Mnashe S., transl. by Barabas, George, *Memorial Book of the Jewish Community in Sátoraljaújhely / Sefer zikkaron shel kehilat Újhely* (s.l.: L. Friedmann, 2003) p. 36.

³¹ *Ibid.* p. 36.

³² Simha Bunam David Sofer, ed., *Mazkeret Paks*, vol. 3 (Jerusalem, 1973) pp. 90-91.

³³ Grünwald Fülöp: "Sárospatak – Mátészalka – Paks", *Öt község* (Budapest, 1972) (Magyarországi Zsidó Hitközségek Monográfiái, 5) pp. 7-21.

ה' מלא וגדוש עם הפצים של היהודים, דלתותיו היו שבורים ולא ה' באפשרי לסוגרם, ממילא היו כל הפצי הפליטים הפקר. נתתי עצה בנפשי וקרענו את המון הכרים והכסתות שנמצאו שם, עד שנתמלא כל חלל האולם בנוצות ופוך פורה, מה שמנע את כניסתם של אנשי הצבא לבית הכנסת."

"The Russians transformed the *mikve* into a bath for the soldiers, and as they had no wood to heat the water tank, they took the Jews' abandoned furniture to heat the bath, and after the furniture had been destroyed, they started to put the benches of our synagogue on the fire. The synagogue was full and heaped with the Jews' belongings, its doors were broken and it was impossible to close them. So, all the belongings of the survivors were in fact ownerless and abandoned. I had an idea, so we tore lots of pillows and duvets that were there, until all the space of the synagogue was filled up with flying feathers and down that prevented the Russian soldiers entering the synagogue."

The Jewish community of Paks had a promising start in 1946. The community hired R. David Moskovits, the former rabbi of Bonyhád. R. Yisrael Brif also worked in the community as ritual slaughterer and rabbi. R. Jehuda Eckstein re-established the famous yeshiva of Paks with the Joint's financial help. Approximately 35 students (*bachurim*) aged 14-20 from the capital learned there. According to data collected by the Jewish World Congress there were 180 Jews starting a new life in Paks after the war. By 1947 there were only 154 people, with R. Bernát Moskovits serving as rabbi.³⁴

According to the report of István Löwinger and Kornél Schmelzer there were 39 tax payers in the community in 1949. In 1955 there were 25 families living in Paks, 20 of them religiously observant. The 16 children living in the community were all below the age of ten and were taught in the Talmud Torah by the ritual slaughterer.³⁵ Though the exact number of the inhabitants is not given in the report, it is plausible that the Jewish population in town had been continuously decreasing since 1947. This period endured until 1956, when the yeshiva stopped functioning and the municipality took hold of the the synagogue and turned it into a "community house." In Paks only the cemetery remained in the possession of the Jewish community.

The synagogue of Paks (built in 1785 and renovated in 1909) still functioned in 1955.³⁶ There were two cemeteries in Paks: the older cemetery was located in the center, but by 1955 there were only six gravestones to be seen there, partly sunken into the ground. The cemetery was very neglected and animals were grazing between the graves. The new cemetery was well maintained. In 1955 the community preferred to exhume the six graves that still remained in the old cemetery.³⁷

³⁴ Ibid, p. 21.

³⁵ Ibid, p. 94.

³⁶ See the report written by István Löwinger and Kornél Schmelzer on the Jewish communities in the Transdanubium (from September, 1955) in Toronyi Zsuzsa, ed., *Zsidó közösségek öröksége* (Budapest: Magyar Zsidó Levéltár, 2010), p. 93.

³⁷ Ibid, pp. 93-94.

V.D Rituals of Memory

V.D.1 Commemoration and politics

The form of commemoration for the victims of the Shoah in Hungary followed the traditional Jewish pattern with the addition of new elements. The traditional Jewish communal forms of remembrance had two main components: a fast, and preservation and liturgical recitation of the names of the victims. *Selihot* ('penitential poems and prayers') and other liturgical poems or a *megillah* ('scroll') narrating the persecutions were composed, and the prayers were inserted into the liturgy of the synagogue. Composing *Memorbücher* ("Memorial Books," Yizkor Books) was a prevalent form of commemoration: they served as the record of persecutions and also contained lists of the martyrs. The names of the victims were read aloud periodically in the synagogue during the memorial services for the dead.³⁸

These forms of rituals commemorating the victims of the Shoah were ones that had been used in the past. Yizkor Books published after the Shoah included the history of a given destroyed community and the list of the names of the victims. *Halakhic* works were also published after the war, commemorating their authors who had been killed, and their communities that had perished. In Budapest, the publication of the responsa collection "*Yerushat peleta*" in 1946 was a commemoration of the Orthodox rabbis active in Hungary who had been killed in the Shoah. The book was published by the *Shas Chevra* association, which planned to publish a collection of responsa for its 50th anniversary in 1944. The publication suffered a two-year delay, and was finally published in fragmented form.³⁹ The publication of the manuscripts of the responsa that had survived the war was perceived as a "holy obligation" of the community for the "eternal memory" of the perished rabbis and their communities. In the appendix of the book the list of the names of approximately 300 Orthodox rabbis who died in the Shoah were published.⁴⁰ The official journal of the Országos Rabbi Egyesület

³⁸ Yosef Hayim Yerushalmi, *Zakhor. Jewish History and Jewish Memory* (Seattle – London: University of Washington Press, 1989, original: 1982) pp. 45-46.

³⁹ The 37 responsa were written by 25 rabbis, who were alive (with the exception of three) during the war. On the history of the publication of the book see the introduction to the book and also the article of Richtmann Mózes entitled "Egy haláchikus emlékmű margójára" in *Az Országos Rabbi Egyesület Értesítője* (Budapest, 1947 April) pp. 44-48.

⁴⁰ The list is missing from the Israeli reprint edition of *Yerushat peleta* (1971). The introduction speaks the language of hope regarding the forthcoming years following the destruction:

"ועתה הגה ספרנו זה מגחת זכרון לבני חברתנו יצ"ו, מזכרת תקופה שתחלתה עלי' וסופה ירידה, תקופה של בנין והרוס. ותפלתנו עולה למרומים שכשם שזכינו לסיים תקופה זו, כן נוכה להתחיל ת קופה חדשה של עלי' תמידית וזכרון קדושינו יפקד לפני כסא כבודו לפליטת

(Nationwide Rabbinic Association) of the Neolog organization published the names of 96 Neolog rabbis who perished in the Shoah.⁴¹

According to the Neolog standpoint if the family was aware of the exact date of the death of the relative they could light a candle and say *kaddish* in the synagogue, or give charity on that day. If the exact day was not known, they could mourn on the last day of the month when the death occurred.⁴²

In Orthodox circles if the date of death was unknown survivors remembered the death of their family members on Sivan 20, the day assigned as a memorial day of mourning and fasting, commemorating the victims of the Shoah in Hungary.⁴³ The Neolog Community disagreed and argued that Sivan 20 had already been the day for the commemoration of too many tragedies in Jewish history.⁴⁴ Thus the department for religious matters of the (Neolog) Nationwide Rabbinic Association (Országos Rabbi Egyesület vallásügyi osztálya) appointed the day of the occupation of Hungary by the German army according to the Hebrew calendar (19th of March /Adar II. 24) as a day of mourning. The case of the erection of the memorial in Nagyvárad (see later) also casts light on the fact that commemoration reflected the different attitudes of the religious streams in Hungary. In 1947 the Neolog Jewish community of Makó erected a separate monument consisting of three marble plaques commemorating the victims of the Shoah who belonged to the Neolog community. The monument was taken to Szeged after the Neolog synagogue of Makó was pulled down and was erected again in the garden of the Orthodox synagogue of Makó after its renovation in 1984.⁴⁵

The previously unknown practice of engraving the names of the victims on a gravestone of a relative buried in the Jewish cemetery spread in (mostly) Neolog communities. Neolog rabbis allowed

עולמים וברחמיו הגדולים יגדור פרצות עמו ישראל ולא ישמע עוד שוד ושבר בגבולנו וזכותם של גדולי וקדושי קדמאי תעמוד לנו של
תמוש התורה מפנינו ומפי צאצאנו עד עולם ונזכה לעלות לציון ברנה. "שלת ירושת פליטה, הקדמה (פעסט, בחודש מנחם התש"ו).

⁴¹ In the article of József Katona, *Az Országos Rabbi Egyesület Értesítője*, Budapest, 1946 August, pp. 3-5. Katona adds the names of 11 rabbis who died a natural death but whose death was hastened by the German occupation.

⁴² *Az Országos Rabbi Egyesület Értesítője* (Budapest, 1946 August) pp. 23-25. Mourning on the last day of the month is in accordance with the decision of the Magen Abraham, Orach Hayyim, 568. R. Yitzhak Yaakov Weiss (an Orthodox rabbi) was asked a similar question by someone who had lost his parents in the Shoah, and who was not aware of the date of their deaths, whether it was permitted to set the *Jahrzeit* of both the father and mother on the same day. R. Weiss argued for choosing separate *Jahrzeit* dates: *Minhat Yitzhak*, vol. 1, no. 83.

⁴³ See the report of Benzion Jakobovits: the Orthodox synagogue on Kazinczy str. (Budapest) was full of praying men and women on Sivan 20, 1948. Benzion Jakobovits, *Zekhor yemot olam*, vol. 3 (Bnei Brak, 2004), p. 402. On the date Sivan 20 see Yerushalmi, Yosef Hayim, *Zekhor*, pp. 48-52. On May 26, 1171 a blood libel accusation led to the death of 31 Jews of the local community of Blois, France who were burned to death. The day of the burning – Sivan 20 according to the Jewish calendar – was declared as a perpetual fast. The fast of Sivan 20 also commemorates the Cossack pogroms led by Bogdan Chmielnitzky in 1648-1649 when thousands of Jews were killed. 20th of Sivan was observed in Eastern Europe until the eve of World War II as a commemoration of 1648.

⁴⁴ *Az Országos Rabbi Egyesület Értesítője* (Budapest, 1948 June) p. 20.

⁴⁵ *Makói holokauszt emlékkönyv. A soá 60. évfordulójára* (Szegedi Zsidó Hitközség, 2004) p. 103. The book contains the list of the names of the victims of Makó (pp. 105-144: Neolog and pp. 145-173: Orthodox). The monument commemorated the 468 Jewish victims of the Neolog community.

this practice on condition that it remained clear who was really buried there and who was not. “It is preferable to refer to them as *deported* and not as dead,” pointed out the article.⁴⁶

R. Yitzhak Yaakov Weiss hid away before the deportation in Nagyvárad and succeeded in escaping to Bukarest via Arad. He returned to Nagyvárad after the war to lead the community but emigrated after the Communist Party came into power.⁴⁷ One of his responsa, presumably written immediately after the war, elaborated on the individual commemoration of missing parents.⁴⁸

R. Weiss wrote his responsum when many survivors still had no information about the whereabouts of their relatives and were unsure if they were dead or alive. Then, immediately after the war, it was still impossible for women to remarry, in lacking of *halakhically* proper testimony concerning the death of their husbands. R. Weiss received a question from a member of his community (Nagyvárad) whether it is appropriate to say a special prayer (הזכרת נשמות) for parents who had probably died but there was no testimony concerning their death. The question was “whether or not to mention those souls who did not return home, and sacrificed their lives” in the prayer.⁴⁹ R. Weiss argued in the responsum that people deported to Auschwitz should be considered as those who “fell into the water that has no end,”⁵⁰ namely the information that they were taken to Auschwitz was not sufficient to proclaim their deaths.

R. Weiss refers to the urgent need of many to remarry, but he definitely warns against rushing to make *halakhic* decisions:

"בנ"ד [בנידון דידן] כיון דאנו רואין שהרבה רדופים לישא ולהנשא, ובדבר הנוגע לרבים יש לחוש לקלקולים
51". [...]

“In this case, as we see many hurrying to marry and get married, and in a matter that concerns so many we should be aware of the [possibility] of making mistakes.”

Instead, R. Weiss urges the rabbis of Hungary to find a consensual position on the matter.

At the end R. Weiss permits the saying of the mourning prayer for the “missing,” on condition

⁴⁶ „Helyes, ha az *elhurcoltakat*, mint ilyeneket, és nem mint holtakat említik meg az emléksorok”, Article on religious matters in *Az Országos Rabbi Egyesület Értesítője* (Budapest, 1946 August) p. 24.

⁴⁷ The memoir of R. Weiss was published in the first part of his responsa collection, *Minhat Yitzhak* entitled: *Pirsumei nissa*.

⁴⁸ R. Yitzhak Yaakov Weiss, *Shu”T Minhat Yitzhak*, I, no. 133.

⁴⁹ “אם להזכיר נשמות עבור אותם שלא חזרו לביתם, ונאבדו על קידוש השם”

⁵⁰ See *bYevamot* 115a. It is forbidden to remarry the woman of someone who fell into the water “with no end,” i.e. into the water with no mainland on either side. The logic behind the *halakha* is that there is still a chance that the man got out of the water somewhere without being seen so his wife still has the status of an *agunah*.

⁵¹ R. Yitzhak Yaakov Weiss, *Shu”T Minhat Yitzhak*, I, no. 133, p. 380.

that the parents were over sixty (elderly people had less chance of survival) and they were both taken to the “left side” in Auschwitz.⁵² However he argues that the son may mourn only once the rabbis come out with the general permission for the agunot to remarry (because mourning would definitely taken as a declaration of their husbands’ deaths).

V.D.2 Commemoration by monuments

After the First World War fallen Jewish soldiers were commemorated in synagogues, typically by placing a marble plaque with their names in the vestibule of the synagogue. (See the responsum of R. Akiba Sofer below.) In the post-World War II years this tradition was revived by placing a plaque with the names of the victims in the vestibule or by erecting monuments with the engraved names of the victims in the Jewish cemetery or in the garden of the synagogue.

The mass murder of Hungarian Jewry took place outside the Hungarian borders. No specific locale in Hungary could represent the mass annihilation of Hungarian Jewry. The monuments ("מצבה" Hebrew ‘gravestone’) were set up in most cases in the traditional Jewish locus of remembrance: in the Jewish cemeteries. The biggest monument to the victims of the Shoah in Hungary is located in the largest Jewish cemetery in the country, that of Rákoskeresztúr (Budapest, Kozma str., designed by Alfréd Hajós). The memorial of the victims of the Jewish male and female forced laborers, who were forced to march towards the Austrian border and who died on the march (*Fussmarsch*) is located in the Jewish cemetery in Óbuda. Placing the monuments in Jewish cemeteries reflected the attitude that saw in the Shoah an “internal Jewish matter.” Until recently, the monuments were set up in “Jewish” places, lacking any connection to places of the killings.

Some 2,000 dead from the Budapest ghetto were buried in the courtyard of the Dohány Street Synagogue (Budapest) located inside the ghetto in mass graves.⁵³ This place did not become a common, Hungarian-Jewish space of commemoration. In this compound there is also a monument to the victims of forced labor and a monument to the 600,000 Hungarian Holocaust victims.⁵⁴

⁵² Those who were commanded to go to the left side were killed in the crematoria soon after.

⁵³ The place is called the Heroes’ cemetery after the nearby Heroes’ synagogue dedicated to the Jewish soldiers who fell in the First World War. Klein Rudolf, “Budapest’s Jewish Cemeteries. A Short Survey of their Art, Architecture and Historical Significance”. *Jüdische Friedhöfe und Bestattungskultur in Europa; Internationale Fachtagung, Berlin-Weißensee, 3.-6. April 2011 = Jewish Cemeteries and Burial Culture in Europe. ICOMOS Deutschland und Landesdenkmalamt Berlin. Berlin: H. Bäbeler, 2011 pp. 105-111.*

⁵⁴ The first noteworthy monument that moved the space of commemoration out of the Jewish area into an area of non-Jewish domination, and at the same time set the positioning of commemoration in the place where the killings actually happened was the work of Gyula Pauer and Can Togay (“*Shoes on the Danube Bank*”). The

Setting a gravestone in the Jewish cemetery on a symbolic “collective” grave of the victims was a new form of commemoration in the post-war era. The symbolic graves replaced the missing graves of the Jews. In most cases human ashes brought from the concentration camps and/or R.I.F. soap were buried in these graves, occasionally along with desecrated, torn Torah scrolls. The responsum of R. Asher Müller, the rabbi of Petrozsény (Transylvania, today Petroșani, Romania) testifies that human ashes and R.I.F. soap were “put on the market” by soldiers who had collected them in the death camps of Germany or Poland and brought them to Hungary with the intention of selling them to Jews. In 1954 he answered the question – sent by the Jewish community of Gyulafehérvár (Transylvania, today Alba Iulia, Romania) to his son – whether it is permitted to “exhume” the R.I.F. soap they had buried in the cemetery in a box in 1945 and rebury it in a more dignified place in the cemetery.⁵⁵

In the post-war era similar *halakhic* problems evolved concerning the practices of commemoration both in the Neolog and the Orthodox camps. Ernő Róth, a Neolog rabbi was asked whether the names of Jewish converts to Christianity killed in the Shoah should be included on a marble plaque. Róth made a distinction between converts according to time of the conversion and permitted engraving only the names of those who converted in “the thunderous times,” presumably under duress.⁵⁶

A rabbi colleague of Róth brought human ashes from Auschwitz himself, in order to bury it in the Jewish cemetery. The question was if *kohanim* were forbidden to make contact with the ashes.⁵⁷ According to the decision of Róth, if a body was burnt, the laws of ritual impurity do not apply to it.⁵⁸ He also suggested that if only a small part of the dead remained, there was an option to keep it in a phial.⁵⁹

The Orthodox rabbis had to face similar *halakhic* questions. The erection of a local monument commemorating the victims often involved questions of authority and power: the Neolog and Orthodox communities of Nagyvárad (Oradea, Romania), for instance, both wanted to place the monument in

monument was erected in 2005 on the bank of the Danube River in Budapest as a reminder of the Jewish people shot into the Danube by Arrow Cross men in December 1944 – January 1945.

⁵⁵ R. Müller prohibited the removal of the soap. R. Asher Müller, *Sheelot u-teshuvot Hayyei Asher* (Bnei Brak, 1991) no. 210.

⁵⁶ Without indicating the exact dates. *Az Országos Rabbi Egyesület Értesítője* (Budapest, 1947 June) p. 22.

⁵⁷ The *Kohanim* (“priests”) are believed to be the descendants of Aron. They are bound by additional restrictions, included making contact with the dead.

⁵⁸ Ernő Róth: “Haláchikus problémák”, *Az Országos Rabbi Egyesület Értesítője* (Budapest 1948 December) pp. 26-27.

⁵⁹ Róth, *Ibid*, p. 27.

their locations. The responsum of R. Yitzhak Yaakov Weiss⁶⁰ reports on the tension between the local Neolog and Orthodox communities of Nagyvárád who argued about this issue:

"ראשי העדה הארטה' דפה גראסוורדיין באו לפני והציעו היות שנתעורר בין הרבה מאחינו בני ישראל לעשות זכרון לאלפים מישראל דפה עירנו שנהרגו על קידוש השם, ונחלקו לכמה כיתות במקום הראוי לעשות זכרון, החפשים רצונם לקבוע ברשותם דוקא, והקהל הארטה בחששם כי על ידי זה יתחזק השפעתם ויחלש כח קהלת הארטה ויוכל להגיע על ידי זה ריעותא גדולה לכל ענינים הנוגעים לדת, ע"כ [על כן] ברצונם דוקא להשתדל בכל מאמצי כחם לפעול לעשות הזכרון הנ"ל [הנזכר למעלה] ברשותם. והנה האופן האיך לעשות זכרון הנ"ל כפי הצעתם, ה' הכוונה לעשות מצבה גדולה וע"ז [ועל זה] יהי נחקק מה שנעשה עם היהודים דפה על ידי הרשעים ימה שמם."

"The leaders of the Orthodox community of this place, Nagyvárád came to me and suggested – because the matter came up among our brothers, the children of Israel – to set up a memorial for the thousands of Israel of Nagyvárád who were killed by sanctifying the name of the Almighty (*kiddush ha-Shem*). The opinions differed on the appropriate place of the memorial: the liberals [Neologs] in fact intend to set it up on their premises and the Orthodox community worry that it would lead to the strengthening of the power of the Neolog and the Orthodox community will weaken, which might lead to the general decline regarding every religious matter. If so, the [Orthodox leadership] in fact makes every effort to set up the above mentioned memorial on their premises. And this is how they propose to erect a large gravestone with the deeds committed against local Jews [of Nagyvárád] by the evil ones – may their name and memory be blotted out –, engraved on it."

The Nagyvárád Orthodox community had some R.I.F. soap. The question was if it was permitted to bury it together with the human ashes taken from Auschwitz and a torn Torah scroll. In his answer R. Weiss refers to Maimonides, according to whom monuments are erected by non-Jews to commemorate fallen heroes and there were nations that even made sacrifices on such stones. Thus Maimonides considered the erection of such a monument a "custom of the nations" and ultimately, idolatry,⁶¹ incompatible with the biblical prohibition of "neither shall ye walk in their statutes"⁶² (בחוקותיהם לא תלכו). On the other hand, argued R. Weiss, a monument erected on a grave, with the name of the dead engraved on it, i.e. a *gravestone*, is not suspected of being idolatrous.⁶³ Basing his decision on the latter argument R. Weiss permitted burying the three things – the soap, the human ash and the Torah scroll – together and erecting a 'gravestone' ("מצבה") on the grave. The act of symbolic burial transforms the place into a grave, symbolized by the 'gravestone', marking the symbolic grave of all the Jewish victims of the Shoah and especially of those who were deported from the Nagyvárád

⁶⁰ *Shu"t Minhat Yitzhak*, I, no. 29. Date: 1947. Title: "בענין מצבת זכרון לאותן שנאבדו על ק"ה [קידוש השם]" / Concerning the monument ['gravestone of memory'] in memory of those who lost their lives by *Kiddush HaShem* ('sanctification of the name').

⁶¹ *Mishneh Torah, Hilkhoh Avodah Zarah*, 6:6.

⁶² *Vayikra* 18:3 and *Shulhan Arukh, Yoreh Deah* 178.

⁶³ *Mishneh Torah, Hilkhoh Evel*, 4:4.

community. According to the plans, the deeds done against the Jewish people by the Nazis would have been engraved into the 'gravestone' in order to remind God: "See Almighty and look what your haters did to the seed of Israel" ("ראה ה' והביטה את אשר עוללו משנאיך לזרע אי"ו!").

The responsum concludes:

"דבנ"ד [דבנידון דידן] נכון יותר כדי לעורר אבל ולהעלות חמה, כשיהי' חרות על האבן מה שקבור שם, ופשיטא דמקום מעמד המצבה זו, צריך להיות ברשות קהל יראים [...]."

"In this case, it is more correct – in order to waken mourning and strengthen wrath – to engrave on the stone what is buried there. It is obvious that the gravestone should stand on premise of the Orthodox community."

The permission to erect the monument given by R. Weiss was due to the need to bury the soap of supposed human origin that "deserved" a gravestone. R. Weiss consistently and consciously uses the word "gravestone" instead of "monument," thus expressing the Orthodox point of view, which endows the latter with negative connotations.

In his next responsum, sent to an unknown community, R. Weiss also concerned the practice of burial of the R.I.F. soap and human ashes brought to Hungary from the crematorium of an extermination camp. The community intended to bury them together in the 'courtyard of the community building' (הצר הקהל). The responsum reflected on the question whether it was allowed for *kohanim* to walk over this grave.⁶⁴

R. Yehoshua Grünwald was asked the very same question.⁶⁵ He also affirmed the burial of the ashes brought from Auschwitz (אפר שריפה, 'ash of fire') and even argued that it was a *mitzvah* to do so. He argued for burying the ashes in the Jewish cemetery among the graves and the placing of a gravestone on the burial site, and permitted *kohanim* to walk beside the grave. In 1943, R. Grünwald went into more detail on the question in his responsum on torn Torah scrolls brought from destroyed Jewish communities of Eastern Europe.⁶⁶

A responsum of R. Akiba Sofer⁶⁷ written in 1937 gives a *halakhic* decision regarding the plan of the Jewish community of Beregszász (today Berehove, Carpatho-Russ, Ukraine) to erect a memorial commemorating the Jewish soldiers who died in the First World War. It is probable that the motivation

⁶⁴ *Shu"t Minhat Yitzhak*, I, no. 30. Date: [1947], Title: "בדבר אם קברת בורית רי"פ ואפר המת מטמא לכהנים" / Whether burying the R.I.F.-soap and the human ash renders the *kohanim* impure.

⁶⁵ R. Yehoshua Grünwald, *Sheelot u-teshuvot Hesed Yehoshua* (New York, 1953), no. 4.

⁶⁶ *Ibid*, no. 21.

⁶⁷ R. Akiba Sofer, *Shu"t Daat Sofer*, Orah Hayyim, no. 22. Addressee: Abraham Schlomo Hirsch (Rabbi in Beregszász since 1930. Killed in 1944. See Spitzer, Shlomo J., *Die Rabbiner Ungarns, 1944*. Budapest: MTA Judaisztikai Kutatócsoport, 1999.p. 25.) Date: עש"ק וארא [וירא] תרצ"ח (22/10/1937).

to create a space for commemoration for the Jewish victims of the war stemmed from the patriotic atmosphere following the re-annexation of certain parts of Carpatho-Russ by the Hungarian army.

The principals of the Jewish community of Beregszász intended to put a marble plaque on the wall of the synagogue commemorating the Jewish soldiers from Beregszász who died in the First World War. R. Hirsch, the questioner, permitted it on condition that they put the plaque with the names of the soldiers engraved on it in the ("פארהויס") entrance-hall of the synagogue and not inside, and R. Akiba Sofer agreed with him.⁶⁸

The head of the rabbinic court of Budapest, R. Yonathan Steif, faced a similar question.⁶⁹ The principals of the Jewish community in Kecskemét planned to commemorate the victims of the Shoah by setting a marble plaque on the wall of the entrance of the synagogue. R. Steif ruled putting the marble plaque in the community house or hall (בית הקהל) where the principals of the Jewish community usually gather. R. Steif is also concerned that having a marble plaque is a non-Jewish custom. If the principals of the community insisted on placing the marble plaque into the synagogue, they should entrust a non-Jew with the work.

V.D.3 Commemoration on existing gravestones

R. Moshe Lemberger, the rabbi of Makó, was asked in 1946 whether it was permitted to engrave the names of relatives killed in the Shoah on a gravestone of a family member who died before the deportations and was buried in the Jewish cemetery.⁷⁰ For engraving the names the gravestone had to be taken to the stonemason, and removing someone's tomb required the consent of a *halakhic* authority. The *Shulhan Arukh* explicitly forbids deriving benefit from someone's tomb.⁷¹ However, in his responsum referring to the decision of the Rashba⁷² permitting the relocation of a gravestone, R. Lemberger permitted taking the gravestone and engraving the names onto it.

In his other responsum written about a similar case in 1950 while still in Makó, R. Lemberger rejected the removal of the gravestone.⁷³ R. Lemberger was asked by Barukh Cvi (Paks) regarding the wish of a member of the Paks community who intended to remove the gravestone of his father and take

⁶⁸ See *Shulhan Arukh, Orach Hayyim*, 152.

⁶⁹ R. Yonathan Steif, *Shu"t ve-hiddushe Mahari Steif*, no. 151. Addressee: Eliezer Popper, *more cedek* in Kecskemét.

⁷⁰ R. Moshe Lemberger, *Sheelot u-teshuvot Ateret Moshe, Yoreh Deah* no. 238.

⁷¹ *Shulhan Arukh, Yoreh Deah* 364.

⁷² *Teshuvot ha-Rashba*, vol. 1, no. 375.

⁷³ R. Moshe Lemberger, *Sheelot u-teshuvot Ateret Moshe, Yoreh Deah* no. 240.

it to the stonemason to engrave the names of his mother and her relatives onto it. (The father had died before the deportations and was buried in the new Jewish cemetery of Paks.) R. Lemberger permitted engraving the names but rejected removing the gravestone arguing that it would not serve the deceased father.

V.E Cemeteries

Jewish cemeteries in the countryside of Hungary had been continuously looted since the destruction of the communities in 1944. Selling the stones to non-Jewish workshops manufacturing gravestones or using them as building material for roads and buildings, etc. was a widespread phenomenon after the war. Bombing and the proximity to the battle front also caused serious damage during the war: in Adásztevel (a village close to Pápa, in Veszprém county, Hungary) German soldiers took the gravestones out of the Jewish cemetery and used them as tank-traps. The cemetery became agricultural land after the war.⁷⁴ All in all, the most extensive damage was caused by the negligence by the surrounding non-Jewish population in the post-war decades. The deterioration of cemeteries in the countryside was the result of both the destruction of the communities and their financial problems.

According to the report of the MIOK (*Magyar Izraeliták Országos Képvisellete*, National Agency of the Hungarian Jews) by 1960 there were 822 Jewish cemeteries all around the country that remained without any supervision.⁷⁵ The maintenance of the guarded Jewish cemeteries of the countryside required substantial financial support from the central Jewish leadership. The responsum of R. Meshulam Rath,⁷⁶ written in Israel, depicts the situation of the Jewish cemeteries in Hungary in the post-war years:

"ע"ד [על דבר] השאלה מהונגריה וז"ל [וזה לשונו]: היות כידוע שבמדינה פה בכלל ובפרט מקומות אשר יושביהם היו מועטים מאחב"י [מאחינו בני ישראל] והכפרים נטרוננו לגמרי ואין דרים בהם כלל יהודים, ובעוה"ר [ובעוונותינו הרבים] מעשים בכל יום הערלים הולכים וגוזלים וגונבים המצבות מבתי הקברות, ולא עוד אלא ששמענו מקומות שסביב בית החיים היה גדר בנין אבנים שברו ופרצו את הגדר ונטלו את האבנים והמצבות ולא נשאר רק הקברים ואין שומר, ומי יודע עוד לעתיד עד היכן הדברים מגיעים."

⁷⁴ Toronyi, *Zsidó közösségek öröksége*, p. 111.

⁷⁵ Ibid, p. 117. "Az ország különböző részein száz és száz olyan zsidó temető található, amelyben nappal marhák és disznók legelnek, este pedig szerelmes párok találkoznak. A zsidó temetők egy részéből szervezett tolvajbandák hordják el a sírköveket is." p. 118.

⁷⁶ R. Meshulam Rath, *Kol mevasser, Sheelot u-teshuvot*, vol. 2, no. 9.

“Regarding the question from Hungary, quoting: ‘Since it is well known that in this country in general, and especially in places where few Jews lived [before the war], and [now] are totally empty of any Jewish inhabitants, the non-Jews (*arel*, ‘uncircumcised’) loot and steal the burial stones from the [Jewish] cemeteries, due to our sins. Moreover, we heard that in places where there was a stone wall surrounding the cemetery, they broke and breached the wall and took the stones [of the walls] and the tombstones and only the graves remained, and there is no guard. And who knows what else is to come.’”

Hungarian rabbis posed the question to R. Rath of whether it was preferable to relocate the gravestones from every unguarded cemetery in the countryside to the cemeteries of nearby towns with functioning Jewish communities. The other option was to sell the broken gravestones and use the money received to put strong fences around the cemeteries of settlements without a Jewish population. The Hungarian rabbis asked if it was also permitted to exhume and re-bury the bones in the nearby towns to avoid the desecration of the graves.

Both questions were motivated by the fear of desecration. According to the responsum the desecration of cemeteries that started immediately after the deportations continued after the war. The few functioning Jewish communities in the countryside of Hungary could not bear the burden of guarding all the Jewish cemeteries that had been targets of assaults during and after the war. Repairing the original walls or building new walls, to avoid further plundering, became a highly important aim of the remaining communities.

R. Rath prohibited the selling of the tombs as both the area within the cemetery and the tombs belonged to the dead.⁷⁷ His decision was based on the *Shulhan Arukh*.⁷⁸ Nevertheless, R. Rath permitted the exhumation of the bones and their relocation, together with the gravestones, to the nearby cemetery. He even argued that it was the obligation of the nearby community to exhume the dead for fear of desecration of the cemetery.⁷⁹ R. Asher Müller also argued for exhuming the corpses and their burial in a guarded Jewish cemetery nearby in his responsum sent to Déva (Transylvania, today Deva, Romania) in 1954.⁸⁰ He went into more detail about the cemeteries in villages that were continuously desecrated by animals.

According to a Neolog statement the same mourning rituals had to be practiced after the exhumation as after burials (tearing the clothes, *shiva*, etc.).⁸¹ In spite of *halakhic* approval, Jewish cemeteries were not relocated after the war. The financial situation of the Jewish communities did not

⁷⁷ His decision follows the Rashba's: *Teshuvot ha-Rashba*, vol. 1, no. 375, see note 72.

⁷⁸ *Shulhan Arukh*, *Yore deah* 363: 1.

⁷⁹ Though he argues for the possibility of putting the bones of more people into one coffin in the footsteps of the Hatam Sofer who decided thus. Cf. Moshe Sofer, *Sheelot u-teshuvot Hatam Sofer, Yoreh Deah*, no. 353.

⁸⁰ R. Asher Müller, *Sheelot u-teshuvot Hayyei Asher* (Bnei Brak, 1991) no. 210.

⁸¹ *Az Országos Rabbi Egyesület Értésítője*, Budapest, 1946 August (pp. 23-25), pp. 24-25. See note 44.

allow the exhuming of the dead from the unguarded cemeteries of the countryside. Victims of massacres buried in mass graves, however, were exhumed.⁸²

The testimony of the Orthodox press on the anti-Jewish riots supports the fear of the rabbis who intended to defend the abandoned Jewish cemeteries and synagogues. Eugene Duschinsky refers to numerous anti-Jewish riots between 1946 and 1948 in the countryside of Hungary quoting *Új Élet* ('New Life'): "In Makó, an important Jewish community in southeastern Hungary, a synagogue was set afire and burned to the ground."⁸³ Desecration of Jewish cemeteries took place in September 1947 in Kecel "... where unknown persons, under cover of darkness, destroyed the Jewish cemetery's ancient tombstones and a recently erected monument to the Jews of Kecel martyred in Auschwitz."⁸⁴ Further desecrations of Jewish cemeteries happened in early November, 1947, in Dunaharaszti,⁸⁵ and two weeks later in Marcali.⁸⁶ In February, 1948, the synagogue of Zugló was raided, and Torah scrolls were desecrated;⁸⁷ the cemeteries of Pásztó and in Körmend were also despoiled.⁸⁸ The Jewish cemetery in Farkasrét (Budapest) and the synagogues in Kiskunfélegyháza and Pásztó were desecrated at the beginning of 1948.⁸⁹

V.F Synagogues

The almost total destruction of the Jewish communities of the countryside facilitated the formation of a new financial structure of the Jewish communities. Financially, the local Jewish communities in the countryside became totally dependent on the centralized, nationwide Jewish leadership, which redistributed all the financial support received from the state. The maintenance of the empty, main synagogues was impossible for the local communities without significant financial

⁸² For example, in Nagysármás at the Hospital at Maros str., Budapest and the mass graves of the death marches.

⁸³ Duschinsky, Eugene, "Hungary", Meyer, Peter et al., *The Jews in the Soviet Satellites* (Syracuse University Press – The American Jewish Committee, 1953), (pp. 373-489) at p. 419. *Új Élet*, June 5. 1946.

⁸⁴ *Ibid*, p. 435, *Új Élet*, September 18, 1947.

⁸⁵ *Ibid*, p. 435, *Új Élet*, November 6, 1947.

⁸⁶ *Ibid*, p. 435, *Új Élet*, November 20, 1947.

⁸⁷ *Ibid*, p. 435, *Új Élet*, February 20, 1948.

⁸⁸ *Ibid*, p. 435, *Új Élet*, February 19, 1948 and November 18, 1948.

⁸⁹ Csorba László, "Izraelita felekezeti élet Magyarországon a vészorkszaktól a nyolcvanas évekig (1945-1983)", *Hét évtized a hazai zsidóság életében*, vol. 2 (Budapest: MTA Filozófiai Intézet Kiadása, 1990, pp. 61-190), p. 81.

support from the center.⁹⁰

According to Jewish tradition the synagogue building has a certain degree of sanctity until it is sold. Being abandoned and damaged (two acute problems in the post-war period) does not put an end to its sanctity.⁹¹ In general, both the Neolog and the Orthodox rabbis were in favor of selling ruined buildings in order to avoid further desecration. Referring to the Talmud⁹² the *Shulhan Arukh* differentiates between synagogues of towns and synagogues of villages: the synagogues of villages were built by locals without the financial help of others, so the locals, as the only owners, are allowed to sell the building. Synagogues of towns, though, were built with contributions from people who were not necessarily related to the local community, so the locals of the town – since they are not the exclusive owners of the synagogue – cannot sell the building. Ernő Róth in his article written in 1947⁹³ suggested selling the abandoned synagogues even in towns, because those who contributed to the building of the synagogue no longer acted as owners. He also argued that local leadership was entitled to sell the synagogue, and the money received from the sale should not be used for profane purposes but only for commemoration of the victims.

Nonetheless, according to the *Shulhan Arukh* there were two cases when the synagogue could not be sold: if it was in use or the new owners intend to establish a church in the building or to build a church on the spot.⁹⁴ Following the *Shulhan Arukh* Róth argued that synagogues where regular prayers are held could not be sold. He made it clear that the Neolog point of view enables the communities to sell the abandoned synagogues only on condition that another location would serve the members of the community as a “house of prayer.”

In the post-war years the ownership of the synagogues was transferred from the local communities to the nationwide Jewish leadership. However, in the long term, the nationwide leadership also lacked the financial means to maintain the synagogues in the countryside. Many local communities had no choice but to pass the ownership of the synagogues to the local authorities, with the tacit approval of the nationwide Jewish leadership. The center left the local communities to their own devices, which made possible for the local authorities even to confiscate functioning synagogues,⁹⁵ without compensating the local Jewish community. There were places where Jewish communities gave

⁹⁰ See a detailed summary on the ruined synagogues in Komoróczy, *A zsidók története Magyarországon*, pp. 1021-1030.

⁹¹ *Shulhan Arukh, Orach Hayyim* no. 151. The synagogue remains holy even in its ruins; *ibid* 151:10.

⁹² *bMegillah* 26a-b.

⁹³ Ernő Róth, “Az elárvult templomokról”, *Az Országos Rabbi Egyesület Értesítője* (Budapest, 1947 April), pp. 31-37.

⁹⁴ *Shulhan Arukh, Orach Hayyim* 151. However, if the purchase price serves higher religious purposes (עליה במצווה), it is allowed to sell the synagogue, *ibid*. 151: 6.

⁹⁵ See the report of the MIOK (Magyar Izraeliták Országos Közössége) on synagogues and cemeteries (1960) in Toronyi, *Zsidó közösségek öröksége*, p. 116.

up the ownership of the synagogue in exchange for symbolic financial compensation, often pushed by political actors.

The conditions for the proper selling of synagogues were already discussed before 1944 by the *halakhic* authorities of the country: for example R. Akiba Sofer in 1914 was asked about the permissibility of selling the synagogue of an abandoned village. His answer was affirmative.⁹⁶

The responsum of R. Yehoshua Grünwald reports on a case when a synagogue that was confiscated by “Christians” (נוצרים, i.e. the local authority) and turned into a church after the deportation of the Jewish population of the city (the name of the city is unknown).⁹⁷ Christian religious objects considered “idolatrous” from a Jewish religious perspective (פסילים והגלולים) had been installed in the building. After the first Jews returned to town, the question arose of whether it was permitted to pray in the synagogue after removing traces of Christian worship. In his answer R. Grünwald considered that a negative answer would cause further degradation to the synagoge, as the building would stand empty (עומד שומם והרוב) though every inhabitant of the town knew that it served initially as a synagogue. The responsum itself mostly intends to clarify the arguments of rabbis who had decided permissively.

R. Betzalel Stern had to make a decision in a very similar case concerning a synagogue where non-Jews (נכרים) took possession after the deportations (the name of the town is unknown).⁹⁸ After returning, the Jewish survivors of the town required the synagogue back; the non-Jews rejected the request, but were willing to buy it. As there was no legal way to eject them from the synagogue, the question was whether the Jews were permitted to receive the money. The *Shulhan Arukh* prohibits the selling of synagogues in populous towns,⁹⁹ so R. Stern had to decide whether the prohibition applied in this case. Finally R. Stern argued that it was permitted to receive money in exchange for the synagogue.

Those responsa referred to in this chapter, which do indicate the name of towns, refer to cases that happened outside the borders of Greater Hungary. The following examples, though, reflect the general problems of Hungarian-Jewish survivors who were forced to sell the local synagogue because of financial or other extenuating circumstances.

R. Yonathan Steif argued that under the new circumstances that evolved after World War II the prohibition of the *Shulhan Arukh* of selling the synagogues in populous towns was invalid (בזמן הזה לא

⁹⁶ The village (ערדא) was left by its Jewish inhabitants. R. Akiba Sofer, *Shu"t Daat Sofer*, Orah Hayyim (Mekhon Yerushalaim, 1993), no. 24. R. Sofer permitted the selling of the synagogue but suggested taking every possible measure to avoid transforming it into something that would be degrading to its original function.

⁹⁷ R. Yehoshua Grünwald, *Sheelot u-teshuvot Hesed Yehoshua* (4rd ed., Brooklyn, 1969) no. 12.

⁹⁸ R. Betzalel Stern, *Sefer be-tzel ha-hokhma*, vol. 1, no. 29.

⁹⁹ *Shulhan Arukh*, Orah Hayyim 153: 7.

(שי"ך דין כרכים). His responsum¹⁰⁰ was sent to R. Yaakov Yosef Weiss, the hassidic rabbi of Szaplonca (Transylvania, today Săpânța, Yid. Spinka, Romania) regarding the synagogue of Szaplonca, which housed the *beit midrash* of *Agudat Haside Spinka*, where the community prayed on every Jewish holiday. R. Steif agreed to the selling of the synagogue on condition that the community would not sell it to serve the purposes of another religion, thus avoiding the degradation of the building. His further conditions were that the members and the leaders of the community should gather and agree on selling the building. Also they should find a new place for the *beit midrash*, and buy it for the community from the proceeds of the sale of the synagogue.

In his responsum R. Steif relates to the selling the “houses of prayer” as a Hungarian phenomenon:

"[...] ונראה שבזה לאו כל המדינות והמקומות שווים ועינינו רואות שבמדינה זו כל עם מוכרים בית תפילהם [...]"

“It seems that regarding this matter not all the countries and places are similar, as we see that in this country [in Hungary] every nation [i.e. every Jewish community] sells his house of prayer.”

The following two responsa were written by R. Yitzhak Yaakov Weiss in Nagyvárad. Both responsa (1946) elaborate on the same question and were sent to a community where the leadership intended to convert the abandoned synagogue into an orphanage (the name of the city is unknown).¹⁰¹ The questioner referred to the fact that in many other synagogues the *ezrat nashim*¹⁰² had already been transformed without first asking a *halakhic* authority. According to him using the *ezrat nashim* for non-holy public purposes was considered as a desecration of the synagogue, however the community would have to face losing the whole building if the municipality decides to confiscate the abandoned building.

R. Weiss unequivocally rejected the conversion of the *ezrat nashim* to an orphanage, because of the degradation caused to the synagogue. Still, he permitted the transformation on condition that it would happen in accordance with the *halakhic* regulations. The decision met the expectations of the questioner, who warned of the consequences of a negative decision.¹⁰³

R. Weiss also argued that there was a real threat that municipalities might take over abandoned synagogues. Thus, in order to prevent confiscation, it was the duty of the community to change the function of the building. R. Weiss was of the opinion that the degradation would have bigger if the

¹⁰⁰ R. Yonathan Steif, *Shu"t ve-hiddushe Mahari Steif*, no. 69.

¹⁰¹ *Minhat Yitzhak*, vol. 1, nos. 118-119.

¹⁰² Literally ‘court of women’, i.e. the separated part of the synagogues for woman, usually the balcony.

¹⁰³ First, the community should sell the synagogue to someone outside the community. Second, they should spend the purchase price strictly only on religious duties (marrying off orphans, maintaining students). After that the community should buy (probably from its own resources) a building for the purpose of establishing an orphanage.

municipality had acquired the building.

R. Pinhas Goldberger wrote a responsum in 1945, while still serving as rabbi in Nagymagyar (Magendorf, today Zlaté Klasy, Slovakia).¹⁰⁴ The responsum was sent to Mordechai Leibovits in Pressburg, concerning the ruined *beit midrash* in Pressburg. The leaders of the re-established Jewish community wished to use the building materials of the structure to construct a *mikve*; the responsa attests that there were observant Jews living in the town after the war. R. Goldberger permitted the use of the materials of the *beit midrash* as building material for the *mikve*, because there were no more students in town studying there, nor was there a *rosh yeshiva*.

The second responsum of R. Goldberger was sent from Nagymagyar to Shalom Moshe Ungar concerning the great synagogue of Nyitra (today Nitra, Slovakia).¹⁰⁵

"אודות בית הכנסת הגדול דעירכם אשר חרבו יסודותי' ונטו הכתלים ליפול, ורבים מאינם יהודים שוברים ולוקחים משם עצים ואבנים ועושים בהם מה שלבם חפץ ומביאים אותם לידי בזיון, אם נכון למכור הביהכ"נ [הבית הכנסת] ולהוציא המעות לחולין או לא [...]."

"Concerning the great synagogue in your town that was ruined and its walls tumbled down. Many non-Jews break in and take wood and stones from there to use it for their own purposes and disgrace them. [The question is] whether it is right to sell the synagogue and to spend the money for non-holy [purposes]."

As in the former case, the selling of the synagogue would save it from degradation. The questioner referred to the decision of R. Steif (without mentioning his name), who argued that the prohibition of the *Shulhan Arukh* on selling synagogues of populous towns was not relevant anymore after World War II. R. Goldberger also permitted the selling of the synagogue on condition that all the Jewish inhabitants of the town agreed on it. R. Goldberger described the situation in a very detailed way in order to support his permission: the synagogue was continuously looted, and there were only a few people who returned from the "Land of Blood" (מארץ הדמים) to Nyitra. The survivors had no financial means to rebuild the destroyed synagogue, where prayers had ceased in 1944. (The returning survivors started praying in the *beit midrash* instead of the main synagogue.)

R. Goldberger argued in the responsum that the sooner they sell the synagogue the better, because it would save the building from daily desecration. The third argument in favor of selling the synagogue was even more convincing:

¹⁰⁴ R. Pinhas Goldberger, *Sheelot u-teshuvot Minhat Asher, Orah Hayyim*, no.1. Date: עש"ק פ' עקב תש"ה (July 27, 1945).

¹⁰⁵ Ibid, no. 2. Date: יום א' פ' נצבים תש"ה (02/09/1945).

"[...] ובפרט שאפילו אותם המתפללים שישנם עוד בהעיר הם מוכנים לעזוב מדינת הרשע וישאר הפקר לגמרי."

"[...] Especially that those [Jews] who still pray in town are preparing about to leave the Evil country [Slovakia], and [the synagogue] will totally be abandoned."

R. Goldberger permitted selling the synagogue on condition that from the proceeds the leaders of the community would support the yeshiva students or marry off the orphans – giving evidence of the reorganized observant Jewish life in Nyitra. In the end of the responsum R. Goldberger concluded that it was a *mitzvah* to sell the synagogue.

In his third responsum¹⁰⁶ R. Goldberger referred to a similar case: the members of the Nyitra community wished to repair the wall around the court of the *beit midrash* with the wood and stone taken from the ruined synagogue. The questioner considered repairing the wall a *mitzvah*. He also emphasized that the majority of the community planned to leave:

"א"כ [אם כן] בוודאי אין מן הראוי שישאר כן הביהכ"נ [הבית הכנסת] להפקר ביד הרוצחים ר"ל [רחמנא ליצלן]."

"If so, certainly it is not appropriate to leave the synagogue abandoned in the hands of the murderers, may the All-merciful protect us."

The next argument of the questioner was that the rabbinical authorities of Hungary suggested selling the synagogue and putting the money received aside for buying or building a new building. However, R. Goldberger was sceptical:

"ומה שכתב כתה"ר [כבוד תורתו הרמה] שהתייעץ עם גדולי אונגארן שליט"א [שיחיה לאורך ימים טובים אמן] והם אמרו לו למוכרו ולהניח המעות לבנין ביהכ"נ [בית הכנסת], לזה אין דעתי נוטה כי בביהכ"נ כבר חששו לפשיעותא, ומה אם בשנים כתיקונן חששו לזה כל שכן עתה דיש לחוש דמי יודע מה יולד יום."

"Regarding what You, the great master wrote that you took counsel with the honored rabbis of Hungary, may they live a good long life, Amen, and they suggested to You to sell [the synagogue] and keep the money for building a [new] synagogue. I would not agree with this, because [the *halakhic* authorities] have already been concerned of failures regarding synagogues [namely that the new synagogue would not be built in the end]. And if they worried on this under normal conditions, all the more we should worry today, as no one knows what will come."

The renovation of an abandoned structure using the building material from another building was a common phenomenon in the post-war years. The responsum¹⁰⁷ of R. Yosef Tzvi Dushinsky

¹⁰⁶ Ibid, no. 3.

¹⁰⁷ R. Yosef Tzvi Dushinsky, *Sheelot u-teshuvot Mahari"tz*, vol. 1, no. 16.

(Jerusalem) written in 1947,¹⁰⁸ addressed to Yosef Eliyahu Steiner (Dunaszerdahely), concerns the synagogue in Dunaszerdahely that had been seriously damaged by locals (שפגעה בו יד הצוררים). The community planned on renovating the building with wood and stone retrieved from the demolishing of the synagogue's *ezrat nashim*.

V.G Summary

The history of the destruction of rural cemeteries and synagogues documented in the responsa reflects the destruction of the Jewish communities. The texts above also attest to the power of the communities in their struggle to fulfill their two crucial aims: re-establishing religious life and preserving the memory, as well as the material and religious heritage of the communities. The forms of commemorating martyrdom, in the re-established Jewish communities, followed the traditional patterns and were partly formulated after WWII.

The intention of engraving, on granite, the deeds done against the Jewish people was an immediate reaction to the deportations. The same need was expressed both in the erection of monuments and in the individualized forms of commemoration, among them the writing of memoirs. Orthodox rabbis considered the erection of monuments as alien to Judaism, nevertheless, they all found a solution, in accordance with the *halakha*, to allow this custom. Selling the synagogues of populous towns was generally prohibited in Jewish tradition, however, every *halakhic* authority of the post-war period supported the selling of the ruined synagogues, even in towns, in order to save them from further degradation. Selling of synagogues was not unprecedented in Jewish tradition. The *halakhic* authorities of the post-war period based their lenient decisions on previous lenient precedents. However, in the past selling the synagogues was exceptional, while after the war it became a large-scale phenomenon.

The commemoration of the victims of the Shoah did not transcend the boundaries of the local Jewish communities and space and remained local in spite of the policy of centralization that became prevalent since 1949 until the present day. This centralization motivated the central Jewish leadership to entrust the Hungarian Jewish Museum in Budapest to collect all religious objects used before the destruction and to transport them to Budapest. In the post-war era these articles that were no longer in

¹⁰⁸ יום כ"ו לחודש תשרי שנת תש"ה (10/10/1947).

use for religious purposes became “sacred” as “objects of memory”, i.e. relics of the destroyed communities. Besides the objects, the museum also collected archival materials of the communities, even of those that continued to function after the war.

The communal and individual forms of commemoration mostly followed traditional ways; the responsa written after 1945, though, reflect a few innovations that spread after the war. The rabbis faced new *halakhic* problems due to the almost total destruction of Hungarian Jewry. The *halakhic* discussion of these problems served the needs of surviving, observant Jews. In the post-war era the maintenance of the synagogues and cemeteries by the survivors and their descendants gained a commemorative function. The texts referred to above, all reflect this tension between new realities and traditional forms of commemoration.

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VI. Appendix

VI.A Biography of rabbis¹

R. Efraim Billitzer (– 1944)

Dayyan in Bethlen (Transylvania, today Beclean, Romania). Died on Sivan 7, 5704 (May 29, 1944).

Shu"t Yad Efraim (Bnei Brak: 1970)

IV.E

R. Yisrael Bleier

Rabbi of Nyírbátor (Hungary, Szabolcs county).

R. Yonathan Steif, *Shu"t Mahar"l Steif*, no. 240

IV.H

R. Mordechai Brisk (1887, Tiszadara – 1944, Auschwitz)

Student of R. Mordechai Leib Winkler, the rabbi of Mád (Hungary, Zemplén county). Since 1920 served as the rabbi of Tasnád, where he established the greatest yeshiva in Transylvania.

Shu"t Mahara"m Brisk (vol. 1, Tasnád: 1939; vol. 2, Tasnád: 1942; vol. 3, Tasnád: 1944 – the first 37 responsa; vols. 1-3, reprint Brooklyn: 1963 – with the missing 6 responsa, nos. 38-44 of vol. 3)

III.H.1; IV.H; IV.J; IV.K; IV.L

R. Shlomo Ehrenreich (1863, Beregszász – 1944, Auschwitz)

The rabbi of Szilágysomlyó (Transylvania, today Șimleu Silvaniei, Romania since 1899 and the head of the yeshiva of 50-60 students. Died on Sivan 11, 5704 (June 2, 1944).

Shu"t Lehem Shlomo (Brooklyn, 1970-1976), *Igrot Lehem Shlomo* (Brooklyn, 1994)

III.G

¹ From Cohen, Yitzhak Yosef, *חכמי טראנסילוואניה* (Jerusalem, Makhon Yerushalaim, 1989), Cohen, Yitzhak Yosef, *חכמי הונגריה והספרות התורנית בה* (Jerusalem: Makhon Yerushalaim, 1997) and Spitzer, Shlomo J., *Die Rabbiner Ungarns, 1944 (Die orthodoxen Gemeinden)* (Budapest: MTA Judaisztikai Kutatócsoport, 1999).

R. David Frenkel (1903-1945, Focșani)

Studied in the yeshiva of Ungvár, later served as rabbi of Berettyóújfalu (Hungary, Bihar county). In 1944 he was taken to forced labor and fell to Russian captivity. In 1945 R. Frenkel arrived to Focșani (near Bukarest) where he died.²

Shu"t Beer David (New York-Jerusalem, 2000)

III.D.2; III.H.1; III.H.3; III.I

R. Yoel Zeev (Vilmos) Glattstein (1872 – 1944, Auschwitz)

In 1896 moved to Királyhelmeč (today Kráľovský Chlmec, Slovakia) and became the leader of the yeshiva in 1906.

In 1944 the Torah scrolls and books of the synagogue were burnt but a few manuscripts of R. Glattstein survived.

Shu"t Nahalat Yoel Zeev (vol. 1: New York, 1988, vol. 2: New York, 1990)

III.H.2; III.I; IV.E; IV.I

R. Pinhas Asher Goldberger

Leader of the Fehérgyarmat *yeshiva* and since 1937 the rabbi of Nagymagyar (today Zlaté Klasy, Slovakia) and head of the *yeshiva*. Moved to the United States after the war and served as a rabbi in Forest Hills.

Shu"t Minhat Asher (Brooklyn, 1977; 1983)

V.F

R. Hayyim Ozer Grodzinski (1863-1940)

Eminent halakhic authority in Vilnius, Lithuania.

II.F.2

R. Shmuel Grünberger (1915, Makó – 1944, Auschwitz)

Student of R. Mordekhai Leib Winkler of Mád. The son-in-law of R. Mordekhai Brisk of Tasnád. *Dayyan* in Tasnád since 1934.

Shu"t Mirkahat besamim (Brooklyn, 1992)

III.H.3

R. Moshe Hayyim (Henrik) Grünfeld (1888-1944, Auschwitz)

Since 1925 the rabbi of Sajószentpéter (Hungary, Borsod county). Died on Sivan 22, 5704 (June 13, 1944).

Sefer Hayyim bi-Retzono, Sheelot u-teshuvot (Jerusalem: 1982)

III.E.2; IV.H; IV.I

² *Shu"t Beer David*, p. 15.

R. Yehoshua Grünwald (1909, Huszt – 1969, Brooklyn)

Rabbi of Huszt since 1934 (Carpatho-Russ, today Khust, Ukraine). Survived Auschwitz and resettled in Budapest after the war, having a position in the Orthodox *bet din* on *agunah* matters. In 1947 moved to Boro Park (Brooklyn) and served as rabbi of “*Kahal Yereim Huszt*.”

V.C; V.D.2; V.F

R. Abraham Yaakov Horowitz (1864-1942)

The rabbi of Probezhna (Ukraine).³

II.F.2

R. Reuben Klein (? , Munkács – 1944, Auschwitz)

Since 1910 rabbi in Szinna (today Snina, Slovakia).

Sefer Matte Reuben (hiddushim, responsa) (Varanov, 1938; Brooklyn, 2002)

II.H

R. Yisrael Abraham Alter Landau (1886-1942, Edelény)

Student of R. Yehuda Grünwald. Since 1921 rabbi of Edelény (Hungary, Borsod county) and head of the yeshiva of 50 students.

Shu"t Bet Israel (2 vols, New York, 1976).

III.D.1; IV.E; IV.J

R. Moshe Natan Neta (Nándor) Lemberger (1909, Tiszapolgár – 1982, Kiryat Ata)

Rabbi and *dayyan* in Makó (Hungary, Csongrád county). Survived the war and returned to Makó and served as the rabbi of the community after the war until his *aliyah*. Served as a rabbi in Kiryat Ata (Israel).

Kle golah (Brooklyn, 1996), *Shu"t Ateret Moshe* (Kiryat Ata, 2013)

IV.L; V.D.3

R. Tzi Hirsch (Herman) Meisels (? Sátoraljaújhely – 1974, Chicago)

Since 1930 *dayyan* in Vác (Hungary, Pest-Pilis-Solt-Kiskun county). He survived the war and worked as the rabbi of the camp in Bergen-Belsen. Later became a rabbi in Chicago.

Shu"t Binyan Tzvi (Vác, 1939; New York, 1956); *Shu"t Mekadshei ha-Shem* (ed.) (Chicago, 1955; vol. 2: Brooklyn 1967) (Brooklyn, 1993)

III.E.2

³ *Elle ezкера* (“These, will I remember”) vol. 1 (New York: Research Institute of Religious Jewry, 1956), pp. 34-39.

R. Eliezer Mishel (1863-1939 or 1940)

The rabbi of Turka (Galicia, Ukraine).

II.F.2

R. Ascher Anshel Yehuda Müller (1880 – 1960, Kiryat Binyamin, today Kiryat Ata, Israel)

Since 1908 the rabbi of Petrozsény (Transylvania, today: Petroșani, Romania). One of the leaders of the Orthodox Rabbi Council in Transylvania after the war, until his *aliyah*.

V.D.2; V.E

R. Yitzhak Öhlbaum

Rabbi of Felsőszeli (today Horné Saliby, Slovakia). Became the rabbi of Český Těšín (Czech Republik) after WWII. Moved to Canada, Toronto.

Shu"t Sheilat Yitzhak (Galánta, 1949; Brooklyn, 1978; 1982)

II.H

R. Yoseph Pollák (1898, Paks – 1944, Auschwitz)

Since 1922 the rabbi of Verpelét (Hungary, Heves county). The son-in-law of R. Yehuda Altmann, rabbi of Mezöcsát. Died on Ijjar 27, 5704 (May 20, 1944).

Sefer Sheerit Yoseph Asher (Jerusalem)

IV.L

R. Meshulam Rath (1875, Horodenka, Ukraine – 1962, Haifa, Israel)

Rabbi in Ukraine. Fled to Bukarest during the war and made *aliyah* in 1944.

V.E

R. Yehuda Rosner (1879, Szendrő – 1944, Auschwitz)

Since 1905 rabbi of Székelyhíd (Transylvania, today Săcueni, Romania), head of the yeshiva. Died on Sivan 6, 5704 (May 28, 1944).

Sefer Imre Yehuda, Teshuvot (Jerusalem, 1979)

III.F.1

Ernö Róth (1908 – 1991)

Neolog rabbi, professor at the Rabbinical Seminary of Budapest (1942-1956). Since 1957 chief rabbi of Rheinland and later of Hessen (Frankfurt am Main).

V.D.2; V.F

R. Eliezer (Lázár) Schwartz (– 1944, Auschwitz)

Since 1898 *dayyan* in Sárospatak (Hungary, Zemplén county). Died on Sivan 15, 5704 (June 6, 1944)

(*Shu"t Mekadshei ha-Shem*, vol. 1, 98)

III.F.1

R. Abraham Sofer (1879 – 1944, Auschwitz)

The grandson of R. Eliezer Sussman Sofer, the rabbi of Paks. He served as the rabbi of Tét from 1914.

R. Abraham Sofer, *Kovetz Bet Vaad la-Hakhamim*, no. 6 (2011), pp. 76-79 (New York)

F.1

R. Akiba Sofer (1878 – 1959, Jerusalem)

Known as the “*Daat Sofer*”. Served as the rabbi of Pressburg, and in 1940 settled in Jerusalem and established the “Pressburg Yeshiva”.

V.B; V.D.2; V.F

R. Menahem Sofer (1880, Nagyszentmiklós – 1944, Auschwitz)

Since 1918 rabbi of Marosvásárhely and the head of the yeshiva. Died on Sivan 9, 5704 (May 31, 1944).

Shu"t Menahem Meshiv (Jerusalem, 1973)

IV.E; IV.H

R. Yonathan Steif (1877 – 1958, Brooklyn)

Dayyan in Budapest before the Second World War. Saved by Rudolf Kasztner, he resettled in Budapest (and later in Brooklyn) after the war.

Shu"t Mahar"i Steif (Jerusalem, 2004)

II.C.2; II.E; II.H; II.J.1; III.F.1; III.F.2; IV.E; IV.H; IV.I; V.D.2; V.F

R. Betzalel Stern (1911-1988)

Be-Tzel ha-Hokhma (Jerusalem, 1990)

V.F

R. Moshe (Miksa) Stern (1914 - 1997, Los Angeles)

Rabbi and *dayyan* in Debrecen. Served as a rabbi in Debrecen after the war until he moved to the United States (Los Angeles).

Shu"t Beer Moshe (Jerusalem 1973; 1984)

V.B

R. Shlomo (Salamon) Strasser (1863, Pressburg – 1952, Bnei Brak, Israel)

Rabbi and the founder of the yeshiva of 200 students in Debrecen. He made *aliyah* after the war. The head of the Central Bureau of the Autonomous Orthodox Israelites in Hungary (*Vaad ha-merkazi, A Magyarországi Autonom Orthodox Izraelita Hitfelekezet Központi Irodája*), located in Budapest.

II.F.2

R. Ephraim Fischl Sussmann Sofer

Since 1914 head of the *bet din* of the Orthodox community of Budapest.

II.J.1

R. Yoel Teitelbaum (1887, Máramarossziget – 1979, Brooklyn)

Since 1928 rabbi of Szatmárnémeti (Transylvania, today Satu Mare, Romania). Saved by Rudolf Kasztner he had lived in Israel for a year after the war. In 1946 he moved to Brooklyn and became the head of the “Szatmár” community.

Shu"t Divre Yoel (2 vols, Brooklyn-Jerusalem, 2005)

II.E; II.J.1; III.E.2; IV.E

R. Moshe (Mózes) Vorhand (1860, Nyitra – 1944, Budapest)

Student of Hatan Sofer of Mattersdorf. *Dayyan* in Nyitra and head of the yeshiva. Since 1912 rabbi in Makó. Died on Sivan 17, 5704 (June 8, 1944).

Shu"t Ohel Moshe (Brooklyn, 2008)

II.F.1

R. Mordechai Vorhand (1885-1945, Bergen Belsen)

The son of R. Moshe Vorhand. Rabbi of Nyitra. Died on Shvat 1, 5705 (January 15, 1945).

Shu"t Beer Mordechai (Jerusalem, 1992)

IV.I

R. Yitzhak Yaakov Weiss (1905, Dolina, Galicia – 1989, Jerusalem)

Student of the Munkatcher Rebbe, R. Hayyim Eleazar Shapiro. The son-in-law of R. Pinhas Zimetbaum. Since 1929 *dayyan* in Nagyvárad (Transylvania, today Oradea, Romania), where he served until 1944, when he fled the deportations to Romania. He settled in Nagyvárad after the war and head of the *bet din* until 1948 when he emigrated to Manchester. Became the head of the “*Edah HaHaredit*” in 1979 after the death of R. Yoel Teitelbaum.

Shu"t Minhat Yitzhak (vols 1-9, Jerusalem – London, 1955-1985)

III.H.3; V.D.1; V.D.II; V.F

R. Yisrael Welcz (1887 – 1974, Jerusalem)

Rabbi and head of yeshiva in Budapest before the war. He survived the war in the Budapest ghetto. After the war he was among the rabbis who established the rabbinical court for solving the problems of *agunot*. In 1949 made *aliyah*.

V.B

R. Shalom Wieder (1865, Borsa – 1944, Auschwitz)

Was raised on Máramarossziget. Since 1894 rabbi of Nyíregyháza. Died on Sivan 16, 5704 (June 7, 1944).

Shu"t Mashmia Shalom (Brooklyn, 1971)

II.J.2

R. Pinhas Zimetbaum (Zeinetbaum) (1865, Tarnów, Galicia – 1944, Auschwitz)

Since 1890 *dayyan* in Nagyvárad and since 1901 the head of the *bet din* in Nagyvárad. Died on Sivan 8, 5704 (May 30, 1944).

Shu"t Divrei Pinhas (Brooklyn, 1963)

IV.E

R. Yehuda Zirelsohn (1860-1941)

Rabbi of Kishinev (in present Moldova).

II.F.2

VI.B Glossary⁴

אוירו"ס	<i>oyrus</i> , 'chemical for removing the beard'
איפר	<i>ipar</i> (Hungarian), 'license' (trade permit)
אנגאבע	<i>Angabe</i> (German), 'contract'
אנגעשטעלטער	<i>Angeshtelter</i> (Germanized Yiddish), 'employee'
אקצי"ז	<i>aktsiz</i> (Yiddish), 'excise', internal tax imposed on the production, sale, or consumption of a commodity
ארבייטסלאגער	<i>Arbeitslager</i> (German), 'forced labor camp'
ארענדא	<i>arende</i> (Yiddish), 'contract for cultivating land'
בהערד"ע	<i>Behörde</i> (German), 'local authority'
בעטייבונג	<i>Betäubung</i> (German), 'stunning the animal'

⁴ I would like to thank Zsombor Hunyadi for his help.

גאבעללע	<i>gabele</i> (Yiddish), ‘tax on the slaughter of meat stock’
דראנגאבע	<i>Dreingabe</i> (Drangabe, German), ‘deposit’
האדו אוזעם	<i>hadi üzem</i> (Hungarian), ‘defense plant’
ווירצהייזער	<i>Virtzhayser</i> (Germanized Yiddish), ‘innkeeper’
ווירצהויז	<i>Virtzhoyis</i> (Germanized Yiddish), ‘inn’
זעמ"ל	<i>zempl</i> (Yiddish), ‘roll’
יארצייט	<i>yohrtsayt</i> (Yiddish), ‘time of year’; anniversary of the day of dead of a relative
לאסט אויטא	<i>last oyto</i> (Yiddish), ‘truck’
לעקטרישען שטראם	<i>lektrishen shtram</i> (Yiddish), ‘electric stream’ (‘electric shock’)
סעביעקט	‘employee’
ערד-אפפע"ל	<i>Erd-Apfel</i> (German), ‘cooked potatoes’
פאבריק	<i>fabrik</i> (Yiddish), ‘factory’

פאבריקאנט טעקסטיל	<i>fabrikant textil (tekstil fabrikant, Yiddish)</i> , ‘owner of a textile workshop’
פיאקער	<i>fyaker</i> (Yiddish), ‘fiacre’
פירמא	<i>firme</i> (Yiddish), ‘company’
פנג"א	<i>pengő</i> (Hungarian), currency of Hungary (1927-1946)
פראטאקאל	<i>protocol</i> (Yiddish), ‘protocol’
פתקאות בלאקען	<i>pitkaot bloken</i> (Hebrew and Yiddish), ‘receipts’
קאמיטע מהרבנים	<i>komite</i> (Yiddish), ‘rabbi committee’
קאמיסיאן (בתורת)	<i>komission</i> (Germanized Yiddish), ‘(on) trust’
קיפ"ל	<i>kifli</i> (Hungarian), ‘crescent roll’
ראה מאטריאל	<i>roh material</i> (Yiddish), ‘raw material’
ראזאל	<i>razol</i> , ‘razor’
רעכט	<i>Recht</i> (German), ‘license’ (trade permit)

שותפים בלאט	<i>shutfim blat</i> (Hebrew-Yiddish), ‘silent [blank] partners’
שטילע שותפים	<i>shtile shutfim</i> (Yiddish), ‘silent partners’
שטיללע קאמפאניאן	<i>shtile kompanien</i> (Germanized Yiddish), ‘silent partners’
שטאט-מאזשאר	<i>shtot mazhor</i> (Yiddish), ‘mayor of town’
שטילריכטער	<i>shtilrikhter</i> (Germanized Yiddish), ‘the magistrate of town’
שוס אפאראט	<i>shiss apparat</i> (Yiddish), ‘shooting apparatus’
שרי הקאמענדאנט	<i>sarei ha-komendant</i> (Germanized Yiddish), ‘commanders of the company’ [=Army corps commands]

VI.C Statistics of Jewish and non-Jewish tradesmen and craftsmen in Carpatho-Russ (1939-1940)

Report of the chief judge of Beregszász township to the Minister of Trade and Transport¹

(Beregszász, October 14, 1939)

According to the report there were 520 tradesmen and craftsmen in Beregszász (Carpatho-Russ, today Berehove, Ukraine) who applied for the renewal of licenses. There were 261 Christian and 259 Jewish applicants, according to the following professions:

	Total	Christian	Jewish
Spice and general store	94	35	59
Chandler	48	6	42
Smith	44	43	1
Threshing-machine craft	39	23	16
Shoemaker	34	18	16
Innkeeping	32	20	12
Butcher and slaughterer	28	16	12
Carpenter	16	13	3
Wheeler	15	15	0
Cooper and coach-maker	13	9	4
Trade of wine	13	0	13
Mason	13	13	0
Tailor craft	12	1	11
Barber and hairdresser craft	10	8	2
Trade of fruit	9	3	6
Joiner	8	8	0
Limited selling of alcohol	7	1	6
Firewood and timber craft	7	1	6

¹ MOL (National Archives of Hungary) FM. 1940 Eln. 175. The lists were arranged into descending order by the author.

Quarry craft	6	1	5
Mill craft	6	2	4
Tinsmith and slater craft	4	0	4
Szikvíz craft	4	0	4
Restaurant	4	2	2
Haberdasher and ladies' wear craft	4	2	2
Trade of farm produce	3	0	3
Glass and porcelain craft	3	0	3
Trade of milk	2	1	1
Millstone making craft	2	0	2
Burying accessories	2	1	1
Clock-maker craft	2	0	2
Baker craft	2	0	2
Pastry-cook	2	0	2
Chimney-sweep craft	2	2	0
Locksmith craft	2	2	0
Peddler	1	0	1
Travelling grinder	1	1	0
Automobile works	1	0	1
Children cloth works	1	1	0
Grinder mill craft	1	1	0
Vegetable gardener	1	1	0
Trade of rags	1	1	0
Trade of flour	1	0	1
Pottery craft	1	1	0
Dentist	1	0	1
Vat-bath craft	1	1	0
Shoe paste craft	1	0	1
Trade of iron and paint	1	0	1
Distillery craft	1	0	1
Book printing and paper	1	0	1
Seller at the market	1	0	1
Textil wares craft	1	0	1
Well sinker master	1	1	0
Whitewash cement and blue vitriol	1	0	1

Trade of shoes and leather	1	0	1
Painter craft	1	0	1
Embroidery and ready-made cloth trade	1	1	0
Perfume and technical items	1	0	1
General iron and haberdasher trade	1	1	0
Tobacco trade	1	1	0
Kaolin and clinker	1	0	0
Bodega craft	1	0	1
Beer store-house	1	1	0
Sum total	520	258	262

According to the report there were 278 tradesmen and craftsmen (256 Christian and 22 Jewish) in Beregszász who received licenses of craft according to the following professions:²

	Total	Christian	Jewish
Smith master	43	43	0
Grocery and general store	40	35	5
Hired thresher craft	24	23	1
Joiner and mason craft	21	21	0
Inn	20	20	0
Shoemaker craft	19	18	1
Butcher and slaughterer	15	15	0
Wheel maker	13	13	0
Carpenter craft	13	13	0
Chandler trade and craft	10	9	1
Cooper and coach-maker craft	9	9	0
Barber craft	9	8	1
Trade of wine	4	0	4

² The applications of 2 Christian and 240 Jewish tradesmen and craftsmen were rejected.

Tailor craft	4	4	0
Trade of fruit	3	3	0
Trade of shoe and leather	2	1	1
Haberdasher and ladies' wear craft	2	1	1
Restaurant and hotel	2	1	1
Locksmith	2	2	0
Mill craft	2	2	0
Limited selling of alcohol	1	1	0
Trade of wood	1	1	0
Trade of rug	1	1	0
Trade of ready-made cloth	1	1	0
Trade of farm products	1	0	1
Travelling grinder	1	1	0
Grinder mill craft	1	1	0
Quarry craft	1	1	0
Millstone making craft	1	0	1
Joiner servant	1	1	0
Vat-bath craft	1	1	0
Burying accessories	1	1	0
Baker craft	1	0	1
Chimney-sweep craft	1	1	0
Automobile works	1	0	1
Bodega craft	1	0	1
Boot-maker	1	1	0
Well sinker	1	1	0
Potter	1	1	0
Children cloth maker	1	1	0
Clock-maker craft	1	0	1
Sum total	278	256	22

In the process of renewing the licenses in Beregszász county there are still 242 tradesmen and craftsmen whose application is pending.

Licenses of craft in Munkács township according to professions³

[1939]

Document No.1.

The number of judged and approved applications by the Ministry of Trade and Transport:

	Total	Christian	Jewish
General store	30	14	16
Chandler	15	10	5
Innkeeper	5	4	1
Hired thresher	5	5	0
Trade of living animals	3	2	1
Trade of flour, farm produces	2	0	2
Trade of textile (produced by cottage industry)	2	0	2
Face cream and cosmetic craft	1	0	1
Bodega	1	0	1
Selling of dairy products and pastries	1	1	0
Greengrocer	1	1	0
Trade of wood and construction materials	1	0	1
Trade of salt	1	0	1
Trade of whitewash, cement and fertilizer	1	0	1
Trade of bicycles and accessories	1	0	1
Bathing craft	1	1	0
Pharmacy	1	1	0
Mill	1	1	0
Transportation	1	0	1
[Sum total	74	40	34]

³ The number of inhabitants in Munkács township (Carpatho-Russ, today Mukacheve, Ukraine) in 1939 was 25481.

The number of judged and rejected applications by the Ministry of Trade and Transport:

	Total	Christian	Jewish
General store	14	0	14
Hired thresher	9	0	9
Inn	8	0	8
Chandler	7	0	7
Trade of horses	6	0	6
Restaurant, inn	6	0	6
Trade of cattle	3	0	3
Trade of firewood	3	0	3
Trade of timber	2	0	2
Wine wholesale	1	0	1
Road constructor	1	0	1
Glazier works	1	0	1
Selling alcohol in closed bottles	1	0	1
Trade of farm produces	1	0	1
Liqueur making craft	1	0	1
Building contractor	1	0	1
Ironmonger	1	0	1
Trade of pelt	1	0	1
Bathing craft	1	0	1
[Sum total	68	0	68]

The number of unjudged and rejected applications by the Ministry of Trade and Transport:

	Total	Christian	Jewish
General store	12	0	12
Chandler	6	0	6
Inn	3	0	3
Hired thresher	3	0	3
Restaurant	2	0	2
Trade of cattle	2	0	2

Trade of horses	1	0	1
Trade with products of cottage industry	1	0	1
Trade of flour and salt	1	0	1
Trade of used cars and accessories	1	0	1
Trade of burnt alcohol	1	0	1
[Sum total	33	0	33]

Document No.2.

The number of judged and approved applications by the Ministry of Craft:

	Total	Christian	Jewish
Smith	19	19	0
Butcher, slaughterer	15	13	2
Mason	13	13	0
Hairdresser	10	9	1
Shoemaker	9	4	5
Carpenter	9	8	1
Painter	5	5	0
Man tailor	5	4	1
Restaurant	5	4	1
Baker	3	1	2
Wheeler	2	2	0
Chimney-sweep	2	2	0
Stoner	2	2	0
Tinman	2	0	2
Cooper and coach-maker	2	2	0
Joiner	1	1	0
Mortician	1	1	0
Boot-maker	1	1	0
Hurdle-maker	1	1	0
Wood processor	1	0	1

Trader of gum condom	1	0	1
Gut-cleaner	1	0	1
Soda-water maker	1	0	1
Plumber and gas-man	1	1	0
Weaver	1	0	1
Coppersmith	1	1	0
[Sum total	114	94	20]

The number of judged and rejected applications by the Ministry of Craft:

	Total	Christian	Jewish
Clock-maker	1	0	1
Baker	3	0	3
Carpenter	3	0	3
Coppersmith and brazier	1	0	1
Shoemaker	2	0	2
Miller and oil refiner	3	0	3
Soda-water factory	4	0	4
Cooper	1	0	1
Smith and locksmith	1	0	1
Tailor	2	0	2
Slaughterer	2	0	2
Gum craft	1	0	1
[Sum total	24	0	24]

The number of unjudged and rejected applications by the Ministry of Craft

	Total	Christian	Jewish
Cooper	2	1	1
Slaughterer	3	0	3
Painter	1	1	0
Locksmith	1	1	0
[Sum total	7	3	4]

Licensees applying for revision of licenses in Upper Hungary
 ordered by decree No. 1100/1939. M.E.
 (Ungvár, June 23, 1939)

Ungvár

	Total	Christian	Jewish
Number of applicants	1483	469	1014
Number of recommended applicants [by the local committees]	1006	449	557
Number of not recommended applicants	477	20	457

The summary of the implementation of decree No. 1100/1939. M.E.
 (Munkács, October 17, 1939)

Munkács

	Total	Christian	Jewish
Applied for new license	1974	417	1557
Received new license	1100	399	701
Rejected until October 17	852	18	834
Pending	22	0	22

Summary of the statistics of tradesmen and craftsmen in Carpatho-Russ⁴
[1940]

Ung county:

Administrative area (with the number of settlements)	Tradesmen		Craftsmen	
	Christian	Jewish	Christian	Jewish
Nagyberezna township (49)	58	253	81	113
Takcsány sub-office of the chief judge (16)	12	34	9	9
Perecsény township (19)	49	96	45	33
Szobránc township (41)	55	162	111	42
Ungvidék township (30)	61	111	64	51
Sum total (155)	235	656	310	248

Bereg county:

Ilosva township (39)	63	367	90	150
Munkács township (73)	65	239	178	134
Szolyva township (33)	72	171	83	107
Alsóverecke sub-office of the chief judge (32)	30	87	20	29
Sum total (177)	230	864	371	420

Máramaros county:

⁴ Statistic data attached to the proposal to the cabinet council (No. 930/1940 Plan).

Administrative area (with the number of settlements)	Tradesmen		Craftsmen	
	Christian	Jewish	Christian	Jewish
Huszt township (21)	92	619	235	312
Nagyszöllős township (28)	89	521	250	200
Ökörmező township (26)	67	204	29	92
Rahó township (16)	128	715	192	283
Técső township (25)	80	577	227	293
Dombó sub-office of the chief judge (10)	32	117	26	58
Sum total (126)	488	2.743	959	1.238

Sum total of tradesmen and craftsmen in Carpatho-Russ

Ung Administrative office	235	656	310	248
Bereg Administrative office	230	864	371	420
Máramaros Administrative office	488	2743	959	1238
Total	953	4263	1640	1906
Summa of Christian and Jewish tradesmen in Carpatho-Russ			5216	
Summa of Christian and Jewish craftsmen in Carpatho-Russ			3546	
Summa of all tradesmen and craftsmen in Carpatho-Russ			8762	