Berger, written by him 14 July 1943 to Himmler, discussing the labor program, and there he states in part to Himmler as follows: "I would suggest that after the termination of the actions in central Russia and north Ukraine, a strong action for labor conscription in Lithuania is initiated." With respect to claimed error 27, to contend that the testimony of Braeutigam establishes that the mass evacuation ordered by Himmler was not carried out, is likewise untenable. The transcript record states that Braeutigam testified: "* * * as is well known, in the autumn of 1943 the *Ukrainians* had already been evacuated to a large extent." [Emphasis supplied.] Counsel quotes such testimony as being "* * * the *Ukraine* had already been evacuated to a large extent" [emphasis supplied], and then goes on to explain that evacuation of the Ukraine, meant that the German soldiers had been obliged to withdraw from the Ukraine. This is an unwarranted assumption, and is based on an incorrect translation of Braeutigam's testimony [*Tr. p. 6575*], for the unchallenged transcript record states that the *Ukrainians* had been largely evacuated in the autumn of 1943, instead of the Ukraine. Even if the witness had used the term Ukraine, small justification exists for the interpretation here given by the defense counsel to the effect that this meant evacuation of German soldiers, and not Ukrainians.

Furthermore, the Tribunal in its judgment (page 770) refers to reports showing the carrying out of such evacuation program. The exhibits are not specifically referred to in the judgment, but we will note some of them here: Prosecution Exhibits 3344, 3345, and 3346 [NO–2007, NO–2008, NO–2009], all in Prosecution Document Book 68. There are also others. The fact that it is claimed in counsel's brief that Berger did not see these reports, even if that were true, does not detract from the value of these reports in proving that an evacuation program was going on during the times in question, and that the Ukrainian people were the unwilling victims.

The Tribunal does not find in the contention of counsel, as shown in his memorandum or in his petition to the Military Governor, proper and adequate basis for the modification of its judgment with respect to its findings against defendant Berger under count seven.

12. SCHELLENBERG—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 26 May 1949, a motion was filed in behalf of defendant Schellenberg praying that the Tribunal's judgment of 14 April

1949 be amended to revoke its findings of guilt against said defendant on counts five and eight of the indictment, and that the defendant be released from custody. On 19 June 1949 the prosecution filed an answering brief to said motion and on 30 June 1949 the defendant filed a rejoinder to the prosecution's answering brief.

It also appears that on 25 April 1949 the defendant joined in a petition for plenary session of the Tribunal for the purpose of "examining the judgment passed on 14 April 1949 by the Military Tribunal IV." The Tribunal having considered said motion and answering brief of the prosecution and the defendant's rejoinder to said answering brief and being fully advised,

IT IS ORDERED that Schellenberg's motion as to counts five and eight be, and the same is, hereby in all respects denied.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

MEMORANDUM

The questions raised by the motion of defendant Schellenberg were considered in our opinion. They have been reexamined in connection with his motion and we find no error and no reason why we should not adhere to our findings and conclusions. His motion should be and hereby is overruled and denied *in toto*.

13. SCHWERIN VON KROSIGK—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 10 May 1949 defendant Schwerin von Krosigk filed a motion for amendment of the judgment in this case with respect to counts five and six, under which said defendant was convicted, calling attention herein to alleged errors of law and fact. On 19 June 1949 the prosecution filed an answering brief to said motion and on 30 June 1949 the defendant filed a rejoinder to the prosecution's answering brief. It also appears that on 25 April 1949 this defendant joined with others in a petition for a plenary session of the Tribunals for the therein expressed purpose of "examining the judgment passed on 14 April 1949" by the Tribunal in this case.

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