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The Gender Equality of Workers in Slovakia During Socialism

JUDITA JUHAROVÁ
Ph.D. student, University of Miskolc,
Central European Academy
E-mail: judita.juharova@centraleuropeanacademy.hu

ABSTRACT
This paper focuses on the history and evolution of women's rights, particularly concerning female workers, but also tackles the rise in gender equality. Czechoslovakia became a democratic country in 1918. The approval of the first Czechoslovak constitution was the most significant legislative accomplishment of the newly formed Czechoslovakia. The positive development of a society that began to emphasise democracy and equality was abruptly interrupted by the Second World War and the communist coup in 1948. The workforce changed because of the economic consequences of 1939. The so-called first wage reform caused low-income levels in 1946. The concept of "*two breadwinners*" began to emerge, implying that many women entered the workforce. Socialist regimes have significantly altered this perspective. The events of February 1948 and subsequent events were significant junctures in Czechoslovakian society. The fact that women were primarily motivated to enter the labour market to escape poverty makes it difficult to interpret the high employment rate of women during the socialist era as entirely positive for gender equality. On the other hand, the totalitarian regime supported women's participation in the labour market through labour and social law measures that also supported women's participation in childcare. Legislation on the equal treatment of female workers evolved into its current form following the fall of the dictatorship. However, it has undergone significant modifications because of the requirements for legislative changes that have emerged since Slovakia became a member of the European Union. Through the issue of gender equality among female workers, we illustrate how challenging it is to alter deeply ingrained attitudes and behaviours in society.
KEYWORDS
gender equality, socialist Czechoslovakia, emancipation, women in socialism.

Egalitatea de gen a angajaților din Slovacia în timpul socialismului

REZUMAT
Acest studiu se concentrează pe istoria și evoluția drepturilor femeilor, în special în ceea ce privește femeile angajate, dar abordează și dezvoltarea egalității de gen. Cehoslovacia a devenit o țară democratică în 1918. Aprobarea primei constituții cehoslovace a fost cea mai importantă realizare legislativă a Cehoslovaciei nou formate. Dezvoltarea pozitivă a unei societăți care a început să pună accentul pe democrație și egalitate a fost brusc întreruptă de cel de-al doilea război mondial și de lovitura de stat comunistă din 1948. Forța de muncă s-a schimbat din cauza consecințelor economice ale anului 1939. Așa-numita primă reformă salarială a cauzat niveluri scăzute ale veniturilor în 1946. Conceptul de doi >>

>> întreținători ai familiei a început să apară, ceea ce implică faptul că multe femei au intrat în rândul forței de muncă. Regimurile socialiste au modificat semnificativ această perspectivă. Evenimentele din februarie 1948 și cele ulterioare au reprezentat momente semnificative în societatea cehoslovacă. Faptul că femeile au fost motivate în primul rând să intre pe piața muncii pentru a scăpa de sărăcie face dificilă interpretarea ratei ridicate de ocupare a forței de muncă în rândul femeilor în timpul erei socialiste ca fiind în întregime pozitivă pentru egalitatea de gen. Pe de altă parte, regimul totalitar a sprijinit participarea femeilor pe piața forței de muncă prin măsuri de drept social și al muncii care au sprijinit, de asemenea, participarea femeilor în îngrijirea copiilor. Legislația privind tratamentul egal al femeilor angajate a evoluat în forma sa actuală după căderea dictaturii. Cu toate acestea, ea a cunoscut modificări semnificative din cauza cerințelor de schimbări legislative care au apărut de când Slovacia a devenit membră a Uniunii Europene. Prin problema egalității de gen în rândul angajatelor, ilustrăm cât de dificilă este modificarea unor atitudini și comportamente adânc înrădăcinate în societate.
CUVINTE CHEIE
egalitatea de gen, Cehoslovacia socialistă, emancipare, femeile în socialism.

I. INTRODUCTION

"*The man and the woman are intellectually and morally equal. [...] There is no natural inequality between men and women, not from nature, but developed historically. And as many mistakes were made in history, and often fatal mistakes, so there was also a mistake, a big mistake, by suppressing a woman.*"[1]

(Tomáš Garrigue Masaryk)

The First Czechoslovak Republic was established in 1918. In its Constitution, the new state defines itself as a democratic and egalitarian republic. Tomáš-Garrigue Masaryk, the first president, was a strong believer in democracy, equal rights, and female emancipation. This was an exceptionally modern approach, especially at the beginning of the 20th century, and it was one of the main driving forces thanks to which female emancipation began to progress quickly in Czechoslovakia. Masaryk, as a member of a feminist group since the 1890s, has always worked towards giving women the right to vote.[2] In his view, he was influenced mostly by the feminist philosopher John Stuart Mill and his wife Charlotte Garrigue-Masaryk. In his monograph, Masaryk states that the rights of women and children are universal human rights, in addition to national, linguistic, social, and economic rights. He called the rights of women and children "*modern family rights.*"[3]

1 Translation of the author. Tomáš Garrigue Masaryk was not only the first president of Czechoslovakia but also a sociologist. Original text in Czech is available at: https://legacy.blisty.cz/art/37521.html (Accessed on 16.11.2022).
2 Melissa Feinberg (2011): *Elusive Equality: Gender, Citizenship, and the Limits of Democracy in Czechoslovakia, 1918–1950*, University of Pittsburgh Press, Pittsburgh, p. 14.
3 Tomáš Garrigue Masaryk (1990): *Ideály humanitní*, Melantrich, Praha, p. 10.

Thanks to the new Czechoslovak Constitution in 1920, women finally had the right to vote. Women could vote and be elected, but above all, they were finally being *de iure* recognised as emancipated members of society. However, it would be wrong to say that these rights were generously offered to women. Women's right to vote was, in fact, the result of a long-lasting fight for women in this territory, mostly through activism, journalism, and different associations. It is important to add, however, that the 1920 Constitution not only granted the right to vote and the right to be elected to women but also to men, who could not vote in the past because they did not meet either the property or the educational census. However, this was only the beginning of a fight for emancipation.

Although the early 1920s brought many positive changes to the perception of gender equality, both legally and socially, there was still some duality in both aspects. Legally, the 1920 Constitution guaranteed equal rights to everyone, but the Civil Code of 1811 (the *Allgemeines bürgerliches Gesetzbuch* or ABGB) was still in effect in the Czech part of the newly founded country,[4] as the matrimonial law of 1919 only made minor changes to it, stating that women are subordinate to men, they are not eligible for parental allowance, and the man should be the provider of the family. According to this Civil Code, the most important task for women should be to bear and take care of their children, and women who get married should free their workspaces for men and unmarried women. This legal duality resulted from the quick establishment of Czechoslovakia, as it could not amend all legal codes simultaneously. From a social perspective the reaction to women getting the right to vote was mostly positive, however, opinions that if women "*leave*" their children behind, the nation will suffer, still prevailed. Some newspapers even contained different photographs of crying children, explaining that this was the effect of women getting the right to vote.[5] Owing to Czechoslovakia's exceptional approach, the right of women to vote was established. However, this was not the end result, but the first step towards true emancipation was followed by ending discriminatory rules in the civil service and ensuring equal access to education. Although in the 1920s these achievements were characteristic of other countries also, we can state that the Czechoslovak approach was unique, especially because of strong popular and political support for women's rights. Implementation of the right to vote was difficult for several reasons. First, the right to vote was contested by the Civil Code and its regulations on marriage and the suffrage of women and men. Another problematic aspect was the existence of citizenship law and the lack of power of women over their own and their children's citizenship status after entering a marriage. In addition, women's rights to be gainfully employed besides their husbands were disputed.

Women gradually joined the labour market even during the First World War, and this trend continued after the establishment of the first Czechoslovak Republic, from

4 In the territories of Czechoslovakia which were part of the Hungarian Kingdom beforehand (the territory of modern Slovakia), the Hungarian uncodified private law remained in effect with the modifications adopted by the Czechoslovak legislature.

5 Andrea Hajdúchová: *Ženy ujdú od detí a národ utrpí, strašili noviny. Pripomíname si sté výročie volebného práva pre ženy.* Available at: https://dennikn.sk/blog/1768261/zeny-ujdu-od-deti-a-narod-utrpi-strasili-noviny-pripominame-si-ste-vyrocie-volebneho-prava-pre-zeny/ (accessed on 16.11.2022).

1918 to 1938, when industrialisation resulted in women joining production, thus forcing the legislature to provide measures for better protection of workers. However, some work positions such as healthcare and social work were still perceived as primarily feminine.[6] Another positive change was the repeal of the so-called *"celibacy acts"*, which were in effect from 1903, and according to which women working in education should remain celibate. There were some exceptions to this rule, although handwork teachers in Czech Silesia were not required to obey the celibacy rule. The main reason for the Act on Celibacy was to separate work from family life so that work would not negatively affect families. In this way, teachers could not have families so that they could focus fully on their work. It is important to note that some teachers did not oppose the implementation of the Celibacy Act as they were mostly educated in monasteries. However, others, influenced by the wave of feminism, started to claim that it was possible to synchronise family life with professional life, and they demanded an end to the celibacy act. One of the most significant people who spoke out against celibacy acts was Františka Plamínková, who was a teacher, member of parliament, and senator. In 1919, a proposal to abolish the Celibacy Act was drafted by Alois Konečný, Josef Smrtka, František Houser, and Františka Zeminová. The draft contained numerous arguments as to why abolishing the Celibacy Act could be beneficial for Czechoslovak society.[7] It stated that if female teachers give up their profession after marriage, the state loses a significant part of the qualified and experienced workforce and wastes a large amount of capital invested in their professional education. Conversely, if female teachers remained in their jobs and, thus, did not have children, the nation would be deprived of intelligent mothers and competent children. Celibacy also causes female teachers to view their teaching profession only as a temporary office to which they will not be fully devoted, as it is required for the benefit of the children they are teaching. Therefore, following this perception, celibacy is also not beneficial for the education system.[8] These rules on celibacy were abolished in 1928.

In the 1930s, Czechoslovakia was hit exceptionally hard by the economic depression. More than a million people were unemployed, and women were the first to lose their jobs. Differences also existed in wages; women in the industry earned only half or a third of what men earned, and the principle of unequal pay for the same work remained only legally endorsed.

During the existence of the Slovak State (1939–1945), the legislation of the previous years was in effect, although there was a new Reception Act, according to which only those legislations that did not contradict the Acts of new regime remained in force.

6 Gabriela Dudeková (2011): *Na ceste k modernej žene: kapitoly z dejín rodových vzťahov na Slovensku*, Veda, Bratislava, pp. 492–493.

7 Lucie Žáková (2020): *Učitelky a celibát. Proč ho musely dodržovat až do 20. století?*. Available at: https://eurozpravy.cz/magazin/ucitelky-a-celibat-proc-ho-musely-dodrzovat.e89cd7d9 (accessed on 16.11.2022).

8 Parliamentary Press 347/0 Vl.n.z. on the abolition of obsolete legal regulations.

II. THE ROLE OF WOMEN IN SOCIALIST CZECHOSLOVAKIA (1948–1989)

The socialist regime brought many changes to the labour market of Czechoslovakia, which concerned women. Although we can only falsely view these changes as a step towards gender equality, as the main purpose of the measures involving an increasing number of female workers in the labour market was not in light of promoting gender equality and the emancipation of women. the goal was to strengthen the labour market and thus the nation. As a result, socialist countries, including Czechoslovakia, viewed women's rights as a significant issue, where it is not so much an individual problem but rather a group interest that can benefit society. The question of women was an important part of workers' rights in Marxist theory on women's emancipation, and so it was also considered a political question.[9]

After the communist coup in February 1948, the status of women in Czechoslovak society changed. During this period, the most important factor in determining rights was consensus with the regime and party affiliation. If we compare this period to the period of the Slovak state (1939–1945), the opposite situation occurred regarding women's positions after the communist coup. During the era of the Slovak state, women were viewed as housewives who should stay at home and raise their children; however, after February 1948, women were welcomed into the workplace. With an increasing number of women joining the workforce, the upbringing of children was put into the hands of qualified educators who would raise children in accordance with the regime, in the spirit of supporting the regime and building socialism. However, children were left with good, loving mothers, as they were not taken away from their mothers by force. Although during the socialist period, women started to be more included in the economically active part of the population, their most important task was still considered to be the production of healthy and strong offspring, which would mean the future generation for the "*wonderful state.*" Women's opportunities expanded, but at the same time, society continued to remain patriarchally oriented, as we can see from the socialist view of women's roles in the family, motherhood, and the role of the mother, reflected in the functioning of social relations.[10]

The socialist regime brought about positive changes in equality between the two genders, as the Constitution of May 1948 guaranteed equality in all areas of social life.[11] The state has begun providing special protective measures for marriages, families, and motherhood. The differentiation between legitimate and illegitimate children ceased. These socialist principles formed the basis of the 1949 Family Code.[12] The upbringing of children was still considered the most important function of the

9 Alena Heitlinger (1979): *Women and state socialism: sex inequality in the Soviet Union and Czechoslovakia*, Macmillan, London, p. 136.

10 Jolana Darulová, Katarína Koštialová (2004): *Sféry ženy: sociológia, etnológia, história*, Fakulta humanitných vied Univerzity Mateja Bela, Banská Bystrica, p. 243.

11 Constitution of the Czechoslovak Republic, Official Gazette No. 150/1948 Coll.

12 Family Code (Slovak: *Zákon o rodinnom práve*), Official Gazette No. 265/1949 Coll.

family, although it now involves both parents equally. Article 26 of the 1948 Constitution states that everyone has the right to work, and pregnant women and mothers have the right to special work regulations. Article 27 stated that men and women are eligible for the same amount of compensation for the same work,[13] which was a huge change in comparison to the previous years, as then women had to quietly suffer discriminatory measures regarding compensation because there was no legal act forbidding it. However, the positive constitutional, labour, and family law measures promoting gender equality and the emancipation of women did not always mirror practical reality, and the reality of women's equality was often confused with socialist propaganda. Unfortunately, the inclusion of women's rights in formal legal texts was often a disguise, behind which the socialist party was hiding, so that they could substitute for the various inequalities in real life.[14] Thus, we can conclude that many of the freedoms declared in the Constitution of Czechoslovakia (but also in the law) were only formal. The equality of women with men was one of the main official policies of the Communist Party of Czechoslovakia, as reflected in numerous new laws and regulations in labour law, civil law, and family law. The reality of implementing the laws was slightly different, as in practice, they were not always applied; for example, women still had lower long-term wages than men.[15]

1. Housework

Although during the socialist regime, an increasing number of women entered the labour market, and they were becoming more economically equal, there were still some perceptions of the female role, that remained unchanged, the main one being, that housework is a "*women's job*". It was estimated that housework in socialist Czechoslovakia took up approximately 5 million hours a year, which is approximately the same amount of time spent on paid work by the whole population of the state. Why has this remained a private matter?

Initially, there were plans to take all domestic activities out of the hands of families and place them under the control of the state, which would also mean a more appropriate type of service. Supporters of this narrative also shed light on the negative effects of housework on a woman's personality, meaning that she is isolated in her home, which becomes the centre of her world.[16] The initial concept of socialised housework, however, failed in Czechoslovakia because it was impossible to expand manpower in this sphere, mostly as a result of the economic crises in 1962 and 1963. So, the originally planned socialised housework had to be replaced by a "*more-suitable*" model, which is mechanising housework and by the usage of home appliances. This resulted in the burden of housework being placed on women. According to a survey from 1968,

13 Constitution of the Czechoslovak Republic, Official Gazette No. 150/1948 Coll.
14 Heitlinger (1979): p. 137.
15 Anna Tokárová (2003): *Vzdelanie žien na Slovensku: Spoločenské bariéry a stimuly v historickom prierezе*, Akcent Print – Pavol Šidelský, Prešov, p. 130.
16 Dana Fukalová (1967): *Ekonomická aktivita žen v ČSSR (Job situation of women in Czechoslovakia)* (Dissertation), Praha/Ostrava, p. 23.

women devote 22% of their "*leisure-time*" to housework, while men give only 8 percent.[17] Paragraph 19 of the Family Code from 1963 states that both parents should be taking care of the needs of the family, which includes taking care of children and the household. The concrete tasks that had to be carried out by women were the preparation of meals, shopping, and different household services, with the first two being the most time-consuming, as they had to be carried out every day. However, according to paragraph 33 of the Family Code, children should also help their parents. Studies from this era also show that with the increase in women's participation in the labour market, men were keener about helping women with housework, but we still cannot conclude that this division of housework was equal.[18]

By examining the statistical data mentioned above and the legalisation, we can once again deduce that in the socialist regime, legislation and reality were often not in synchronicity regarding women's rights questions.

One of the most important novelties of the 1965 Labour Code was the regulation of maternity leave. This regulation granted maternity leave to working women both before and after giving birth. From a legal perspective, maternity leave has the characteristic of excused absence from work. Maternity leave could last up to 22 weeks, approximately until the child is 5 months old. During this time, women were financially helped by financial aid provided by the insurance company. Based on the mother's request, it was also possible to prolong maternity leave until the child reached one year of age. In 1968, maternity leave was prolonged from 22 to 26 weeks. In 1969, women could stay at home with their children until they reached 2 years of age. The 1965 Labour Code is examined further in Chapter 4.

2. The types of work done by women in Czechoslovakia

During the socialist era, there was a significant increase in female employment in the Czech part of Czechoslovakia. In 1948, 38% of workers were women, and in 1978, this number increased to 48 percent. In comparison, this number in Western countries during the same period ranged from 27 to 38 percent. Although the trend in Western countries was to employ women on a part-time basis, in Eastern Europe part-time work was carried out mostly by students or older people (after retirement). In 1961, 63% of females between the ages of 20 and 30 years were employed; this number increased to 80% in 1970, which is truly remarkable considering that these were the years in which women had children. This meant that women returned to work after maternity leave, which could last for up to 3 years. The female participation rate in Czechoslovakia increased from 54% (1950) to 85% (1970). However, could this also mean that more doors were being opened for women in the labour market? We examine these aspects in this subchapter.

At the beginning of the socialist era, Czechoslovak women were in the majority in two sectors of the labour market: health service and social welfare, where women

17 Svoreň, Királyová (1968): p. 96.

18 Alena Wagnerová (1983): Women in Czechoslovakia, in Eugen Lupri (ed.): *The Changing Position of Women in Family and Society: A Cross-national Comparison*, Brill, Leiden, p. 302.

represented 60% of the total workers, and the second being agriculture, where 54% of the workers were female.[19] In 1968, the total number of jobs, where most workers were female, was already eight, and they were agriculture (53 percent), public services (53 percent), communications – nonproduction units (55 percent), housing administration (64 percent), trade and public catering (71 percent), and the educational system (60 percent), with the biggest percentage of female representation being health service and social welfare (76 percent). By 1973, the situation had changed slightly: 64% of workers in communications were women; 67% of workers in the educational system; 75% in trade and catering; 69% of workers in finance and insurance; 80% of workers in health service and social welfare; but only 48% of workers in agriculture were women. The percentage of women working in the manual industry increased from 34% in 1954 to nearly 45% in 1973. In this area of labour, the greatest number of women worked in the consumer sector: textiles, ready-made clothes, tanning, fur, and food.[20] The increase in the number of females working in these sectors was also a result of the increase in workers in these sectors in general; naturally, the number of women working in fields that were more feminised even before this era has increased faster in comparison to those that were dominated by male employees. Individually, women could be found in every sector, and the number of women working in different sectors was more evenly distributed over professions than in the West. Although there were many positive changes, there were also some negative events, as sex typing was still typical, especially for some professionals, such as doctors. Female doctors in Czechoslovakia achieved much higher theoretical standards, yet there was still a higher percentage of male representation in practice because they were more competent and talented, and patients trusted them more. Female doctors were also "*burdened*" by family duties, as a result of which they were unable to obtain higher qualifications, and thus, a higher income.[21]

Despite this, there were still fewer leading positions among women, and although one may expect the corresponding development of sexual distribution in positions of authority, barely any change occurred in this regard. The main cause was the dual role of women, as where they were responsible for "*reproduction*" as well as "*social production*." According to some scholars from this era, the requirement for any position of authority is a total commitment to it, and employed women find it difficult to concentrate because they are busy raising children and doing domestic work. In 1960, women made up 44% of all medical doctors, and 80% of all medical personnel, yet only 12% of them were in positions of authority. Another interesting profession was teaching, which was perceived to be predominantly feminine, yet only 42% of the teachers' in positions of authority were women.[22] A typical attribute of female labour in Eastern Europe was that women were mostly concentrated in middle-range jobs, and if they obtained positions of higher authority, it was not in prestigious institutions. This is typical of educational, industrial, and political institutions.

19 Heitlinger (1979): p 148.
20 Heitlinger (1979): p 148.
21 Jaroslava Bauerová (1974): *Zaměstnaná žena a rodina*, Práce, Praha, p. 78.
22 Heitlinger (1979): pp. 160–161.

The first part of "*social reconstruction*" occurred in the distribution of women representatives, which were elected to national committees at every level. Female representation increased from 17% to 22 percent. Negative changes have occurred in the number of female representatives of the National Assembly. In 1960, 28% of the people elected to the district national committee and 21% of those elected to local national committees were women.[23] In 1964, the number of female representatives in these institutions declined to only 19 percent, and in 1970, this number dropped below 18 percent. In 1971, nearly 22% of the representatives were women, which was a result of directives calling for greater participation of women in these areas.[24]

3. Women's organizations and the education of women in Czechoslovakia

In the 1950s, the second wave of feminism began to emerge worldwide, but in countries with soviet type totalitarian regimes, including Czechoslovakia, it was hardly observable, as everything had to be realised within the plans of the socialist regime. At the time, two committees were functioning, but under strict socialist supervision: first, the Czechoslovak Women's Committee (v*ýbor Československých žen*), and later the Czechoslovak Women's Association (*Československý svaz žen*). Both committees were under socialist "*guidance*", so it is not possible to talk about freedom of expression or great emancipation. The organisations published a newsletter publication called the Newsletter of the Czechoslovak Association (*Zpravodaj Československého svazu žen*), in which they included reports on various conferences and meetings with other unions, such as Russia. The association also dealt with more serious topics, such as the main problems faced by women in Slovakia and the role of women in society. There was also a glossary section of the newspaper, where they explained various terms appearing in the articles for women, as well as a counselling centre and a library, where they included the latest news.

Education is closely related to the entry of women into the labour market. Women during socialism had to enter the labour market mainly for economic reasons, as sometimes it was not possible to provide for the whole family with one salary. Education is intricately linked to women earning better positions in society and jobs. In the 1950s, women were used as unskilled, cheap labour, but by achieving more qualifications and education, their positions improved significantly, and they became part of all branches of work, even feminising some of them (e.g. social care, finance, education, or healthcare). One main flaw of this system was the wage, which remained low for a long time, but the hygienic conditions were not ideal, and women sometimes had to work up to 60 hours a week. They even faced discrimination in some branches that were viewed as traditionally masculine, such as the technical branches. However, women's work was still needed not only for the family but also for the Czechoslovak economy.

The overall approach to education for women during this period was positive. The level of education of women changed rapidly and grew quickly, which is reflected in the

23 Heitlinger (1979): p. 158.
24 Heitlinger (1979): p. 159.

statistical data from the period: in 1950, university-type higher education was completed by only 0.1% of women, in 1970–1980 this number increased by 138.2 percent, and there were 69.6 thousand women, who had a university education. Similar or higher numbers were achieved by female graduates from secondary vocational schools and colleges. Women in this period received job positions that required higher qualifications, in contrast to the era of the First Republic, where they mostly worked in manual labour.

4. The new Labour Code of 1965 and its effect on female workers

Changes in society after the socialist coup of 1948 led to the need for new legislation. The first significant sign of the new regime's intention to fully use the workforce in Czechoslovakia was the capture of employment on new Czechoslovak identity cards in 1952. In 1949 and 1950, all other general branches of the law were freshly codified, except for labour law. The amendment of the Labour Code occurred later, in 1965, and it was supposed to let go of the old, so called "*exploitative*" legislation and replace it with new legislation. With the codification of the new Labour Code, the law in Czechoslovakia was unified.

The recodification of the entire legal system was based on a resolution of the Central Committee of the Communist Party of Czechoslovakia (*Komunistická strana à esko-Slovenska*), which called for the unification of the codes and their alignment with the new socialist regime. Labour law was the only field of law that had not been codified before. The newly codified labour law measures were supposed to guarantee the rights of workers and create new socialist legislation of labour law, but also to unify labour relations in Czechoslovakia. It also intended to develop new industrial relationships.[25]

The new Labour Code, which was supposed to help solve all problems related to labour law, came into force on the 1st of January 1966. In labour law, the principle of equality is expressed with emphasis on a woman's biological role. This is in contrast with the Family Law legislation of this period, according to which women's equality is based on the formal recognition of their equal role.[26] The new code consists of a preamble, basic principles, paragraph wording, and an attachment. The basic principles reflected the ideology of the state at the time, and they emphasised the equality expressed in the Constitution of Czechoslovakia, especially Articles 20 and 27, which were devoted to equality and gender equality. Article 20 states that all citizens of Czechoslovakia have the same rights and obligations. Point 3 of Article 20 emphasised, that "*[m]en and women shall have equal status in the family, at work, and in public activity.*"[27] Article 27 predicted a separate legal action that is needed to be devoted to gender equality and the emancipation of women:

25 Zákonník práce (1966): *Predhovor Václav Pašek tajomník Ústrednej rady odborov*, Práca, Bratislava.
26 Alena Wagnerová (2017): *Žena za socialismu (Československo 1945–1974 a reflexe vývoje před rokem 1989 a po něm)*, Sociologické nakladatelství (SLON), Praha, p. 156.
27 Constitution of Czechoslovakia, Article 20, Point 3, Official Gazette No. 100/1960 Coll.

> *"[t]he equal status of women in the family, at work and in public life shall be secured by special adjustment of working conditions and special health care during pregnancy and maternity, as well as by the development of facilities and services which will enable women fully to participate in the life of society."*[28]

As mentioned previously, the new Labour Code fulfilled the expectations of the 1960 Constitution and anchored the principle of gender equality in work relations. Article 7 provided that

> *"[w]omen have the right to the same status at work as men. Women are provided with working conditions that enable them to participate in work not only with regard to their physiological prerequisites but especially with regard to their social function in motherhood, raising, and caring for children."*[29]

As this principle was included in the Labour Code, women became recognised as a specific group, but their equality was emphasised based on their specific biological functions. The new code strictly specified women with cogent legal norms, which meant that socialist organisations could not deviate from them. Regulations from that time, especially regarding the protection of the female workforce by regulating breaks during work, restricting work at night, and protecting pregnant workers, are still included in Slovakia's labour legislation. This happened again from the socialist perception of pregnancy not being a private matter but rather something of public interest that is prosperous for society as a whole. The new law was intended to moderate the differences in social security between pregnant and non-pregnant workers. In addition to the pension for pregnant women, it also regulated the rights of women to return to work after maternity leave.

The legislation on work conditions regulated the establishment and adjustment of workplaces in such a way that women could work more easily. This means the establishment of preschools, schools, and infant institutions.

One of the most important positive changes of the new legislation was the fact, that it recognized that women, as a result of their biological differences, which are even more emphasized during pregnancy, are not able to work under the same conditions as men. More importantly, they were not required to work in professions that could be dangerous to their maternal role. The Ministry of Health regulated the professions that pregnant women and women could not take on until nine months after giving birth, and this list was updated and edited according to new scientific findings in technology and science. The typical jobs on the list were those in which women could come into contact with different dangerous substances, radiation, or contagious diseases.[30] The new regulations allowed organisations to transfer pregnant women to jobs that they could partake in without the possibility of endangering themselves or their children.

28 Constitution of Czechoslovakia, Article 27, Official Gazette No. 100/1960 Coll.
29 Labour Code of Czechoslovakia, Article 7, Official Gazette No. 65/1965 Coll.
30 Jaroslav Filo (1981): *Československé pracovné právo*, Obzor, Bratislava, p. 409.

It was possible to transfer a pregnant woman from one job to another at the same workplace, but it was not allowed to transfer a pregnant woman to another workplace outside her place of residence or work, only based on her request. This also applied to women, who were taking care of children younger than one-year-old.[31] Pregnant women and women who care for children below the age of eight can be sent on work trips only if they agree. The new Labour Code also limited the possibility of termination of job contracts for pregnant women and women who are taking care of children younger than three years old to the absolute minimum, with only a few situations in which such termination of a job contract could take place. This also applied to adoptive mothers.

Mothers also had the privilege of organising shifts at work. The shifts had to be organised while considering their specific positions and the need for them to take care of their children and households.[32] Pregnant women and women who care for children younger than one year could not work night shifts or overtime.[33]

5. The position of Czechoslovak women in late socialism

Czechoslovakia was one of the countries with the highest female participation in the workforce worldwide, with a proportion of 48% in 1975.[34] In 1972, the largest group of female workers was married (73%). There was a huge representation of young women in the labour market, as 61% of all working women were between the ages of 20 and 35. As previously mentioned, a large contributing factor to the rapid increase in women's involvement in the labour market was progress in the educational upbringing of women. A comparison between educated men and women in the age group below 40 years reveals that they are nearly equal, although the number of educated men was still slightly higher. The opposite situation occurred in the age group below 35 years, where more women had formal training or education than men.[35]

The increase in female involvement in the labour market was, of course, intricately linked to the education of women in this period. Statistical data from this era indicate that in the school year 1975–1976, 63% of all pupils at high schools were represented by women; furthermore, women made up nearly 60% of students at colleges, 62.6% at universities, 38.1% at arts schools, 29.1% at agricultural science schools, and 53.6% of apprentices. In 1975, 78.2% of all young people leaving school were girls who were more likely to join the workforce immediately after leaving elementary school.[36]

The situation occurred where men mostly chose apprenticeships to prepare for university but also to obtain the requirements for a profession. Women preferred schools to apprenticeships, even when they did not plan to attend university. The differences in the orientation of educational institutions may be explained not only by the traditional

31 This was later changed, in 1988 they raised the requirement for the minimum age of the child to 15 years old.
32 Jaroslav Filo (1981): *Československé pracovné právo*, Obzor, Bratislava, p. 412.
33 Labour Code of Czechoslovakia, Official Gazette 65/1965, Paragraph 156.
34 *Statistická ročenka ČSSR* (1976), SNTL, Praha.
35 Wagnerová (1983): p. 299.
36 *Statistická ročenka ČSSR* (1976), SNTL, Praha.

concept of the distinction between male and female jobs but also by the low financial rewards of higher education in Czechoslovakia. Another reason may be that the industry was more interested in male apprentices.[37] Although Czechoslovakia provided the same educational opportunities for boys and girls, opportunities to qualify for the job market were more restricted for women than for men. While qualified women find themselves in middle-range and higher positions, they are more often employed in middle-range and inferior jobs.[38]

Although the number of female students was 11 times greater in 1975 than in 1945, qualified and graduated women were still considered a novelty in the 1970s, although they still took less advantage of their qualifications than men. This was considered to be because of their additional duties in the family, as having an overly demanding job would threaten this aspect of their lives. Studies from this era concluded that there was a need to change women's position at home to align more with their profession.[39] However, the regime's dependence on women's labour is reflected in the 80% increase in women in the labour market from 1948 to 1975.

While women's equality enjoyed expansive attention and peaked in the 1950s, in the 1970s, this perception returned to the traditional concept of connecting women with childbearing and housework. In this era, differences between the two genders were perceived as a result of natural inequality, which could not be removed by law or philosophy. Although the perception of gender equality changed during this time, women who had already entered the workforce did not leave their jobs to become housewives. This was mostly because the communist agenda and legal code ordered everyone to work, including women. Men did not become the sole breadwinners, but both men and women continued to work while achieving self-realisation at home. So, we can conclude that the "*two-breadwinners*"-model continued even in these times.

III. CONCLUSIONS

Considering Czechoslovakia's history, we can clearly state that the state has been working towards equality, more specifically, gender equality, since its establishment in 1920. In 1920, the first president, Tomáš G. Masaryk, emphasised an especially progressive approach. However, this progress ceased when the Nazi occupation began in 1938 in the Czech part of Czechoslovakia and when the clerico-fascist rule strated in the First Slovak State.

Not long after the Second World War ended and the communist coup occurred, women joined the labour market *en masse* and the two-breadwinner model started to develop. Although at first glance, we can get the impression that this was a solely positive change and a great result towards the equality of the two genders, the reality was

37 Wagnerová (1983): p. 299.
38 Bohumil Jungmann (1969): Složitost práce jako roměr vertikální diferenciace spolecnosti a jako individuálni šance, in: Pavel Machonin: *Československá spolećnost*, Epocha, Bratislava, p. 189.
39 Wagnerová (1983): p. 302.

that women were forced to start working to align with the regime's ideology, but also sometimes to escape poverty.

After the Velvet Revolution of November 1989, the Soviet regime collapsed in Czechoslovakia. On the 1st of January, 1993, Czechoslovakia peacefully split, and two countries were established: the Czech Republic and the Slovak Republic. Article 12 of the Constitution of the Slovak Republic declares that

> *"all human beings are free and equal in dignity and rights. Their fundamental rights and freedoms are sanctioned, inalienable, imprescriptible, and irreversible. All humans are free and equal in terms of dignity and rights. Their fundamental rights and freedoms are sanctioned, inalienable, imprescriptible, and irreversible."*[40]

Furthermore, it states, that

> *"[f]undamental rights shall be guaranteed in the Slovak Republic to everyone regardless of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or any other status. No one shall be aggrieved, discriminated against, or favoured on any of these grounds."*[41]

All rights and freedoms outlined in the Constitution may be exercised in accordance with this provision, which is general in nature. In other words, if for example Article 36 of the Constitution of the Slovak Republic establishes the right to compensation for services rendered, it also falls under the broad category of the Slovak Republic's anti-discrimination provision.[42] International Accords and the Slovak Republic Constitution offer protection, particularly against state discrimination, but do not completely shield citizens from the activities of private individuals. From this vantage point, the Slovak Republic's Anti-discrimination Act of 2004 benefited from the incorporation of anti-discrimination directives approved in the EU territory of the European Union into the Slovak Republic's legal system. The Anti-Discrimination Act was the result of a protracted process that spanned years and involved the insertion of anti-discrimination provisions into specific legislation. The proposed law was presented to the National Assembly to stop the transposition of EU directives.[43] On 1 May 2004, with the Slovak Republic becoming a member state of the European Union, its legislation became legally enforceable for the Slovak Republic before that, even during the accession process, our legal system had to be adjusted to the system of the European Union. Before the Anti-Discrimination Act was passed, all labour laws gradually included a

40 Constitution of the Slovak Republic, Official Gazette No. 460/1992 Coll., Article 12, Point 1.
41 Constitution of the Slovak Republic, Official Gazette No. 460/1992 Coll., Article 12, Point 2.
42 Janka Debrecéniová, Zuzana Očenášová (2005): *Rovnosť príležitostí žien a mužov na Slovensku: Správa o dodržiavaní smerníc EÚ týkajúcich sa rodovej rovnosti,* Nadácia otvorenej spoločnosti, Bratislava, p. 65.
43 Ján Martinec (2005): Zásada rovnakého zaobchádzania v pracovnoprávnych vzťahoch (Vybrané otázky a postrehy), in: *Ústav štátu a práva SAV a Informačná kancelária Rady Európy. (Ne) rovnosť a rovnoprávnosť: Zborník medzinárodnej konferencie konanej v dňoch 13. –15. októbra 2005 v Tatranskej Štrbe*, SAP, Bratislava, pp. 282–288.

ban on gender-based discrimination. For instance, the Employment Act was changed in 1999 to forbid the posting of job offers containing any form of discrimination. Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection Against Discrimination (Anti-Discrimination Act) of 20 May 2004 regulates the application of the concept of equal treatment and defines the means of legal protection if this principle is violated. This law can be viewed as a significant improvement in terms of equal treatment. Gender discrimination in employment and similar legal relationships is prohibited in Paragraph 6 of the Anti-Discrimination Act, which also applies to (a) access to employment, occupation, or other gainful activities or functions, including requirements for employment and the conditions and method of selection; b) employment and working conditions, such as pay, career advancement, and termination; c) having access to vocational training; and d) being a member of and participating in organisations that represent employees, employers, and people in particular professions, including receiving benefits from these organisations. According to Paragraph 8 of the Anti-Discrimination Act, discrimination applies not only if the differential treatment is objectively justified by the nature of the activities performed in the job or the conditions in which they are performed; it also applies if the extent or manner of the differential treatment is reasonable and necessary considering these activities or the conditions in which they are performed.[44]

The Labour Code of 2001 elaborates on the fundamental principles of gender equality and equal opportunity in labour relations by establishing in Article 6 that

> *"[w]omen and men shall have the right to equal treatment regarding access to employment, remuneration and promotion, vocational training, and also concerning working conditions. For pregnant women and mothers until the completion of the ninth month of confinement, and for breastfeeding women, working conditions should be secured to protect their biological state with respect to pregnancy, childbirth, care for the child after birth, and their special relationships with the child after birth. For women and men, working conditions shall be secured that will enable them to perform their social functions in the upbringing of children and childcare."*[45]

According to Paragraph 47, point 2, the employer is required by law to treat all employees equally, and simultaneously, it is his responsibility to provide the employee with information about the rules governing compliance with this principle when hired. The prohibition of discrimination against anyone for any reason, including sex, race, colour, language, age, sexual orientation, faith or other beliefs, disability, political or other opinions, national or social origin, or membership in a nationality or ethnic group, includes the principle of equal treatment. The prohibition of all forms of discrimination for these reasons constitutes compliance with the equal treatment principle as does taking precautions to avoid discrimination. In the areas of labour law and similar legal relationships, social security, healthcare, the provision of goods and services, and education, everyone is obligated to uphold the principle of equal treatment.

44 Monika Čambáliková (2006): Prehľad legislatívy ES a SR týkajúcej sa rodovej rovnosti, in Magdaléna Piscová (ed.): *Slovensko na ceste k rodovej rovnosti,* Accord GS, Bratislava, pp. 195–196.
45 Labour Code of the Slovak Republic, Official Gazette Act. No. 311/2001 Coll.

This principle is one of the most significant and challenging facets of European labour and social law. Equal treatment is a major problem that affects civil and criminal procedural, administrative, family, and constitutional laws. The definition of the "*prohibition of discrimination*" was changed to the "*principle of equal treatment*" because of the anti-discrimination law's passage into law. During the hiring process and throughout the duration of the employer-employer employment contract's validity, the employer is obligated to treat employees equally. Before hiring an applicant, the employer may not be required to disclose information about the applicant's family or pregnancy. When it comes to hiring a natural person, it is also against the law for an employer to violate the principle of equal treatment when it comes to accessing employment. The injured party has the right to provide adequate financial compensation if the employer breaches the legal obligations related to the principle of equal treatment at the beginning of the employment relationship. This also applies to civil service-related legal relations as well as those relating to performing work in the public interest.[46]

From the above, we can conclude that Slovakia is on the right path to achieving true and full gender equality, although there is still room for improvement in this area. In Slovakia, men and women still have significant income disparities, as evidenced by current statistics showing that women typically earn with a quarter less of what men do.[47] According to a survey on 22 October, among the countries in the European Union, Slovakia is the 4th from the bottom with the worst results in terms of gender equality.[48] Again, a situation similar to the one in the 1920s arises, where based on the legislation, one could conclude that the regulations concerning gender equality are sufficient; however, in reality, there are situations where these regulations are still not enough, or in some cases, implemented poorly. The issue of equal treatment of female workers in Slovakia is a notable example through which we can prove how difficult it is to change the behaviour and deeply rooted mentality in society.

46 Helena Barancová (2007): *Zákonník práce. Komentár. Piate prepracované a doplnené vydanie*, SPRINT, Bratislava, p. 153.

47 Elena Gemzová (2022): *Aká bola cesta k rovnosti mužov a žien na pracovnom trhu? A sme už v cieli?*. Available at: https://blog.profesia.sk/rovnost-muzov-a-zien-na-pracovnom-trhu/ (accessed on 13.01.2022)..

48 Lucia Yar (2022): *V európskom rebríčku rodovej rovnosti je Slovensko štvrté od konca*. Available at: https://euractiv.sk/section/rodova-rovnost/news/v-europskom-rebricku-rodovej-rovnosti-je-slovensko-stvrte-od-konca/ (accessed on 13.01.2022).

Legislative and Social Emancipation of Working Women in Croatia Under the Influence of Socialist Ideologies[1]

TENA KONJEVIĆ
Teaching Assistant, Josip Juraj Strossmayer University of Osijek
Ph.D. student, University of Miskolc,
Central European Academy
E-mail: tena.konjevic@centraleuropeanacademy.hu

ABSTRACT
The review of the relevant publication provides an analysis of the legal, economic, and ideological-social role of women as workers in Croatia, with an emphasis on the socialist era. The introduction presents a brief overview of how women's position in society as workers and contributors to the household budget in early Croatian history was impacted by social barriers. Furthermore, the position of women is analysed from the beginning of the Second Yugoslavia until the 1960s, when changes in legislation and society were followed by the socialist ideal of a woman as a quality worker and as a good mother. Therefore, this study addresses the question of whether the 1960s brought real positive changes for women in the social and economic segments of life or if that period marked a return to the traditional portrayal of a woman as a housewife who now carries the additional burden of a full-time worker. Finally, the analysis of the legislative and social approach to women in late socialism offers the possibility of observing today's progress from the relatively recent socialist order that conceived the idea of women as workers. One question has persisted throughout the history of Croatian women's emancipation in the workplace: does reality follow the law, or does it remain just a dead letter on paper?
KEYWORDS
employment, Croatian history, women's rights, socialist ideology.

Emanciparea legislativă și socială a femeilor muncitoare în Croația sub influența ideologiilor socialiste

REZUMAT
Articolul oferă o analiză a rolului juridic, economic și ideologic-social al femeilor ca muncitoare în Croația, cu accent pe epoca socialistă. Introducerea prezintă o scurtă prezentare generală a modului în care poziția femeilor în societate, în calitate de lucrătoare și de contribuitoare la bugetul gospodăriei, la începutul istoriei croate, a fost influențată de barierele >>

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>> sociale. În plus, poziția femeilor este analizată de la începutul celei de-a doua Iugoslavii până în anii 1960, când schimbările din legislație și societate au fost urmate de idealul socialist al femeii ca angajată de calitate și ca mamă bună. Prin urmare, acest studiu abordează întrebarea dacă anii 1960 au adus schimbări pozitive reale pentru femei în segmentele sociale și economice ale vieții sau dacă acea perioadă a marcat o întoarcere la imaginea tradițională a femeii ca gospodină care acum poartă povara suplimentară a unui angajat cu normă întreagă. În cele din urmă, analiza abordării legislative și sociale a femeilor în socialismul târziu oferă posibilitatea de a observa progresul de astăzi din ordinea socialistă relativ recentă care a conceput ideea femeilor ca muncitoare. O întrebare a persistat de-a lungul istoriei emancipării femeilor croate la locul de muncă: oare realitatea urmează legea, sau aceasta rămâne doar o literă moartă pe hârtie?
CUVINTE CHEIE
raport de muncă, istoria Croației, drepturile femeilor, ideologie socialistă.

I. INTRODUCTION

Even though the beginning of women's participation in economic life is considered to be the period after the end of the Second World War, women paved the way for participation in the workforce at the very beginning of modern civil society and the market economy in Croatia. By studying the economic position of women from the end of the 19th century to the beginning of the 21st century, significant but gradual progress can be observed towards improving their position as participants in economic life.[2] Although this study examines the position of women as workers in the 20th century, when social and economic life was dominated by socialist ideology, the historical, social, and economic context in which the aforementioned issue of the position of women was raised needs to be explained in further detail, focusing especially on the interwar period.

The economic and urbanisation crises at the turn of the 20th century, along with the lack of suitable education for women, limited the range of professions available to them. Between 1880 and 1910, there were slightly more than 2% unemployed men, while the remaining 18% were unemployed women; however, exact data cannot be given because there was no available statistical record of the composition of the workforce at that time.[3] The inclusion of women in industrial production reduced the problem of poor women from rural areas of Croatia;[4] for example, at the end of the 19th century, a hundred female peasants worked in chair factories in Bakar and Ravna Gora.[5]

2 Ksenija Vuković, Tamara Šmaguc: Društveni kontekst izbora zanimanja žena u Hrvatskoj u razdoblju od kraja 19. do početka 21. stoljeća, *Ekonomska misao i praksa*, 1/2015, p. 298.
3 Agneza Szabo: Regionalno porijeklo i socijalna struktura stanovništva grada Zagreba između 1880–1910. godine, *Radovi Zavoda za hrvatsku povijest Filozofskog fakulteta Sveučilišta u Zagrebu*, 1/1984, p. 105.
4 Mirjana Gross, Agneza Szabo: Prema hrvatskome građanskom društvu, Društveni razvoj u civilnoj Hrvatskoj i Slavoniji šezdesetih i sedamdesetih godina 19. stoljeća, *Globus*, 1992, p. 141.
5 Agneza Szabo: Demografska struktura stanovništva civilne Hrvatske i Slavonije u razdoblju 1850–1880, *Historijski zbornik*, 1/1987, p. 205.

Furthermore, the period between the two World Wars on the territory of Croatia was marked by the foundation of the State of Slovens, Croats, and Serbs and then the Kingdom of Serbs, Croats, and Slovens by the Serbian regent Alexander on 1 December 1918, which was later renamed the Kingdom of Yugoslavia. In 1929, a dictatorship was introduced, which affected the political and intellectually complex lives of the people.[6] The interwar women's movement in Yugoslavia was imbued with nationalism, and the image of the Yugoslav woman consisted of representatives of the hysterical and archaic past that needed to be nationalised to become new, true Yugoslav women.[7] Women's position in Croatia in the interwar period[8] began to change during their childhood; however, there was a significant difference between developed and underdeveloped areas. Specifically, although both girls and boys attended public schools, further education was a rarity for boys, and such an option practically did not even exist for girls in rural areas, whereas girls in more developed areas had many more opportunities. An example of a possible exception in Croatia was the lace school in Lepoglava, which provided relatively good earnings.[9] Conversely, women were more visible in higher education in more developed areas in the 20th century. For example, at the end of the First World War, women were allowed to attend mining, veterinary, legal, technical, and theological faculties in Croatia, and as early as 1938, women accounted for 22.8% of the students at Yugoslav colleges and universities.[10]

Despite the aforementioned educational progress, the patriarchal view of women's roles continues to segregate professional choices and contribute to the gender distribution of occupations.[11] As a consequence of the aforementioned poor educational opportunities, women in developed areas are typically employed in lower-paid jobs that enable them to harmonise the roles of mother and worker.[12] The special feature of the rural girl's earnings was that it was mostly invested in wedding supplies. However, the difference between women's and men's income was significantly higher in more developed regions than in the countryside. Furthermore, the importance of women's work in this interwar period was increasing for several reasons. Primarily, there was a need for an additional workforce, especially in the countryside. However, when the need for labour decreased, women were the first to lose their jobs, which was then reflected

6 Dalibor Čepulo (2022): Croatian Constitutionalism from Autonomy to the State, in Lóránt Csink, László Trócsányi (ed.): *Comparative Constitutionalism in Central Europe* (ed.), CEA Publishing, Miskolc-Budapest, pp. 39–40.

7 Andrea Feldman (2004): Poričuči gladnu godinu: Žene i ideologija jugoslavenstva (1918–1939.), in Andrea Feldman (ed.): *Žene u Hrvatskoj, Ženska i kulturna povijest*, Institut "Vlado Gotovac", Zagreb, pp. 235–236, 240, 245.

8 See more in: Chiara Bonfiglioli (2012*): Revolutionary Networks. Women's Political and Social Activism in Cold War Italy and Yugoslavia (1945–1957)*, Utrecht University (Ph.D. dissertation).

9 Suzana Leček (2004): "Ženske su sve radile", Seljačka žena između tradicije i modernizacije u sjeverozapadnoj Hrvatskoj između dva svjetska rata, in Andrea Feldman (ed.): *Žene u Hrvatskoj, Ženska i kulturna povijest*, Institut "Vlado Gotovac", Zagreb, pp. 212–214.

10 Vuković, Šmaguc (2015): p. 302.

11 Branka Galić: Žene i rad u suvremenom društvu – značaj "orodnjenog" rada, *Sociologija i prostor: časopis za istraživanje prostornoga i sociokulturnog razvoja*, 1/2011, pp. 25–48.

12 Marina Blagojević (1991): *Žene izvan kruga: profesija i* porodica, Institut za sociološka istraživanja Filozofskog fakulteta u Beogradu, Beograd, p. 73.

in the decline of their social status. Second, the increase in women's work was also influenced by changes in the family structure. Despite the continued existence of traditional "women's" and "men's" divisions of labour, these division patterns gradually disappeared as a result of the complexity of family structures.[13]

Furthermore, women's organisations in the Kingdom of Yugoslavia actively promoted women's rights in all spheres of life, advocating for the right to vote, equal pay for equal work, and civil marriage.[14] The influence of the patriarchy[15] on the position of women in the workforce gradually diminished, which meant that women were given the role of "*economic partners*" of men.[16] Therefore, the position of women in the economic sense was no longer accompanied by strong patriarchal understandings, given that women were provided with an increasing number of opportunities in terms of contributing to the household budget. Despite everything mentioned above, women continue to be subordinated in all spheres of life, and their position is still far from equal. However, it is unclear how women's status progressed from the construction of the Second Yugoslavia until its collapse in the 1990s, all under the strong influence of socialism.

II. THE ROLE OF WOMEN IN THE PERIOD FROM THE BUILDING OF THE SECOND YUGOSLAVIA TO THE 1960S

The construction of the socialist federation began as early as 1943 on the territory of the former Kingdom of Yugoslavia.[17] The role of the new government after the Second World War was aimed at dealing with previously acquired social practises and the transformation of society, and special attention was paid to the modernisation of society. Therefore, the postwar period marked massive social, political, and economic changes, which largely affected the position of women. The rights that women acquired in Yugoslavia were won by themselves, primarily through participation in the People's Liberation Struggle. Likewise, it is important to emphasise that women's equality was one of the foundations of communist ideology, and according to Lenin's understanding,

13 Leček (2004): p. 221, 223.
14 Darja Zaviršek (2012): Women and social work in central and eastern Europe, in Joanna Regulska, Bonnie G. Smith (ed.): *Women and Gender in Postwar Europe, From Cold War to European Union*, Routledge, London, New York, p. 53.
15 Older literature presented patriarchy as a system based on the authority of a man: the father. However, in recent literature, concepts such as dominance, subordination, phallocentrism, and androcentrism are associated with this institute, while asymmetry and marginality are associated with women as the other side in this relationship. See more in: Jasenka Kodrnja (2008): *Žene zmije – rodna dekontrukcija*, Institut za društvena istraživanja u Zagrebu, Zagreb, p. 51.
16 Leček (2004): p. 222.
17 Ljubiša Vujošević (1985): *Povijest Saveza komunista Jugoslavije*, IC Komunist, Narodna knjiga, Beograd, pp. 98–99.

> *"there can be no socialist movement if a large part of working women does not take a large part in it. We need women workers to achieve, not only before the law but also in life, equality with a men-workers. That is why women workers must take increasing participation in the management of companies and the management of the state."*[18]

The social organisation of Yugoslavia can be said to have two characteristics: the rule of the working class and working people, as well as socialist production relations among people who are free and equal creators of their own common needs.[19] The labour market in the 20th century brought industrialisation, mass employment, urbanisation, and changes in economic opportunities and lifestyles that created a discrepancy in the position of women, previously closely and almost exclusively related to family values.[20] Additionally, the labour market of Yugoslavia caused two conflicts: the first concerned the role of the worker and the role of the father or mother, while the other was related to gender roles, in which the man in the family did not share familial chores with the woman.[21] Therefore, the Second World War marked a turning point in the expansion of the range of hitherto unavailable occupations for women, especially in low-paid service industries.[22]

In socialist theory, industrialisation opened up the possibility of working regardless of a woman's marital status, and with the organisation of social care for children, the position of working mothers became significantly easier.[23] In the postwar period, the number of employed women increased by approximately nine times because of postwar reconstruction and society's need for new cultural values and forms of socialism.[24] However, after the Informbiro Resolution, the attack of the Soviet Union on the Yugoslav government, military threats, economic blockades, and major droughts that destroyed the crops caused a general decrease in the number of employees, especially women, and the situation only improved in the 1960s.[25] Therefore, after the aforementioned Resolution of the Informbiro, the Soviet Union ceased to be a model for

18 Franjo Kožul (1973): *Samoupravni i radni status žene u Jugoslaviji (rezultati istraživanja)*, University of Sarajevu, Faculty of political sciences, Sarajevo, p. 23.; Bojana Đokanović, Ivana Dračo, Zlatan Delić (2015): Žene u Socijalizmu – od ubrzane emancipacije do ubrzane repatrijarhalizacije, in Jasmina Čaušević, Emina Bošnjak, Saša Gavrić (ed.): *Zabilježene: Žene i javni život Bosne i Hercegovine u 20. vijeku, Drugo dopunjeno i izmijenjeno izdanje, III. Part: 1945–1990*, Sarajevski otvoreni centar, Fondacija CURE, Sarajevo, pp. 104–105.

19 Marinko Učur: Labour and Labour Relations in the Amandments to the Constitution of the SFR of Yugoslavia and the Associated Labour Act, *Zbornik Pravnog fakulteta u Rijeci*, 9/1988, pp. 143–144.

20 Mirjana Adamović (2011): *Žene i društvena moć*, Plejada, Institut za društvena istraživanja u Zagrebu, Zagreb, p. 114.

21 Marijo Volarević: Novi feminizam i kulturna promocija žene majke-radnice, *Obnovljeni život: časopis za filozofiju i religijske znanosti*, 2/2012, pp. 223–236.

22 Galić (2011): p. 26.

23 Vida Tomšić (1981): *Žena u razvoju socijalističke samoupravne Jugoslavije*, Novinarsko-izdavačka radna organizacija "Jugoslavenska stvarnost", Beograd, p. 91.

24 Tomšić (1981): p. 91.

25 Smiljana Milinkov (2014): *Medijska prezentacija žene pedesetih godina prošlog veka u Jugoslaviji: retradicionalizacija društva vs. emancipacija na primjeru Autonomne pokrajine Vojvodine*, Philosophy Faculty, University of Novi Sad, Novi Sad, pp. 179–180.

imitation, hence, plans for the mass inclusion of women in production were no longer implemented because quality took precedence over quantity. The lower level of education[26] was the key reason women remained only in more difficult jobs that required lower qualifications and paid lower wages.[27]

1. Legislation as a result of the socialist ideal of women as quality workers and good mothers

According to the Constitution of the People's Republic of Croatia from 1947, based on the Constitution of the Federal People's Republic of Yugoslavia (hereinafter: FPRY):

> *"[w]omen are equal citizens with men in all areas of the state, economic and socio-political life. For equal work, women are entitled to equal pay as men and enjoy special protection in the employment relationship. The state protects the interests of the mother and the child, especially through the establishment of maternity hospitals, children's homes and kindergartens, and the mother's right to paid leave before and after childbirth."*[28]

The aforementioned Constitution was a kind of turning point in the legislative improvement of women's position in Croatia, given that in the Kingdom of Yugoslavia, laws from the 19th century were applied, which were in line with the later understanding of the position of women. Additionally, the problem was non-harmonised legislation, given that different laws were applied in Croatia and Slavonia than in the rest of Croatia, for example, in Zadar.[29]

Furthermore, the FPRY Constitution was supplemented by laws that regulated the position of women, so that the constitutional provisions would not remain just a dead letter on paper. Laws and decrees were mainly directed towards the realisation of women as workers and the protection of the rights of employed women during and after pregnancy, given that they contribute to the reconstruction of the country by working and giving birth.[30]

The Law on Social Security of Workers, Officials, and Their Families from 1950 allowed women to retire five years earlier than men and provided paid leave for mothers for six weeks before and six weeks after childbirth,[31] while the Decree on the Protection of Pregnant Women and Nursing Mothers in Employment extended maternity leave to 90 days. Furthermore, the night work of mothers from the fourth

26 See more about the workers' education in Yugoslavia in: Gary K. Bertsch, Karen L. Persons: Workers' education in Socialist Yugoslavia, *Comparative Education Review*, 1/1980, pp. 87–97.
27 Iva Niemčić, Dijana Dijanić, Mirka Merunka-Golubić, Dijana Stanić (2004): *Ženski biografski leksikon: sjećanje žena na život u socijalizmu*, Centar za ženske studije, Zagreb, p. 142.
28 Zbirka Zakona, Uredaba i Naredaba Narodne Republike Hrvatske, Ustav Narodne Republike Hrvatske, *Izdanje Narodnih novina, službenog lista Narodne Republike Hrvatske*, 5/1947.
29 Ana Prokop (1969): *Komentar Osnovnom zakonu o braku*, Školska knjiga, Zagreb, p. 391.
30 Njemčić et al. (2004): p. 187.
31 Law on social security of workers and officials and their families (Cro. *Zakon o socijalnom osiguranju radnika i službenika i njihovih porodica*), Official Gazette of the Federal People's Republic of Yugoslavia, Articles 27. and 37.

month of pregnancy to eight months after birth is prohibited by the Law on Amendments to the Law on Civil Servants, while the Decree on Material Assistance for the Children of Workers and Civil Servants provided equipment for a newborn, a one-time allowance for families with several children, and cash allowances for children. The regulation also stipulated that a pregnant woman could not be fired and that companies employing more than 20 mothers must have a crèche or kindergarten. However, in practise, the mentioned provisions were not respected, therefore, on the initiative of the activists, kindergartens, crèches, and fun centres were established throughout Croatia, which significantly helped working mothers. However, with the introduction of the child allowance in 1951, kindergartens and crèches began to be supported exclusively from parental funds, which a large number of parents could not pay, which is why the number of children's institutions rapidly decreased.[32]

Although the state's social policy related to women was modernised, it continued to primarily help women employed in state-owned enterprises or institutions, considering that this was the only way they were able to exercise their rights. However, despite modernisation and urbanisation,[33] a large number of women were still engaged in agriculture, which meant that the aforementioned laws only applied to working women but not those engaged in agriculture, even though there was no significant difference in their working hours or the number of obligations.[34]

In conclusion, it can be stated that the constitutional and legislative regulations of Yugoslavia until the 1960s guaranteed equality in access to workplaces and the unity of personal income for work; however, in practise, it worked much differently, which was justified by the unfavourable qualification structure of women.[35] Indeed, Yugoslavia, with its anti-discrimination approach to labour legislation, was among the more advanced countries in the world; however, this did not prevent women as workers from being placed in an unequal relationship as part of economic or social emancipation.[36]

2. Female organised action as a movement of changes

With the collapse of the Kingdom of Yugoslavia, civic feminist organisations could no longer continue their work, and the war marked their end. However, the war did not stop the activists of the women's proletarian movement, who became the inheritors of the development of the women's movement. The first document related to the start of women's organised activities in Croatia is the Resolution of the Assembly of Women

32 Njemčić et al. (2004): pp. 187–190.
33 See more in: Bette S. Denich: Urbanisation and woman's roles in Yugoslavia, *Anthropological Quarterly*, 1/1976, pp. 11–19.
34 Sara Tar (2021): *Žena u procesu izgradnje jugoslavenskog socijalizma, primjer Zadra*, University of Zadar, Zadar, p. 26.
35 Tomšić (1981): pp. 95–97.
36 Sanela Đurkan (2015): *Rodna ideologija u socijalističkoj Jugoslaviji 1970-ih: prikaz analize sadržaja reprezentativnih hrvatskih romana*, University of Zagreb, Zagreb, p. 28.

of the Drvar Valley, dated 21 August 1941.[37] Subsequently, the Anti-Fascist Women's Front, officially founded in 1942, entered the scene[38] as part of the Conference, which was praised by Josip Broz Tito, who stated that: "*[w]omen are fighting today side by side with men for the freedom of the people of Yugoslavia [...] In this war, they are fighting today for the equality of women*".[39]

One of the key authors who dealt with the issue of the position of women and their emancipation in Croatia in the relevant period of the 20th century was the sociologist and ethnologist Lydia Sklevicky, whose research subjects were war and postwar reports and records of women's organisations. She is also responsible for important information about the Anti-Fascist Front of Croatian Women.[40] Therefore, the Anti-Fascist Women's Front was the most massive women's movement in our region and beyond, which contributed in an extraordinary manner to the fight against fascism, for the general equality of women, and the freedom and emancipation of Yugoslav society as a whole. By participating in the People's Liberation Struggle, women won the legitimacy of the greatest revolutionary achievement: equality and the anti-fascist women's front grew over time into a strong socio-political factor in socialist Yugoslavia.[41]

The Front had three basic emancipatory roles: literacy and education of women; mobilisation for reconstruction; and encouragement of the construction of kindergartens to enable the employment of women and thereby establish their economic independence.[42] The aforementioned Front published the newsletter "*Women in the Struggle*", which offers an excellent insight into the state of women's position after 1945. The successor of that newspaper is the magazine "*Žena*", which is also a key source of information about the emancipation of women in the second half of the socialist period in Croatia.[43] In the aforementioned magazine, women were viewed as workers and heroes of work together with their male work colleagues. The magazine exalted the work and restoration of the country and the equalisation of "women's" and "men's" jobs. With its cover depicting a woman with a child and a rifle in her hand, the first edition immediately demonstrated the importance of women's positions, with an emphasis on

37 Marija Šoljan (1955): *Žene Hrvatske u Narodnooslobodilačkoj borbi*, Knjiga I., Rezolucija sa skupštine žena Drvarske doline od 21.VIII.1941., Izdanje glavnog odbora saveza ženskih društava Hrvatske, Zagreb, pp. 19–20.

38 Lydia Sklevicky: Organizirana djelatnost žena Hrvatske za vrijeme narodnooslobodilačke borbe 1941–1945, *Povijesni prilozi*, 3/1984, p. 90.

39 *Adela Jušić, "Ja mislim, drugarice..."*. Available at: https://afzarhiv.org/items/show/481 (accessed on 16.11.2022).

40 Dunja Rihtman-Auguštin: Lydia Sklevicky (1952–1990), *Narodna umjetnosti: hrvatski časopis za etnologiju i folkoristiku*, 1/1990, p. 333.

41 Available at: https://afzarhiv.org/ (accessed on 16.11.2022).

42 Ivana Pantelić (2011): *Partizanke kao građanke*, Institut za savremenu istoriju, Evoluta, Beograd, p. 56.

43 Mira Kolar-Dimitrijević: Žena u borbi 1943/45, Izd. Konferencije za društvenu aktivnost žena Hrvatske, časopisa "Žena" i Instituta za historiju radničkog pokreta Hrvatske, Zagreb 1974, str. 522, *Časopis za suvremenu povijest*, 2/1975, p. 202.

combat.[44] From 1947 to 1951, texts promoting the work of women in the industry were published under the slogan "*same work, same pay.*"[45]

However, the question is whether women were treated equally, as promoted by the Front. In particular, according to Sklevicky's research, women experienced various injustices, especially from male colleagues, and considering that over time the Front was perceived as a kind of threat to the Communist Party, it became only a tool in its hands.[46] Finally, in 1953, by the decision of the People's Front, the Anti-Fascist Women's Front was abolished.[47] What followed after the Front was the Conference for the Social Activity of Croatian Women, which in 1961 became part of the Socialist Alliance of Working People (more on that follows below).[48]

III. POST-1960S EVOLUTION: SIGNIFICANT CHANGES OR A REVERSION TO TRADITIONAL CONCEPTS?

In the 1960s, women seeking employment comprised 50% of the total number of unemployed in Yugoslavia,[49] and by the mid-sixties, this percentage decreased because of the increasing qualifications of female workers applying for jobs, the decrease in the number of unqualified workers applying for jobs, and their temporary employment abroad.[50]

The average growth rate of employed women in Yugoslavia between 1954 and 1974 was 6%.[51] In 1961, the proportion of women still working in agriculture was 42% because of the increasing abandonment of agriculture by men and frantic employment in the industry.[52] As per estimates, there were approximately 40,000 women in full-time employment in agriculture in Second Yugoslavia and approximately 9,700 women in Croatia.[53]

Since the mid-1960s, most women in the Socialist Republic of Croatia who did not engage in agriculture have been employed in economic organisations that belong to lower categories of expertise. This was caused, among other things, by the delay in improving women's qualifications under the pretext of being overworked, which kept

44 "Učestvujemo u obnovi domovine", *Žena u borbi*, 14–15/1945, pp. 16–17.
45 Reana Senjković: Ugljen i šminka. Narativi o jugoslavenskoj radnici na ponudi posttranzicijskom sjećanju, *Etnološka tribina*, 41/2018, p. 178.
46 Renata Jambrešić Kirin (2008): *Dom i svijet. O ženskoj kulturi pamćenja*, Centar za ženske studije, Zagreb, p. 23.
47 Available at: https://afzarhiv.org/ (accessed on 16.11.2022).
48 Mario Febekovec (2005): *Konferencija za društvenu aktivnost žena Hrvatske 1945–1990*, Hrvatski državni arhiv, Zagreb, pp. 5–8.
49 See more in: Janez Malačić: Unemployment in Yugoslavia from 1952 to 1975, Eastern European Economics, *Taylor and Francis*, 4/1979, pp. 85–109.
50 Iva Dujmović (2016): *Radnice u Jugoslaviji 1960–1980. Uloga i položaj u industriji i društvu i slučaj Rijeka*, University of Rijeka, Rijeka, p. 36.
51 Tomšić (1981): p. 91.
52 Dujmović (2016): p. 35.
53 Livada et al.: Ekonomski i društveni položaj žena u poljoprivredi i na selu, Konferencija za društvenu aktivnost žene, *Tisak "Epoha"*, 2/1967, pp. 15–23.

them in lower-paid jobs. Not only in Croatia but throughout the entire former Yugoslavia, women were employed in lower positions, and very few women managed to advance to better-paid positions. The workers attributed this to the woman's absence from work due to family obligations.[54] Diana Pearce coined the phrase "*feminisation of poverty*" in 1978 to describe the concentration of poverty among women, especially among female-headed households, because of men's low wages and their generally poorer living standards.[55]

Therefore, if the percentage of employed women in Croatia is analysed, as reported by the population census, it can be noticed that it was just 38.38% of all women in their 60s, and that increased to 43.26% in their 70s. However, it must be acknowledged that the 1970s were also the high point for the percentage of employed women, since their drop was once again observed in the 1980s and 1990s, and their decline was again recorded in 1981 and 1991 at 40.95% and 38.52%, respectively.[56] Such an oscillation in the share of employed women was greatly influenced by the poor adaptation of working women as mothers and the migration of Yugoslav workers abroad (more on this follows below).

1. Housework as "a woman's natural role"

Despite the economic emancipation of women, housework was still considered a woman's natural role and is labelled unproductive. According to a 1959 survey by the Federal Bureau of Statistics, over 60% of female workers did all the housework alone on weekends. However, statistics reveal that as many as 42% of women themselves were imbued with traditional-conservative ideology.[57] Therefore, one section of women wanted the traditional way of family relations, while the other section wanted a more modern way, but in both variants, women's desired to work conflicts with the traditional patriarchal ideology. The clash of traditional and modern approaches to life lead to difficulties in assimilating new trends brought about by urbanisation and to a discrepancy between modern approaches and the way men and women were raised. In the 1960s, there was a fusion of consumerism and socialism, shopping and production, as well as traditional and modern gender roles.[58]

The Constitution of 1963 gave special protection to women workers,[59] and the socialist government introduced numerous decrees to facilitate the simultaneous fulfilment of a woman's role as a quality worker and as a good mother. For example, the Decree on the issue of women's work during pregnancy or menstruation exempts

54 Dujmović (2016): pp. 38–42.
55 See more in: Diana Pearce: The feminisation of poverty: Women, work, and welfare, *Urban and Social Change Review*, 11/1978, pp. 28–36.
56 Njemčić et al. (2004): p. 349.
57 Marko Mladenović: Neki problemi porodice u suvremenom jugoslavenskom društvu, Konfrerencija za društvenu aktivnost žene, *Tisak "Epoha"*, 1/1967, p. 10.
58 Lea Horvat: Figura domaćice u šezdetima: knjiga za svaku ženu, *Quorum, Kikagraf*, 4-5-6/2013, pp. 323–329.
59 Constitution of the Socialist Federative Republic of Yugoslavia, Official Gazette No. 14/1963, Article 37.

women from work that requires standing for long durations, or the Decree on the opening of nurseries by companies.[60] However, according to data from 1966, the available day care for children covered only 5.4% of their needs, which meant that a very large number of employees had no place for their children during working hours. Likewise, the number of household assistance services and open-type catering restaurants that would help working parents was insufficient.[61] Additionally, the Law on Labour Relations of Pregnant Women gave the woman the right to transfer to an easier job than the previous one and to retain the income that she had in her old workplace. However, this created a significant burden for units with a large number of employed women, which is why companies continued to employ male workers and thus avoid paying for sick leave due to pregnancy or a child's illness.[62] Therefore, despite the socialist government's attempt to enable women to perform both the roles of workers and mothers without conflict, such a policy was difficult to apply in practise due to the burden of the housework borne by women.[63]

2. Cross-border employment of Yugoslav women

The policy of connecting the Yugoslav and European markets was maintained in sociology and economics from the second half of the 1960s until the 1980s. Such an understanding led to a significant number of Yugoslavian workers migrating abroad. The cross-border movement of Yugoslavian workers to other European countries destroyed the myth of full employment in socialism, the artificial maintenance of low personal incomes, and the tendency of egalitarianism, which resulted in the generalisation of low living standards across all social categories, changes in the development policy of the 1960s, and a shift towards capital investment technology. The aforementioned factors of emigration from Yugoslavia caused the abandonment not only of backward sectors but also of the most developed sectors.[64] As per estimates, in 1962, there were more than 110,000 workers from Yugoslavia in Western European countries. In the same year, the Yugoslav state leadership decided to adopt legal regulations for managing the employment of Yugoslav citizens abroad, which was the first positive attitude towards economic emigration without condemning those going abroad as an act of hostility.[65]

In the 1960s, the trend of female labour migration from Yugoslavia to the countries of the European Economic Community also started. However, it was challenging to hire

60 Aida Spahić (2014): *Zabilježene – Žene i javni život Bosne i Hercegovine u 20. Vijeku*, Sarajevski otvoreni centar, Sarajevo, p. 128.
61 Mladenović (1967): pp. 10–11.
62 Dujmović (2016): p. 29.
63 Manuela Dobos: The Woman's Movement in Yugoslavia: The Case of the Conference for the Social Activity of Women in Croatia, 1965–1974., *A Journal of Women Studies, University of Nebrasca Press*, 2/1983, p. 50.
64 Silva Mežnarić: Jugoslavenska sociologija (vanjskih) migracija – pokušaj sistematizacije, *Migracijske teme 1*, 1/1985, pp. 79–80.
65 Vladimir Ivanović (2012): *Geburtstag pišeš normalno: jugoslovenski gastarbajteri u SR Njemačkoj i Austriji 1965–1973*, Institut za suvremenu istoriju, Beograd, pp. 55–57.

Yugoslav women because of the different regulations, long waiting periods, and priority employment of citizens of the community. In 1973, a "*family reunification permit*" was passed, which led to a mass migration of women and children from Yugoslavia to find work but not necessarily better working conditions. Women abroad worked in jobs that were not attractive to the domestic population, such as the industrial sector, the tertiary sector, and health care, and they mostly did hard, "male" jobs, such as turning, assembly, and bricklaying. These women represented cheap labour, often working illegally for lower wages and with questionable or non-existent job security protections.[66] However, it should be emphasised that compared to other female migrants, Yugoslavian workers had a good education, and only 11.3% of female migrants in 1971 had no schooling, which included those who had completed 1 to 3 grades of primary school. The problem lay in the fact that general education rather than vocational education predominated in Yugoslavian schools, which classified Yugoslavian female workers, even those with high school education, as unqualified workers.[67]

Migrant women were called "*invisible migrations*" and represented continuity in the subordination and exploitation of female labour, even though almost 40% of the total migration in Europe at that time was represented by women; therefore, it is questionable why this part of the population was so neglected. The reasons are found in the so-called "*psychological reductionism*" that led to women not being portrayed as true protagonists in the migration process; that is, their presence is rarely linked to production, and their economic function is ignored.[68] Therefore, the role of women in migration was primarily economic, and their migration enabled the stabilisation of the foreign population, the normalisation of family relations, and the way of life,[69] but on the other hand, it put women again in a disadvantageous position in the workplace.

IV. LATE SOCIALISM: DID THE NEW LEGISLATION MEAN A BETTER POSITION FOR WORKING WOMEN?

In the 1970s and 1980s, an association called "*Woman and Society*" influenced the media portrayal of women through various forums to raise awareness among young people.[70] Additionally, as previously mentioned, the Conference for the Social Activity of Croatian Women has been dealing with issues of women's position in society since the 1960s and closely cooperates with state and social institutions. They believed that the emancipation of women was necessary for all spheres of life to achieve and ensure the equality already granted to them by the Constitution and laws.[71] Through

66 Melita Švob: Migracije žena Jugoslavije, *Migracijske i etničke teme*, 4/1990, pp. 5–7.
67 Švob (1990): p. 8.
68 Mirjana Morokvašić: Migracija žena u Europi, *Časopis za kritiku znanosti*, 38–39/1980, pp. 174–175.
69 Švob (1990): p. 5.
70 Andrea Feldman (2004): *Žene u Hrvatskoj; Žene i kulturna povijest*, Institut "Vlado Gotovac", Ženska infoteka, Zagreb, pp. 249–250.
71 Febekovec (2005): pp. 5–8.

the struggle for the expansion of women's rights, the conference emphasised the key problems that accompany Croatian women, especially social care, low qualifications, the position of female workers in the workplace, low employment of women, insufficient help for working mothers, etc. Finally, because of a disagreement with the draft of the republic's social plan and conservative decisions from 1971, they united with the national leadership of the Union of Communists of Yugoslavia, representatives of workers in Croatia, the League of Croatian Trade Unions, and the Croatian Congress of Self-Governing Managers. The aforementioned association resulted in a resolution as a draft of the 1974 Constitution.[72] The right to work for men and women was guaranteed, in addition to social and health insurance, the right to basic and further education, the prohibition of gender discrimination, equal pay for equal work was guaranteed for a working week of at least 42 hours and at least 18 days of rest per year.[73] However, the question is whether the legislative provisions have been applied or whether they remained just dead letters on paper. Therefore, a more detailed description of the legal regulations guaranteeing the rights of women as workers in late socialism is given below, along with a comparison with the real situation.

1. Legal protection of Yugoslavian female workers from 1971 to 1991 vs. application in practice

The abovementioned Constitution of the SFRY from 1974 already states in its basic principles that the social community, based on solidarity and reciprocity, ensured society's policy towards the family and social care for children, which includes ensuring, among other things, the health care of mothers and children and the special protection of women at work. Likewise, Article 239 stated that the rights of women at work in connection with childbirth, maternity, and child care, as well as obligations to ensure the funds necessary for the realisation of these rights, are determined by law, self-governing agreement, and social agreement.[74]

Key regulations in the field of labour relations and employment in the Socialist Republic of Croatia, some of which were eventually adopted after the independence of Croatia by the Law from 1991,[75] were the Associated Labour Act,[76] which was later supplemented or partially replaced by the Law on Basic Rights in the Employment Relationship,[77] Regulation on special conditions for the entry of a foreign citizen into

72 Constitution of the Socialist Republic of Croatia, Official Gazette No. 8-86/74.
73 Dobos (1983): pp. 48–53.
74 Constitution of the Socialist Republic of Croatia, Official Gazette No. 8-86/74, Basic Principles (VI); Article 239.
75 Act on taking over federal laws in the field of labour relations and employment that are applied in the Republic of Croatia as republican laws (Cro. *Zakon o preuzimanju saveznih zakona iz oblasti radnih odnosa i zapošljavanja koji se u Republici Hrvatskoj primjenjuju kao republički zakoni*), Official Gazette of Republic of Croatia No. 34/91.
76 Associated Labour Act (Cro. *Zakon o udruženom radu*), Official Gazette of SFRY No. 53-764/76.
77 Law on basic rights in employment (Cro. *Zakon o osnovnim pravima iz radnog odnosa*), Official Gazette of SFRY No. 60/89.

joint work,[78] which was replaced by the Law on Conditions for Establishing Employment Relations with Foreign Citizens,[79] Act on the Protection of Citizens of the SFRY on Temporary Work Abroad,[80] Law on records in the field of work,[81] Law on obtaining and using foreign funds to increase employment and employment of returnees from work abroad,[82] and the Act on providing funds for partial financing of programs for the protection of the socially vulnerable population and workers whose work ceases to be necessary due to the restructuring of the economy.[83]

In the following section, the articles of certain mentioned regulations of the SFRY related to the protection of women as a particularly vulnerable group of workers will be analysed.

The Associated Labour Act from 1976, a very important regulation of the time in the sphere of labour legislation, which was valid almost until the breakup of Yugoslavia, stated in Article 166 that workers/women in employment have the right to special protection for pregnancy, childbirth, and maternity (Article 166). He also stated that women can establish an employment relationship with working hours shorter than the prescribed full-time working hours, under the conditions and in the manner prescribed by law (Article 184 paragraph 10).[84]

The Law on Basic Rights in Labour Relations, which was repealed, among numerous articles, the two previously mentioned articles of the Associated Labour Act,[85] emphasises the right of working women to special protection during pregnancy, childbirth, and maternity (Article 3). The law also states that a working woman during pregnancy or with a child up to two years of age cannot work longer than full-time, that is, at night. The only exception is when a female worker with a child older than one year can work at night based on her written request. A single parent who has a child under the age of

78 Regulation on special conditions for the entry of a foreign citizen into joint work (Cro. *Uredba o posebnim uslovima za stupanje stranog državljanina u udruženi rad*), Official Gazette of the SFRY, No. 6/74.

79 Law on Conditions for Establishing an Employment Relationship with Foreign Citizens (Cro. *Zakon o uvjetima za zasnivanje radnog odnosa sa stranim državljanima*), Official Gazette of SFRY, No. 11/78 and 64/89.

80 Act on the Protection of Citizens of the SFRY on Temporary Work Abroad, Official Gazette of the SFRY (Cro. *Zakon o zaštiti građana SFRJ na privremenom radu u inozemstvu*), No. 15/80 and 61/88.

81 Law on records in the field of work (*Zakon o evidencijama u oblasti rada*), Official Gazette of SFRY, No. 2/77 and 21/82.

82 Law on obtaining and using foreign funds to increase employment and employment of returnees from work abroad (Cro. *Zakon o pribavljanju i korištenju inozemnih sredstava za povećanje zaposlenosti i zapošljavanja povratnika s rada u inozemstvu*), Official Gazette of the SFRY, No. 22/78 and 54/86.

83 Act on providing funds for partial financing of programmes for the protection of the socially vulnerable population and workers whose work ceases to be necessary because of economic restructuring (Cro. *Zakon o osiguravanju sredstava za djelomično financiranje programa za zaštitu socijalno ugroženog stanovništva i radnika za čijim radom prestaje potreba zbog prestrukturiranja privrede*), Official Gazette of the SFRY, No. 84/89.

84 Associated Labour Act (Cro. *Zakon o udruženom radu*), Official Gazette of SFRY No. 53-764/76, Articles 166, 184.

85 Law on basic rights in employment (Cro. *Zakon o osnovnim pravima iz radnog odnosa*), Official Gazette of SFRY No. 60/89, Article 93.

seven or a severely disabled child may work longer than full-time or at night only based on his or her written consent (Article 40). During pregnancy and childbirth, a worker has the right to maternity leave for at least 270 continuous days. Based on the findings of the competent health authority, a worker can start maternity leave 45 days before giving birth, and it is mandatory 28 days before giving birth (Article 41). When a child turns one year old, a female employee has the right to work half of the full time until the child is three years old if, in the opinion of the competent health authority, the child is in dire need of care given the state of his or her health and in other cases established by law. One of the parents of a severely handicapped child has the right to work half of the full time in the cases and under the conditions established by law (Article 42 paragraphs 3–4). If a worker gives birth to a stillborn child or if the child dies before the completion of the maternity leave, she has the right to extend the maternity leave for as much time as, according to the doctor's opinion, is necessary to recover from childbirth and the psychological state caused by the loss of the child, which is at least 45 days, and during this period, all rights are due based on the provisions of the maternity leave (Article 44). Furthermore, a female worker in an organisation in the fields of industry and construction cannot be assigned to work at night if her work at that time would make it impossible for her to rest for at least seven hours between 10 p.m. and 6 a.m. the next day. The ban does not apply to a worker who has special authorisations and responsibilities or who performs health, social, or other worker protection tasks. However, exceptions could arise when workers are ordered to work at night when it is necessary to continue work that was interrupted because of force majeure that cannot be foreseen or when it is necessary to prevent damage to raw materials or other materials. A female worker may be assigned to work at night when particularly serious socioeconomic, social, and similar circumstances require it, with the condition that the organisation or employer for the introduction of such work obtains the consent of the competent authority in the Republic of the respective autonomous province (Article 45).[86]

2. Breakdown of the feminist struggle for a better position for women workers

After a detailed presentation of the key labour legislation that was supposed to be the foundation for the emancipation of women as workers, it is necessary to see how such a process took place in reality. Accordingly, it is important to point out that in 1978, the first feminist conference on the position of women in Yugoslavia was held under the official title "*DRUG-CA žena. Žensko pitanje. Novi pristup?*" organised by feminists from Belgrade, Zagreb, Sarajevo, and Ljubljana, who represented the first appearance of feminists on the public stage. They condemned the socialist approach to the women's issue because it was classified among class issues. During that conference, the importance of women's issues was highlighted for the first time with media support, and it also connected feminists from various parts of Yugoslavia. The last meeting of this type was held in Ljubljana in 1991.[87]

86 Law on basic rights in employment, Articles 3, 40–42, 44–45.
87 Spahić (2014): p: 133.

On the other hand, despite the efforts of feminists to improve the position of women, an analysis of the position of women as workers at the end of socialism in Croatia yields devastating data. Namely, in the 1990s, the position of women in Yugoslavia retrogrades back to patriarchalisation, and women returned home. In 1991, the number of employed women was the lowest since the establishment of socialism, and the role of women was lower than under some totalitarian dictatorships.[88] Croatia followed that trend, like all countries in transition; thus a woman was again seen through the prism of motherhood as her basic identity, after which, as a secondary option, the identity of a worker followed.[89] By affirming the role of mother and housewife, all historical efforts for a woman to be side by side with a man began to fade too quickly, but it remains to be seen whether modern Croatia has returned to the right path.

V. CONCLUSION

After reviewing the position of women as a part of the workforce in recent Croatian history, we can state that women had a very hard time winning their "place under the sun" in the workplace but also lost it very easily. Therefore, it remains to be seen how Croatia today, as an independent country, protects the rights of female workers legislatively and practically. Croatia is a member state of the European Union, which is obliged to apply relevant European legal frameworks that protect the rights of workers and human rights. However, a very important role is played by national legislation, starting with the Constitution as the most powerful act. The Croatian Constitution emphasises gender equality as a fundamental value and guarantees the right to work and choose an occupation, as well as the availability of jobs for everyone under equal conditions.[90] Furthermore, the Gender Equality Act prohibits any form of discrimination in the sphere of labour relations, with an emphasis on the case of employment, promotion, professional training, equal pay for equal work, participation in workers' associations, reconciliation of professional and private life, and in the case of pregnancy, parenthood, and guardianship.[91] The currently valid Labour Act prohibits direct and indirect discrimination

> *"in the field of work and working conditions, and includes the criteria for the selection and conditions for employment, promotion, professional guidance, professional training and development, and retraining, under this Law and special laws."*[92]

88 Spahić (2014): p 133.
89 Njemčić et al. (2004): p. 344.
90 Constitution of the Republic of Croatia, Official Gazette No. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.
91 Gender Equality Act, Official Gazette No. 82/08, 69/17, Article 13.
92 Article 7. par. 4.

The act also stipulates that the employer may not refuse to hire a woman if the reason for this is her pregnancy, nor may he offer an already employed woman to enter into an amended employment contract under less favourable conditions. The employer may not cancel the employment contract for pregnant women or persons during the use of

> *"maternity, parental, adoption leave, half-time work, half-time work for increased care and care of the child, leave of a pregnant or nursing mother, and leave or half-time work to care for a child with severe developmental disabilities"*

15 days after the termination of use. Such actions are considered forms of the most serious violations by employers, and a fine is prescribed for the employer. The employer has no right to ask the pregnant woman for information about her pregnancy, except in exceptional cases. The employer's obligation to pay equal wages to persons of both sexes for performing equal work and work of equal value is also prescribed.[93] In addition to the aforementioned laws, the Anti-Discrimination Act[94] is also important for the equal position of women as workers as well as the Labour Market Act.[95] Numerous institutions deal with the suppression of discrimination based on gender and make it possible to report violations of women's rights in the workplace and in connection with employment. However, despite the developed legislation aimed at harmonising with Western countries, the question is whether Croatia has moved away from the historical problem of the inferior position of women as workers.

By analysing the latest statistical data from the Croatian Bureau of Statistics, we can observe that in October 2022, of the total number of employees in Croatia, slightly less than half of the population was female, which indicates an increase in the share of employed women. However, the average monthly net salary paid per employee in legal entities of the Republic of Croatia for the third quarter of 2022 was HRK 7,888 for men and HRK 7,323 for women, which implies that women still have an average lower salary than men, even though women are no longer exclusively employed in lower-paid jobs, although they are still predominantly represented in such jobs.[96] For example, according to the data provided by the Croatian Bureau of Statistics, the occupations in which women were predominantly engaged in Croatia in 2022 were wholesale and retail trade, education, the processing industry, health care, and social welfare activities, public administration, and defence, mandatory social insurance, etc.[97] Furthermore, according to Croatia's gender structure in management, men dominate in the highest positions and women make up only 6%, while in middle management, the advantage also goes to men. Therefore, the position of women in companies is 7.3 times

93 Labour Act, Official Gazette No. 93/14, 127/17, 98/19, Articles 7, 30–36.
94 Anti-Discrimination Act, Official Gazette No. 85/08, 112/12.
95 Labour Market Act, Official Gazette No. 118/18, 32/20, 18/22.
96 Croatian Bureau of Statistics: *Average monthly net and gross wages of employees by gender in 2022*. Available at: https://podaci.dzs.hr/2022/hr/31498 (accessed on 20.11.2022).
97 Croatian Bureau of Statistics: *Employees according to activities in October 2022*. Available at: https://podaci.dzs.hr/2022/hr/29230 (accessed on 18.11.2022).

less favourable than the position of men. However, such indicators are not the result of education, considering that the educational qualifications of women in the mentioned positions are equal to that of men; therefore, the reason must be sought in other sources.[98] Newer research from 2018 on women in managerial positions reveals their opinion that the position of women has improved in the last ten years but that a satisfactory level of equality has not yet been achieved.[99] Although the Croatian authorities, with projects such as the "*Zaželi*" project[100] and with national policies, measures, and incentives, try to encourage the employment of women, it is questionable whether this is enough.

In conclusion, we can state that modern Croatia has moved away from the historically extremely subordinate position of women in the workplace and employment, but the author opines that significant changes will only come through a change in the perception of the population and the traditional attitudes that continue to exist in part of the population. "*Women are already strong; it is about changing the way the world perceives that strength*." (G. D. Anderson)

98 See more in: Pere Sikavica, Fikreta Bahtijarević-Šiber (2004): *Menadžment: teorija menadžmenta i veliko empirijsko istraživanje u Hrvatskoj*, Masmedia, Zagreb, pp. 58–64, 85–87.

99 Sonja Nidogon Višnjić, Nina Begičević Ređep, Violeta Vidaček-Hainš: Stavovi i percepcije žena na rukovodećim pozicijama o njihovom položaju na radnom mjestu, *Ekonomska misao i praksa*, 1/2018, p. 309.

100 Ministarstvo rada i mirovinskog sustava: "*Zaželi – program zapošljavanja žena*". Available at: https://www.hzz.hr/projekti/zazeli-program-zaposljavanja-zena/ (accessed on 23.11.2022).

The Principle of Gender Equality in Employment: Historical Development During the Period of Soviet-type Dictatorship in Poland

TOMASZ MIROSŁAWSKI[1]
Ph.D. student, University of Miskolc,
Central European Academy
E-mail: tomasz.miroslawski@centraleuropeanacademy.hu

ABSTRACT
This article discusses the historical development of the principle of gender equality in employment and the situation of women in the labour market in Poland under the Soviet-type totalitarian regime. The equality of men and women in employment was declaratively one of the most important ideas in the new state after the war; however, according to the period and party leadership, the equality of men and women in employment was implemented to a different degree, and by different legal instruments. On this ground, the author analyses the legal history of the development of the principle of gender equality during three periods of People's Poland – the period of Stalinism and the Six-year plan (1948–1955), the post-1956 "thaw" period and the last two decades of the People's Republic of Poland. The analysis of labour legislation and social policy of the time was extended by an analysis of propaganda and media material, and by detailed observations of the sociological nature of the actual situation of women in society and employment at that time.
KEYWORDS
female work, gender equality, People's Republic of Poland [PRL], employment, Soviet-type totalitarianism, labour law.

Principiul egalității de gen în domeniul muncii: dezvoltare istorică în perioada dictaturii de tip sovietic din Polonia

REZUMAT
Acest articol abordează dezvoltarea istorică a principiului egalității de gen la locul de muncă și situația femeilor pe piața muncii din Polonia în timpul regimului totalitar de tip sovietic. Egalitatea bărbaților și a femeilor la locul de muncă a fost declarativ una dintre cele mai importante idei în noul stat de după război; cu toate acestea, în funcție de perioadă și de conducerea partidului, egalitatea bărbaților și a femeilor la locul de muncă a fost pusă în aplicare într-un grad diferit și prin instrumente juridice diferite. Pe această bază, >>

1 ORCID: 0000-0002-7758-7415

>> autorul analizează istoria juridică a dezvoltării principiului egalității de gen în trei perioade ale Republicii Populare Polone – perioada stalinismului și a planului de șase ani (1948–1955), perioada "dezghețului" de după 1956 și ultimele două decenii ale Republicii Populare Polone. Analiza legislației muncii și a politicii sociale din acea perioadă a fost completată de o analiză a propagandei și a materialelor din mass-media, precum și de observații detaliate privind natura sociologică a situației reale a femeilor în societate și la locul de muncă în acea perioadă.
CUVINTE CHEIE
munca feminină, egalitatea de gen, Republica Populară Polonă [PRL], ocuparea forței de muncă, totalitarism de tip sovietic, legislația muncii.

I. INTRODUCTION

The idea of equality is the axiological foundation of the Polish legal system. The Preamble of the Constitution of the Republic of Poland of 2 April 1997[2] declares that all the citizens of the Republic are "*equal in rights and obligations towards the common good – Poland*." To express the significance of the principle of equality, the legislature placed it in Articles 32 and 33 in Chapter II of the Constitution, devoted to the freedoms, rights, and obligations of persons and citizens. Article 32 (1) states that all persons shall be equal before the law and shall have the right to equal treatment by public authorities, whereas Paragraph 2 prohibits discrimination against anyone in political, social, or economic life for any reason. Article 33 of the Constitution concretises the general principle of equality in Article 32, focusing on gender equality between men and women. The first paragraph states that men and women have equal rights to family, political, social, and economic life in Poland. However, paragraph 2 of Article 33 has unique relevance in the context of the subject matter of this paper. This is because it stipulates that men and women shall have equal rights, particularly regarding education, employment, and promotion, and shall have the right to equal compensation for work of similar value, social security, holding offices, and receiving public honours and decorations. The designation of spheres to which the principle of equality applies, as used in this article, is exemplary; however, it should be noted that it explicitly establishes the constitutional principle of equal pay for equal work or work of equal value.[3]

The Polish legislature also decided to introduce provisions on the equal treatment of employees and the prohibition of discrimination in employment into the Polish Labour Code, granting them the rank of fundamental principles of labour law. These provisions were introduced in 1996 by a labour code amendment inspired by the laws of

2 Dz. U. Nr 78, poz. 483, Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Constitution of the Republic of Poland of 2 April 1997).

3 Helena Szewczyk (2017): *Równość płci w zatrudnieniu,* Wolters Kluwer Polska, Warsaw, 5.2.2. Konstytucyjne podstawy ochrony praw jednostki w aspekcie równości płci w zatrudnieniu. Available at: https://sip.lex.pl/#/monograph/369410088/332992?keyword=r%C3%B3wno%C5%9B%C4%87%20p%C5%82ci%20w%20zatrudnieniu%20&tocHit=1&cm=SREST (accessed on 17.11.2022).

the European Union.[4] Article 11^2 of the Labour Code[5] expresses the principle of equal treatment, stating that employees have equal rights for the equal performance of the same duties, and this provision applies particularly to the equal treatment of men and women at work. Article 11^3 l.c. introduces the principle of non-discrimination, providing in turn that no discrimination in employment, either direct or indirect, especially on the grounds of a person's gender, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, denomination, sexual orientation, and employment for definite or indefinite terms or on a full-time or part-time basis, shall be allowed. These fundamental principles are specified further in the labour code legislation, namely in Chapter IIa entitled *"Equal treatment in employment"*, which covers and defines various aspects of equal treatment and non-discrimination, including the gender issue. According to Polish labour law doctrine, the mentioned principles, in addition to regulating social relations, are also guidelines for courts and other entities interpreting labour law and general guidance for the legislative activity of law-making bodies.[6]

This study explores the historical development of the principle of equality in employment, mainly in the context of gender equality between women and men. This is because the Polish legal system was founded on the traditional division of human beings into men and women, primarily considering biological sex. Moreover, in the Polish public debate, discussions on employment equality were frequent and mostly focused on gender. This is primarily due to the inequalities between men and women that still exist in the Polish labour market.[7] It should also be mentioned that the largest number of discrimination cases in labour courts involve gender discrimination.[8]

The historical development of the principles of men's and women's equality in employment has taken different paths in each country. In the Republic of Poland, this process has been influenced by events such as the 123 years of the Partitions of Poland, the period of the Soviet-type dictatorship, the political and economic transition, and the Europeanisation of national labour law.

After Poland regained its independence in 1918, one of the main objectives of national policy became state-building by, in particular, the replacement of foreign legislation with national regulations, which also referred to as labour law. During the inter-war period, labour law was regulated in several acts and was not codified. The working and pay conditions of various professional groups were determined by contracts with

4 Zbigniew Góral (2016): Principles of labour law, in Krzysztof W. Baran (ed.): *Outline of Polish labour law system,* Wolters Kluwer Polska, Warsaw, p. 59.

5 Dz. U. z 2022 r. poz. 1510, Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy (Act of 26 June 1974 Labour Code, further: l.c.).

6 Szewczyk (2017): 5.3. Zasada równego traktowania oraz zasada niedyskryminacji (ze względu na płeć) jako podstawowe zasady prawa pracy zawarte w art. 11^2 i 11^3 k.p. (accessed on 17.11.2022).

7 Główny Urząd Statystyczny (2022): *Differences in earnings between women and men in Poland in 2022*, GUS, Bydgoszcz, p. 2 – the publication indicates that average monthly gross earnings of men in October 2020 were higher by 14.7% than the average monthly gross earnings of women.

8 Szewczyk (2017): Wstęp (accessed on 17.11.2022).

employers.[9] Contractual freedom was limited by the provision of individual legal acts to protect employees. One of the basic demands of the world and the Polish working-class movement at the time related to the principle of equality in employment and the need to regulate working time.[10] The response to these demands was adopted on 29 October 1919 in the first ILO Convention on limiting working time to eight hours a day and forty-eight hours a week in the industry.[11] At the national level, ILO regulations were reflected in the Act of 18 December 1919 on working time in industry and commerce.[12] The Act introduced a 46-hour working week, a prohibition on work on Sundays, public holidays, and at night, and increased the overtime allowance,[13] being in many aspects more progressive than the provisions of the aforementioned ILO Convention No. 1. The Constitution of the Republic of Poland on 17th March 1921, known as the March Constitution, also played a significant role in the development of the principle of equality in employment.[14] Article 102 of the March Constitution established labour as the main basis of the wealth of the Republic and covered it with the special protection of the state. Special protection was provided for working women and juveniles. Article 103, Sentence 4 of the March Constitution prohibited youths under the age of 15 from working and prohibited night work for women and young workers in industries harmful to their health, thus equalising their position in employment. Furthermore, the March Constitution was the first legislation to express the normative principle of the equality of all citizens before the law abolished class privileges and family titles.[15] This principle was more important in the sphere of political equality, but it also paved the way for labour and social equality. Another act directly touching on the issue of equality between men and women in employment during the inter-war period was the Act of 2 July 1924 on the subject of juveniles and women's work.[16] This

9 Beata Goworko-Składanek (2020): Ewolucja zasady równości kobiet i mężczyzn aktywnych zawodowo – ujęcie prawno-historyczne, in Sławomira Kamińska-Berezowska (ed.): *Kobiety, praca, podmiotowość – refleksje socjologiczne*, Wydawnictwo UŚ, Katowice, p. 43.

10 Kamila Naumowicz (2021): Rozdział 3 Ustawowe i podstawowe źródła prawa pracy, in Krzysztof W. Baran (ed.): *System Prawa Pracy. Tom XIV. Historia polskiego prawa pracy*, Wolters Kluwer Polska, Warsaw, 3.3.2. LATA 1918–1920. Available at: https://sip.lex.pl/#/monograph/369494646/23?keyword=system%20prawa%20pracy%20&tocHit=1&cm=SREST (accessed on 18.11.2022); Karl Marx (1867): Instructions for the delegates of the provisional general council. The different questions, in Karl Marx and Frederic Engels (ed.): *Volume 20 Collected Works 1864–68*, Lawrence & Wishart, Electric Book (2010), London, p. 187.

11 C001 – Hours of Work (Industry) Convention, 1919 (No.1) – art. 2.

12 Dz.U. 1920 Nr 2 poz. 7, Ustawa z dnia 18 grudnia 1919 r. o czasie pracy w przemyśle i handlu (the Act of 18 December 1919 on working time in industry and commerce).

13 Dz.U. 1920 Nr 2 poz. 7, Ustawa z dnia 18 grudnia 1919 r. o czasie pracy w przemyśle i handlu (the Act of 18 December 1919 on working time in industry and commerce) – art. 1, 10, 14, 16.

14 Dz.U. 1921 Nr 44 poz. 267, Ustawa z dnia 17 marca 1921 r. – Konstytucja Rzeczypospolitej Polskiej (the Constitution of the Republic of Poland of 17 March 1921).

15 Marek Dobrowolski, Dorota Lis-Staranowicz (2022): (Im)permanence of Polish Constitutionalism: in Seaarch of an Optimal Vision of the State, in Lóránt Csink and László Trócsányi (ed.): *Comparative Constitutionalism in Central Europe – Analysis on Certain Central and Eastern European Countries*, CEA Publishing, Miskolc-Budapest, p. 95.

16 Dz.U. 1924 Nr 65 poz. 636, Ustawa z dnia 2 lipca 1924 r. w przedmiocie pracy młodocianych i kobiet (the Act of 2 July 1924 on the subject of juvenile and women's work).

Act tried to equalise women and juvenile positions in employment by prohibiting work in particularly hazardous or harmful conditions, night work, and overtime work; it listed work that juveniles and women were prohibited from undertaking (e.g. women were banned from working underground in mines); it prohibited the termination of employment during the puerperium period; and obligated employers who employed more than 100 women to set up a nursery in the workplace. However, changes in the conception of state-building towards a state based on social solidarity and contribution to the common good resulted in the departure under the April Constitution (23 April 1935)[17] from the concept of equality of all citizens, as expressed in the March Constitution. Instead, Article 7 of the April Constitution pointed out that citizens' efforts and merits for the common good will determine their power to influence public affairs, and neither origin, religion, gender, nor nationality can be reasons for limiting such powers. It should be noted that despite attempts to equalise the positions of men and women in employment in the II Republic of Poland, this was equality in theory rather than in practice. An example that supports this statement is the so-called celibacy acts aimed at limiting or eliminating married women's access to public services. One such law was the State Civil Service Act of 17 January 1922[18] which, through Article 6, sentence 2, referring to the rules of the civil laws of the time, required the consent of husbands for married women to be admitted to state service.[19]

The inter-war period was significant for the development of the principle of gender equality in employment, but the experience that had the greatest impact and left the most profound mark on this principle was 48 years of the Polish United Workers' Party (*PZPR*) rule. Moreover, this period is the least researched period within the Polish literature on equality in labour law. For these reasons, this article aims to analyse the development of the principle of gender equality in Poland during the Soviet-type totalitarian period.

II. PERIOD OF THE SOVIET-TYPE DICTATORSHIP

V. I. Lenin in one of his works wrote that

> *"[t]he second and most important step (in the liberation of a woman) is the abolition of the private ownership of land and the factories. This and this alone opens up the way towards complete and actual emancipation of a woman, her liberation from 'household bondage' through the transition from petty individual housekeeping to large-scale socialised domestic services. This transition is difficult because it involves the removal of the most deep-rooted, inveterate, hidebound, and rigid order. But the transition has started, the thing has been set in motion, and we have taken a new path."*[20]

17 Dz.U. 1935 Nr 30 poz. 227, Ustawa Konstytucyjna z dnia 23 kwietnia 1935 r. (the Constitutional Act of 23 April 1935).
18 Dz.U. 1922 Nr 21 poz. 164, Ustawa z dnia 17 lutego 1922 r. o państwowej służbie cywilnej (the State Civil Service Act of 17 January 1922).
19 Goworko-Składanek (2020): p. 45.
20 Vladimir Ilicz Lenin (1921): International working women's day, in Yuri Sdobnikov (ed.): *V.I. Lenin Collected Works Volume 32 – December 1920 – August 1921*, Lawrence & Wishart, London (1965), p. 162.

In addition, Frederic Engels, whose thought became the basis of Lenin's views, in his famous work "The origin of the family, private property and the state. In the light of the research by Lewis H. Morgan" pointed out that the first precondition for the emancipation of women is the reintroduction of the entire female population into the public industry.[21] Taking into account the words of the two aforementioned authors, whose ideas shaped the new system of the Polish state, to a greater or lesser extent, it is relevant to consider how the principle of gender equality developed, especially in the sphere of labour, which was to define new social relations. It is also important to analyse whether the state of real socialism, by taking actions in the legal sphere and thus attempting to mould the new reality, led to the realisation of the idea of gender equality expressed in the Constitution of the Polish People's Republic.[22]

1. Regendering from above (period of Stalinism and Six-year plan)

During World War, approximately 5,800,000 Polish citizens died, many of whom were men.[23] War, while on the one hand being a tragedy, also became a source of social change. In the early post-war period, women constituted the majority of the population. According to data from the Central Statistical Office, in 1946, there were 118 women per 100 men,[24] who became the largest reserve of the weakened working class after the war. Furthermore, many women faced the burden of supporting their families on their own, which required them to enter the labour market. Unfortunately, they were often victims of mistreatment and hostility from employers, especially in traditionally male-dominated branches of the industry. In 1947, there were approximately 120 thousand unemployed women.[25] For these reasons, women quickly found themselves in the spotlight of public opinion and the political forces of the time.

The coalition government that took power in 1945, the majority of which were PPR (*Polska Partia Robotnicza* – Polish Workers' Party) members, decided to initiate limited measures to equalise the position of women in post-war state and to facilitate their access to the labour market. A three-year plan (1947–1949) was introduced in 1947. Its main aims were to reconstruct the economy, create a framework for a new system, and increase workforce size. The plan involved extending medical care to pregnant women and nursing mothers and expanding the participation of the female workforce

21 Frederic Engels (1884): The origin of the family, private property, and the state. In the light of the researches by Lewis H. Morgan, in Frederic Engels (ed.): *Volume 26 Collected Works 1864–68*, Lawrence & Wishart, Electric Book (2010), London, p. 182.

22 Dz.U. 1952 Nr 33 poz. 232, Konstytucja Polskiej Rzeczypospolitej Ludowej uchwalona przez Sejm Ustawodawczy w dniu 22 lipca 1952 r. (the Constitution of Polish People's Republic of 22 July 1952) – art. 66, 69.

23 Cecylia Leszczyńska (2018): *Historia Polski w liczbach t. 5,* Zakład Wydawnictw Statystycznych, Warsaw, p. 80.

24 Główny Urząd Statystyczny, Departament Opracowań Statystycznych (2018): *100 lat Polski w liczbach 1918–2018*, GUS, Warsaw, p. 53.

25 Małgorzata Fidelis (2010): *Kobiety, komunizm i industrializacja w powojennej Polsce*, W.A.B., Warsaw, p. 68.

in professions previously carried out by men.[26] The three-year plan was the first act of the new authorities to lay the groundwork for gender equality policies in modern economic reality.

The leading inspiration for the three-year plan was the Soviet five-year plans (*пятилетка*). This led to the implementation in Polish reality of a distinctive policy for gender equality in employment, termed by W. Z. Goldman "*regendering from above*." This idea was based on the movement of large groups of women into new occupations previously held by men or created and designated by the state. Gender integration was achieved through a new segregation of labour, redrawing but not erasing the boundaries between men's and women's work, which caused a paradox.[27] Despite formal equality, the overemphasis on the "*gender*" of a profession led to the perpetuation of a traditional gender hierarchy in the collective mind of society.[28]

Many female political activists were not satisfied with the new state policies for professional equality. They stressed that the three-year plan was primarily oriented towards raising output in the area of production and did not lead to the real equalisation of women's and men's work. In particular, they drew attention to the need for training and education for women rather than treating them as cheap labour by assigning them to new professions. The government, to some extent, taking into account women's demands, in the spring of 1947 initiated "*the action for economic independence of unemployed women*", the so-called Action AZ. The Ministry of Labour and Social Welfare, cooperating with the League of Women in planning the action, focused on the most disadvantaged group of women living in geographical regions with the highest rate of unemployment, namely women over 35 with limited skills, and incapable of moving to another region because of family commitments, widows of veterans, and women with health problems.[29]

On 21 May 1948, the Act of 28 April 1948 on the amendment of the Act of 2 July 1924 on the work of juveniles and women came into force, which was part of the policy of the time to equalise the position of women at work by emphasising their psychophysical traits and their traditional social role as mothers. The provisions of the law primarily increased the protection of pregnant workers. Compared to the pre-war regulations, this Act increased the protection of pregnant workers by allowing women, from the sixth month of their pregnancies, to be reassigned to less strenuous work, along with remuneration no lower than the average previous remuneration for the last three months of work [art. 1(1)]; extended pregnancy leave to 12 weeks within which a 2-week break before and an 8-week break after childbirth is compulsory [art.1(2)]; implemented a protection period from termination of the contract during pregnancy and pregnancy leave and special protection covering women working on the basis of fixed-term contract or contract for the performance of a specific job, under which if

26 Dz. U. 1947 Nr 53 poz. 285, Ustawa z dnia 2 lipca 1847 r. o Planie Odbudowy Gospodarczej (the Act of 2 July 1947 on Plan for Economic Reconstruction) – art. 58 (2)a, 75.

27 Wendy Z. Goldman (2002): *Women at the gates. Gender and industry in Stalin's Russia*, Cambridge University Press, Cambridge, p. 144.

28 Fidelis (2010): p. 70.

29 Małgorzata Fidelis: Equality through protection: The Politics of Women's Employment in Postwar Poland, 1945–1956, *Slavic Review*, 2/2004, p. 311.

such a contract would expire within four months before childbirth, it shall be extended until the date of childbirth [(art.1(4)]; and prohibited the employment of women from the fourth month of pregnancy and prevented women who have a child up to the age of eighteen months from taking up overtime work from outside their regular place of work [art. 1(7)].[30] However, the policy of the new authorities was about to change, putting even more priority on the idea of "*emancipation through work*" by departing to some extent from the idea of equalisation of gender in employment by protecting women, especially pregnant ones, in the labour market.

In 1948, the Polish Socialist Party (*PPS)* merged or rather was taken over by the Polish Workers' Party (*PPR)* to form the Polish United Workers' Party (*PZPR),* which began a period of the one-party rule until 1989.[31] The year 1948 also marks the implementation of a system of state governance in Poland, known as "Stalinism", which lasted until approximately 1955.

In 1950, a six-year plan was adopted to introduce accelerated industrialisation. The main aims of the plan were to develop a productive force, increase the prosperity of the working masses, flourish culturally, and build the foundations of socialism in Poland. The plan also envisaged a level of employment in the socialist economy of 5.7 million people, that is, an increase of 60% compared to 1949. For this purpose, women were widely drawn into production and facilitated by their professional work. Women's participation in the socialist economy was boosted to 33.5 percent, which meant the employment of 1,230,000 women.[32]

Achieving the new economic goals was, on the one hand, ambitious but on the other, probably overstated. The state undertook radical steps that have led to a significant weakening of the protective function of labour law in favour of an organisational function.[33] By the Act of 26 February 1951 on amendment of the Act on juvenile and women work,[34] and the Decree of Council of Ministers of 28 February 1951 on works prohibited for women,[35] the catalogue of works that were not allowed for women was considerably reduced. In particular, the ban on women working underground in mines and at night has been substantially abolished. On the other hand, the Act of 26 February 1951 an amendment of the Act on Juvenile and Women Work, compared to the

30 Dz.U. 1948 Nr 27 poz. 182, Ustawa z dnia 28 kwietnia 1948 r. o zmianie ustawy z dnia 2 lipca 1924 r. w przedmiocie pracy młodocianych i kobiet (the Act of 28 April 1948 on amendment of the Act of 2 July 1924 on the work of juveniles and women) – art. 1.

31 Formally speaking, there were two other political parties operating legally in Poland – United People's Party and Democratic Party, but they were satellite parties to the PZPR.

32 Dz. U. 1950 Nr 37 poz. 344, Ustawa z dnia 21 lipca 1950 r. o 6-letnim planie rozwoju gospodarczego i budowy podstaw socjalizmu na lata 1950–1955 (the Act of 21 July 1950 on Six-year plan of economic development and building the foundations of socialism for years between 1950–1955).

33 Naumowicz (2021): 3.5. OKRES POWOJENNY I PRL (LATA 1945–1989) (accessed on 26.11.2022).

34 Dz. U. 1951 Nr 12, poz. 94, Ustawa z dnia 26 lutego 1951 r. o zmianie ustawy w przedmiocie pracy młodocianych i kobiet (the Act of 26 February 1951 on juvenile and women work).

35 Dz.U. 1951 Nr 12 poz. 96, Rozporządzenie Rady Ministrów z dnia 28 lutego 1951 r. o pracach wzbronionych kobietom (the Decree of Council of Ministers of 28 February 1951 on works prohibited for women).

legislation of 28 April 1948[36] extended the protection of mothers through a prohibition against pregnant women and women with children up to one year working not only overtime but also at night.[37]

In the Stalinist era, the policy of "*regendering from above*" initiated during the three-year plan, was further developed. Women were now to undertake "*new occupations*", that is, occupations that had traditionally been performed by men but were redesigned to be performed by women. Men who had previously carried out these jobs were re-assigned to "*more masculine*" jobs.[38] The party-state's use of a strongly dichotomous division into male and female occupations indicates that it was not intended to erase the boundaries between genders in employment or achieve equality between men and women. The main premise of the Stalinist policy was the appropriate redistribution of the workforce, making use of natural gender characteristics to maximise national production. The embodiment of this approach was Resolution No. 620 of the Government's Presidium on 17 July 1952 on increasing the employment of women in the national economy. Based on this resolution, there was the establishment of a minimum percentage of women's employment in the workforce of the specific workplace, particularly in the engineering, chemical and construction industries; the initiation of efforts to ensure that the children of working women are provided with care from the state; the reduction of male employment in occupations that can be fully performed by women; and the reassignment of men to other types of work positions that can be performed by women.[39]

For the realisation of the six-year plan and the policy of "*regendering from above*", party propaganda disseminated mainly through women's organisations and the press played a major role. This propaganda also had a significant impact on the public's understanding of the principles of equality in employment.

The League of Women was the most important organisation promoting new occupations for women. The League was established shortly after the war in 1945 under the name "*Social-Civic League of Women*."[40] Initially, it was mainly concerned with the training of women for a future profession—maternal and child healthcare—and helping to reunite families separated by war and occupation. Its statutory activities were not strictly political and operated independently of the party to a great extent. In its

36 Dz.U. 1948 Nr 27 poz. 182, Ustawa z dnia 28 kwietnia 1948 r. o zmianie ustawy z dnia 2 lipca 1924 r. w przedmiocie pracy młodocianych i kobiet (the Act of 28 April 1948 on amendment of the Act of 2 July 1924 on the work of juveniles and women) – art. 1(7).

37 Dz. U. 1951 Nr 12, poz. 94, Ustawa z dnia 26 lutego 1951 r. o zmianie ustawy w przedmiocie pracy młodocianych i kobiet (the Act of 26 February 1951 on juvenile and women work) – art. 1(3).

38 Fidelis (2004): p. 313.

39 M.P. 1952 Nr 73 poz. 1160, Uchwała Nr 620 Prezydium Rządu z dnia 17 lipca 1952 r. w sprawie zwiększenia stanu zatrudnienia kobiet w gospodarce narodowej (Resolution No. 620 of the Presidium of the Government of 17 July 1952 on increasing the employment of women in the national economy) – §1, §4, §5, §7.

40 Anna Marcinkiewicz-Kaczmarczyk: Rola kobiety w Polsce Ludowej w świetle treści propagandowych rozpowszechnianych przez Ligę Kobiet w latach 1946–1956, *Dzieje Najnowsze*, 2/2018, pp. 150–151.

ideological declaration, the League emphasised that the new government had introduced equal rights for women, and the organisation's task was to ensure that the declared equality was implemented.[41] The League was also publishing a journal called "*Fashion and Practical Life*" (*Moda i Życie Praktyczne*),[42] which at first occasionally, and later more frequently, next to beauty tips and recipes for "*sponge cake pudding*", included texts on women at work and their role in the new regime.[43] Circles of the organisation designed to gather women from different backgrounds were set up in cities, villages, workplaces, and even the army. In 1950, the political bureau of the PZPR Central Committee, seeking to bring all national organisations under its control, decided that the league's *modus operandi* had to be changed. The Social-Civic League of Women was dissolved, and an organisation with almost the same name (League of Women) but a changed scope of activities was established. League circles in workplaces were also liquidated.[44] The new League of Women was subordinated to the party and its work was based on ideological and propagandistic activities. From then on, the League was not focused on real help for women but on convincing them to fulfil party resolutions and shape their political consciousness in line with the party-state interpretation. It did so through various campaigns, occasional bulletins, or supplements in the press addressed to leaders of labour (*przodownicy pracy*), activists, and agitators.

As mentioned above, the perception of the new role of women and gender equality in employment were deeply influenced by the women's press. Its core were two magazines: "*Moda i Życie Praktyczne*" (Fashion and Practical Life) and "*Przjaciółka*" (Girlfriend). As described earlier, "*Moda i Życie Praktyczne*" tended to target highly educated women living in cities. While the weekly Przjaciółka was a magazine addressed to the broadest group of the female population at the time, namely, poorly educated women living in the countryside or workers.[45] Women taking up "men's jobs" were described in the press as heroines. It was also pointed out that in the new Poland, women could be workers, labour leaders, political activists, housewives, mothers, and wives. A. Kłoskowska in her research on the family model in "*Przyjaciółka*" in the period 1950–1951, indicated that two-thirds of the novellas in the magazine portrayed the lives of peasant and worker families. The dominant family model in the indicated period was therefore the family originating from the "*broad masses of society*". In most cases, women are depicted in professional roles that determine their lives and families. They were considered equal to their husbands because, like them, women could actively participate in the state's production and contribute to the family's maintenance. Economic

41 Marcinkiewicz-Kaczmarczyk (2018): p. 153.

42 Urszula Ćwik (2017): Podstawowe założenia Społeczno-Obywatelskiej Ligi Kobiet w świetle «Mody i Życia Praktycznego» (1946–1951), in Małgorzata Dajnowicz, Adam Miodowski (ed.): *Polityka i politycy w prasie XX i XXI wieku. Prasa organizacji politycznych*, Wydawnictwo Humanica Instytut Studiów Kobiecych, Białystok, pp. 51–53.

43 The article "Working women" can serve as an example – "Kobiety pracy", *Moda i Życie Praktyczne*, 1946, No. 15, p. 11.

44 Fidelis (2010): p. 123.

45 Katarzyna Florczyk (2010): Modelowy wizerunek kobiety w propagandzie okresu stalinowskiego w Polsce, in Łukasz Kamiński and Tomasz Kozłowski (ed.): *Letnia Szkoła Historii Najnowszej 2010. Refereaty*, Instytut Pamięci Narodowej, Warszawa, pp. 30–31.

equalisation led to the equalisation of interpersonal relations. Additionally, women's attractiveness was perceived through the prism of their involvement in professional work.[46] The symbol and role model in the social order of the time became Magdalena Figur, a leader of labour and the first female tractor driver.[47] Her image appeared on photographs and posters with the caption "*youth – forward to the fight for a successful socialist Polish countryside*" or "*women on tractors*." A distinctive narrative in media coverage was that women in "male" jobs brought many positive "feminine" qualities, such as maternal and household instincts and an emotional bond with the machine.[48] In 1950, the daily newspaper "*Trybuna ludu*" (People's Tribune) – organ of the Central Committee of PZPR, published an article under the meaningful title "*The factory is her second home*." This article tells the story of Antonina Słowińska, a woman working in a lighting equipment factory who has come a long way from a small town to finally end up in Warsaw, a factory that she loved so much. Moreover, the woman, wanting to achieve a higher result, started working on both machines. She is also an executive member of a basic party unit and is active in the League of Women. Her only concern is that seeing how much there is still to do, she is constantly lacking time.[49] This text illustrates the specificity of the propaganda message of the time on how a liberated woman was expected to behave and by what means gender equality in employment was to be achieved.

The next step in the development of the principle of gender equality in employment was adopted by the Sejm of the Constitution of the People's Republic of Poland on 22 July 1952 modelled on the Constitution of the USSR on 5 December 1936. This Constitution brought the principle of equality between men and women to the forefront, as formulated in Article 66.[50] The first section of Article 66 stated that women in the Polish People's Republic have rights equal to those of men in all spheres of public, political, economic, social, and cultural life. The second section of this article focused on guaranteeing the implementation of gender equality. The legislature has divided these guarantees into two groups. The first group contained provisions granting women "*equal rights with men to work and pay according to the principle 'equal pay for equal work', the right to rest and leisure, to social insurance, to education, to honours and decorations, to hold public appointments.*" This regulation was intended to ensure women's fundamental civil rights. The second group of guarantees included

> *"mother-and-child care, protection of expectant mothers, paid holidays during the period before and after confinement, the development of a network of maternity homes, creches and nursery schools, the extension of a network of service establishments and restaurants and canteens."*

46 Antonina Kłoskowska: Modele społeczne i kultura masowa, *Przegląd Socjologiczny*, 2/1959, pp. 59–60.
47 Goworko-Składanek (2020): p. 48.
48 Fidelis (2010): p. 183.
49 Fabryka to jej drugi dom, *Trybuna Ludu*, No. 68, 9 March 1950, p. 5.
50 Dz. U. 1952 Nr 33, poz. 232. Konstytucja Rzeczypospolitej Polskiej uchwalona przez Sejm ustawodawczy w dniu 22 lipca 1952 r. (the Constitution of People's Republic of Poland of 22 July 1952) – art. 66.

These guarantees were designed to enable women to combine family and professional duties and to ensure the possibility of exercising their rights.[51] In the context of the discussed provisions, Article 67 of the Constitution of the Polish People's Republic, which established the protection of the state over marriage and family and gave special attention to families with many children, is of great importance. These regulations followed a model of equality known in the literature as "*compensatory equality*" (*równość wyrównawcza),* characterised by the establishment of labour and social law institutions applicable exclusively to women, which were aimed at abolishing existing inequalities identified by the legislator to be a disadvantage to this group of employees.[52]

At the very beginning of the Stalinist period, not as much importance was given to the role of women as mothers. The reference to it in the Constitution of the Polish People's Republic[53] and the emphasis on maternity protection and the caring status of women in labour law indicates that the system started slowly to solidify and partly return to traditional patterns such as the woman's role as a mother.[54] Legal scholars acknowledged this turn. Wieruszewski pointed out that

> *"the significance of the constitutional provisions on gender equality was determined by the biological function of the woman and her role in the family, which fundamentally limited the possibility of women participating in socio-political life. Therefore, constitutional regulations were based on the assumption that maternal function is socially important for equalising women's opportunities by placing emphasis on the development of material conditions for the realisation of the rights granted to women."*[55]

Despite the constitutional regulation of equal pay and gender equality in employment, in practice, working women were disadvantaged compared to their male coworkers. Often, male supervisors were prejudiced against female workers and sent them to work under harsh conditions so that they did not meet the required production limits.[56] Furthermore, there was a common belief in the workplace that men's wages, unlike women's, were family wages, and thus, should be higher.[57] M. Fidelis, analysing the situation of the female staff of the Żyrardów textile factory in the post-war years,

51 Roman Wieruszewski: Zasada równouprawnienia kobiet w polskim systemie prawa, *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 3/1975, p. 24.

52 Artur Tomanek (2021): Rozdział 3 Prawo pracy w aktach konstytucyjnych w latach 1918–2018, in Krzysztof W. Baran (ed.): *System* Prawa Pracy. *Tom XIV. Historia polskiego prawa pracy*, Wolters Kluwer Polska, Warsaw, 2.5. ZASADA RÓWNOŚCI. Available at: https://sip.lex.pl/#/monograph/369494646/16?keyword=historia%20prawa%20pracy%20&tocHit=1&cm=STOP (accessed on 28.11.2022).

53 Dz. U. 1952 Nr 33, poz. 232. Konstytucja Rzeczypospolitej Polskiej uchwalona przez Sejm ustawodawczy w dniu 22 lipca 1952 r. (the Constitution of People's Republic of Poland of 22 July 1952) – art. 66,67.

54 Tomanek (2021): 2.5. ZASADA RÓWNOŚCI (accessed on 28.11.22).

55 Wieruszewski (1975): p. 24.

56 Fidelis (2010): p. 186.

57 Fidelis (2010): p. 260.

indicated that women received from 40 to 300 Polish zlotys for two weeks of work, while men for the same period and work received from 60 to 432 Polish zlotys.[58]

On 18 May 1954, a resolution of the Presidium of the Government introduced an allowance for working mothers for the period of absence from work owing to the need for personal care of a sick child under 14 years of age.[59] In 1955, the resolution of the Presidium of the Government on 18 May 1954 was extended to include fathers.[60] Both regulations were adopted in line with the spirit of the slowly changing post-Stalin state policy regarding gender equality in employment. This policy was to consider a women's "natural" functions and their role in the family as a mothers while ensuring relative equality in marriage and opportunity to work (covering the father's ability to stay home with his sick child and receive the benefit).

In 1954, the Council of State decided to adopt ILO Convention No. 100 on Equal Remuneration. According to art. 2 (1) of the Convention –

> *"Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value."*[61]

The obligation identified in this study confirmed and reinforced the constitutional regulation of equal pay for equal work.

2. Return to the traditional division of work (period after 1956)

After the June protest in Poznań in 1956, the time of "thaw" came (de-Stalinization). However, in parallel with political liberalisation, it also brought a desire to change the previous understanding of the principle of gender equality in employment. The slowdown of industrialisation, the resistance of society and the desire to emphasis national traditions and the "*Polish way to socialism*" caused the beginning of the process of dismissing women from new professions.[62] Images of "heroines" working in men's jobs

58 Fidelis (2010): p. 89.

59 M.P. 1954 Nr 47 poz. 659, Uchwała Nr 293 Prezydium Rządu z dnia 18 maja 1954 r. w sprawie przyznania matkom pracującym zasiłków chorobowych za okres nieobecności w pracy z powodu choroby dziecka (Resolution No. 293 of the Presidium of the Government of 18 May 1954 on the granting of sickness benefits to working mothers for the period of absence from work due to child illness) – §1.

60 M.P. 1955 Nr 124 poz. 1614, Uchwała Nr 993 Prezydium Rządu z dnia 17 grudnia 1955 r. o uzupełnieniu uchwały z dnia 18 maja 1954 r. w sprawie przyznania matkom pracującym zasiłków chorobowych za okres nieobecności w pracy z powodu choroby dziecka (Resolution No. 993 of the Presidium of the Government of 17 December 1955 on supplementing the resolution of 18 May 1954 on the granting of sickness benefits to working mothers for the period of absence from work due to child illness) – §1.

61 C100 – Equal Remuneration Convention, 1951 (No.100) – art. 2 (1).

62 Małgorzata Fidelis (2020): Równouprawnienie czy konserwatywna nowoczesność? Kobiety pracujące, in Katarzyna Stańczak-Wiślicz, Piotr Perkowski (ed.): *Kobiety w Polsce 1945–1989. Nowoczesność, równouprawnienie, komunzim*, Universitas, Kraków, p. 126.

disappeared from the press, and labour policy started to focus on restoring the traditional division of professions and outlining a new role model for women – the "Polish mother."[63] These tendencies were reflected in the next five-year plan (1956–1960).

At that time, modern economic concepts of Polish economists such as Oskar Lange, Michał Kalecki, and Edward Lipiński, which assumed the implementation of certain market elements into a socialist economy began to gain popularity. Economists have advocated increased self-reliance on enterprises, greater use of economic accounts, and decentralisation of the economic planning system.[64] Moreover, the new five-year plan involved strengthening the consumerist function of society and the development of other branches of industry, with a focus on heavy industry.[65] A new approach to economic issues entailed the need for changes in employment structure.

Women quickly ceased to be an important element of the workforce, and the process of dismissing them, especially from more prestigious and better-paid positions, began. First, the authorities decided to "*eliminate the administrative outgrowths*" by the implementation of the resolution of the Council of Ministers of January 1957 "*on the rules of dismissal, training, and employing workers in connection with the reorganization of the administration.*" This resolution provided that

> *"in case of coequal professional qualifications, in dismissing an employee, the following should be taken into consideration: the employee's family status, age, number of working persons in the family, and whether he or she owns a farm household or another workplace."*[66]

Formally, this provision applied to both men and women, but in practice, it was used primarily to dismiss women, mainly based on "*family status*" and the "*number of working persons in the family*" criteria.[67] A further resolution in February 1958 referred to a broader group of employees, as its subject was employment policy in socialised workplaces. The resolution stated that "*when it comes to dismissing an employee, their usefulness in the workplace ought to be taken into account, along with their professional skills and possessing additional sources of subsistence.*"[68] In addition, this provision, mainly because

63 Kołakowska (1959): p. 67.

64 Piotr Koryś, Maciej Tymiński: Od socjalizmu do socjalizmu. Koncepcje reform gospodarczych w PRL po wybuchach społecznych w 1956 i 1980 r., *Dzieje Najnowsze,* 4/2016, p. 127.

65 Dz. U. Nr 40, poz. 179, Uchwała Sejmu Polskiej Rzeczypospolitej Ludowej z dnia 12 lipca 1957 r. o Planie Rozwoju Gospodarczego w latach 1956–1960 (Resolution of the Sejm of the People's Republic of Poland of 12 July 1957 on the Economic Development Plan 1956–1960) – Chapter I and II.

66 M. P. z 1957 r. Nr 6, poz. 37, Uchwała z dnia 18 stycznia 1957 r. w sprawie zasad zwalniania, przeszkalania i zatrudniania pracowników w związku z reorganizacją administracji (Resolution of 18 January 1957 on determining the principles of dismissal, training and employment relative to the administration reorganisation project) – §6 (2).

67 Natalia Jarska: Gender and labour in post-war communist Poland: Female unemployment 1945–1970, *Acta Poloniae Historica,* 1/2014, p. 63.

68 M. P. z 1958 r. Nr 16, poz. 100, Uchwała Nr 42 Rady Ministrów z dnia 26 lutego 1958 w sprawie zadań polityki zatrudnienia w uspołecznionych zakładach pracy (Resolution No. 42 of the Council of Ministers of 26 February 1958 on the policy tasks related to employment in socialised workplaces) – §6.

of the fragmentation of an additional source of subsistence, was used to dismiss married female workers.[69]

From now on, women were no longer to perform occupations that had previously been considered as "masculine" but were to be relegated to branches of industry and professions that were compatible with their "*natural characteristics*". As such, the authorities have considered the textile, dairy, and meat industries.[70] Furthermore, a characteristic phenomenon of the Polish employment system, in contrast to the Soviet one,[71] was the implementation and promotion by the party-state of the cottage industry, which was to be a kind of the new core of women's employment after 1956.[72] The cottage industry was intended to enable women to work professionally on the one hand and fulfil their "natural" role in society as mothers and housewives on the other.

A subsequent sign that the system was returning to the protective and compensatory function of the principle of gender equality in employment was the restoration of the previously revoked bans on women's work through the adoption of the Regulation of the Council of Ministers on 18 February 1959 amending the Regulation of 28 February 1951 on work prohibited for women. The Regulation reinstated the prohibition of women's underground work in mines and established new ones in forestry and agriculture (e.g. women could no longer work as tractor drivers).[73]

On 8 May 1961, Poland ratified the ILO Convention 111.[74] The Convention is of great significance in relation to the principle of gender equality in employment, as it introduced a definition of discrimination, which means

> *"any distinction, exclusion or restriction (particularly on grounds of gender) which results in or is intended to deprive women, regardless of their marital status, of the granting or exercising of human rights and fundamental freedoms in the political, economic, social, cultural, civil and other fields on equal terms with men"*[75]

69 Jarska (2014): p. 64.
70 Fidelis (2020): p. 127.
71 Jill M. Bystydzienski: Women and socialism: A comparative study of women in Poland and the USSR, *Signs: Journal of Women in Culture and Society*, 3/1989, p. 676.
72 Dz. U. Nr 40, poz. 179, Uchwała Sejmu Polskiej Rzeczypospolitej Ludowej z dnia 12 lipca 1957 r. o Planie Rozwoju Gospodarczego w latach 1956–1960 (Resolution of the Sejm of the People's Republic of Poland of 12 July 1957 on the Economic Development Plan 1956–1960) – Chapter I and III.
73 Dz.U. 1959 Nr 18 poz. 109, Rozporządzenie Rady Ministrów z dnia 18 lutego 1959 r. zmieniające rozporządzenie z dnia 28 lutego 1951 r. o pracach wzbronionych kobietom (Regulation of the Council of Ministers of 18 February 1959 amending the Regulation of 28 February 1951 on work prohibited to women).
74 Dz.U. 1961 Nr 42 poz. 218, Konwencja (Nr 111) dotycząca dyskryminacji w zakresie zatrudnienia i wykonywania zawodu przyjęta w Genewie dnia 25 czerwca 1958 r. [Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation adopted in Geneva on 25 June 1958].
75 Szewczyk (2017): 3.2. Konwencje i zalecenia MOP (accessed on 18.12.2022).

and obliged members to pursue a national policy aimed at eliminating all discrimination in employment.[76]

The 1960s, under the influence of the new national economic concept, became known as a period of "*small stabilisation.*" There was a definite increase in the production of means of consumption, and the new force in the employment structure became intelligentsia and skilled workers. Due to economic and political changes, Poles were able to devote more attention to the sphere of private life. Citizens' consumption expectations have begun to be clarified, including housing, technology, and fashion.[77] This looser atmosphere in society has contributed to the emergence of criticism of many aspects of the state's functioning. One topic of discussion was the difference between the declared and actual equality for women in employment. The dominant voices in these debates were those of female sociologists researching the situation of women in the workplace.[78] In her work, Waluk pointed out that there are certain occupations that women should not perform to protect their own health and the health of future generations, but the catalogue of such jobs should not be too broad and will decrease over time with economic development.[79] In addition, the researcher indicated that the widespread belief that women have less endurance in industrial work because of their physical characteristics is only partly true because the main factor contributing to exhaustion is the double burden of work and household duties.[80] The exclusion of women from the possibility of carrying out certain professions was also strongly influenced by men's prejudices against women being able to manage their work, for example in technical professions.[81] The author criticised the approach that generalises the specific nature of women's abilities and skills, stating that whether someone can perform a particular profession should depend on the individual's personal aptitude.[82]

These results illustrate, to some extent, the direction of discourse among women at the time regarding gender equality in employment.

3. The stiffening of the mother role model in the late period of the People's Republic of Poland (1971–1989)

In the following two decades in the People's Republic of Poland, authorities continued the course of development chosen by the previous party leadership, placing more emphasis on traditional gender divisions, especially in the spheres of employment and domestic work.[83] The new First Secretary of the PZPR Central Committee – Edward

76 C111 – Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – art 2.
77 Aleksandra Jasińska, Renata Siemieńska (1978): *Wzory osobowe socjalizmu*, Wydawnictwo Wiedza Powszechna, Warsaw, p. 113.
78 Fidelis (2020): p. 131.
79 Janina Waluk (1965): *Płaca i praca kobiet w Polsce,* Książka i Wiedza, Warsaw, p. 60.
80 Waluk (1965): p. 61.
81 Waluk (1965): p. 62.
82 Waluk (1965): pp. 64–65.
83 Fidelis (2020): p. 138.

Gierek, was portrayed as a man of progress and "*father of the nation*",[84] open to society and expected to create policies according to new standards.[85] E. Gierek during his speeches paid a lot of attention to Polish women, as exemplified by his words during the Labour Day celebrations—1 May 1974—

> *"we send words of respect and warm feelings to Polish women, we greatly appreciate your contribution to the development of the country, your contribution to the upbringing of the young generation, your care for the family home and the atmosphere of everyday life."*[86]

These words illustrate the approach of the party at the time, which wanted to present itself as a party that listened to women's demands and fulfilled the conditions for the expansion of the welfare state.[87] To achieve these goals, the authorities used a social policy tool heavily oriented towards pronatalism.[88]

On 14 January 1972, the Council of Ministers introduced into the legal system the institution of unpaid leave for working mothers caring for young children. Paragraph 1(1) of Resolution No. 13 of the Council of Ministers stipulated that a female employee who had been employed at the relevant workplace for at least 12 months could apply, at the end of her maternity leave, for an unpaid leave of up to three years to enable her to care for her child, but no longer until the child reached the age of four years.[89] Shortly after the adoption of Resolution No. 13, maternity protection was further strengthened by the extension of maternity leave to 16 weeks for the first birth and 18 weeks for multiple births or each subsequent birth.[90]

In 1974, labour legislation was ordered, including provisions on the protection of women's work through the enactment of the Labour Code (the first comprehensive labour law regulation since 1918).[91] The new Labour Code was strongly ideologically oriented[92], as reflected in the preamble – "*[w]ork in the People's Republic of Poland, in the state of the working people, is a fundamental right, duty and matter of honour for every citizen*."[93]

84 Piotr Perkowski: Wedded to Welfare? Working Mothers and the Welfare State in Communist Poland, *Slavic Review*, 2/2017, p. 476.
85 Adrian Korfenał: Wizerunek I sekretarza Edwarda Gierka kreowany przez propagandę reżimu komunistycznego na łamach dziennika "Trybuna Ludu", *Świat Idei i Polityki*, 1/2020, p. 308.
86 Edward Gierek: Speech on the celebration of the 1st May 1974 (record), 1:30 – 1:50. Available at: https://www.youtube.com/watch?v=BAh-aSwXh-g&t=373s (accessed on 21.12.2022).
87 Perkowski (2017): p. 476.
88 Perkowski (2017): p. 476.
89 M.P.1972.5.26, Uchwała Nr 13 Rady Ministrów z dnia 14 stycznia 1972 r. w sprawie bezpłatnych urlopów dla matek pracujących, opiekujących się małymi dziećmi (Resolution No. 13 of the Council of Ministers of 14 January 1972 on unpaid leave for working mothers caring for young children) – §1(1).
90 Dz.U.1972.27.190, Ustawa z dnia 6 lipca 1972 r. o przedłużeniu urlopów macierzyńskich (Act of 6 July 1972 on the extension of maternity leave) – art. 1.
91 Goworko-Składanek (2020): p. 48.
92 Ludwik Florek: Ewolucja Kodeksu Pracy, *Studia Iuridica Lublinensia*, 3/2015, p. 30.
93 Dz. U. Nr 24, poz. 141, Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy (Act of 26 June 1974 Labour Code) – Preamble.

One of the basic principles of labour law expressed in the Code's preamble was the principle of equality of all people of labour, prescribing equal treatment for all working people and granting everyone the same rights to perform the same duties.[94] Unfortunately, this principle was not formulated *expressis verbis* in any further provisions of the Code. However, the Code included Section 8, which introduced special protection of women's work, which can be seen as a reference to the previously mentioned principle of equality. The Labour Code provisions on the protection of women's work focused primarily on the restriction of employment, particularly arduous or harmful work and maternity aspects in the context of employment.[95]

Further legislation implementing the paternalistic approach of the authorities to social and employment policy was the Decree of the Minister of Labour, Wages, and Social Affairs on 31 May 1974 on family allowances and the Act of 17 December 1974 on cash benefits from social insurance in the event of sickness and maternity. The first act increased benefits for families with many children and low incomes,[96] whereas the second unified and organised provisions on cash benefits in the event of sickness and maternity.[97]

On 21 February 1976 an amendment to the Constitution of the People's Republic of Poland took place, modifying Article 69 concerning the principle of equal rights of all citizens by adding five new features which cannot be the reason for discrimination:[98] birth, education, profession, social position, and gender.[99] Moreover, while transferring the former art. 66 to art. 78, the constitutional amendment added paragraph 3 stating that "*[t]he People's Republic of Poland shall strengthen the position of women in society, especially mothers and working women*."[100] These changes illustrate the development of the principle of gender equality at the constitutional level and demonstrate that there was still a strong emphasis on this issue in People's Poland, even though the idea of equality between men and women was oriented towards the traditional division of roles in society and was not entirely reflected in reality.

The last piece of legislation under the Soviet-type dictatorship rule with a real impact on the development of the idea of gender equality in employment was the Decree

94 Dz. U. Nr 24, poz. 141, Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy (Act of 26 June 1974 Labour Code) – Preamble.

95 Dz. U. Nr 24, poz. 141, Ustawa z dnia 26 czerwca 1974 r. Kodeks pracy (Act of 26 June 1974 Labour Code) – art. 176 – art. 189.

96 Dz.U.1974.21.127, Rozporządzenie Ministra Pracy, Płac i Spraw Socjalnych z dnia 31 maja 1974 r. w sprawie zasiłków socjalnych (Decree of the Minister of Labour, Wages and Social Affairs of 31 May 1974 on social allowances).

97 Dz.U. 1974 Nr 47 poz. 280, Ustawa z dnia 17 grudnia 1974 r. o świadczeniach pieniężnych z ubezpieczenia społecznego w razie choroby i macierzyństwa (the Act of 17 December 1974 on cash benefits from social insurance in the event of sickness and maternity).

98 Tomanek (2021): 2.5. ZASADA RÓWNOŚCI (accessed on 04.01.23).

99 Dz. U. z 1976 r. Nr 7, poz. 36, Konstytucja Polskiej Rzeczypospolitej Ludowej uchwalona przez Sejm Ustawodawczy w dniu 22 lipca 1952 r. (the Constitution of Polish People's Republic of 22 July 1952) – art. 67(2).

100 Dz. U. z 1976 r. Nr 7, poz. 36, Konstytucja Polskiej Rzeczypospolitej Ludowej uchwalona przez Sejm Ustawodawczy w dniu 22 lipca 1952 r. (the Constitution of Polish People's Republic) – art. 78(3).

of the Council of Ministers on 17 July 1981 on parental leave. The Decree introduced the possibility for female workers to take parental leave for up to three years for the personal care of a child up to the age of four.[101] In addition, the regulation introduced a progressive solution for the time, enabling fathers of children to use this kind of parental leave.[102] However, fathers were treated by the legislature as additional or even emergency persons who were able to take parental leave only under certain circumstances. Therefore, the positions of women and men in employment and those related to the parental sphere were not equal, and the main burden of parenting continued to fall on the shoulders of working mothers.

III. CONCLUSION

The political transformation began after 1989 following the collapse of Poland's totalitarian system. Part of the transformation in the economic sphere was the so-called "*shock therapy*", whose form and the instruments by which it was introduced had little to do with the demands of Solidarity and the expectations of the majority of Poles.[103] The neoliberal economic model required the deregulation of labour law and led to a wave of bankruptcy, mass unemployment,[104] and uncontrolled privatisation. To facilitate faster restructuring of enterprises, the legislature reduced the protection of the permanence of the employment relationship.[105] In 1989, Article 177 § 4 of the Labour Code was amended according to which, due to the liquidation or declaration of insolvency of the workplace, the employment contract of an employee who is pregnant or on maternity leave may be terminated with notice.[106] There has also been a change in the social policy model. Numerous social benefits, including those for mothers, were reduced.[107] All these actions led to a situation in which women were once again the weakest element of the labour market. Moreover, many Polish women who decided to "stay at home" also had to struggle with their husbands' professional problems, which

101 Dz.U. 1981 Nr 19 poz. 97, Rozporządzenie Rady Ministrów z dnia 17 lipca 1981 r. w sprawie urlopów wychowawczych (the Decree of the Council of Ministers of 17 July 1981 on parental leave) – §1(1).

102 Dz.U. 1981 Nr 19 poz. 97, Rozporządzenie Rady Ministrów z dnia 17 lipca 1981 r. w sprawie urlopów wychowawczych (the Decree of the Council of Ministers of 17 July 1981 on parental leave) – §1(3).

103 Perkowski (2017): p. 479.

104 Teresa Liszcz: Zmiany w polskim ustawodawstwie pracy w latach 1989–1993, *Annales UMCS*, 15/1994; and Główny Urząd Statystyczny: *Stopa bezrobocia rejestrowanego w latach 1990–2022*, GUS, Warsaw, 2022.

105 Naumowicz (2021):, 3.6. OKRES TRANSFORMACJI (LATA 1989–2004) (accessed on 05.01.2023).

106 Dz.U. 1990 Nr 4 poz. 19, Ustawa z dnia 28 grudnia 1989 r. o szczególnych zasadach rozwiązywania z pracownikami stosunków pracy z przyczyn dotyczących zakładu pracy oraz o zmianie niektórych ustaw (the Act of 28 December 1989 on special rules for termination of employment relations with employees for reasons related to the workplace and on amendments to certain acts) – art. 20 (2).

107 Perkowski (2017): p. 479.

is often overlooked in the discussion on the situation of women of that period. The transition period was one of the most difficult periods in the history of Polish workers, regardless of gender.

However, since the early 1990s, negotiations on Poland's accession to European Communities had been ongoing. The Polish desire to join the European Community resulted in the need to adapt its labour laws to new standards.[108] Thus, by 24 August 2001 an entire chapter on the equal treatment of women and men was added to the Labour Code.[109] This regulation marked a new path toward the issue of gender equality in employment and became the basic legislation regulating this subject.

The principle of gender equality in employment has a dual function: protection and equalisation. Its development over the period analysed in this article has proceeded by balancing these two functions, once placing more emphasis on one and once on the other, as reflected in the described legislation. During the inter-war period, influenced by the demands of the working class, the focus was on protecting women. After the war, equality between men and women in employment became one of the main ideas of the new totalitarian state. However, it has been implemented in different ways. At the beginning of the Polish People's Republic, gender equality in employment meant assigning women to new occupations, that had previously been performed by men, the so-called "*regendering from above*." Subsequently, after protest in Poznań in 1956, the time of political "thaw" brought a desire to change the previous understanding of the principle of gender equality in employment. Labour policy started to focus on restoring the traditional division of professions and outlining a new role model for women – the "*Polish mother*." The last two decades of the dictatorship have been characterised by an even greater commitment to women's traditional roles in society, with an emphasis primarily on social policies through the expansion of the social benefits system intended to relieve the burden on families and enable women to remain at home. By contrast, during the transition period, gender equality in employment was set aside, and women became one of the first victims of the new economic system, losing their jobs and social benefits. However, this state of affairs could not last long due to Poland's ambition to join the European Community, and gender equality has once again become one of the most important issues in labour law, which is particularly evident today.

108 Naumowicz (2021):, 3.6. OKRES TRANSFORMACJI (LATA 1989–2004) (accessed on 05.01.2023).

109 Dz. U. Nr 128, poz. 1405 z późn. zm., Ustawa z dnia 24 sierpnia 2001 r. o zmianie ustawy – Kodeks pracy oraz o zmianie niektórych innych ustaw (the Act of 24 August 2001 on amending the Act – Labour Code and on amending certain other acts) – art. 1 (5).

Historical Development of Gender Equality During the Soviet-type Dictatorship in Romania

CSABA SZABÓ
Ph.D. student, University of Miskolc,
Central European Academy
E-mail: szabo.csaba@centraleuropeanacademy.hu

ABSTRACT
The present article focuses on legislation covering gender equality during the Soviet-type totalitarian era in Romania. The article showed that the institution of gender equality made significant progress under the dictatorship. It is worth noting that every era comes with its own set of problems: in the beginning, under the leadership of Gheorghe Gheorghiu-Dej, the will of independence, then, under Nicolae Ceaușescu, the will to increase the population, and the general monitoring and propaganda spreading mechanism.
KEYWORDS
gender equality, Soviet-type totalitarian regime, working mother, women's organisation, abortion, Gheorghe Gheorghiu-Dej, Nicolae Ceaușescu.

Dezvoltarea istorică a egalității de gen în timpul dictaturii de tip sovietic din România

Rezumat
Prezentul articol se concentrează asupra legislației privind egalitatea de gen în timpul epocii totalitare de tip sovietic din România. Articolul arată că instituția egalității de gen a făcut progrese semnificative în timpul dictaturii. Este demn de remarcat faptul că fiecare epocă vine cu propriul set de probleme: la început, sub conducerea lui Gheorghe Gheorghiu-Dej, voința de independență, apoi, sub Nicolae Ceaușescu, voința de creștere a populației și mecanismul general de monitorizare și răspândire a propagandei.
Cuvinte cheie
egalitate de gen, regim totalitar de tip sovietic, mamă muncitoare, organizație de femei, avort, Gheorghe Gheorghiu-Dej, Nicolae Ceaușescu.

I. INTRODUCTION

Gender equality is a basic fundamental principle of society, not only in labour law but also on a much broader level. However, we nevertheless continue to struggle to

eliminate inequalities in the 21st century; thus we are far from having perfect regulations that ideally eliminate gender-based discrimination. For example, unequal wages between sexes or jobs associated with male workers are still prevalent.

Accordingly, it is imperative to understand the development of this institution to ensure effective regulation in this field. The present article aims to offer a broad perspective on the development of gender equality in Romania, focusing on the period of the Soviet-type dictatorship. Romania was a state heavily influenced by the USSR and which carried forward the fundamental steps of the communist ideology. Romania had two rulers during the Soviet-type totalitarian period: Gheorghe Gheorghiu-Dej and Nicolae Ceaușescu. Despite these dictators supporting communist ideologies, they had independent views on how to build a prosperous socialist society.

For reference, let us first examine the period before the installation of this type of totalitarianism. It can be stated, gender equality was an unexploited field of law, in particular, Romania being a state where women were subordinated to their husbands' or fathers' will. The subordination of women was generally an accepted state in society.

When examining labour law from the point of view of gender equality, there is hardly any concrete regulation because laws regulating this field were just emerging.

Interestingly, the first law that contained few labour law regulations was the Romanian Civil Code of 1864, which was based on the Napoleonic French *Code civil*.

Initially, the field of labour law was regulated with royal decrees. The first decree was from 1912:[1] the law for organising occupations, credit system, and worker care. Although there is no *expressis verbis* mention of equal treatment in the mentioned law, it has some interesting regulations. In this era, a woman who wanted to work needed the permission of a man (the husband). However, the law allowed women to take any legal action required in the meantime regarding the working process individually; furthermore, to be a part of litigation without a man's consent. The working hours were maximised for women at 11 hours per day with some additional benefits for female workers who were married.

Seventeen years later, in 1929, another law was implemented,[2] which abolished the need to acquire a man's permission for women to work or to perform actions that arise during the working process. The same law also gave women the right to use their salary as they wished.

1. Education

The first step for women to be able to compete in the labour market with men was to get good education and gain knowledge that would help them enter the various fields of the labour market.

The first law in Romania, which was a starting point for equal education, concerned secondary education in 1928,[3] which stated in Article 4 that secondary education will

1 Law No. 27 from 1912.
2 Law about labour contracts from 1929, Article 40.
3 Law No. 79 from 1928, Article 4.

be provided equally to boys and girls. These laws were far from introducing equality in the educational system in Romania. If we carefully read the law, we can see that education continued to be different among boys and girls. For example, there were separate schools for boys and girls at that time, or girls had different courses than boys, like handwork or household. In this regard, girls followed an education system that already assumed that they would become housewives instead of equal members of the labour market. Women were raised to become housewives from the beginning. Therefore, after completing their studies, they did not have a chance to enter any competitive field with men in the labour market, especially those that required special, concrete, material knowledge. The importance of education was significantly proved when the following Constitution was adopted.

In 1938, the Romanian Constitution agreed to give women the right to vote. Although this right was conditioned by education, it meant that, in reality, the number of female voters was confined to wealthy urban women. Coincidentally, the next elections, in which women were allowed to participate for the first time, were organised by the Communist Party, which helped it seize power and start the era of the Soviet-type dictatorship in Romania.[4] In reality, the regime had two advantages arising from this regulation. First, the image of a democratic and modern state because seemingly they were following states like the Netherlands (1919) or the USA (1920) in this matter. Another upside was that the Communist Party could be elected with double the votes.[5]

Before examining the period in qestion, it is important to mention that the two world wars had a major impact in many fields, including labour laws and gender equality. Both world wars consumed immense resources, and problems arrived not just in the economic field but in the workforce as well. After World War II, Romania, among many other states, faced huge losses. In order to offset the losses, women were gradually allowed to enter the workforce.[6]

II. GHEORGHE GHORGHIU DEJ (WOMEN AS WORKERS)

After King Michael I was forced to abdicate, the Soviet-type totalitarian regime in Romania came into force officially in December 1947, two years after the end of the second World War.

The first dictator of the period in Romania was Gheorghe Gheorghiu-Dej. He was the head of the Romanian Communist Party that came to power in 1945. At the beginning of his leadership, he was governing Romania under the influence of the USSR.

4 Mihaela Bărbieru (2022): *Women in Romanian politics: representation and a better governance*, in Iulian Boldea, Cornel Sigmirean, Dumitru-Mircea Buda (ed.): *Reading Multiculturalism. Human and Social Perspectives*, The Alpha Institute for Multicultural Studies, Tîrgu-Mureș, p. 256.

5 Oana Lavinia Ciucă: Etapele ideologozarii conceptului de emancipare a femeii, *Antropomedia*, 2/2010, p. 76.

6 Viorica Banciu, Chipea Floare, Ionuț Bancilă (2012): The Social Status and Image of the Romanian Woman Presented in the Nationalist Discourses of the Dictator Nicolae Ceauşescu, in *History and Society IPEDR vol. 34*, IACSIT Press, Singapore, p. 112.

From the 1950s, he began focusing on the partial removal of the dependence of Romania from the leadership of the USSR. In 1958, this goal could be achieved as the Soviet army withdraw from the country, so he even attempted to pursue an independent foreign and domestic policy without Moscow's influence. Gheorghe Gheorghiu-Dej saw the success of the independence of foreign and domestic policy in industrialisation.[7] The idea of industrialisation also accentuated the need for women to enter the already imperfect labour market.

The first and most important task of the regime was to consolidate power; so, it changed the Constitution and its provisions to match the USSR's philosophies and ideologies. The reason for the change was clear; the Constitution was at the top of the hierarchy in the given law system, which was the supreme law based on every other law.

The first Romanian Constitution of the regime was adopted on 13 April 1948, and it stated in Article 16 that all citizens of the Romanian Peoples' Republic, irrespective of sex, nationality, race, religion, or cultural grade, are equal before law. This Constitution was the first that placed women at the same level in one particular area, namely, justice. Furthermore, it offered equal rights to women and men in economic, social, cultural, political, and private fields of life. In Article 21, it stated that for equal work, women have the right to equal salary as men.

It can be noticed that immediately after the new regime came into force, gender equality became an important issue. This can be attributed to the modernisation process of the society, which was started by the regime. Gender equality served as one of the essential measures of modernisation. However, it was sustained by the regime just at an ideological level.[8]

1. 1948-education reform

At the beginning of the Soviet-type dicatorship in Romania, similar to other countries, every law and institution needed to be changed to conform to the USSR's ideologies. As with the Constitution, the education system needed to be revamped. The regime acknowledged that education was a primary tool to raise "*valuable members of the Socialist society.*" Romania was directly under the control of the USSR, meaning that the USSR heavily influenced the first educational reform. The only institution that could organise education became the state, and private schools or schools operated by the church were excluded from providing education.[9] From my point of view, what is relevant is the first article on educational reform, which stated that public education constitutes an equal right for all citizens of the Romanian People's Republic, regardless of sex, nationality, race, or religion. This was the next step, after the 1938 education law, towards

7 Stanca Iris Iacob (2018): *Worker, Mother, Socialist: The Making of the Romanian Communist Woman, 1965–1975*, Duke University – Department of History, Durham, p. 8. Available at: https://hdl.handle.net/10161/16659 (accessed on 27.12.2022).

8 Ciucă (2010): p. 74.

9 Georgeta Stoian Connor (2003): *The Reform of Education in Romania and its Implications for the Teaching of Geography in Secondary Schools* (unpublished Master's thesis), University of Georgia, Athens (Georgia), p. 21. Availabel at: https://getd.libs.uga.edu/pdfs/connor_georgeta_s_200308_ma.pdf (accessed on 27.12.2022).

gender equality. Reading the entire law, we can state that the text remains faithful to the first article, uses gender-neutral language, and does not contain any regulation differentiating genders in education.

The result of the present reform quickly gained popularity, resulting in many women entering the education system, not only schools but also universities. The importance of gender in the education system began to wane gradually, but another issue appeared. Education was hard to reach for people living in villages. A new trend showed that, in reality, education was available in most cases only for wealthy urban families.[10] Good education was considered the privilege of the upper echelon of society.

The present regulation aimed to change the whole education system. In its last article, it repealed all former laws dealing with education.

2. Labour Law Code

In 1950, Romania continued to be heavily influenced by the USSR, meaning that Romania followed other Soviet-type totalitarian regimes and finally introduced its first labour law code. In the field of gender equality, this labour law code strengthened the principle of equal pay for equal work between women and men, which was already regulated in the 1948 Constitution. It included age and nationality in this principle.[11]

The code introduced various individual rights for pregnant workers:

1. They cannot be assigned overtime duty – Article 59
2. They cannot work in challenging or harmful conditions and cannot be delegated without their consent – Article 89
3. After the sixth month of pregnancy, they cannot be asked to work on night shifts – Article 91
4. They are exempted from the so-called temporary obligations (for example, helping authorities in a natural disaster) – Article 112

It is important to note that the labour law code from 1950 does not regulate in any sense maternity leave.

The labour code does not include any provision that promotes gender equality in particular besides the principle of equal pay for equal work, meaning that the only field that was aimed to balance the differences between genders in the labour market was the economic aspect. This can be explained by the fact that, 15 years after the end of World War II, the consequences of the loss of people continued to mark this period. The economic approach of gender equality aimed to introduce women into the labour market. We can see that this originated from the deficit of workers available at that time rather than balancing the inequalities between the sexes. Women were seen as a tool for solving the demographical problems triggered by the world wars.

This was the beginning of the use of women in the propaganda. Women were portrayed in it as professionals, hard-working members of society, and no longer

10 Cristina Petrescu: A Genderless Protest: Women Confronting Romanian Communism, *Annals of the University of Bucharest. Political science series*, 2/2014, p. 85.

11 Law No. 3 from 1950, Article 33.

remained just housewives. Posters came up showing women working in factories or driving tractors, which further appeared to encourage women to take up jobs. It can be acknowledged that women benefitted from the economic approach of achieving gender equality, with financial independence much more prevalent than before (in some cases, they were not totally dependent but partially), and with that, the roles in a family became relaxed.[12]

This seemed beneficial to the ruling government, just as in the case of giving women the right to vote. First, it solved the problem of worker deficit. With women entering the labour market, the existing workforce was doubled. Second, the emancipation of women in the working class portrayed the ruling body as a modern democratic government.

It became evident that the economic intention somewhat limited gender equality at one point and helped its evolution. Women entered the labour market and gained more or less financial independence. However, they were generally employed in positions at the bottom of the hierarchy and their salaries reflected this. Industries were somehow classified because the most critical sectors, like strategic or energy industries, continued to be occupied by men.[13] Furthermore, even in industries dominated by women workers, the leaders were generally men.[14]

In 1952, a new Constitution was adopted in Romania, the second Constitution of this totalitarian era.[15] The regulations of this Constitution cautiously expanded the fields where it offered equality between males and females. Here, it is important to mention that the rights offered were more at an ideological level, and were motivated by the deepening and spreading propaganda, which had an important role in creating and influencing the society in the desired direction.

First, Article 83 expands on areas of life where women of the Romanian Peoples' Republic had equal rights as men, and highlights the already existing economic area: politics, state, and culture. The intentions of this expansion makes sense when discussing the next important article.

Furthermore, the same article of the 1952 Constitution expands areas of equal rights in the labour law field, stating that women and men have equal rights to the following: work, salary, rest, social security insurance, and education. It is worth noting that the previous Constitution already mentioned work and salary, and even education was discussed earlier in the first educational reform, leaving two new aspects: the right to rest and right to social security insurance. By introducing these two concepts from the point of view of gender equality, the intention of creating attractive working conditions for women can be observed.

The last phrase of Article 83 mentions that the state protects families and the interests of women and children. Interestingly, the previous legal system did not include

12 Petrescu (2014): p. 7.
13 Petrescu (2014): p. 8.
14 Mihaela Miroiu (2004): *Drumul către autonomie. Teorii politice feministe*, Polirom, Iași, p. 203.
15 It is interesting to note that even at that time, Romania was heavily influenced by the USSR. In the preamble, it is stated that the Romanian Peoples's Republic was born due to the victory of the Soviet Union against German fascism and the liberation of Romania by the Soviet Army.

any regulation prohibiting domestic violence or consider it as a crime.[16] The state's protection of children was materialised concretely by daycares (*creșă*), where parents could leave their children at a very young age. The reason once again was simple, as Mihaela Miroiu remarks in her book, the task of child-raising was taken over by the state, so that the parents could return to work much quicker, and, in that way, the adults are occupied with production, while the state in turn could control them. Furthermore, taking care of children's education at an early age meant that the state had the opportunity to control and influence their education.[17]

Article 96 can be seen as a sequel to Article 83, giving women the right to vote. However, importantly, it introduced the right to be elected, and this right is what expanded the area of gender equality in the fields of politics and state, which is mentioned in Article 83.

The arguments regarding the advantages of the governing body hold water, because the image of a democratic country is once again upheld, and the number of votes helps consolidate power.

The expansion of these areas had not influenced reality, as women continued to occupy the same positions and jobs at the bottom of the hierarchy. The right to be elected for women could be symbolic, but in no way influenced anything, in particular, there was a one-party system so if they wanted to be elected they had to become a member of the Communist Party, while members of the Communist Party were chosen instead based on political decisions (fidelity towards the party) than their genuine merits.[18]

After almost 13 years of the 1952 Constitution, provisions regarding the right for women to social security insurance came to the fore. In 1965, the decision to grant material aid within the state social insurance introduced the right to material help for women in case of maternity. A separate section, Chapter 3, regulated in particular the aid that is offered by the state in case of maternity.

The institution of maternity leave was finally regulated. The law states that female workers have a right to 112 days of maternity leave, including 52 days before the birth of the child and 60 days after. The same article stated that maternity leave ends if the child dies during its first 42 days, highlighting the dark side of the regime. Browsing the statistics, I suppose the extended period was given because the government did not want to show a high number of child deaths in their statistics.[19]

A vital regulation was the interdiction to terminate the employment contract of a woman on maternity leave.[20] The mother's workplace was somehow protected, and it offered continuity for those who desired to return to the same workplace where they worked before the child's birth.

16 Petrescu (2014): p. 85.
17 Miroiu (2004): p. 205.
18 Banciu, Chipea, Ionut (2012): p. 114.
19 *Romania Population 1950–2023*. Available at: https://www.macrotrends.net/countries/ROU/romania/population (accessed on 27.12.2022).
20 It is important to mention that 12 years before the present law, in 1953, Decree No. 202 already introduced punishment for reducing the salary of a woman due to pregnancy or maternity or refusing to accept them for work for the same reason by imprisonment from 3 months to 1 year or by a fine.

3. Women Organisations in Romania

To comprehensively understand the intentions and aims of the dictator, we need to examine the situation of women's organisations.

Before the installation of the Soviet-type totalitarian regime, feminism in Romania evolved as a movement in similar proportion as in western countries. In 1850, the Romanian Women's Society and in 1913, the Union of all Romanian Women's Reunion were established.[21] These organisations were not centralised. They were somewhat autonomous organisations, meaning the state did not intend to acknowledge them.

When the regime came to power in Romania, the ruling body recognised the organisations' potential. Women's groups were just some of the organisations that captured the state's attention, although it was a general observation. The state considered all types of organisations with a possibility to reorganise them in a way that helped consolidate power. For example, the heads of these organisations were chosen by political decisions[22] rather than based on their objective merits. The communist ideology saw the opportunity in the organisations and tried to separate the whole population into various organisations. For example, there were organisations for youth, workers, or as we can see, women. Another advantage of these reorganisations was that the state could expand and strengthen its control over people.

The direction in which women's organisations could evolve was decided. At the beginning of 1946, all women's organisations were rethought, and the state centralised them. Unification of the mentioned organisation began and it fell under the direct subordination of the state, and the so-called Democratic Federation of Romanian Women was established within the framework of the Romanian Democratic Woman's Congress, which was held in March 1946. As Oana Lavinia Ciucă remarked, in 1964, the organisation, whose function can be described as a "lever" to influence female public opinion was established, with its principal activities aiming at political work.[23] The existence of the organisation, seemingly upheld by the government, was imitating western countries' will to emancipate women. However, it was just used as another tool to spread propaganda and control the population.[24]

In general, the organisations were used as tools by the state for objectives other than what they were meant for. The goals of these organisations were never achieved; instead, they were limited by the state at the level of their own goals.

However, in the middle of the 1960s, a new era in the history of the dictatorship started under the rule of Nicolae Ceaușescu, and as an essential part of the communist ideology, the use of women's organisations and the use of women as symbols changed. Unfortunately, as we will see in the next chapter, the change brought additional problems and extremist ideologies.

21 Krassimira Daskalova, Susan Zimmermann (2017): Women's and Gender History 1, in Irina Livezeanu, Árpád von Klimo (ed.): *The Routledge History Of East Central Europe Since 1700*, Routledge, New York, p. 306.
22 Miroiu (2004): p. 201.
23 Ciucă (2010): pp. 74–75.
24 Miroiu (2004): p. 202.

III. NICOLAE CEAUȘESCU (WOMAN IN THE MOTHER'S ROLE)

After the death of the first dictator Gheorghe Gheorghiu-Dej, a new leader came to power in 1965. Despite also being a dictator, Nicolae Ceaușescu had different ideologies and goals to attain. As a symbolic gesture, the same year, the name of the ruling Communist Party changed to the Romanian Communist Party. Furthermore, they even changed the state's name, which is what Romania came to be called: the Socialist Republic of Romania.

Ceausescu's popularity skyrocketed, driven by his intentions to separate Romania from the foreign policy dictated by the USSR. He was not famous just in communist circles. By denouncing the occupation of Czechoslovakia as illegal in 1968, he also gained popularity in western countries. A new era started in Romanian totalitarianism, which was considered one of the harshest at that time. One of the main differences was the personality cult of the new dictator and his wife. His main goal at the beginning of his reign was to increase the population, which was around 19.1 million[25] when he assumed power, to 35 million. Later in the 1980s, he focused on repaying Romania's foreign debt, collapsing the national economy. The process of following these goals influenced all aspects of life, both in the private and public sphere.

Under his rule, the expected role of women underwent a massive change, as we will see. Women were often referred to as *"Heroine Mothers"* in Ceausescu's speeches, accentuating the pressure to raise children.[26]

1. Criminalisation of abortion

The new ruler was clear about his new goals; his approach to promote population growth was relatively simple: the population can grow if birth rates are as high as possible, and one of the easiest ways to reach this was to criminalise abortion. Within two years of him having the supreme power, he made abortion illegal by decree No. 770/1966, with effect from 1967. The pressure for women to fulfil their role as a mother was a general perception in the communist ideology. However, the criminalisation of abortion led to Romania becoming a unique regime in the Eastern Bloc. By this law, the Romanian regimes attempted to control an individual's private sphere in a manner that no other Soviet-type totalitarian state did.[27]

The decree[28] had just eight articles and regulated the interdiction in a brief manner. The first article stated that termination of pregnancy was prohibited. The second enumerated six exceptions, situations in which abortions would be possible and allowed:

1. If the pregnancy endangers a woman's life that any other way than the termination of pregnancy cannot remediate;

25 *Romania Population 1950–2023*. Available at: https://www.macrotrends.net/countries/ROU/romania/population (accessed on 27.12.2022).
26 Iacob (2018): p. 95.
27 Iacob (2018): p. 119.
28 Decree No. 770/1966.

2. If one of the parents suffers from a disease, which is hereditary, or causes serious congenital malformations;
3. If the pregnant woman has severe physical, mental, or sensory disabilities;
4. If the woman is aged over 45;
5. If the woman already gave birth to four children and takes care of them;
6. If the pregnancy is a result of rape or incest.

We can state that the exceptions arose when the child's or the mother's life was threatened. Another type of exception was only the case in which a woman was already raising four children. Therefore, the goal was for every woman to give birth to at least four children. Those were the steps that Ceaușescu used to increase the population of Romania.

The intention behind the protection of children is obvious; the goal was to increase the population rate, and with that, the regime needed the next generation of parents to be as healthy as possible. A healthy population was the basis of the socialist society in Ceaușescu's perception.[29] The contradiction in Ceaușescu's way of thinking was obvious because while the health of the population was an essential piece of his plan to build a prosperous socialist society, the healthcare system was being neglected[30] by the governing body. The healthcare system in Romania started to improve only in the last 10–15 years. Therefore, the neglect of the healthcare system in the totalitarian regime had a significant impact even after the change of regime.[31]

To achieve the goal of increasing the population, Ceaușescu's regime even went further than just prohibiting abortion. In reality,[32] hospitals had a plan that maximised the number of births that could occur by C-section. Unfortunately, women who needed C-sections risked their lives in the hospital where the birth took place. Women who were in one of the cases of the enumerated exceptions needed the consent of a prosecutor, who was present when the abortion took place.

The right to raise a child, becoming an aggressively pressured obligation by the state, meant that both parents' privacy was violated by the state. However, women lost more than just their privacy. It is true that the law that mentioned the interdiction to terminate the employment contract of a woman on maternity leave was in force, but for an employer it seemed more advantageous to employ men than women, which appeared to be completely legal. The simple reason that the clear intention of that state forced women to have more children, disadvantaged them because in this case, they needed maternity leave, meaning that labour and child birth would negatively influence productivity, driven by Ceaușescu's strict "*five-year plans.*"

29 Banciu, Chipea, Ionut (2012): p. 113.
30 Lorena Anton (2011): *Socialist Mothers and their Legacies: Migration, Reproductive Health and 'Body Memory' in Post-Communist Romania*, p. 6. Available at: https://hal.archives-ouvertes.fr/hal-00785532 (accessed on 27.12.2022).
31 Elena Bărbulescu: Farewell to Communism but Leave the Hospitals Here, *Transylvanian Review*, Supplement 1/2016, p. 17.
32 Roxana-Elisabeta Marinescu: Representing gender in communist and postcommunist Romania, *Diversité et Identité Culturelle en Europe*, 1/2017, p. 30.

The totalitarian state was very inventive when it came to achieving goals. Acknowledging that, in reality, the prohibition of abortion will have, as one of the side effects, illegally executed abortions, authorities forced women to have medical controls to track early stages of pregnancy. These controls took place in most cases during work at their workplaces.[33] Despite these efforts, Romania continued to struggle with many illegal abortions and a high infant mortality rate.[34]

Another disadvantage for working women was financial autonomy. The decision from 1965 remained in force, regulating, among others aspects, financial support for maternity leave. The regulation distinguished three cases. If women worked uninterruptedly for more than 12 months before maternity leave, they earned 90% of their salary; if they worked for 6–12 months, they earned 70% of salary; and if they worked for less than six months, they earned 50% of salary.[35] It can be stated that if women could not reach at least a year of uninterrupted work, their monthly income was significantly lower, especially when compared to the income of fathers, who were working and continued to receive their full salary.

At this point, it is essential to acknowledge that the criminalisation of abortion also abused men's rights. Child raising becoming an obligation in the Ceaușescu era was a concrete violation, not just for women, but for men's rights to private life as well. The double obligation to child raising and working strongly affected their day-to-day life. Men also were involved in parenting, maybe not at the same level as women, but the responsibility to raise children weighed on them as well.

Without differentiating between genders, we can understand that with the power of the state to decide for their citizens to have children, even defining the number of children, and then leaving the obligation of raising the children to parents was considered a severe violation of the parental dimension of individuals. This deep interference of the state that violated individual rights was one of the reasons that led to the peculiarity of the Romanian Soviet-type dictatorship.

2. The second Romanian labour law code (Women in the working mother role)

In 1972, Romania adopted a new labour law code. The new regulation was in line with the new goals of the regime. This labour code reinforced the principle of equal pay[36] for equal rights or the right of women to choose their profession, education, and work. The maternity leave was highlighted and accentuated by introducing it into the labour law code.[37]

It is important to mention the additional rights offered to women by the present regulation, which were considered "*special measures*" under the new labour code. Women

33 Petrescu (2014): p. 87.
34 Anton (2011): p. 10.
35 Decision No. 880/1965 regarding the granting of material aid within the state social insurances, Chapter 3, Article 15.
36 Law No.3 from 1950, The Labour law code, Article 33.
37 Law No.3 from 1950, The Labour law code, Article 66.

were allowed to work on night shifts only in exceptional cases. Pregnant women were prohibited from working in challenging, dangerous, or harmful conditions. If they worked under these conditions, the employer was required to delegate them to another work without reducing their salary.

We can see that separate measures were primarily created to protect pregnant workers, thereby aligning the labour code with the idea of the working mother. Article 158 of the 1972 labour code makes it clear that women were not just a symbol of motherhood. It states that women who have children up to 6 years of age, whom they take care of, can cut their working hours by half if they do not benefit from nurseries or dormitories; the time they were placed under these conditions will be considered as full-time working hours.

The symbolisation of the woman as a mother, in reality, was a double expectation. It did not change from women as workers to women as mothers.[38] The role of the mother was added to workers' role. The state continuously needed the workforce to be able to maintain and raise the level of production. Therefore, the plan to increase the population was tantamount to exploitation of women in both "*reproductive and productive*" ways.[39] The best example of this double work schedule is the regulation of the abovementioned labour code, which stated in its 156th article that women with children who are no more than nine months old can take half-an-hour breaks every three hours during their work time to feed and take care of their children.

In Ceaușescu's speech, women were characterised as heroic builders of the socialist economy who contributed to growth, both as workers and mothers. As Oana Lavinia Ciucă writes, an ideal socialist woman was an equal desexualised object in the labour market with its male counterpart, the image of the crane operated by a woman, as a tractor operator, and an object sexualised in private life (the image of the patriotic mother eager to procreate the nation).[40] The celebration of women who were both mothers and workers was disguised propaganda that pressured and obligated women to work and raise children. The two tasks were hard to separate; it was common to take the child with them to work, especially if there was no one to take care of them.[41] In the wake of rapid industrialisation, people tended to move to cities to be able to work. Therefore, grandparents were not able to take care of their grandchildren.

3. Education under the Ceaușescu era

In the Ceaușescu era, two main educational reforms were promulgated: one in 1968, and another in 1978.

The 1968 reform was a manifestation of the intention, of independence, both from the USSR and the west. The leader of that time realised the importance of education to build an "*independent and great nation.*" It gave some autonomy to universities but the regime nevertheless had a significant influence on them, the control was maintained

38 Ciucă (2010): p. 75.
39 Banciu, Chipea, Ionut (2012): p. 113.
40 Ciucă (2010): p. 85.
41 Iacob (2018): p. 95.

through several solutions.[42] From the point of view of gender equality, the reform did not bring too many new regulations. It strengthened the prohibition of gender discrimination by expanding the prohibition of discrimination on nationality, religion, or any limitation that could constitute discrimination.[43] The text avoids gendering the wording; education was declared unitary in the Socialist Republic of Romania. From the perspective of education, the evolution was unquestionable: obligatory classes were determined at ten instead of eight in the educational reform from 1948; it introduced the classification of students based on grades, etc.

The 1978 educational reform practically copied the same article from the previous one stating that: citizens of the Socialist Republic of Romania have the right to education without differentiating nationality, race, sex, or religion and without any other limitations that could constitute discrimination. Four new bodies were introduced to control and help the evolution of national education: the National Council for Science and Technology, Academy of Social and Political Sciences, Congress on Education and Instruction and Supreme Council for Education and Instruction.[44]

The most interesting part of education from the point of view of gender equality was Elena Ceaușescu, Nicolea Ceaușescu's wife. Elena's entry into politics was made through education, with her election as General Director of the Institute of Chemical Research and as vice president of the National Council for Science and Technology.[45]

4. Elena Ceaușescu, the supreme woman

The progress of building the personality cult of Nicolae Ceaușescu was followed in parallel with building his wife's personality cult. The couple was portrayed as the perfect socialist couple, the husband was the head of the state as well as the head of the family. Concurrently, Elena was the perfect woman who was not just educated. She fulfilled both the worker's and the mother's role, having and raising three children. She was the perfect example for Romanian women's society.[46] Even International Women's Day, which is held every year on 8 March, was instead a celebration of Elena Ceaușescu than a celebration and recognition of women in general.[47] The propaganda was, of course, built on lies and exaggerations. Elena was often portrayed as a scientist in chemistry. She was even handed a Ph.D. even though she had only finished primary education (until the 4th grade).

To help his wife advance in politics, Nicolae Ceaușescu, at the beginning of the 1970s, consistently built propaganda on the emancipation of women in decision-making bodies and in politics. The regime even specified minimum quotas for women's participation in politics at every level. This led to a significant increase in women's

42 Stoian Connor (2003): pp. 25–26.
43 Law No. 11 from 1968, law about the education in Romania, Article 4.
44 Stoian Connor (2003): p. 26.
45 Iacob (2018): p. 25.
46 Miroiu (2004): p. 201.
47 Banciu, Chipea, Ionut (2012): p. 114.

presence in politics. For example, in 1989, 24% of the members of the Central Committee of the Communist Party of Romania were women.[48]

With the help of her husband, Elena reached the top level of the political sphere,[49] and in 1980, she became the first Deputy Prime Minister of Romania.

The propaganda undoubtedly built the possibility for women to participate in politics, but did not achieve the goal of fully integrating women into politics. Women were appointed to their positions by political decisions rather than based on their merits. They were seen instead as a percentage that needed to be maintained to fulfil the will of their dictator, Nicolae Ceaușescu. We can remark that at the level of entering into politics, women had same rights as men, from the point of view that both could only become a member of the Communist Party. Their political will and loyalty, rather than their merits and knowledge, could propel them upward.

Many believe that the image propagated of Elena as the perfect example of a socialist society contributed to a general resentment among the population. This may have contributed even to the fall of the totalitarian regime in Romania.[50]

IV. CONCLUSION

First, we can see that as time passed, the perceived importance of gender equality developed exponentially. From the time when women were highly subordinated to their husbands' will throughout the totalitarian period, they achieved relative independence in various fields such as their economic situation.

It is visible that the evolution of the present regulation was influenced by the events that occurred at that time. Gender equality was driven by the consequences of the war, more concretely by the gap in the labour market caused by the colossal loss of the working force during the war. This situation was accentuated by the first leader of the Soviet-type totalitarian regime, Gheorghe Gheorghiu-Dej, as one of his primary goals was to decouple the country from the USSR by increasing industrialisation, where women were a tool for expanding the workforce. Women's appearance as a tool can be tracked in the situation of women's organisations, where these were instead used for controlling and monitoring people or spreading propaganda than to encourage women and narrow the gap between genders. A similar situation occurred under the leadership of Nicolae Ceaușescu, the second leader, whose main goal was to almost double the population; again, women were used as a tool to fulfil this goal, as abortion was criminalised.

At the level of legislation, it can be seen that at the beginning of the totalitarian regime, the evolution of the institution of gender equality was affected by the USSR because, in the beginning, amendments to the law, in general, were made to harmonise

48 Miroiu (2004): p. 201.

49 Radu Clit (2015): Modelul femeii comuniste: Elena Ceaușescu sau Ana Pauker?, in Alina Hurubean (ed.): *Statutul femeii în România comunistă. Politici piblice și viață privată*, Institutul European, Iași, p. 89.

50 Banciu, Chipea, Ionut (2012): p. 114.

the legal system with communist ideologies and institutions. With the appearance of a personal cult of Nicolea Ceaușescu, the law needed to match not just the general communist ideologies but the personal ideologies of the leader itself. The peak of this phenomenon had the most significant impact on gender equality when the personal cult of the leader was extended to his family, including his wife, Elena Ceaușescu.[51] It is also interesting to see the development of the personal cult of the leader and the potential to deviate from the general mechanism seen in other counties of the Eastern Bloc, which gave the possibility to Nicolae Ceaușescu to reach an outstanding level in the violation of personal rights of individuals by criminalising abortion and monitoring the status of pregnancy among women.

51 Miroiu (2004): p. 201.

PEDEAPSA CU MOARTEA ÎN EUROPA CENTRALĂ ȘI DE EST

DEATH PENALTY IN EAST-CENTRAL EUROPE

The History of the Death Penalty in the Territory of Modern Slovakia

DOMINIK BOBROVSKÝ
Ph.D. student, University of Miskolc,
Central European Academy
E-mail: dominik.bobrovsky@centraleuropeanacademy.hu

ABSTRACT
This article reviews basic essential elements connected with the death penalty performance – means of execution, courts, numbers, and exceptions in the territory of modern Slovakia since the beginning of the 20th century, which forms the main sections of this article. Each section is further divided into subsections, comprising three important time periods—Austria-Hungary, First Czechoslovak Republic, and Czechoslovakia after 1945, and the communist coup—because each of these periods brought substantial changes to the development of this institution of criminal law. The conclusion analyses the arguments in favour of and against the abolition of capital punishment and the country's internal opinions and policies issued until the final abolition in 1990. Moreover, it contains an evaluation of its use, whether it was overused, or whether it was in compliance with the essentials of the modern democratic state respecting the rule of law and basic human rights.
KEYWORDS
capital punishment, execution, death penalty, Slovakia, Czechoslovakia, Austria-Hungary.

Istoria pedepsei cu moartea pe teritoriul Slovaciei actuale

Rezumat
Acest studiu examinează elementele esențiale legate de executarea pedepsei cu moartea – mijloace de executare, instanțe, număr și excepții pe teritoriul Slovaciei moderne de la începutul secolului al 20-lea, care formează principalele secțiuni ale acestui articol. Fiecare secțiune este împărțită în subsecțiuni, cuprinzând trei perioade importante – Austro-Ungaria, Prima Republică Cehoslovacă și Cehoslovacia după 1945, precum și lovitura de stat comunistă – deoarece fiecare dintre aceste perioade a adus schimbări substanțiale în dezvoltarea acestei instituții de drept penal. Concluzia analizează argumentele în favoarea și împotriva abolirii pedepsei capitale, precum și opiniile și politicile interne ale țării emise până la abolirea definitivă din 1990. În plus, aceasta conține o evaluare a utilizării sale, dacă a fost folosită în exces sau dacă a fost în conformitate cu elementele esențiale ale statului democratic modern care respectă statul de drept și drepturile fundamentale ale omului.
Cuvinte cheie
pedeapsa capitală, execuție, pedeapsa cu moartea, Slovacia, Cehoslovacia, Austro-Ungaria.

I. INTRODUCTION

The death penalty is a form of punishment, with a long history of use, and which continues to divide opinions even in most developed countries, such as the United States (US). Despite this fact, its use has decreased considerably owing to the efforts of several influential international and regional organisations. For example, today in Europe, there are discussions regarding the death penalty; however, from an academic perspective than with the intention of its reintroduction.[1] Except for the US, its use is mostly in non-democratic, totalitarian, and religiously influenced countries, where it relates to the persecution of political opposition and different-minded persons, than the general establishment. In a simplified sense, we can say that the more we move towards the East, the more death penalties and executions we can find.[2] Certainly, arguments in favour of death penalty exist, owing to which it continues to bear some type of legitimacy in the eyes of the general population. I have attempted to analyse them in the conclusion.

Analysis of the history of death penalty in Slovakia is important because it could reveal the general progress of our penal history throughout the century and analyse the level of democracy and respect for human rights in the Slovak territory. It is not a secret that the largest number of fatal executions correlates with non-democratic regimes. Proper analysis of the ones executed could reflect the political situation in the state. This simple method of analysis could attract the sympathies of the general population; however, its general advantages could appear sceptical after proper analysis, as in the case of other obsolete penal policies.

This study comprises a special analysis of four particularities and their changes throughout the country's history — means of execution, crimes, courts, and exceptions. It analyses the period from the beginning of the 20th century, because it is the beginning of modern legal codifications and penal policies that gradually erode the legal policies of the 1000 years old kingdom, which considerably influenced Slovak history. This study focuses on three periods—it begins with the description of the law in the Kingdom of Hungary (Austria-Hungary), thereafter, it succeeds to the period of the newly created Czechoslovak Republic, sometimes appended with a small interruption of the World War II period, and finally, proceeds to the post-war development after the communist coup in 1948. The study concludes in 1990, when the institution was finally abolished from the Criminal Code and banned by the constitution owing to the amendment of the National Assembly.

Particularly, the period of post-war development is important for research because of the important transformations that occurred during this period. For example, the harsh period of Stalinist persecution and the following period of liberalisation of criminal law by adjusting its use for the harshest criminal cases, is noteworthy. The Soviet-type totalitarian period brought the unification of the legal systems in the republic, which was the inheritance of reception norms, an important pillar of the legal system

1 Miloš Deset: Kritika trestu smrti, *Justičná revue*, 8–9/2008, p. 1223.
2 Ján Šmrhola: Úvaha o treste smrti, *Justičná revue*, 3/1997, p. 46.

in the First Czechoslovak Republic. This period began the slow process of the final deconstruction of the last remnants of legal particularism—the historical division between the criminal liability of soldiers and the general population.

The conclusion attempts to analyse the theoretical aspects of the death penalty in Slovak territory—scientific opinions on the benefits of its use and its abolition by the country authorities—and whether its abolition was the real obligation for membership in prestigious European and international organisations and what was the crucial argument in this debate. Further, it analyses the list of perpetrators and, owing to this analysis, attempts to provide the country's profile regarding the use of this punishment. Additionally, it provides the general population's opinion towards its use throughout history.

II. MEANS OF EXECUTION

1. Austria-Hungary

According to the Austro-Hungarian legislature (§ 21 of the Hungarian Csemegi Codex known as law No. V/1878) "*the death penalty is performed by hanging in a closed place.*" Further details were regulated under regulation numbers 6575/1890 and 4868/192 which supplemented the aforementioned § 21 of the Csemegi Codex. Both the aforementioned regulations were placed in the Hungarian Ministry of Justice bulletin. State counsel had an obligation to announce the death sentence to the perpetrator in the moment of its effectiveness, and with his powers could allow family members to join in the final procedure, or invite men selected from the public, to secure the preventive effect of such penalty. The death sentence was realised the morning after the final delivery of the verdict. Moreover, the religious life of convict was protected— "*[a]fter the final hearing of the verdict, the proper priest of the perpetrator's religion is sent to the perpetrator.*"[3]

A separate law regulating crimes committed by soldiers prevailed, the most noticeable being Military Criminal Code, also known as law No.18/1855, which stipulated execution in the form of hanging and shooting, according to the specific character of military crime. Soldiers has to aim as to hit convicts in the heart or head. Later, the doctor would check the condition of the convict; if he was not dead, they would shoot him with another hit while on the ground.

2. First Czechoslovak Republic

During the initial period of Czechoslovakia, law No. 11/1918 was adopted, which incorporated Austrian and Hungarian criminal law into the Republic's legal system. Within this act, legal dualism was created, and Czech lands adopted Austrian law, with active

3 Albert Milota, Jozef Nožička (1932): *Trestní řád platný v zemích České a Moravskoslezské s vedlejšími zákony*, J. Gusek, Kroměříž, p. 228.

law No. 117/1852 – Criminal Code, and in Slovakia and Zakarpattia the already mentioned law No. V/1878 regarding felonies and punishments.[4] Both codes were adjusted with a derogative clause, which substituted all terms regarding the Austro-Hungarian statehood with terms denoting republican and democratic meaning. All acts undermining the republican and democratic character of the state were prohibited. Despite this fact, the law began to melt gradually in the Republic. The initial influence of the Czech (Austrian) legal system could be noticed: executions began to be performed in the yard of the court or prison, which was the tradition for execution in the Czech lands. Executions according to the Military Criminal Code continued to be performed by shooting, and most of them were realised by summary field military courts in war with Hungary while liberating the southern Slovak lands, who were in war with the Hungarian Soviet Republic in 1919.

The classic executions were performed by a state hangman who served as a hangman for the territory of the entire Czech lands in Austria-Hungary. The occupation of a hangman was usually a family tradition. Independent Czechoslovakia had three hangmen in all – the first was Leopold Wohlschlager. He served as a regional hangman in the Kingdom of Bohemia. After the creation of the Czechoslovak Republic, he was appointed as the state hangman until 1927.[5] He performed six executions of Czechoslovak prisoners, and he bore general authority for this job. His successor with the pseudonym František Broumarský (real name Josef Nehyba), the retired military policeman, was rescinded from his post in 1930 because he breached the duties (discreetness) relating to his post. The last hangman, Josef Vašák, maintained his privacy, therefore, not much is known about him.

The method of execution remained unchanged until the communist coup and the reform of the Criminal Code and Criminal Procedure Code, adopted together in 1950. This special form of execution was performed by extraordinarily popular courts called retributive courts. The death penalty was performed within two hours of the final hearing of the verdict.[6] On the request of the convict, the court could prolong this period by one more hour. If the proceeding was held in absence of the perpetrator (contumation), execution needed to be performed within 24 hours of the convict's arrest.[7] The special court could decide on the publicity of such execution, and in such cases, the postponing could be prolonged for more than two hours, but no more than 24 hours.

3. Czechoslovakia after 1945 and the communist coup

The communist coup was characterised by the final unification of legal systems in Czechoslovakia, thus abolishing legal dualism. According to the Criminal Code (law

4 Jarmila Chovancová: K problematike trestu smrti (pár poznámok), *Acta Facultatis Iuridicae Universitatis Comenianae*, 1/2011, p. 148.

5 Ivo Pejčoch, Jiří Plachý (2012): *Masarykovy oprátky. Problematika trestu smrti v období první a druhé Československé republiky 1918–1939*, Svět křídel, Cheb, p. 11.

6 Otakar Liška et al (2006): *Vykonané tresty smrti Československo 1918–1989. (Nezahrnuje rozsudky německé justice)*, Úrad dokumentace a vyšetrování zločinu komunismu, Praha, p. 20.

7 Edvard Beneš presidential Decree No. 16 from 19. June 1945, § 31 section 2.

No. 86/1950) the death penalty was performed by hanging and, in times of increased danger, by shooting.

In April 1954, the Ministry of Interior Affairs issued a report regarding the system of execution, to the leadership of the Communist Party, which criticised the system and the associated obsolete procedures of execution. After the final verdict announcement, convicts waited approximately 18 hours for the execution, which brought them to a state of madness many times. During this period, they could meet their close relatives if they managed to travel to the capital for such an occasion. According to the report, executions were held in the open places of the prison facilities, enlightened by reflectors, which could easily disclose the real number of executions to the public and show unpleasant views to the prison facility neighbours. The death penalty was viewed as a state secret owing to the numerous political executions associated with the communist regime. The execution was performed by a butcher, selected from the public volunteers of various professions, who were paid 600 Kčs (Czechoslovak koruna) for the job. The report proposed a new system of execution, which was later adopted until its final abolishment in 1990.

The members of the Communist Party adjusted the execution system according to the standards of the 20th century and their requirements, which was realised with the proposal of the Prosecutor General and Minister of Interior Affairs to the Secretary of the Communist Party. If the death penalty was not obstructed by appeal or call for amnesty to the president, the prisoner was informed regarding the decision of the performance of the death penalty together with the dismissal of his request for amnesty. In the time between the final performance of the effective verdict, guards provided the convict time for writing letters to his close relatives or for another hearing by public authorities, if he asked for such courtesy.[8] The execution was realised in the basement of a particular room with the presence of the persons stipulated by law. From 1955 onwards, all executions were centralised in Prague and Bratislava. The butcher in charge of execution was registered as an employee in the evidence of the Ministry of Justice, however, he also had a civil occupation.

III. CRIMES

1. Austria-Hungary

At the beginning of the 20th century, the Hungarian Csemegi Codex was in force in modern Slovakia. In comparison with Austrian law, it was generally considered more progressive owing to its late elaboration and adoption of various liberal institutes. The death penalty was regulated in § 21 and was usually bestowed as a response to murder. Another legal act containing such a penalty was the law regulating the dangerous use of explosive materials (law No. 134/1885). Law No. XIX/1915 determined the death sentence for specific crimes that endangered kingdoms' combat capability.

8 Róbert Fico (1998): *Trest smrti*, Kódexpress s.r.o., Bratislava, p. 48.

The Military Criminal Code (law No. 18/1855) stipulated the death penalty for various crimes, such as defection, spying, rebellion, refusal of an order (even by omission), attempted murder, or extortion of a high-ranking officer. Spying was punishable by death, even if committed in negligence. Refusal of an order had increased consequences in times of martial law – what was in many places the situation during World War I. The rebellion was another type of crime punishable by capital punishment, which became famous in Slovakia with the most legendary case during that period – the Kragujevac uprising. According to regulations of martial law, in cases of mass rebellion, the commander could decide to shoot every tenth person in the row as a reprisal.

2. First Czechoslovak Republic

The first Czechoslovak Republic adopted the regulation of the former empire, as a reception of Austro-Hungarian law. As mentioned, Austrian and Hungarian criminal law acknowledged capital punishment as the sole possible method to sanction intentional murder.[9] However, this sanction could be eased, reflecting the mitigating circumstances of the perpetrator. Problems arising from the war with Hungary forced the special Minister for the Governance of Slovakia to issue martial law on the entire territory (also in the Zakarpattia oblast) for three years. As it was written in the Act,

> *"[a]ccording to the statement, the following acts are punishable by death: disloyalty, rebellion, murder, crime against public healthcare causing death, crimes causing flood, crimes against public security in train traffic, telegraphs, telephones, and ships."*[10]

Czechoslovakia formally stipulated the death penalty also as a consequence of treason during war, with the formal amendment of law for the protection of the Republic in 1936 because of the worsened international situation.

3. Czechoslovakia after 1945 and the communist coup

After World War II, laws regulating the retributive judiciary were adopted in the Slovak territory. According to the regulations of the Slovak National Council No. 33/1945, it aimed to punish former fascist occupants (non-Czechoslovak citizens) with the sole possible sanction of death. Further, it aimed to punish homeland traitors, who were punishable only with the death penalty. Other targets were collaborators who could receive up to 30 years of prison incarceration despite the death penalty. Treason of the Slovak national uprising was viewed as a special crime, with capital punishment as the only consequence. Other targets of the aforementioned act were smaller convicts, which were mostly sentenced to forced labour or short-period prison incarcerations. In comparison with Czech regulations, the aforementioned crimes had vague

9 Cornelie C. Bestová (1996): *Trest smrti v německo-českém porovnání*, Doplněk, Brno, p. 140.
10 Decree of issuing Martial Law in the territory of Slovakia and Zakarpattia.

descriptions, therefore, judges had substantial discretionary powers to decide which crime should be connected with particular groups of people.

In connection with the communist coup in 1948, law No. 231/1948 on the Protection of the People's Democratic Republic was adopted. This law modified the general understanding of crimes against the state, such as high treason, spying, treason, war sabotage, and attacks on state representatives. According to the new modification, people could be charged for their activities against the socialist character of the state (people democratic) or its allies.

With the adoption of the unified Criminal Code (law No. 86/1950), the Military Criminal Law and Civil Criminal Law were unified; therefore, the potential number of penalties stipulating the death penalty broadened. It stipulated a death penalty for 25 criminal acts, in some cases, without any other alternative.[11] It was possible to impose the death penalty as the sole sentence in 15 cases. Nevertheless, § 29 of the Code stipulated that in a case of special injustice, the death penalty could be substituted with a lifelong sentence or with incarceration lasting from 15–25 years. The Code contained crimes listed in the Law on the Protection of the People's Democratic Republic, and fully supplemented them. The penalties were formulated with the totalitarian intention to toughen the criminal policy for all citizens and persecute their opponents, which was highlighted in § 17 of the Code, stating that the basic aim of punishment was to destroy the enemy of the working class.

With the amendment of the Criminal Code in 1956, crimes such as murder or attack on the public representative were deleted, and it stipulated the possibility of imposing the alternative penalty of 25 years prison sentence for crimes, where the death penalty was viewed as the only sanction. The lifelong sentence was abolished and substituted with a 25-year-long prison incarceration.

With the adoption of the new Criminal Code (law No. 140/1961), crimes punishable by the death penalty increased, accounting for 33 crimes. This situation partially happened because of the development of society, when lawmakers needed to reflect on new types of crimes, such as endangering the security of the subject of aviation or abduction of a plane abroad (these crimes were introduced with the amendment of the Criminal Code (law No. 45/1973) or introduced various crimes against humanity in connection with international obligations. § 29 of the Criminal Code characterised the death penalty as a special penalty, which could be imposed for the preservation of the security of society and there was no possibility that the perpetrator would improve with a prison sentence up to 15 years. Furthermore, the Criminal Code in the aforementioned paragraph connected its further implementation with the conditions that the level of dangerousness of such crime for society needed to be particularly high because of the horrible motive, hardy reparable consequences of such action, or particularly terrible manner of its perpetration. Owing to the significant disproportion between possible penalties, with the novelisation of the Criminal Code in 1973, the state adjusted § 29 with the possibility of resocialisation of the perpetrator with an incarceration sentence from 15 to 25 years, which the court could impose instead of

11 Jarmila Chovancová: Jednotlivé stanoviská k trestu smrti, *Acta Iuridica Sladkoviciensia*, 1/2011, p. 122.

the use of capital punishment. In the first five years of the amendment, alternative incarceration was imposed on 64 people. The general meaning of the term protection of society became publicly known owing to the Publication of Opinions and Unitary Decisions of the Supreme Court of the Federative Republic.

IV. COURTS

1. Austria-Hungary

According to the Criminal Procedural Code of 1897 (law No. XXXIII/1896), the first instance courts were the district courts, where the judge was an individual or *sedrie* (senate of three people). There was a possibility of appealing to the regional courts (*sedries*), which could revise the opinion on the merits of the case. District courts would decide criminal acts based on the threat they posed to society and preside over the proceedings. *Sedries* would decide serious crimes, including murder, as a first instance court, which was an offence punishable by death. Second instance courts – Royal Tables, with the possibility of decision revision in the matter of merit, and the Royal Hungarian Curia as the last instance, could revise legal mistakes connected to decisions.

Classical military jurisdiction comprised Brigade Courts, Division Courts, and the Curia. In the case of war, moveable military field courts were created, comprising Lower Field Courts, Higher Field Courts, and a Supreme Field Court, which were useful in situations of moving frontlines. In cases when martial law was declared, a special type of proceeding and punishment was introduced, with no possibility of requesting an amnesty or appeal. Harshened sanctions were introduced. Martial law could expand military jurisdiction to a broader area, even in the civil or criminal sphere, in compliance with the description of proper regulations. It could be introduced for specific areas or for specific types of crimes. In several parts of the monarchy, military courts were justified in handling cases of serious criminal acts, such as murder, which were punishable by death. The Hungarian part of the monarchy, protecting the interests of its citizens, did not apply such a state of emergency to the entire territory. For special cases stipulated in the Military Procedural Code, there was the possibility of introducing summary military courts, where the commanding officer, who usually found the perpetrator involved in a special type of crime, *in flagranti*, issued the death sentence on him and shot him dead on the spot.

2. First Czechoslovak Republic

With the creation of the Czechoslovak Republic, legal dualism emerged even within the court structures. In the sphere of criminal law, Hungarian law continued to be in effect in Slovakia. Within the amendment to the Military Procedural Code adopted shortly after the creation of the Czechoslovak Republic (law No. 89/1918 from the 19th

of December 1918), the institute of summary military courts was finally abolished.[12] Moreover, the Czechoslovak Supreme Court was established. Law No. 201/1928 unified the names of the courts in the entire republic. Four types of courts in the republic can be identified. Laws No. 131/1936 and No. 115/1937 adopted new rules regulating martial law and military field courts, with the amendment of the rules regulating amnesty – it was not passed to the president directly. The newly created state court, founded in the Law on the Protection of the Republic, was proper for appraising the crimes.

3. Czechoslovakia after 1945 and the communist coup

During the period of World War II, allies agreed on the prosecution and punishment of persons who perpetrated crimes against humanity and breached the fundaments of international law.[13] After World War II, Czechoslovakia in connection with its international obligations, began arranging reprisals aimed towards the country's war criminals and collaborators. In January 1942, at the London conference, the Czechoslovak delegation signed St. Jacob's declaration, which appealed for the punishment and prosecution of Nazi criminals.[14] This was solved by the creation of a people's retributive judiciary.

The legal base of the people's judiciary in Slovak territory were the regulations of the Slovak National Council (which acquired law-making legitimacy owing to its role in the Slovak National uprising in 1944), No. 33/1945, 83/1945, 57/1946, and 88/1947, and governmental regulation No. 55/1945. In the Czech part of the common state, the decree of President Edvard Beneš No. 16/1946, 137/1945 and 138/1945. According to the presidential decrees, the convict did not have the option to appeal against the judgement, and his final opportunity to save his life was to submit his demand for amnesty.[15] According to regulation No. 33/1945, the National Court was established in Bratislava, and in each regional district and municipal town, Regional and Municipal Courts were established, however, Municipal Courts could only adjudicate on insignificant felonies. The presidential decree referred only to the extraordinary people's courts, which were being established in place of regional courts.[16] The national court in Bratislava held processes with top officials of the independent Slovak Republic. Retributive courts were decided in the senate, whereas the chairman was decided according to the profession,[17] and other judges were selected from the public. In practice, the people's judges were elected from active members of the Slovak National Uprising, from

12 Pejčoch, Plachý (2012): p. 18.
13 Liška et al (2006): p. 15.
14 Miloš Maďar: Trest smrti – Komparácia vybraných historických a právnych súvislostí, *Notitiae Novae Facultatis Iuridicae Universitatis Matthiae Beli Neosolii*, 1/2012, p. 205.
15 Ivo Pejčoch (2017): *Gottwaldovi milosti*, Svět křídel, Cheb, p. 5.
16 Ladislav Vojáček, Karel Schelle (2007): *Právní dějiny na území Slovenska*, KEY Publishing s.r.o., Ostrava, p. 332.
17 Matej Mesko: Sociálne aspekty retribúcie na Slovensku na príklade mesta Banská Bystrica, *Motus in verbo*, 2/2018, p. 41.

anti-fascist backgrounds, or who were persecuted during the cleric-fascist regime.[18] There were agreements for the division of judges based on the political life in the country – the communist and democratic part of the resistance. Retributive courts were closed by 1947 and later re-opened for a short period after the communist coup in 1948.

The legal codification in the totalitarian period brought the adoption of the new Criminal Procedural Code, which was adopted in 1950, later substituted by an amended Code in 1956, and finally, again in 1961. As another important source of law, we need to mention the law adopted on people's character of the courts and about new areas of the courts in 1948. The powers of the courts were adjusted to the borders of administrative units of the republic, and reforms caused the final unification of the court's systematics in Czechoslovakia. The people's character of the courts caused changes in the structures of the deciding bodies—in the Municipal Court, there was one professional judge together with two people selected from the public; in Regional Courts, there were two professional judges and three people selected from the public; and in the Supreme Court, there were three professional judges and two people selected from the public. Judges from the public were appointed by the government in connection with the propositions of the regional administrative bodies for a period of one year – they were usually people known for their positive stance towards the totalitarian government.

According to the Military Procedural Code of 1950, military courts had the following structures: Lower Military Courts, Higher Military Courts, and Supreme Military Courts (in the case of field courts, Lower Field Military Courts, and Higher Military Courts). In 1961, a new law was adopted referring to the powers of the courts, which further stipulated new rules for the composition of the senates, with few changes. With the federalisation of the republic in 1968, the Supreme Courts of the Federative Republics and one Supreme Court for the entire Czechoslovak Republic were established.

With the adoption of law No. 64/1956, compulsory revisions of death penalty sentences were introduced into the Criminal Procedural Code as a duty of the Supreme Court. During the period 1962–1988, 131 persons were convicted to capital punishment, however, by such revisions, 42 sentences were deemed defective after the Supreme Court revision, which denotes almost one-third of the issued sentences. The newly adopted Criminal Procedural Code (law No. 141/1961) also contained regulations of the aforementioned law.

With the adoption of law No. 149/1969, which amended the Criminal Procedural Code, the death penalty proceeding was held exclusively in regional courts as the first instance judiciary body in such cases.

18 Anton Rašla (1969): *Ludové súdy v Československu po II svetovej vojne ako forma mimoriadneho súdnictva. (Rukopis autorsky sprac. v rokoch 1964–1965)*, Slovenskej Akadémie Vied, Bratislava, p. 127.

V. AMNESTIES

According to § 496 of the Hungarian Criminal Procedural Code (law No. XXXIII/1896), the death sentence could be performed only in case the head of the state did not decide about the convict's request for an amnesty. However, this rule was not applicable to the decision imposed during martial law. The Hungarian Criminal Procedural Code (law No. XXXIII/1896, § 496–500) stipulated that the chairman is obligated to ask the convict if he wishes to apply for an amnesty. In cases where this request was submitted, the chairman asked the defence counsel for the official submission of the amnesty, which was further considered by the court in the private session, with an evaluation of the opinion of the state prosecutor. The court's stance towards amnesty was submitted to the Supreme Court, which adopted its own opinion on the amnesty and submitted it further to the Minister of Justice, who finally submitted it to the head of the state – the king.[19] The regulation was later adopted in Slovak territory, and furthermore, it was found in the Military Procedural Criminal Code elaborated during World War II for the independent Slovak state (law No. 232/1941). According to the aforementioned provisions, the death penalty could not be performed until the final decision of the head of the state regarding the amnesty was received. This situation did not apply at all to the decisions of the field military courts. Under provisions of amnesty, the head of the state could partially ease punishment or completely release the convict from prison.

With the adoption of the provision § 7 section 1 of law No. 91/1934, the death penalty could not be performed until the president of the Republic did not decide about amnesty. Lawmakers wanted to clarify the situation and establish unitary regulations for the entire Republic. Provisions under the aforementioned law provided the possibility in cases of mitigating circumstances, to substitute the death penalty with 15 to 30 years of incarceration and the death penalty imposed according to the provisions of the law on the protection of the Republic with life-long prison sentences.[20] President Masaryk granted 412 amnesties in total, which considerably reduced the actual executions. His successors in the first Republic did not have the same attitude; they granted 10 amnesties in total.

After the reestablishment of the Czechoslovak Republic, president Beneš did not grant amnesty to new death sentences, however, lawmakers cancelled death sentences from the interwar Slovak war state. President Klement Gottwald during the years between 1948–1953 granted 56 amnesties in total; his successor Antonin Zápotocký during the years between 1953–1957 granted only two; Antonín Novotný during the years between 1957–1968 granted uncertain numbers; Ľudvík Svoboda during the years between 1968–1975 according to the statistics available granted two amnesties (minimally); and Gustav Husák also two. Request for amnesty can be submitted by the perpetrator, his relatives, or another competent authority.

19 Jan Rychlík (2005): Perzekúcia odporcov režimu na Slovensku 1938–1945. (K problematike charakteru ľudáckeho režimu), in Michal Šmigel, Peter Mičko (ed.): *Slovenská republika 1939 – 1945 očami mladých historikov IV,* Fakulta humanitných vied Univerzity Mateja Bela Ústav vedy a výskumu Univerzity Mateja Bela v Banskej Bystrici, Banská Bystrica, pp. 129–130.

20 Vojáček, Schelle (2007): p. 270.

VI. NUMBERS

1. Austria-Hungary

Between 1867 and 1913, 3257 civilians were sentenced to death by Cisleithanian (i.e. the Austrian part of the monarchy) courts, but only 121 were actually executed (3.7 per cent). In the years immediately preceding the First World War (1904–1913), just one person was executed in 1909 out of the 483 civilians sentenced to death.[21] We also need to mention, that from 1848 till 1918 Austro-Hungarian emperors reviewed more than 5000 capital punishments. The number of death penalties in Austria-Hungary, particularly with the focus on modern Slovak territory, is difficult to ascertain because of the situation during World War I and martial law statuses. More than 400,000 Slovaks were conscripted together during World War I, falling under the direct power of the Military Criminal Code. However, modern scholars estimate around 3000 (considering civilians and soldiers together, with more than 1000 executed civilians) sentenced to death by military courts.[22] Despite this fact, we could pinpoint the famous execution of 44 Slovaks in connection with their activities in the Kragujevac uprising, five months before the official end of World War I, or 42 Slovaks (40 soldiers and 2 civilians) connected with the Prešov uprising initiated by the creation of the newly emerged Czechoslovak republic. Rebels were executed in accordance with § 167 Military Criminal Code, for armed rebellion. Slovakians instigated more than 5 of 25 army rebellions in the Austro-Hungarian army during World War I, which says a lot, in comparison with their 4% army representation.[23] Death penalties connected with war were common, owing to mobilisation and martial law, which broadened military jurisdiction for civil and criminal matters.

2. First Czechoslovak Republic

In the First Czechoslovak Republic, 22 people were executed in total. During this period, four people were executed for political (military) crimes, others mostly for an accumulation of various felonies, particularly murders. No woman's execution was recorded, despite many death sentences; all of them received amnesties from the

21 Václav Šmidrkal: A Milestone or Mistake of Progress? The Death Penalty and State Consolidation in Austria and Czechoslovakia after 1918, *European History Quarterly*, 1/2022, pp. 21–42.

22 Peter Fitl: Die Verzeichnisse der k.u.k. militärgerichtlichen Standrechrurteile – ein Sensationsfund?
Überlegungen zur Zahl der militärgerichtlichen Exekutionen in der österreichisch-ungarischen Armee im 1.
Weltkrieg und die Thesen Hans Hautmanns, *Mitteilungen des Instituts für Österreichische Geschichtsforschung*, 2/2021, p. 24.

23 Milan Čaplovič (1996): *Vojenské dejiny Slovenska zv. IV (1914–1939)*, MO SR vo Vojenskej informačnej a tlačovej agentúre, Bratislava, p. 78.

president. Interwar Czechoslovak President T. G. Masaryk was strongly against the death penalty, which is perfectly reflected in his own following statement.

> *"When I rejected amnesty for the first time, I wrote a letter to the perpetrator, with an explanation, however, he was acquitted later. In one case the perpetrator on his own initiative told me that he was not angry with me. That the convict understood justice at that moment."*[24]

He did not like the process of not granting amnesties; however, sometimes he needed to approve an execution owing to the pressure of public opinion. Despite the majority opinion on this issue, he attempted to alleviate this burden as much as possible through amnesties. During his presidential tenure, there were 16 people executed in total, most of them for various terrible murders committed as long-term recidivists. Four persons were executed by field martial courts during the war with Hungary in 1919. After the adoption of the amendment to the law on the protection of the Republic, treason began to be punishable with capital punishment. This was reflected by rising tensions with Germany and Hungary before the eruption of World War II. During the years between 1935–1939, 10 persons were executed in total for murder and recidivism combined, and 3 for treason and spying. During the entire interwar period, four were Slovak, two were Hungarian, 15 were Czech, four were German, and one was Polish. Many times the nationality of the executions led to tensions in the political life of the country. Five people were executed with sentences from military criminal courts, and four according to the rules of field martial courts – summary military courts.

Several apologetics of the Slovak state say that there was no death penalty issued during its short period of existence. This assertion does not appear to be true; we have evidence of the execution of Ján Tehlárik in 1944 for civilian and as well as military crimes. According to Slovak historian Jozef Letz, there were about 13 death sentences in absentia, which were later revised by the newly established Czechoslovak state. However, it is noteworthy that this number does not reflect the 57,628 Slovak Jews, who were deported to the area of occupied Poland, in 1942, from which after World War II only 800 people returned.[25]

3. Czechoslovakia after 1945 and the communist coup

After World War II, Czechoslovakia began its own reprisals against traitors, collaborators, and war criminals of the Nazi occupation in compliance with its international obligations. The Republic, with this aim, established special courts called the retributive judiciary, which were in effect from May 1945 to 31 December 1948. In total, 737 people were sentenced to the death penalty. In Slovakia, only 65 persons were sentenced to death by extraordinary people's courts, of which only 29 executions were finally performed.[26] The most famous retributive processes in Slovak territory are those

24 Jan Kuklík jr.: Prezident Masaryk a trest smrti, *Dějiny a současnost*, 5/1998, p. 31.
25 Rychlík (2005): p. 134.
26 Mesko (2018): p. 49.

with former Slovak state officials—President Jozef Tiso and Minister of Foreign Affairs Vojtech Tuka—who were sentenced to death by hanging. Nine people were sentenced to death by regular courts during this period.

The year 1948 was characterised by the communist coup of the government, which followed their adjustment of the criminal policy and assumption of power from important state institutions. In the years between 1948–1950, 99 death penalties for political crimes and 16 for murders were rendered. Further, several processes were conducted with high-ranking party officials, which caused the execution of the former Secretary General of the Communist Party Rudolf Slánký and Minister of Foreign Affairs Vladimír Clementis. The last capital punishment for political activity—the fight against communist ideology—was performed on 17 December 1960, at 11:40, in the prison of Praha-Pankrác. Mr. Vladivoj Tomek, born 9 June 1933, was sentenced to death in connection with § 78 section 3 of law No. 86/1950 for high treason.[27] Up to that period, 252[28] (according to some authors 269[29]) political murders were conducted in Czechoslovakia, which comprised almost 60% of performed capital punishments from the year 1948. During the years between 1970–1990, we identified 21 death sentences (after obligatory revision of the Supreme Court), however, the factual number of executions was 16. The number of executions began to decrease over time. In general, in the Third Republic, 74 women were executed in total, most of them (66) during the period between 1945–1948 by the post-war retributive judiciary. After 1945 Slovak penitentiary facilities executed 72 prisoners in total, but we need to mention, that 62 prisoners executed within the Czech penitentiary facilities were born in Slovakia. The last execution before the official abolition of this form of punishment was held in Prague, on 2 February 1989, where Vladimír Lulek was hanged, and the last executed person in Bratislava was Štefan Svitek, hanged on 8 June 1989. Both were sentenced to death because of murder.[30]

VII. EXCEPTIONS

1. Austria-Hungary

According to the Csemegi Codex, the death penalty could not be imposed on youth aged 18 to 20 years old, which was adopted by amendment No. XXXVI/1908, which stipulated basic rules regarding the protection of and criminal proceedings against the youth in the Kingdom of Hungary. Separate protection for mentally ill and pregnant women was based on the Hungarian Criminal Procedural Code (law No. XXXIII/1896) where § 502 stated that the death penalty could not be imposed on pregnant women and mentally ill people until the period of their full recovery. Further, the protection of perpetrators under 20 was based on the Military Criminal Code, which stated in § 121,

27 Liška et al (2006): p. 37.
28 Liška et al (2006): p. 159.
29 Fico (1998): p. 77.
30 Liška et al (2006): p. 21.

> *"[i]f the perpetrator of crime, which is sanctioned by the death penalty or lifelong prison sentence was not 20 years old at the time of criminal conduct, or the crime was only in the stage of attempt, there will be in the classic proceeding, if there are no special provisions regarding particular crimes, instead of hanging or lifelong sentence, incarceration lasting from 10 to 20 years, and instead of the death penalty by shooting, incarceration from 5 to 10 years."*[31]

2. First Czechoslovak Republic

The First Czechoslovak Republic adopted law No. 48/1931 regarding criminal proceedings on youth. Youth were considered persons from 14 to 18 years old. Persons under the age of 14 years were not responsible for their criminal actions and were called minors. There was an exception for crimes that could be sanctioned with capital punishment. In such cases for minors older than 12 years, it was mandatory for the court to impose an institute of protective upbringing in a medical facility.[32]

3. Czechoslovakia after 1945 and the communist coup

After the communist coup, a new Criminal Code was adopted in 1950. The code enabled the application of the death penalty for persons above 18 years of age, however, as during earlier periods, youth and minors were protected by separate provisions concerning the protection of youth. With formal derogation of all criminal acts in the territory of Slovakia, the protection of pregnant women became ineffective, however, an improvement of this situation came with the novelisation of the Criminal Code in 1956, which stated that the death penalty could not be imposed on pregnant women. Another important change occurred with the Criminal Code of 1961 which stated that the death penalty could not be imposed on the perpetrator, who was 18 years old at the time of criminal conduct. Other protective regulations based on the Criminal Procedural Code prohibited the execution of the death penalty on pregnant women. A pregnant woman can only receive an alternative incarceration sentence. If it was discovered that the woman was pregnant before the final verdict, it could be the basis for a retrial.[33] Protective regulations on mentally ill people disappeared, however, provisions regarding criminal responsibility stayed untouched – the death penalty could not be imposed on persons, who due to their illness, could not recognise the consequences of their actions.

VIII. CONCLUSION

Czechoslovakia inherited historically broad democratic and progressive traditions, which caused the death penalty to not be used excessively in the country's history, apart from the exception of the retributive judiciary and purges according to the

31 Military Criminal Code, law No. 18/1855, § 121.
32 Vojáček, Schelle (2007): p. 270.
33 Fico (1998): p. 52.

Soviet-style Stalinist pattern (many times realised under the direct guidance of the Soviet supervisors and advisors). Even the independent Slovak state courts performed only one execution in total, due to the still applicable Czechoslovak laws and former Czechoslovak state judges, who remained in their functions. Their fear of future regime change is a well-known known fact because many historians believe that from 1943 it was highly probable that Germany would lose the war and Czechoslovakia would be restored afterwards. Judges wanted to save their lives in the purview of the potential regime change.

The means of execution remained practically the same during the periods discussed (with the exception of guillotine executions in the Protectorate of Bohemia and Morava, which was introduced by the Nazis). Worldwide, hanging was viewed as the most successful and appropriate method of execution, which was confirmed even by the stance of the English Royal Commission examining the performance of the death penalty in the years between 1949–1953. Alternatives other than hanging were not discussed, despite the use of other forms of punishment, particularly in the US.

Throughout the Soviet-type totalitarian period, the death penalty sentences were reduced after the stabilisation of the regime due to the various criminal regulations restricting its use. Legal scientists even discussed the justness of its use because its performance was mostly backed by the intention of preventing future crimes. Prestigious Slovak legal scientist of the socialist period and future co-author of the Slovak constitution, M. Čič, stated that estimating the effectiveness of this penalty is not accurate, because several serious crimes, which are sanctioned with the death penalty, are perpetrated in affect. In 1969, regarding the legality of the death penalty, the Commission of the Federal Assembly of the Czechoslovak Socialist Republic stated that the commission had unequivocally lined towards the conclusion that it was required to continue a lean towards abolitionist tendencies in Czechoslovak law and that contemporary research results regarding the problematics of the death penalty constitute a clear foundation for a revision of the currently effective law.[34] The essential argument defending the use of capital punishment is the protection of society from perpetrators. Most convicts from the last 20 years of Czechoslovakia's existence were harsh recidivists, and their execution was realised in compliance with the strict provisions of § 29 of the Czechoslovak Criminal Code.

Regarding the problematics of judicial mistakes, the classical argument of the abolitionist movement, in the territory of modern Slovakia, no available data is known regarding any case that was accompanied by the court's mistake, which resulted in the sanction of the death penalty sanction, or even execution.[35] Some authors even stated that based on the remedies available, in effect even before 1 July 1990, it is demagogical to insist on the possibility of an execution due to a judicial mistake in the territory of modern Slovakia.

The death penalty was finally abolished in 1990, owing to the insistence of Czechoslovak politicians for membership in prestigious international and European

34 *Materials of the Federal Assembly CSSR Commission to the problematics of the Death penalty*, Federal Assembly of the CSSR, Prague, 1969.

35 Fico (1998): p. 20.

organisations, such as the Council of Europe or the European Union. All these assertions were demagogical, as membership in the Council of Europe was connected to the adoption of Resolution No. 1044 regarding the abolition of the death penalty, which stated that the *preparedness of the state to ratify the Sixth additional protocol will be deemed as a basic condition of membership in the Council of Europe.*[36] However, this move helped to achieve a democratic reputation in the West.

Popular opinions on this matter have changed over the time and can be illustrated using available data. According to the results of the first public opinion survey on this matter, which was realised by the Czechoslovak Institution for the Survey of the Public Opinion in 1947, 54% of citizens were in favour of the preservation of the death penalty, 25% supported its abolition and 21% did not take any stance.[37] In the year 1990, results of a similar poll had the following results – 49% of the respondents supported the preservation of the institution of the death penalty, 33% supported its abolishment, and 18% did not take any stance. Owing to the rise of criminality and mafia, caused by the general amnesty and erosion of police authority, several people believed its reintroduction was a necessity. However, due to constitutional changes and the recently adopted regulation of the Council of Europe, its reintroduction became almost impossible.

36 Fico (1998): p. 33.

37 Alica Fedorková: The development of the death penalty in the territory of the Slovak Republic and options his restoration, *Projustice. Vedecko-odborný recenzovaný časopis pre právo a bezpečnostné vedy*, 2019. Available at: https://www.projustice.sk/trestne-pravo/vyvoj-trestu-smrti-na-uzemi-slovenskej-republiky-a-moznosti-jeho-znovuobnovenia (accessed on 28.12.2022).

The Historical Context of the Death Penalty in Croatia

LEA FEUERBACH
Ph.D. student, University of Miskolc,
Central European Academy
E-mail: lea.feuerbach@centraleuropeanacademy.hu

ABSTRACT
This article explores the historical development and abolition of the death penalty in Croatia, emphasizing its significance in the broader context of human rights and state power. Tracing its roots through the tumultuous periods of World Wars I and II, and particularly under the Yugoslavian socialist regime, the article highlights how autocratic practices led to widespread human rights violations and unexplained human losses. The abolishment of the death penalty in 1990, coinciding with Croatia's independence and the adoption of a new constitution, marked a significant step towards protecting human life. This transition reflects global and European trends towards the abolition of capital punishment, as seen in Croatia's ratification of relevant European protocols. The study underscores that merely enacting laws is insufficient without their fair implementation and respect for human rights, warning against the potential resurgence of the death penalty under adverse political influences. By understanding this historical context, we can better safeguard against future abuses of state power.
KEYWORDS
death penalty, Croatia, human rights, Yugoslavian socialist regime, world wars, capital punishment abolition.

Contextul istoric al pedepsei cu moartea în Croația

Rezumat
Acest articol explorează dezvoltarea istorică și abolirea pedepsei cu moartea în Croația, subliniind importanța acesteia în contextul mai larg al drepturilor omului și al puterii de stat. Urmărind evoluția sa prin perioadele tumultoase ale Primului și celui de-al Doilea Război Mondial și, în special, sub regimul socialist iugoslav, articolul evidențiază modul în care practicile autocratice au condus la încălcări generalizate ale drepturilor omului și la pierderi umane inexplicabile. Abolirea pedepsei cu moartea în 1990, care a coincis cu independența Croației și cu adoptarea unei noi constituții, a marcat un pas semnificativ către protejarea vieții umane. Această tranziție reflectă tendințele globale și europene de abolire a pedepsei capitale, după cum reiese din ratificarea de către Croația a protocoalelor europene relevante. Studiul subliniază faptul că simpla promulgare a legilor este insuficientă fără punerea lor în aplicare echitabilă și fără respectarea drepturilor omului, avertizând cu privire la potențiala reapariție a pedepsei cu moartea sub influențe politice adverse. Prin înțelegerea acestui context istoric, ne putem proteja mai bine împotriva viitoarelor abuzuri ale puterii de stat.
Cuvinte cheie
pedeapsa cu moartea, Croația, drepturile omului, regimul socialist iugoslav, războaie mondiale, abolirea pedepsei capitale.

I. INTRODUCTION

We ask ourselves why speaking about the death penalty is important, especially in the historical context of a country that abolished it more than 30 years ago. The answer can be found in an old Latin saying, *Historia est Magistra vitae*. The history of the death penalty is the best teacher of the importance of respecting human rights and how dangerous state autocracies can be. This article presents the development of the death penalty in Croatia.

World Wars I and II strongly influenced the development of criminal law in Croatia. In the period of the wars, a lack of control resulted in a high number of victims, leading to an after-war period in which the state dealt with war enemies under unclear circumstances. Special attention should be paid to Yugoslavia's socialist period. Another reason the death penalty remains a controversial topic is that there is a large amount of unexplained human losses. Unlike the victims of fascism and Nazism, the victims of communism have been investigated to a much lesser extent. As a totalitarian system, the latter regime did not allow the disclosure of information or any research on topics that would call into question the correctness of the system and policy itself. Moreover, this regime unfairly enforced laws and sanctions on political and other prisoners, even with the most severe punishments.

The death penalty is a cruel way of punishment, and as such, just a constitutional text or the text of the criminal code is not good enough to guarantee human rights. The past shows us that if we do not have rule of law, autocratic state authorities can easily find ways to bypass basic human rights. The death penalty is a clear symbol of a social structure in which state power is at the centre, instead of individuals and their rights. To prevent such violations, it is important to be aware of their histories.

Although global trends are moving toward abolishing the death penalty, the death penalty is still widely applied. Discussions about the death penalty are ongoing, and we can never be sure that the possibility of its application will not return under the wrong political influence. Therefore, even though the past is behind us, we should not ignore it but learn from it and ensure the protection of human rights.

II. CRIMES

1. Regulation of the death penalty at the beginning of the 20th century in Croatia (1900–1918)

At the very beginning of the 20th century in Croatian territory, the Austrian Criminal Code on Crimes, Transgression, and Misdemeanours regulated matters of criminal law and, therefore, the death penalty. The Criminal Code was introduced in 1852 by imperial patents in Croatia and Slavonia. Its introduction abolished the legal particularism, legal uncertainty, and arbitrariness of courts in the field of penalties. Although it was repressive, it reduced the number of death sentences imposed. As

can be seen from the name of the law, there was a tripartite division into crimes, transgressions, and misdemeanours. The difference was in the severity, intent, and character of the act committed; however, the distinct application was not strictly determined. The death penalty was prescribed for some specific cases. The death penalty could be pronounced for high treason if it was directed against the person of the ruler or the exercise of his ruling rights; for the violation of someone else's property, if it resulted in death, and if the perpetrator could have foreseen it; for the committed murder, more precisely, for the perpetrator and the person ordering the murder and all others who directly participated in the commission; for murder during a robbery, and for all those who participated in the killing, and for arson if it killed a person, provided that the person who caused the fire could have foreseen it in advance.[38] Martial courts could impose the death penalty for rebellion, murder, robbery, arson, and public violence. Under certain circumstances, the jurisdiction of military courts could include the prescription of the death penalty for espionage, the conclusion of agreements with the enemy, inciting violations of military duty, and participating in other military crimes.[39] This law intended to reduce the number of crimes punishable by death and corporal punishment of convicts. Accordingly, only six death sentences were imposed in 1900.[40]

2. Regulation of the death penalty during the Kingdom of Serbs, Croats, and Slovenes and the Kingdom of Yugoslavia (1918–1941)

In 1918, a new form of state was created and the state of Serbs, Croats, and Slovenes were established. One of the first and most important documents of this period was the Vidovdan Constitution, which was adopted in 1921.[41] The Constitution itself narrowly regulated the death penalty. In principle, the death penalty couldn't be determined for perpetrators of political crimes. Exceptionally, it was permitted for an attempted or successfully executed assassination of the ruler or other members of the royal court. In addition, according to the constitution itself, the death penalty could be imposed when, in addition to political crimes, another crime was committed for which the death penalty was prohibited.[42] Although the Constitution itself had this arrangement, the reality was completely different. Just one month after the adoption of the Constitution, on 2 August 1921 the Law on the Protection of Public

38 Ivana Vidović (2018): *Kazneno pravo u Hrvatskoj i Slavoniji nakon 1852. godine*, Sveučilište Josipa Jurja Strossmayera u Osijeku, Pravni fakultet, Osijek, pp. 12–13.
39 Josip Šilović (1908): *Kazneno pravo po K. Janki*, Drugo popravljeno izdanje, Zagreb, p. 236.
40 Zvonimir Prtenjača: Ubojstvo i smrtna kazna u Austro-Ugarskoj, *Essehist. Časopis studenata povijesti i drugih društveno-humanističkih znanosti*, 11/2020, p. 95.
41 Hrvoje Čapo (2012): *Državni represivni aparat na području Hrvatske od 1918. do 1941. godine*, Sveučilište u Zagrebu, Fakultet hrvatskih studija, Zagreb, p. 32.
42 *Constitution of the Kingdom of Serbs, Croats and Slovenes from January 28, 1921*.

Security and Order in the State was passed.[43] The law punished participation in associations whose goal was the spread of communism and other associations whose goal was to gain power through non-parliamentary means. Participation in such associations was punishable by death or imprisonment for up to 20 years. The authoritarianism of the regime and the dichotomy between the law and the Constitution itself are proven by the fact that in the Kingdom of Serbs, Croats, and Slovenes (hereinafter: SCS) between 1918 and 1928, 30,000 people were arrested, 600 political murders were committed and 24 death sentences were handed down for political offences.[44]

The year 1929 was marked by the repeal of the Vidovdan Constitution and the adoption of the Criminal Code for the Kingdom of Serbs, Croats, and Slovenes. In 1929, the authorities tightened their relations with citizens. The state tried to keep citizens obedient by using force, and in its efforts to achieve this, it used various administrative and judicial bodies. This period of dictatorship was marked by restrictive legislative solutions.[45] This situation did not change even after the adoption of the new Constitution of the Kingdom of Yugoslavia in 1931. According to the Constitution, the king was the holder of all legislative, administrative, and judicial powers, and any insult to his majesty was severely punished.[46] Although the legislation of this period predominantly emphasised the protection of the state, the Criminal Code for the Kingdom of Serbs, Croats, and Slovenes also prescribed the death penalty for ordinary crimes. The law divided criminal offences into crimes and misdemeanours. The difference was in the punishments: the death penalty or prison was prescribed for crimes, whereas milder punishments such as imprisonment and fines were prescribed for misdemeanours. The death penalty was prescribed as absolute only for certain crimes that could be defined as political. Thus, attempted murder, murder of the king, the heir to the throne, and the royal governor stand out. However, "ordinary" murder was regulated in a separate chapter of the law. This chapter of the law referred to criminal offences against life, and to impose the death penalty, the murder needed to be committed in a "*grave manner.*" As a rule, it is necessary to prove that the murder was planned to be carried out with poison or in a merciless way, so that several lives were endangered, and that it was motivated by self-interest or committed to conceal another crime.[47] The law provided for the death penalty for property crimes, more precisely, for robbery and aggravated theft if a person was killed during the same crime against someone's property. Instead of the death penalty, the court rendered a sentence of life imprisonment at its discretion.

43 Bosiljka Janjatović: Hrvatska 1928.–1934. godine: vrijeme organiziranih političkih ubojstava, *Povijesni prilozi*, 13/1994, pp. 219–221.
44 Ivan Kosnica, Martina Protega: Politička prava u Kraljevini Srba, Hrvata i Slovenaca: Razvoj temeljnih obilježja, *Pravni vjesnik*, 1/2019, pp. 149–151.
45 Janjatović (1994): pp. 220–222.
46 Stipica Grgić: Neki aspekti poimanja uvrede vladara u vrijeme diktature kralja Aleksandra I. Karađorđevića, *Radovi Zavoda za hrvatsku povijest Filozofskoga fakulteta Sveučilišta u Zagrebu*, 1/2009, pp. 347–349.
47 Nikolina Srpak*:* Kazneno pravo u doba Nezavisne Države Hrvatske (1941.–1945.), *Hrvatski ljetopis za kazneno pravo i praksu*, 2/2006, pp. 1120–1124.

3. The death penalty during World War II in the Independent State of Croatia (1941–1945)

World War II had a significant impact on relations between Europe and the world. Accordingly, there were also changes in the political organisation of the Croatian territory. Instead of the Kingdom of Yugoslavia, the Independent State of Croatia (NDH) was established. It was a puppet state created under the supervision of Nazi Germany and Fascist Italy. It was a period of fascist totalitarian dictatorship under the control of the Ustasha movement. These political changes are also reflected in criminal legislation. Namely, the first legal change was the name of the criminal law as to make it more in the spirit of the Croatian language (from "*krivični*" to "*kazneni*").[48] Other changes were in the direction of aggravating punishment for political crimes. A special chapter of the criminal code was introduced that regulates criminal offences against the state and its organisation. In this chapter, the death penalty was prescribed for eight criminal acts. This represents a significant tightening of the situation in Yugoslavia. Additionally, the death penalty was introduced for political crimes, whereas the previous system prescribed life imprisonment, with exceptions.[49] The chapter on the law dealing with anti-state crimes experienced the most significant changes. There was increased repression and a wide possibility (and often an obligation) of prescribing the death penalty. Thus, the death penalty was a mandatory punishment for anti-state crimes, which provided the death penalty for any crime that aimed to change the state order by force or by threatening the use of force, for any crime that hindered or had the aim of preventing a chief or other persons from performing their duties, for any crime whose goal was to acquire state power, and for every act that aimed for the Independent State of Croatia to merge with another state or to separate some part of it.[50]

Changes can also be seen in a chapter on the Criminal Code that referred to crimes against life. The main change referred to the change in the jurisdiction of the criminal offence of murder (basic and qualified forms), from the jurisdiction of the regular court to that of the martial court and mobile martial court. On 17 May 1941, a legal provision for a martial court was adopted. The Act established courts that could issue the death penalty only for 14 crimes. These acts include violence in a crowd; murder; qualified murder; arson of one's own or another's property; arson of one's own or another's property with serious consequences; use of explosive devices; causing danger or death by any generally dangerous action; endangering railways, trams, ships, or air traffic; endangering more people in traffic; obstructing traffic; sabotage of plumbing, electrical, gas, and other installations; and robbery, burglary, and theft that resulted in death. This legislation created the broad possibility of applying the death penalty to crimes that were not commensurate with the severity of the crime committed.[51] With this arrangement, the principle of individualisation of punishment was abolished. The

48 Srpak (2006): p. 1122.
49 Srpak (2006): p. 1123.
50 Srpak (2006): p. 1134.
51 Zakonska odredba o prijekom sudu (Legal provision on summary court) Official Gazette No. 32/1941.

only exceptions were the privileged forms of murder (manslaughter, murder on demand, and infanticide), which remained under the jurisdiction of regular courts and thus retained the previous legal framework of punishment. In addition, it is important to highlight the changes in the provisions on abortion. Abortion was prohibited in the fascist Croatia, just as in the Kingdom of Yugoslavia, but the change was the impossibility of reducing punishment for such crimes. Abortion was thus moved from the rank of a misdemeanour to the rank of a crime. Such an arrangement created a bizarre situation in which infanticide remained in a privileged form and abortion was considered a crime and punished with the death penalty.[52] The jurisdiction of the martial courts was further expanded on 28 June 1941 by a new legal provision. According to the new law, the state prosecutor, with the approval of the Minister of Justice, could start a trial for any criminal offence under the 1929 Criminal Code. Such *de facto* regulations created the unlimited possibility of imposing the death penalty for all criminal offences.[53]

4. The death penalty after World War II in the Socialist Federal Republic of Yugoslavia (1945–1990)

The end of World War II brought about the establishment of a new socialist regime and a new state, the Socialist Federal Republic of Yugoslavia (hereinafter: SFRY). Partisans gradually liberated the Croatian territory and constituted the government. The Communist Party held all the power in the country through the Union of Communists of Yugoslavia. The beginning of this period was marked by the annihilation of the enemies and political dissidents. The period between 1945 and 1951 was extremely repressive. There were two types of death row inmates: those who were executed without trial and those who were sentenced to death by civilian or military courts.[54] A special role throughout Yugoslavia was played by military courts, which were responsible for the most important crimes, regardless of whether the perpetrator was a military officer or a civilian. Their cruelty was confirmed by official Yugoslav reports, according to which military courts handed down 5,484 death sentences in 1945, of which 4,864 executions were carried out against civilians.[55] The military judiciary played a dominant role until 21 September 1945 when the law on criminal offences against the people and state passed. The law criminalised acts aimed at overthrowing the existing state system but also acts such as war crimes or acts committed by enemies of the state. This law transferred jurisdiction over civilians to civilian courts, whereas jurisdiction over military

52 Srpak (2006): pp. 1125–1126.
53 Srpak (2006): p. 1132.
54 Tatjana Šarić: Osuđeni po hitnom postupku: uloga represivnih tijela komunističke vlasti u odnosu na smrtne osude u Hrvatskoj u Drugom svjetskom ratu i poraću, na primjeru fonda Uprava za suzbijanje kriminaliteta Sekreterijata za unutrašnje poslove SRH, *Arhivski vjesnik*, 1/2008, p. 345.
55 Vladimir Geiger*:* Ljudski gubici Hrvatske u Drugome svjetskom ratu iu poraću koje su prouzročili Narodnooslobodilačka vojska i Partizanski odredi Jugoslavije/Jugoslavenska armija i komunistička vlast Brojidbeni pokazatelji (procjene, izračuni, popisi) Case study: Bleiburg i folksdojčeri, *Časopis za suvremenu povijest*, 3/2013, pp. 695–697.

personel remained in military courts.[56] This law allowed the legal continuation of the radical and inhumane treatment of the state's enemies, which was also visible during the fascist Croatia. In addition, the insufficiently precise definition of criminal offences has enabled a legal analogy and a broad interpretation of the law. The goal of the law was to enable quick conviction through the deprivation of all procedural and human rights.[57] The codification of this period began with the 1946 Constitution of the Socialist Federal Republic of Yugoslavia. The Constitution does not mention the death penalty but guarantees some procedural rights. According to the Constitution, no one may be punished for a criminal offence without a competent court's decision, which is made based on law.[58] Work on codification continued, and in the following year, 1947, a new criminal law was adopted. Article 28 of the law prescribes 12 possible types of punishment, including the possibility of imposing a death penalty. The law did not contain a special part; therefore, it did not prescribe for which crimes it was possible to impose the death penalty.[59] The repression of the period from 1946 to 1951 can also be seen from the data; in that period, one death sentence was imposed per 142,000 inhabitants. If we compare it with the period of the "First Yugoslavia" from 1922 to 1937 when one death sentence was carried out per 750,000 inhabitants and the period from 1961 to 1977 where one death sentence was imposed on 3.5 million inhabitants, we see a significant reduction.[60]

After 1951, the repression and punishment for political dissidents eased. The Criminal Code was adopted in the same year. For the first time, the Socialist Federal State of Yugoslavia uniformly prescribed all criminal offences for which death penalties could be imposed. The death penalty was prescribed as an exceptional punishment only for the most serious criminal offences against the people and state, in the chapter against humanity and international law, for criminal offences against the armed forces, in the chapter referring to criminal offences against life, and for criminal offences against the general safety and the property of people.[61]

Unlike in the previous period, the death penalty was not prescribed as absolute, but the court had the discretion to choose the punishment. In the chapter on the criminal code that refers to criminal offences against life, we also find the relaxation of the previous legal framework. According to the new law, the death penalty is allowed only for gruesome murders. The law lists some of the circumstances that must exist for the death penalty to be imposed for murder. The murder must be committed cruelly or insidiously; it must be committed in a way that puts several people in danger; it

56 Geiger (2013): p. 699.
57 Nada Kisić-Kolanović*:* Vrijeme političke represije: »veliki sudski procesi« u Hrvatskoj 1945.–1948., *Časopis za suvremenu povijest*, 1/1993, pp. 3–7.
58 Constitution of the Federal People's Republic of Yugoslavia. Available at: http://mojustav.rs/wp-content/uploads/2013/04/Ustav1946.pdf (accessed on 17.11.2022).
59 Krivični zakonik – Opšti dio (Criminal Code – General part), Official Gazette of SFRY, No. 106/47.
60 Srđan Cvetković: Jedan pokušaj kvantifikacije državne represije U Srbiji 1944–1953, *Istorija 20. veka*, 2/2005, p. 71.
61 Vidoje Miladinovic: Death Penalty in Our Legislation and Judicial Practice in the Past 30 Years, *Collection Papers. Faculty of Law Niš*, 15/1975, p. 113.

must be committed out of self-interest or to cover up another criminal act. The law also enabled the imposition of the death penalty if the murder was committed for low motives, which left the courts with a wide range of interpretations and applications of the death penalty.[62] In addition, there was the possibility of imposing the death penalty if the person did not commit a murder in any of the stated cases but was previously convicted of premeditated murder.[63] If we compare this law with the Criminal Code of the Kingdom of Serbs, Croats, and Slovenes, we will see that the 1929 law prescribes qualified murder, murder or manslaughter, and ordinary murder in the same paragraph, whereas the 1951 law separates murder or manslaughter in an isolated paragraph as a special form of the criminal offence of murder. The trend of mitigating punishment is more clearly visible through other preventive punishments. Thus, the 1929 code created the possibility of life imprisonment for murder with a minimum sentence of 10 years imprisonment. In 1951, the minimum sentence for murder was five years.[64] The death penalty was not reserved for murder. In the section on the law that refers to property crimes, we find two crimes for which it was possible to impose the death penalty. The first were serious cases of theft and robbery, which were committed cruelly, or where a person was deprived of life or was seriously injured during the commission of the crime. The second set of crimes where the death penalty was also permitted were robbery cases that resulted in serious consequences for the economy of the state and the supply of citizens if the robberies were committed by a group or gang. The death penalty could also be imposed for crimes that endangered the general safety of people and property. However, the possibility of pronouncement was limited and allowed only if several people had died. The criminal offences referred to were endangering life and property by dangerous action or means; damaging protective devices in mines, factories, and construction sites; illegally and improperly performing construction works; endangering public traffic; and recklessly supervising public traffic. These criminal acts seriously endangered public safety.

Although there was a broad possibility of applying the death penalty, its widest application is found in the two heads of law that refer to criminal offences against the people and the state and criminal offences against the armed forces. The law prescribed 23 criminal offences against the people and the state for which it is possible to impose the death penalty, and 13 criminal offences in the chapter relating to acts against the armed forces. Although by 1951, the resistance towards political dissidents and war enemies had weakened, great emphasis was placed on the protection of the state and its security.

The most significant weakening of the death penalty occurred with the 1959 Amendment of the Criminal Code.[65] This amendment abolished the possibility of imposing the death penalty for almost all property crimes. Thus, the strictest punishment for serious forms of robbery and crimes against security was harsh imprisonment.

62 Krivični zakonik FNRJ (Criminal Code of the SFRY), Official Gazette of the SFRY, No. 13/1951.
63 Miloš Okuka: I sve stroži i stroži, *Književni jezik*, 2/1982, p. 94.
64 Okuka (1982): p. 96.
65 Novela Krivičnog zakonika (Amendment of the Criminal Code), Official Gazette of the SFRY, No. 13/1951.

This amendment greatly reformed the previous strict criminal legislation. An important change was that the death penalty was not prescribed for any crime. Under the new law, harsh imprisonment is always an alternative to the death penalty. This left the court with the discretion to choose the punishment. Although there could be a basis for imposing the death penalty, the court may impose a sentence of harsh imprisonment if there were justifiable reasons.[66]

Further tendencies of the Yugoslav legislation are toward limiting the death penalty and its application only to exceptional cases. This trend is also proven by the fact that from 1952 to 1972, 198 death sentences were pronounced, which is significantly less than in the previous post-war period. It is also interesting to note that, in addition to legislative reforms, the possibility of pardons influenced the reduction in the number of death sentences during this period. From 1954 to 1964, 22 people were pardoned, and over 70% of death sentences were commuted to rigorous imprisonment during the same period.[67]

The 1963 Constitution of the Federal People's Republic of Yugoslavia made significant progress regarding the protection of human rights. Unlike the 1946 Constitution, which dealt with all criminal issues in just one article with nine paragraphs, the 1963 Constitution dealt with the criminal procedural rights of man in more detail. Thus, the four articles guaranteed fair judicial proceedings: the right to appeal, the right to defend, and the right to respect human rights and dignity. The most significant change was highlighted in Article 47 and related to the limited prescription of the death penalty.[68] The 1963 Constitution of the SFRY stipulated that the death penalty can only be provided for exceptional cases and only by federal law for the most serious crimes and only for the most serious forms of such crimes.[69]

For the first time, the 1974 Constitution of the SFRY declared that human life is inviolable and once again emphasised that the death penalty can be exceptionally prescribed and pronounced only for the most serious forms of crimes.[70]

Since 1976, we have to follow criminal legislation regulations at two levels: federal and republican. The Criminal Code of the Socialist Federal Republic of Yugoslavia was adopted in 1996. This code was adopted by the SFRY Assembly during the Federal Council session held on 28 September 1976.[71] Article 37 stipulates that the death penalty can only be imposed for the most serious crimes and follows the legal description introduced in 1959, according to which the death penalty cannot be prescribed as the only main punishment for a specific criminal offence. This law does not regulate criminal offences against life, or property crimes. Federal law emphasised protecting the

66 Miladinovic (1975): p. 113.
67 Miladinovic (1975): pp. 114–115.
68 Mihaljević Josip: Ustavna uređenja temeljnih prava u Hrvatskoj 1946–1974, *Časopis za suvremenu povijest*, 1/2011, p. 44.
69 Constitution of the SFRY, Official Gazette of the SFRY, No. 14. 1963.
70 Constitution of the Socialist Federative Republic – Socialist Republic of Croatia, Official Gazette 1974.
71 Krivični zakon Socijalističke Federativne Republike Jugoslavije, Službeni list SFRJ (Criminal Code of the Socialist Federal Republic of Yugoslavia, Official Gazette of the SFRY) 44/76-1392, 36/77-1478, 56/77-1982, 34/84-895, 37/84-933, 74/87-1743, 57/89-1441, 3/90-63.

state system. Thus, we can follow the special regulations of criminal offences against the basics of the socialist self-governing social order and security of the SFRY, criminal offences against humanity and international law, and criminal offences against the armed forces of the SFRY. The heads mentioned above were criminal offences for which the death penalty was prescribed. Although the chapter of the Criminal Code, which refers to crimes against the socialist self-governing social order and security of the SFRY contains 11 criminal offences for which the death penalty may be imposed, for most criminal offences, it is necessary that the offence resulted in the death of one or more persons or that it caused a danger to people's lives rather than it was accompanied by severe violence or great destruction, or that it led to a threat to the security, economic, or military strength of the country. The second condition was that the perpetrator acted with premeditation. The only exception for which these conditions were not required is the criminal offence of capitulation and occupation. Although the possibility of imposing a sentence was still wide, the trend of mitigation is visible in the minimum prison sentence, which, according to this law, was a minimum of 10 years, unlike the previous law, where the death penalty could only be replaced with a minimum sentence of 20 years of rigorous imprisonment. In addition, a wide range of criminal acts for which it is possible to prescribe the death penalty could be found in the chapter on criminal acts against humanity and international law. In this section, we identify 20 crimes for which the death penalty was prohibited, mostly war crimes.

In 1977, the issue of the execution of the death penalty was transferred to the jurisdiction of the republics. The Basic Criminal Code of the Republic of Croatia, which existed at the level of the republic, had not introduced many new features.[72] For the most part, this law repeated federal law decisions. This law was valid from 1 July 1977 to 31 December 1997.[73] Between 1977 and 1990, 38 final death sentences were imposed in Yugoslavia. In the first five years, 21, and in the next 10 years, 17 death sentences were pronounced for murder and robbery.[74] If we compare this period with the period from 1952 to 1972 when we followed an easing trend, 198 death sentences were carried out over 20 years. Therefore, we can see that in the territory of Yugoslavia—more precisely, in Croatia—there has been a significant decrease in the number of death sentences.[75] The last few years of the SFRY's existence have been marked by large changes in the field of criminal law. Federal regulation of the criminal code allowed the Croatian legislature to reduce the unacceptably high level of normative; long-term imprisonment served as a substitute for the death penalty.[76]

72 Osnovni krivični zakon Republike Hrvatske (Basic Criminal Law of the Republic of Croatia), Official Gazette, No. 31/1993., 39/1993., 108/1995., 16/1996. and 28/1996.

73 Krivični zakon Republike Hrvatske (Criminal Code of the Republic of Croatia) Official Gazette, No. 32/1993., 38/1993., 16/1996. and 28/1996.

74 Jelena Volić-Hellbusch: Ivan Janković, Na belom hlebu-smrtna kazna u Srbiji 1804-2002, Službeni glasnik i Clio, Beograd, 2012., 66 str., *Časopis za suvremenu povijest*, 1/2013, pp. 403–406.

75 Vidoje (1975): p. 114.

76 Neven Cirkveni: Zastrašivanje u kaznenoj politici Republike Hrvatske, *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 1/2010, pp. 589–590.

III. SPECIAL CIRCUMSTANCES THAT INFLUENCED THE IMPOSITION OF THE DEATH PENALTY

Since the law of 1852, which was applied at the beginning of the 20th century in the territory of Croatia, we have noticed special circumstances that impacted the absence of pronouncements of the death penalty. The death penalty was reserved only for convicts over the age of 21 years, and sentencing required concrete evidence that the perpetrator was guilty, not just circumstantial evidence.[77] In the later period of the SCS Kingdom, the Vidovdan Constitution only apparently limited the death penalty to non-political crimes, but as already stated, the Law on the Protection of Public Safety and Order in the State, which was in force, enabled its wide application without any restrictions. Stricter provisions to deal with political enemies can also be found in Yugoslavia. The Criminal Code of 1929, concerning the punishment of minors, followed the regulation that existed in the law from 1852, according to which the death penalty could not be imposed on older minors. For minors between 17 and 21 years of age, instead of the death penalty, a prison sentence of seven years was provided.[78] The law also equalised the positions of men and women; therefore, it did not contain any exceptions according to which women would be exempt from the death penalty in special circumstances.[79] Even during the war, criminal law from 1929 continued to be applied. The law was supplemented with stricter solutions but there were no changes to the special circumstances under which the imposition of the death penalty would be mitigated.

The postwar totalitarian period was followed by a new criminal law in 1947. Once again, there was a provision according to which it is not possible to impose the death penalty against a pregnant woman during her pregnancy. The innovation was introduced by the law in 1951 and the same provision was retained by the reform of the law referring to severely physically or mentally ill persons. It is not possible to impose a death penalty against such persons as long as the disease persists. The law also recognised minority as a mitigating circumstance. Although it did not define the age at which someone can be considered a minor, it stipulated that the minimum age required for criminal responsibility is 14 years. A minor older than that age could be sentenced to all types of punishment, except the death penalty and life imprisonment. In addition, the court was required to consider the psychological development of juveniles during sentencing. The same regulations in 1951 were reflected in the 1959 reform; no changes to these circumstances were introduced.

A different legal arrangement was introduced in 1976 by the Criminal Code of the Federal Republic of Yugoslavia, according to which it was not possible to impose the death penalty on pregnant women or minors, and a special provision existed for minors up to 21 years of age. They could only be sentenced to death for the most serious

77 Prtenjača (2020): p. 96.

78 Milica Anđelković (2018): *Šestojanuarska diktatura i Krivični zakonik Kraljevine Srba, Hrvata i Slovenaca*, Univerzitet u Nišu, Pravni fakultet, Niš, pp. 67–69.

79 Anđelković (2018): pp. 70–72.

criminal acts, including crimes committed against the socialist self-management social system and the security of the SFRY, criminal acts against humanity and international law, and criminal acts against the armed forces of the SFRY. The Basic Criminal Code of the Republic of Croatia adopted the same legal arrangements.

IV. METHODS OF EXECUTION

The death penalty is the most severe sanction that can be imposed, and the method of executing the death penalty is one of the ways cruelty is further emphasised. Throughout history, there have been different forms of punishment, such as beheading, flogging, burning, and crucifixion, the main goal of which was to torture the convict and to ensure suffering and pain. The turning point in the story is the French Revolution of 1789 and the introduction of the guillotine. This represented a rapid, efficient, and humane approach to the death penalty.[80] Similar intentions towards reducing the physical punishment of people and avoiding excessive pain and suffering can also be observed in the 19th-century code from 1852, which was also applied in the 20th century in the territory of Croatia. During this period, the death penalty was carried out by hanging, and if necessary, the sentence was completed by the strangulation of the condemned.[81] Hanging is one of the oldest methods of execution; in addition to repression, its purpose is general prevention. Hangings occurred publicly in front of many spectators and served as a warning to future criminals. In addition, hanging was a shameful act of execution, in which spectators often mocked the executed person. Such mockery was considered a consolation for all those injured by the perpetrator's criminal act. We can observe the tendency towards milder criminal legislation in law from 1852, which stipulated that the public was limited during the execution of the death penalty.[82]

During the time of the SCS Kingdom and up to the amendments to the Criminal Code in 1929, the legal arrangement from 1852 was applied, but in reality, state repression grew, and punishment was carried out through all kinds of authority.[83] The death penalty by hanging was the only possibility of imposing the death penalty until the passing of the Legal Provision on the Revision of the Code in 1929. This provision opened the possibility of the death penalty by shooting, which was based on the discretion of the Minister of Justice and Theology.[84] This law was also enacted during World War II. The legal provisions on martial courts that were passed in parallel enabled the quick execution of the death penalty, ignoring all human and procedural rights. Trials in martial courts were conducted orally, and the goal of the procedure was to prove that the perpetrator had committed a criminal offence. Once pronounced, the verdict

80 Mirna Jurjević Škopinić (2021): *Smrtna kazna*, Sveučilište u Splitu, Katolički bogoslovni fakultet, Split.
81 Vidović (2018): pp. 12–13.
82 Jurjević Škopinić (2021): p. 7.
83 Janjatović (1994): pp. 219–222.
84 Srpak (2006): p. 1120.

immediately became final, and the perpetrator was sentenced to death by the firing squad, which was then carried out within three hours.[85]

The postwar period brought with it the reckoning of war criminals. The lack of information on the actual number of people killed and the method of killing was one of the main problems in this period. Also, it was difficult to distinguish death sentences imposed on political enemies and war criminals from death sentences imposed for "ordinary" crimes. We also observe the inhumanity of this period through the fact that the last public punishment in Croatian territory was imposed in 1946 in Zagreb on the former director of public order and security in the Independent State of Croatia, Erih Lisak. He was publicly hung, and his body was left standing in a public place for 24 h to serve as an example.[86] The Criminal Code was passed just one year later in 1947, allowing the execution of the sentence by hanging or firing squad. Criminal law from 1951 followed the same arrangement, while criminal legislation reforms from 1959 introduced changes. According to the new arrangement, the possibility of imposing the death penalty by hanging was abolished and the only way to impose the death penalty was by firing squad. The Criminal Code of the Socialist Federal Republic of Yugoslavia in 1976 and the Basic Criminal Code of the Republic of Croatia in 1977 stipulated that the death penalty could be imposed by hanging and expressly prohibited public participation. Although from 1852, the law tended to limit public viewing during the implementation of the death penalty, this was only captured in the legislation of 1976, which prevented public incitement. The last execution by the firing squad was implemented in 1987. It was carried out against Dušan Kosić, who was sentenced to death for stabbing four people: Cedomir Matijevic, his wife Slavica, and their two children, two-year-old Dragana and eight-month-old Snjeć Ana.[87] This was also the last execution on Croatian territory.

V. CONCLUSION

Issues around the death penalty in Croatia were concluded in 1990. This year was considered the year Croatia was established as an independent state. The death penalty was abolished in 1990 with the adoption of the Constitution of the Republic of Croatia. According to Article 21 of the Croatian Constitution, every human being has the right to life and, therefore, there is no death penalty in the Republic of Croatia.[88] Instead of the death penalty, Article 46 of the Criminal Code prescribes a long-term sentence with the longest duration of 40 years, and exceptionally, where the criminal acts are related to bankruptcy, the punishment can be for a duration of 50 years. The abolishment of the death penalty was not surprising, especially after the introduction of the new Criminal Code in 1951 and the reforms of the Criminal Code in 1959.

85 Srpak (2006): p. 1132.
86 Srđan (2005): p. 71.
87 Selection of decisions of the County Court in Vukovar in 2005. Available at: http://www.zupsudvu.hr/radovi/izbor_odluka_2005.pdf (accessed on 12.12.2022).
88 Constitution of the Republic of Croatia, Official Gazette No. 56/1990.

Additionally, European trends were in the direction of softening punishment, which is visible in the protocols of the Convention for the Protection of Human Rights and Fundamental Freedoms on the abolition of the death penalty. Protocol 6 was adopted in April 1983 and ratified in Croatia in November 1997.[89] According to this protocol, the death penalty was abolished, and the only exception to which it could be prescribed again was war. The work of the Council of Europe continued into the 21st century, and in 2002, Protocol 13 was adopted, according to which there are no exceptions regarding the possibility of imposing the death penalty.[90] Although such a solution has existed in Croatia since the adoption of the constitution in 1990, this protocol officially came into force in 2003.

The discrepancy between positive laws and the manner of their application, which we saw in the application of the death penalty in Croatia, is no exception typical for this area. Radbrauch's formula describes this phenomenon, which has been recognised by various nations. According to this formula, a positive law, protected by legislation and power, shall prevail even when its provisions are unjust and do not serve the interests of the people.[91] The exception is if the conflict between law and justice becomes so intense that law as a "deficient law" must be subordinated to the interests of the people.[92] The history of the death penalty in Croatia shows that legal regulations without proper implementation and protection of basic human rights can have dreadful consequences. The abolishment of the death penalty is an elementary step in protecting life and preventing situations when unlimited state power leaves the lives and rights of the individual unprotected.

89 Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty (28 April 1983). Available at: https://www.usud.hr/sites/default/files/doc/Protokol_br._6.pdf (accessed on 14.12.2022).

90 Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances Vilnius 2002. Available at: https://www.usud.hr/sites/default/files/doc/Protokol_br._13.pdf (accessed on 14.12.2022).

91 Bix Brian: Radbruch's Formula and conceptual analysis, *American Journal of Jurisprudence*, 1/2011, p. 45.

92 Brian (2011): p. 45.

Historical Context of the Death Penalty in Serbia

ASEA GAŠPARIĆ
Ph.D. student, University of Miskolc,
Central European Academy
E-mail: asea.gasparic@centraleuropeanacademy.hu

ABSTRACT
This article examines the history of death sentences in Serbia (Yugoslavia). It begins by providing an illustration of the criminal legal system, focusing on the standards governing the death penalty. The article considers provisions for death sentences at the turn of the 20th century, focusing on political offences and offering a historical context to support its points. It examines the socialist era, concentrating on the years following World War II. The first two sections explain the political circumstances that affected the severity of death sentences, and the third section focuses on unique elements such as age and gender. It explains how the current system dealt with unique situations and whether these situations were considered when the death penalty was applied. The execution method is also described. This demonstrates a progressive change from extremely harsh punishment methods to those that employ more humanitarian strategies. The author concludes by explaining how the legal system operated at the time. The presentation of a few cases demonstrates how strongly the judiciary has been politicised and how communist ideology has influenced it. Finally, the article summarises the influence of the Council of Europe on the abolishment of the death penalty and streaming to the advocacy of common human values.
KEYWORDS
death penalty, political crimes, socialist period, execution, Serbia.

Contextul istoric al pedepsei cu moartea în Serbia

REZUMAT
Acest studiu examinează istoria condamnărilor la moarte în Serbia (Iugoslavia). Acesta începe prin a oferi o ilustrare a sistemului juridic penal, concentrându-se pe standardele care reglementează pedeapsa cu moartea. Articolul examinează dispozițiile privind condamnările la moarte la începutul secolului al 20-lea, concentrându-se asupra infracțiunilor politice și oferind un context istoric pentru a-și susține argumentele. Acesta examinează era socialistă, concentrându-se asupra anilor care au urmat celui de-al Doilea Război Mondial. Primele două secțiuni explică circumstanțele politice care au influențat severitatea pedepselor cu moartea, iar cea de-a treia secțiune se concentrează pe factori unici precum vârsta și sexul. Aceasta explică modul în care sistemul actual a abordat situațiile unice și dacă aceste situații au fost luate în considerare atunci când a fost aplicată pedeapsa cu moartea. Metoda de execuție este, de asemenea, descrisă. Aceasta demonstrează o schimbare progresivă de la metodele de pedeapsă extrem de dure la cele care utilizează strategii mai umanitare. În încheiere, autorul explică modul în care funcționa sistemul juridic la acea vreme. Prezentarea câtorva cazuri demonstrează cât de puternic a fost politizat sistemul >>

>> judiciar și modul în care ideologia comunistă l-a influențat. În cele din urmă, articolul rezumă influența Consiliului Europei asupra abolirii pedepsei cu moartea și a fluxului către apărarea valorilor umane comune.
CUVINTE CHEIE
pedeapsa cu moartea, infracțiuni politice, perioada socialistă, execuție, Serbia.

I. INTRODUCTION

The death penalty is the most severe punishment imposed in certain legal systems. It is a historical fact, almost without exception, that all people and cultures in the past experienced social punishment, including death.[1] It developed from blood vengeance as an unwritten rule in the communities. The death penalty, the harshest form of retaliation for those who commit heinous crimes, has existed for a very long time. It has its roots in eternal vengeance but follows the principle of the old Talian philosophy, "*an eye for an eye – a tooth for a tooth.*" Not long ago, the concept of punishment for death was widely accepted and was often imposed on perpetrators who committed the most serious crimes. Some views claim that the death sentence serves two purposes. These punishments are society's response to crimes that have been committed and a means of preventing further crimes against other people in society. However, one may wonder whether the death penalty serves its purpose when applied to specific individuals. The death penalty was considered the harshest punishment for the most serious crimes around the start of the 20th century, following the prevailing views at the time. In addition, because all major world wars occurred within relatively short periods, the death penalty was frequently applied to both war combatants and criminals.

Speaking specifically of Serbia, which was then a part of Yugoslavia, political opponents were put to death in the post-war era, especially those who publicly spoke against the communist ideology and the totalitarian system. Terror and repression, as well as the disregard for fundamental rights to due process during trials, characterised the socialist era. The number of people directly affected by the use of death sentences to execute political opponents is still unknown. Political leaders voluntarily and arbitrarily passed legislation when the socialist regime was still in power. Additionally, the Socialist Republic of Yugoslavia, at the time, was ruled by legal particularism because of the several national republics of which it was composed. The regulation of the death penalty is typically vague at the level of the constitution or law. This makes the judicial system seem even more arbitrary. It was up to the courts to impose punishment, and although there were precautions, such as warnings, security measures, and instructional measures in addition to punishment[2]—particularly the death penalty—they were almost never used.

1 Luka Tomašević: Church and capital punishment, *Crkva u svijetu: Crkva u svijetu*, 3/2002, pp. 280–295.
2 Veljko Delibašić (2010): *Najstroža kazna u Krivičnom zakonu Republike Srbije u periodu od 17.11. 2001. godine do 9.3. 2002. godine*, Pravo-teorija i praksa, Beograd, p. 98.

II. CRIMES

1. Legislation on the death penalty from 1900 to 1945 in Serbia

At the beginning of the 20th century, part of what is today Serbia was part of the Kingdom of Serbia. Thus, it became part of the constellation of European states where the first political parties were founded. The May Coup[3] in 1903, bringing Karađorđe's grandson, King Peter I, to the throne, opened the way for parliamentary democracy in Serbia. This initiated a period of parliamentary government and political freedom, which was interrupted by the outbreak of the liberation wars.

On the initiative of Prince Aleksandar Karađorđević, the draft of the Serbian Criminal Code entered into force in 1860.[4] At the beginning of the 1900s, it was the main source of regulating criminal law, which included provisions on the death penalty. In the first chapter, the Code differentiates 11 types of punishment, including the death penalty. Death, corporal punishment, monetary fines, and imprisonment were stipulated as the main sanctions, while deprivation of title, confiscation, bans on specific actions, and expulsion were prescribed as secondary sanctions. The Code included 16 capital offences: various forms of murder and robbery leading to death, as well as treason. Even though capital punishment was reserved for serious violations of state organisations as well as for intrusion on the human body, in 1863, the death penalty was re-introduced for theft and certain other crimes. However, theft was no longer considered a capital offence in 1902.

Serbia had several national goals.[5] According to some opinions, Serbian intellectuals dreamt of a southern Slavic state. At the end of World War I and the collapse of both the Austro-Hungarian and Ottoman Empires, conditions were met to proclaim the Kingdom of Serbs, Croats, and Slovenes in December 1918. Although the idea of a common state was initially proposed by intellectuals after the war, idealist intellectuals gave way to politicians. On 28 June 1921, the first constitution of the newly formed kingdom, the Vidovdan Constitution,[6] was approved by the Constitutional Assembly. Article 9 of the Constitution stipulates that

3 This was an overthrow involving the assassination of the Serbian King Alexander Obrenović and his consort Queen Draga inside the Royal Palace in Belgrade on the night of 10–11 June which resulted in the extinction of the Obrenović dynasty.

4 Dušan Jakšić, Dragomir Davidović: Razvoj kaznenog sistema u krivičnom pravu Srbije, *Specijalna edukacija i rehabilitacija*, 4/2013, pp. 525–538.

5 Martin Gilbert, Arthur Banks (1970): *First world war atlas*, George Weidenfeld & Nicholson, London, p. 8.

6 Constitution of the Kingdom of Serbs, Croats and Slovenes from 28 January 1921. Archives of Yugoslavia.

> *"the death penalty cannot be established for purely political crimes. Cases of execution or attempted assassination of the ruler and members of the Royal House, for which the death penalty is specified in the criminal code, are excluded. In addition, cases in which, in addition to purely political guilt, one who committed another punishable act, for which the criminal code stipulates the death penalty, and also cases, which are punishable by the death penalty under military laws."*

This paper now turns to one of the first attempts to abolish the death penalty. Communists and republicans, as representatives of the left wing, with the support of smaller parties from Slovenia and Yugoslavia, first suggested the abolishment of the death penalty. This attempt failed.

Furthermore, in 1923, there were some initiatives by Yugoslav women's organisations to abolish the death penalty. Unsurprisingly, these were also unsuccessful. As the parliamentary system, which was the lead political system at the time, failed to promote national unity, on 6 January 1929, King Alexander declared a manifest. He established a royal dictatorship and took control of all existing state organs. In his manifest, the king declared that the Parliament had become a nuisance due to political abuse and that he, as the guardian of national unity, had to abolish the 1921 Constitution and dissolve the National Assembly.[7] Once a dictatorship was declared, it was easier to harmonise laws since parliamentary procedures were avoided. Following the principles of the neoclassical school, he aimed to unify substantive criminal laws after the proclamation of dictatorship. Nevertheless, a new criminal code was initiated with the establishment of the Kingdom of Serbs, Croats, and Slovenes and enacted on 27 January 1929.[8] Built on more modern ideas than the French, German, and Italian criminal codes, it served as a great example of all codes of the European continent.[9] In the Code also other types of sanctions appeared in addition to the aforementioned punishments which were differentiated into main and secondary sanctions. As expected, the death penalty was the main punishment prescribed for murder, manslaughter, and qualified murders. Additionally, several property crimes and other qualified crimes were punished by death.

2. Legislation on the death penalty after World War II until the dissolution of the Socialist Republic of Yugoslavia (from 1945 to the 1990s)

The socialist era, which lasted from the mid-1940s until the collapse of Yugoslavia, required more comprehensive treatment, given its relevance to recent developments

7 Dunja Pastović: Unification of Criminal Law in the Interwar Yugoslav State (1918–1941), *Krakowskie Studia z Historii Państwa i Prawa*, 4/2019, pp. 555–574.

8 Criminal Code for the Kingdom of Serbs, Croats and Slovenes from 27 January 1929, Official Gazette of the Kingdom of Serbs, Croats and Slovenes.

9 Borislav Petrović: Novi Krivični Zakonik za Kraljevinu Jugoslaviju i ideje trodeobnog (tripartitnog) sistema u nauci Krivičnog Prav, *Branič*, 1/1929, pp. 1–6.

in the death penalty.[10] During World War II, Yugoslavia suffered tremendous human losses, losing more than one million people, mostly civilians.[11] Since many crimes were political in nature, special regulations on military courts were adopted in May 1944.[12] The decree gave them jurisdiction over crimes that were directed against the liberation struggle of the people of Yugoslavia, against the achievements and interests of that struggle, and against the criminal acts of military personnel and prisoners of war. These provisions included some exceptions prescribed in Article 2 for acts that fell under the jurisdiction of the Higher Military Court.

In 1945, the Law on Criminal Offenses Against the People and the State[13] was enacted. Considering the period in which it passed, the death penalty was mostly prescribed for war crimes but also for political and capital crimes, including theft of the government's property and aggravated murder and robbery. The legislative body at the time, the Anti-Fascist Council for the National Liberation of Yugoslavia, was characterised by arbitrariness and passed laws without legal procedures. The following law was the Impermissible Speculation and Economic Sabotage Prevention Act, enacted on 23 April 1945.[14] This law incriminated every activity that aimed to benefit from the exploitation of extraordinary military circumstances (impermissible speculation). The law went one step further and criminalised activities that called into question the functioning of economic companies or actions which were directed against the state's economic policy (sabotage). Perpetrators were considered a high threat to the system, and as such, they were prosecuted and given the strictest possible punishment, which included the death penalty and forced labour.[15]

Yugoslav legal practice was defined by the fact that in this period, over 200 laws were passed based on the idea that the law is a weapon that is driven by political will with the purpose of establishing socialist social and economic relations.[16] Among others, criminal law matters were regulated by introducing fundamental legal institutions through several law acts such as the Law on Prohibition and Suppression of Illegal Speculation and Economic Sabotage, the Law on Prohibition of Inciting National, Racial, and Religious Hatred and Discord, and The Law on Criminal Offenses Against the People and the State.[17]

10 Agata Fijalkowski: The Abolition of the Death Penalty in Central and Eastern Europe, *Tilburg Foreign Law Rev*iew, 1/2001, pp. 62–83.
11 Mark Biondich: Religion and Nation in Wartime Croatia: Reflections on the Ustaša Policy of Forced Religious Conversions, 1941–1942, *The Slavonic and East European Review*, 1/2005, pp. 71–116.
12 Veronika Bílková: Divided We Stand? The AD HOC Tribunals and the CEE Region, *American Journal of International Law*, 1/2016, pp. 240–244.
13 The Law on Criminal Offenses Against the People of the State from 14 August 1945. Archives of Yugoslavia.
14 Impermissible Speculation and Economic Sabotage Prevention Act from 23 April 1945. Archive of Yugoslavia.
15 Nada Kisić-Kolanović: Pravno utemeljenje državnocentralističkog sistema u Hrvatskoj 1945.–1952. godine, *Časopis za suvremenu povijest*, 1/1992, pp. 49–99.
16 Kisić-Kolanović (1992): p. 7.
17 Zdenko Radelić: 1945 in Croatia, *Review of Croatian History*, 1/2016, pp. 9–66.

After World War II ended, work on creating the new state's legal framework officially began, and in 1947, the general criminal code was created in accordance with the times and the new state structure. The new Yugoslav Criminal Code,[18] passed in 1946, prescribed 12 types of punishment, including the death penalty. The general part of the Code did not prescribe crimes for which a capital sentence could be imposed. Furthermore, provisions on criminal procedures were included in only one of the nine-paragraph article. The influence of the socialist regime and court arbitrariness was strong. In the context of normative regulations which were dealing with the subject of criminal law, it is worth highlighting the repressive character of the law. It unquestionably resulted from the fact that the criminal conduct against the people and the state's procedures were not adequately described by the law, which violated the basic principle of criminal law: "*nullum crimen sine lege, nulla poena sine lege.*" It is clear that the law served as a repressive instrument against political opponents, especially politicians from the former system.[19] Additionally, during the socialist regime and the legislation at the time, numerous deviations from the fundamental principles of criminal law were visible.

The repression coerced by the existing regime eased, and the use of the death penalty declined, which led to the new Yugoslav Criminal Code in 1951.[20] With this law, the legislation enumerated the specific crimes for which capital punishment was prescribed. Most were concerned, as the authorities interpreted, with resistance to the existing system and were so-called political crimes with high ideological motivation. The Criminal Code prescribed counter-revolutionary attacks on social and state organisations as a starting point for defining crimes with strong political motivations. Furthermore, political crimes mostly included espionage and other war crimes, such as endangering the territorial integrity and independence of the state, undermining the military and defence power of the state, murdering representatives of the people's government and social organisations, and armed rebellion. Aiding the enemy was an extremely serious offence that involved serving the enemy's army during wartime, helping the enemy during wartime, and political and economic cooperation with the enemy. It was also illegal to oppose the government and perform acts such as participation in hostile activities against the Federative People's Republic of Yugoslavia, sabotage, association against the people and the state, refusal to execute orders, and counteracting the superior. Lastly, acts such as assault on a military person on duty, failure to respond to the call for military service, evasion of military service by deception, failure to fulfil duty during combat, weakening of combat morale, and other particularly serious crimes against the people and the state were also punishable by death at that time because the army was seen as one of the pillars of the state.

Imprecise and lengthy descriptions of the actions of execution, diffused and unclear descriptions of the consequences of the act, and extensive use of so-called counter-revolutionary intentions were some of the issues in the Socialist Federative Republic of Yugoslavia (hereinafter: SFRY). The fact that, for example, the concept of

18 Criminal Code from 1946. Archives of Yugoslavia.
19 Radelić (2016): p. 20.
20 Criminal Code from 1951. Archives of Yugoslavia.

"*socio-political circumstances in the country*", whose alleged "*false presentation*" was sanctioned as a criminal offence, could be extended to any social topic clearly says that socialist Yugoslavia during its entire existence cannot be spoken of as a state governed by the rule of law. The concept of "*socialist feelings of citizens*" was equally questionable: it is not possible to define what was meant by that term, but insulting those feelings is against the established principle of criminal law.[21] This was one of the main issues people had to deal with during the socialist era. Legal certainty was absent, criminal offences lacked a precise definition, and arbitrary punishment was imposed. People are not always clear about the expectations of their behaviour or the consequences of engaging in apparently inappropriate activities. Given that the repercussions of death sentences are severe and irrevocable, insufficiently defined crimes posed a particular issue. Capital punishment was imposed on anyone who dared to challenge the *status quo* with beliefs that opposed those of communist leadership.

The Criminal Code offered a wide scope and the possibility of imposing the death penalty for various types of crimes. It may appear that the 1951 criminal legislation encompassed more offences punishable by death than the earlier laws when listing all authorised crimes. This is only partially true, considering that, in contrast to earlier times when crimes were defined by the subjective judgment of the courts, certain crimes have now been clearly defined, and the law was, to an extent, characterised by certainty.

The Criminal Code[22] was reformed in 1959. This alleviated the severity of criminal legislation and limited the potential use of the death penalty. These newly drafted criminal law regulations introduced stricter criminal justice systems. Even though the number of capital crimes was reduced and the death penalty for property crimes was completely abolished, all the offences listed above remained the most serious and were still punishable by death. However, the Amendment prescribed the possibility of imprisonment for the same crime and prescribed the death sentence as an alternative sanction. Thus, it was left to the court's discretion to decide the proper punishment.

The new Yugoslav Constitution[23] was passed in the Serbian legal framework. Its provisions proclaim that life should be inviolable. Furthermore, the Constitution's stipulation limited the death penalty to rare circumstances and was an exceptional type of punishment for the gravest criminal offences under federal law. The Criminal Code, which was changed in 1959, was still in force; therefore, the Constitution did not stipulate any other provisions regarding specific crimes. The novelty was the strengthening of certain procedural rights, such as the right to an appeal and the right to a defence. Unlike the legislation, the Constitution of 1963 showed the first signs of recognising and respecting human rights.

21 Danilović Rajko (2010): *Upotreba neprijatelja. Politička suđenja u Jugoslaviji 1945–1991.*, Javno preduzeće Zavod za udžbenike, Beograd, p. 341.

22 Reform of Criminal Code, Official Gazette of Federal People's Republic of Yugoslavia, No. 13/1951.

23 Yugoslav Constitution from 1963. Archives of Yugoslavia.

The subsequent constitution of the SFRY,[24] adopted in 1974, contained many identical regulations. Similar to the 1963 Constitution, it once more affirmed that life is sacred and established the death penalty as the ultimate punishment for the gravest types of crime. These provisions were supported by the Penal Code of the Socialist Federative Republic of Yugoslavia in 1977.[25] The Penal Code specifies that the death sentence is not the primary punishment for a crime. Moreover, it followed the provisions of the Constitution, prescribing the death penalty for only the most serious criminal acts, mostly political and war crimes, when provided for by federal law. At this point, socialism was still the ruling regime in Yugoslavia, and even though it had started to fade, capital punishment was still broadly defined, considering frequent encounters with dissenters. Capital punishment was widely spread and imposed for a number of crimes, with an emphasis on crimes committed against the basis of the socialist self-management, social system and the security of the Social Federative Republic of Yugoslavia. A special accent was put on political crimes focusing on the protection of the territory, such as counter-revolutionary endangerment of the social system, acknowledging capitulation and occupation, endangering territorial integrity, and endangering independence. Not supporting the state with actions such as preventing the fight against the enemy, serving in the enemy's army, and assisting the enemy, but also undermining the military and defensive power and violence committed out of hostile motives against the SFRY were criminalised. Furthermore, the crimes that were enlisted were armed rebellion; terrorism; destruction of important establishments in the national economy; sabotage; espionage; and dispatching and transferring armed groups, arms, and ammunition into the territory of the SFRY. Strong state repression also forbids hostile propaganda, inciting national, racial, or religious hatred; discord or hostility; and violations of territorial sovereignty associated with hostile activities (against the people and the state). Evidently, death was a punishment reserved mostly for war and political crimes, while provisions remained general, without specific details. While the tendency in the pre-war period was to extend the scope of capital punishment to protect high-ranking political figures, in the post-socialist period, Central Eastern European countries argued that the death penalty was an effective way to fight organised crime and other kinds of offences.[26]

In 1980, the federal government was weakened and could not cope with rising economic and political challenges. At that time, lawyer Srđa Popović[27] from Belgrade sent a petition to Yugoslav authorities with a proposal to abolish the death penalty. However, this petition was unsuccessful. A year after Tito's death, the Society for the Death Penalty was established in Belgrade. However, their work was banned by the authorities. In the years that followed, Serbian nationalism increased when, finally, in January 1990, the League of Communists of Yugoslavia was dissolved, and republican communist organisations became separate socialist parties. With the newly formed

24 Yugoslav Constitution 1974. Archives of Yugoslavia.
25 Penal Code from 1977, Official Gazette of SFRY.
26 Fijalkowski (2001): p. 82.
27 Available at: http://www.smrtnakazna.rs/en-gb/topics/abolitionism.aspx (accessed on 18.12.2022).

state, the Socialist Republic of Yugoslavia, a new constitution[28] was passed in 1992. It proclaimed human life to be inviolable and forbade the death penalty for crimes prescribed by the feral law. The Constitution of the Federal Republic of Yugoslavia, which consisted only of Serbia and Montenegro, on 6 April 1992, abolished the death penalty for crimes prescribed by federal laws (genocide, war crimes, political and military crimes, etc.), but the federal units retained the right to prescribe the death penalty for acts within their jurisdiction (murder and robbery). The partial abolishment marked a new historical period in which Serbia strived for democracy. This alteration was confirmed when the legal provisions governing the death penalty stipulated in the Penal Code of 1977 were amended in the Criminal Code in February 2002[29] by the National Assembly; therefore, the death penalty was completely abolished. Finally, the same issue was reiterated in the new Constitution of Serbia,[30] which states, *"[t]here is no death penalty in the Republic of Serbia."*

III. SPECIAL FACTORS THAT AFFECTED THE APPLICATION OF THE DEATH PENALTY

The law has always prescribed special provisions when imposing the death penalty. In the Serbian Criminal Code of 1860, which was in force at the beginning of the 20th century, there was a special obligation that the deceased be buried right away to prevent the needless desecration of the body and agony for those who were close to the condemned. Other specific circumstances, such as the age or sex of the convicted, did not have an impact on the imposition of the death penalty. Similarly, the Vidovdan Constitution explicitly prescribed that the death penalty should not be established for purely political crimes. Thus, it did not provide provisions for death sentences related to political crimes. The Criminal Code of 1929 had norms regulating specific groups, such as minors. The Criminal Code provided that juveniles cannot be sentenced to death. In a strict sense, minors between the ages of 17 and 21 could get a 7-year prison sentence. The law also made women and men equal; therefore, no exceptions were provided for women regarding the death penalty. This criminal legislation remained in force during the war, with some harsher penalties added later on; however, the specific conditions for imposing the death penalty remained the same. With the strengthening of human rights in the postwar period, the Yugoslav Criminal Code of 1947 introduced a death penalty that could not be imposed on pregnant women during their pregnancy. Furthermore, recognising the special status of minors, the law stipulated that they could be sanctioned using an educational-remedial measure. A similar provision was provided for unaccountable persons, imposing for them special health-protective measures.[31]

28 The Constitution of Socialistic Rebuplic Yugoslavia, Official Gazette, No. 48/94.
29 Criminal Code, Official Gazette, No 85/2002.
30 Constitution of the Republic of Serbia, Official Gazette, No. 98/2006.
31 Jakšić, Davidović (2013): p. 530.

In the new criminal law regulations of 1951, the law went even further and expanded the limitations of the conditions for death sentences. The clause prohibiting the death penalty on a pregnant woman was retained, and other provisions restricting punishment by death were added to people who are seriously physically or mentally ill while such disease lasts. Minors were once again recognised as a vulnerable group. The law provided special mitigating circumstances, prescribing a minimum of 14 years for admissible criminal culpability to inflict a death sentence. In contrast, the law allowed other types of punishment to be imposed on minors older than the prescribed age of 14. The statutory provisions prescribed in the Criminal Code from 1951 remained the same after the 1959 Criminal Law Reform.

Furthermore, the Penal Code of the SFRY from 1977 once again took over the aforementioned provision, emphasising the exclusion of the death sentence on pregnant women and adding other restrictions. The law provided special protection for minors, preventing persons below 18 years from being subjected to the death penalty for their criminal acts. In fact, the death penalty could be imposed on adults under 21 years of age at the time of the commission of a criminal act only for criminal acts committed against the socialist self-management social system and security of the SFRY, criminal acts against humanity and international law, and criminal acts against the armed forces of the SFRY.

After the establishment of a new state, the Republic of Serbia, all the above-described provisions were implemented in the new legislation. These remained in force until the 2002 amendment when all provisions concerning capital punishment were erased.

IV. MEANS OF EXECUTION

Throughout history, capital punishment has been considered an *ultima ratio* punishment. People came up with many ways of punishing perpetrators who they found dangerous to society. Depending on the period, it was performed by various means, such as stoning, crucifixion, hanging, burning, strangulation, beheading, and shooting. Furthermore, the place of execution was either public or non-public depending on the circumstances. Until the beginning of the 20th century, with the Serbian Penal Code still in force, the death penalty was implemented publicly. Around the time of the 1905 executions in the centre of Serbia, Belgrade ceased to be public, offenders were taken and shot furtively.[32] However, the provisions on the public character of executions were still applicable, so they, by law, remained public until 1930 in other towns and the rest of the country, attracting many spectators.

According to the Criminal Code of the Kingdom of Serbs, Croats, and Slovenes, the only legal method of execution was shooting in public places. As the state's repression grew, punishments, including the death penalty, were imposed by a variety of

32 Jelena Volić-Hellbusch, Ivan Janković (2012): *Na belom hlebu-smrtna kazna u Srbiji 1804–2002*, Službeni glasnik i Clio, Beograd, pp. 403–406.

authorities.[33] With the establishment of the Kingdom of Yugoslavia, the method of execution of the death penalty by hanging was introduced into the Yugoslav Criminal Code in 1929, with the explanation that "*this is the easiest and therefore the most humane way of execution of the death penalty.*"[34] Judgments passed by military courts were exceptions because they were executed by shooting.

During World War II, many deaths occurred without records or proper trials. Bearing in mind the political realities of the era, the death penalty was mainly imposed in the context of political crimes. As the war ended in 1945, there were mainly trials regarding war crimes, where people would be quickly sentenced to death without a properly regulated court proceeding. Although the exact number of people killed remains unknown, some estimates have been made. According to one source, at least 80,000 people were executed throughout Serbia, whereas others state that more than 100,000 were executed.[35]

However, in the middle of the 20th century, from a historical perspective, the totalitarian dictatorship softened. By 1950, the number of pronounced death sentences declined rapidly. Unfortunately, the date of execution was not recorded, but some historians say it is safe to assume that approximately two-thirds of all death sentences resulted in executions. The law stipulated shooting and hanging as the only legal means, and the arbitrariness of the court was once again emphasised. In practice, the execution method was determined by the court judgment in each case.

With the reform of the Criminal Code, the only method of executing the death penalty was by shooting. It was carried out without public presence by an eight-member firing squad, who did not know which of them fired real bullets and which had "blank" bullets. The same method of execution was prescribed in the Penal Code of the SFRY in 1977, emphasising no public presence. This was the only way capital punishment was carried out until Serbia's independence as a separate state.

V. CASE LAW

The judiciary was another important part of the state's repression during the era. Following the communist ideology, the judiciary system was initially not an independent third branch of the government but rather susceptible to direct interventions by executive authorities, even the local ones. The period when state repression was at its worst can thus be placed between the end of World War II and 1952, a time mainly characterised by mass extrajudicial killings, forced forfeitures of property, show trials, forced labour sentences, and deportations of people from their places of residence.[36] After the

33 Bosiljka Janjatović: Hrvatska 1928.–1934. godine: vrijeme organiziranih političkih ubojstava, *Povijesni prilozi*, 13/1994, pp. 219–244.

34 Mihail Čubinski (1934): *Naučni i praktični komentar Krivičnog zakonika Kraljevine Jugoslavije, drugo izdanje*, Izdavačko i knjižarsko preduzeće Geca Kon, Beograd, p. 24.

35 Available at: http://www.pressonline.rs/sr/vesti/vesti_dana/story/67957/Grobnice+svuda+po+Srbiji.html (accessed on 19.12.2022).

36 Žiga Koncilija: Prispevek k zgodovini političnih sodnih procesov, *Prispevki za novejšo zgodovino* (before 1960: *Prispevki za zgodovino delavskega gibanja*), 1/2013, pp. 213–247.

war, when politics ruled over the law, death sentences were passed mostly in political trials, but such sentences were no longer pronounced in Yugoslavia after 1954, exclusively for political reasons.[37]

The socialist regime's strong influence also affected court proceedings. The concept of "courts" and "trials" in socialist Yugoslavia, which is similar to other states of the Eastern Bloc, was only used conditionally. Unfortunately, there is not much data on trials since proceedings were mostly politically and ideologically influenced and not governed by law. To demonstrate its strength, the tendentious judiciary conducted the trials. One of the most famous politically motivated trials was the Trial of Draža Mihailović *et al*.[38] The so-called Belgrade Process echoed not only in Serbia but the whole of Yugoslavia. Mihailovic launched a resistance movement in 1941 against German occupation before turning against communist guerrillas later in the war. At the time, this was not in accordance with the existing political will. When World War II was over, in 1946, Draža Mihailović was convicted for high treason and war crimes committed during World War II. Almost 70 years later, the same ruling was overturned by the Serbian court, stating that it was a communist political show trial that was fundamentally and inherently unfair.[39]

The relatively limited normative scope for resolving legal cases was replaced by the political orientation of the courts. At the federal level, several trials were exclusively politically motivated. Judges in the proceedings held the political philosophies that the court had adopted and concluded that this decision, because of its strictness and consistency, must serve as a model for punishing and outing those who "*treat the people's property in the old, profiteering, speculative, and saboteur way.*"[40] Courts became increasingly preoccupied with political evaluation and less with the legitimacy of the law. This judiciary was initially governed by the "*spirit and meaning of socialist legislation*" rather than by the literal interpretation of the legal norm. Evidently, at the time, the requirement to strictly carry out governmental tasks took precedence over the legal security of the people. Thus, there was a lack of assurance and rationality for the citizens to whom the legislation was applied.

There were fewer death sentences as the laws governing the death penalty loosened over time. From 1991 to 2002, the courts in Serbia, a member of the Federal Republic of Yugoslavia since 1992, handed down 19 death sentences, none of which were carried out.[41]

37 Steven Freeland: No longer acceptable: the exclusion of the death penalty under international criminal law, *Australian Journal of Human Rights*, 2/2010, pp. 1–34.

38 Available at: https://archive.org/stream/trialofdragoljub027481mbp/trialofdragoljub027481mbp_djvu.txt (accessed on 19.12.2022).

39 Available at: https://www.reuters.com/article/us-serbia-court-wwii-idUSKBN0NZ1DY20150514; available at: https://www.cbsnews.com/news/world-war-ii-general-draza-mihailovic-gets-nazi-treason-conviction-tossed-by-serb-court/ (accessed on 19.12.2022).

40 Karakter Zločina protiv državne imovine, *Zagreb*, 1/1947, pp. 6–8.

41 Uroš Ćemaloivć: Usklađivanje pravnog sistema Srbije sa pravnim tekovinama Evropske unije-slučaj životne sredine, *Ekonomika poljoprivrede*, 3/2016, pp. 891–904.

Finally, in mid-February 2002, Johan Drozdek of Karavukovo, who strangled and raped a five-year-old girl in 1987, was executed.[42] He stole a bicycle from the girl's father and drove her to the village cemetery, ignoring her cries and pleas to take her home. He immediately confessed his monstrous crime and, as he stated, took revenge on the girl's father, who did not want to lend him a bicycle. It turned out, however, that Drozdek had long been known to the police as a sex offender and had been convicted several times. The execution was carried out by an eight-member firing squad whose members did not know which of them fired real bullets and who fired "blanks", as it was prescribed by law in force at the time.[43] Ultimately, after the last execution took place, the judgment for the 20 persons who were waiting to face the firing squad was changed to 40 years in jail when the death sentence was abolished.[44]

VI. CONCLUSION

The period of socialism on the territory of Yugoslavia, and therefore Serbia, in the 20th century was characterised by the so-called dark age without much-saved data. It is a notorious fact that executions took place arbitrarily without proper trials. In the period between the First and Second World Wars, repression grew, and the accused's right to defend himself or appeal the decision rendered became illusory. Quite often, the verdict read identically to the indictment,[45] and the procedural rights of the accused were practically nonexistent. Thus, there are not many documents that reveal the true situation. Furthermore, it is particularly important to point out that during the socialist era, political opponents were perceived as the biggest obstacles. These were all those who opposed the existing regime, questioned the imposed values, and spoke publicly against the ruling ideology of the time. The death penalty served not only for general prevention and as an example to others but also for silencing political opponents and creating a mass of like-minded people. Nevertheless, in addition to putting to death "*enemies of the people*", a large number of death sentences were carried out daily by collaborationists and war criminals, precisely all those who initially opposed the communist takeover. From this period onwards, there are no reliable data on the number of death sentences or executions.

The 1977 Penal Code of the Socialist Republic of Yugoslavia was the last law to prescribe the death penalty in Serbia. Comparing Serbia with other countries from the previous regime, we see that Serbia applied capital punishment for a relatively long time until the beginning of the 21st century. However, with the modern emphasis on human rights and the strengthening of human dignity, death as a punishment was no longer accepted in the European community. The Penal Code of the SFRY was in

42 Available at: https://www.republika.rs/hronika/hronika/360659/poslednja-smrtna-kazna-u-srbiji-johan-drozdek (accessed on 2.12. 2022).
43 Available at: https://newsbeezer.com/serbiaeng/johan-shot-ivan-6-for-a-terrible-crime-and-when-he-discovered-the-motive-shock-followed/ (accessed on 21.12.2022).
44 Available at: https://newsbeezer.com/serbiaeng/johan-shot-ivan-6-for-a-terrible-crime-and-when-he-discovered-the-motive-shock-followed/ (accessed on 21.12.2022).
45 Rajko (2010): pp. 337–344.

force until 2002 when all provisions regarding death sentences and their execution were deleted through an amendment. The main motive for this abolition was to ensure the acceptance of the Federative Republic of Yugoslavia in the Council of Europe. The Council of Europe strongly condemned the use of the death penalty. They emphasised numerous times that death sentences conflicted with both international and European human rights provisions. The death sentence became perceived as an unequal punishment against human dignity. However, this does not prevent crimes from reoccurring. No legal system is immune to judicial mistakes that can result in the deaths of innocent people. Considering the strong influence of Europe, and as the Penal Code was amended in 2003, Serbia signed and ratified Protocol No. 6[46] to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty drafted on 28 April 1983.[47] Article 1 of the Convention stipulates that the death penalty should be abolished. No one shall be condemned to such a penalty or be executed. Even though this protocol still allowed the death penalty in times of war in the instances laid down in the law and in accordance with its provision and respected reservations, it emphasises the prohibition of derogations of provisions regarding death sentences. In the same year, Serbia ratified Protocol No. 12[48] of the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty in all circumstances outlined in Vilnius on 3 May 2002.[49] In contrast to Protocol 6, it forbids the death penalty under all circumstances and eliminates the possibility of reservations. Finally, with the passage of the law on the ratification of the aforementioned protocols and other documents pertaining to respect for human life and dignity, the Serbian legal system abolished the death penalty.

In sum, the influence of the international community and Serbia's anticipated membership in the European Union are clearly decisive factors in the move towards the abolition of the death penalty. The majority of Central and Eastern European nations oppose the death penalty, even those who do not appear to be making preparations for its eventual abolition.[50]

46 Council of Europe, Protocol 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of Death Penalty, 28 April 1983, ETS 114. Available at: https://www.refworld.org/docid/3ae6b3661c.html (accessed on 22.12.2022).

47 Available at: https://www.paragraf.rs/propisi/zakon-ratifikaciji-evropske-konvencije-ljudska-prava-osnovne-slobode.html (accessed on 22.12.2022).

48 Council of Europe, Protocol 12 to the European Convention on Human Rights and Fundamental Freedoms on the Prohibition of Discrimination, 4 November 2000, ETS 177. Available at: https://www.refworld.org/docid/3ddd0cb44.html (accessed on 22.12.2022).

49 Available at: https://www.echr.coe.int/Documents/Library_Collection_P13_ETS187E_ENG.pdf (accessed on 22.12.2022).

50 Fijalkowski (2001): p. 81.

The Death Penalty in Hungary During the 20th Century

MIKLÓS VILMOS MÁDL
Ph.D. student, University of Miskolc,
Central European Academy
E-mail: madl.miklos@centraleuropeanacademy.hu

ABSTRACT
Capital punishment is a controversial sanction that still exists today in many states. However, it has been abolished in more than two-thirds of countries, including Hungary. The last 100 years of its application in Hungary have been affected by changes in the political climate. These changes have resulted in different laws using this punishment in different ways. In this article, I compare the peaceful legislation on capital punishment in Hungary starting from the beginning of the 20th century. Throughout this comparison, I focus on three important aspects of this punishment: the crimes that were punishable by death, the means of execution, and other factors that had to be considered while issuing the death sentence, and finally, the practice of the courts. Based on this comparison, I drew a conclusion that aimed to present the dynamics of the analysed period. Accordingly, we can say that in the last 100 years of capital punishment in Hungary, some things like the means of execution have not changed significantly, but crimes that attracted the death penalty have changed frequently. After examining the conclusions of each analysed topic, we can conclude that capital punishment had a structure in which the start and end of the analysed period represented the *ultima ratio* nature of this punishment the most, and the periods in between were more distant from it.
KEYWORDS
capital punishment, means of execution, abolition of the death penalty, Hungary, 20th century, Csemegi Codex.

Pedeapsa cu moartea în Ungaria în cursul secolului al 20-lea

REZUMAT
Pedeapsa capitală este o sancțiune controversată care există și astăzi în multe state. Cu toate acestea, ea a fost abolită în mai mult de două treimi din țări, inclusiv în Ungaria. Ultimii 100 de ani de aplicare a acesteia în Ungaria au fost afectați de schimbările din climatul politic. Aceste schimbări au dus la legi diferite care utilizează această pedeapsă în moduri diferite. În acest articol, compar legislația pașnică privind pedeapsa capitală în Ungaria începând de la începutul secolului al 20-lea. Pe parcursul acestei comparații, mă concentrez asupra a trei aspecte importante ale acestei pedepse: infracțiunile care erau pedepsite cu moartea, mijloacele de executare și alți factori care trebuiau luați în considerare la pronunțarea sentinței capitale și, în cele din urmă, practica instanțelor. Pe baza acestei comparații, am tras o concluzie care a urmărit să prezinte dinamica perioadei analizate. În consecință, putem spune că, în ultimii 100 de ani de pedeapsă capitală în Ungaria, unele lucruri, cum ar fi mijloacele de executare, nu s-au schimbat semnificativ, dar infracțiunile >>

>> care au atras pedeapsa cu moartea s-au schimbat frecvent. După examinarea concluziilor fiecărui subiect analizat, putem concluziona că pedeapsa capitală a avut o structură în care începutul și sfârșitul perioadei analizate au reprezentat cel mai mult natura de *ultima ratio* a acestei pedepse, iar perioadele intermediare au fost mai îndepărtate de aceasta.
Cuvinte cheie
pedeapsa capitală, mijloace de executare, abolirea pedepsei cu moartea, Ungaria, secolul al 20-lea, Codul Csemegi.

I. INTRODUCTION

The death penalty is the harshest sanction that can be imposed on a human being, as it was explained in the dissenting opinion of Justice William Brennan in the famous *Gregg* v. *Georgia* case, "*an executed person has indeed 'lost' the right to have rights.*"[1]

Capital punishment is one of the oldest legal institutions and is deeply rooted in ancient times; however, its purpose has changed throughout history. First, it appeared in connection to blood feuds, and then it became a "*poena ordinara*" sanction, but this was not without any periodical peculiarities. In certain periods, it was used as a sanction for everyone; in other cases, it applied only to certain parts of society, and in other cases, it was used as a form of political repression. Capital punishment has been abolished in more than two-thirds of countries, but it still exists in some developed countries, such as the United States.[2] With a greater emphasis on human rights in the future, it will most likely become an obsolete sanction; however, until then, this is a topic worthy of discussion.

In this article, I will not attempt to showcase the entire history of the death penalty, or its long Hungarian history. Rather, I focus on the more peaceful times of the 20th century, which is the last century in which capital punishment was still used.

In Hungary, after the 1867 Austro-Hungarian compromise, which brought about the need to modernise certain pieces of legislation,[3] a relatively modern criminal code, namely the Csemegi Codex, was adopted. The general part until 1950 and the special part until 1960 deeply influenced Hungarian criminal law. From its application, one special period must be mentioned: the time of war. This period was very different from peaceful times, and the reason for using capital punishment differed from its regular usage. For two reasons, I will not discuss this period in detail. First, the analysis of this special period due to its difference from peaceful time legislation is incomparable to the other times, and it deserves a separate article. Due to length constraints, even if I

1 Gregg v. Georgia 428 U.S. 153 (1976).
2 Death Penalty Information Centre: *Policy Issues International*. Available at: https://deathpenaltyinfo.org/policy-issues/international (accessed on 29.12.2022).
3 Barna Mezey (2020): A föltétlen igazság és a társadalom fenntartásának érdeke, in Attila Horváth (ed.): *A Csemegi-Kódex megalkotásának 140. évfordulója tiszteletére*, Dialóg Campus, Budapest, p. 39.

wanted to include it, I would not have been able to do so. Nevertheless, I will outline this period in the second section for clarity.

Therefore, in this article, I provide an overview of capital punishment in peaceful times in its last century by comparing the legislation of the periods. Certain predetermined aspects were used to make the comparison more substantive. The first of these are the crimes that were punishable by death, the means of execution, and other factors that had to be taken into account when sentencing someone for capital punishment, and then the practice of the courts. Finally, I will discuss the abolition of the death penalty in Hungary. By comparing these periods, I highlight the differences in the use of capital punishment over its last 90 years.

II. CRIMES PUNISHABLE BY DEATH

The first issue I am going to cover is crimes that were punishable by death. The nature and seriousness of crimes that stipulate capital punishment are the best indicators of how criminal law regimes construe the death penalty and its most protected values. In this chapter, I discuss the periodic changes in crimes that could have been punishable by death.

1. Csemegi Codex

Our starting point is the Csemegi Codex,[4] a revolutionary piece of legislation that ended the feudalist structure of criminal law.[5] Before the Parliament accepted the Codex, there were quite a few opposing ideas toward maintaining the institution of the death penalty. One of the biggest protesters was the previous Minister of the Interior, Bertalan Szemere, who compiled a list of 20 reasons why the death penalty was a less sensible punishment than imprisonment.[6] Another opposer was Béla Komjáthy, who said in Parliament that capital punishment was unjust and unnecessary. He elaborated his opinion and said that the death penalty is against all the "*principles of correct punishment*", which are that it is appreciable, restorable, exemplary, reparative, and popular.[7] Notwithstanding these concerns, capital punishment was included in the new Codex. Here, I have to mention the opinion of Károly Csemegi, who expressed that capital punishment is currently necessary, but it must be limited to the most serious crimes and the most severe cases, and only when it is necessary.[8] In the reasoning of the 1878 V Act they expressed that the 1843 draft Act on the criminal code did not contain the death penalty as a sanction and that the debates over its necessity have even caught

4 1878. V. Act on the Hungarian Penal Code on crimes and misdemeanours.
5 József Palló (2020): A Csemegi-kódex formálódása a korabeli büntetőpolitikai változásainak tükrében, in Attila Horváth (ed.): *A Csemegi-Kódex megalkotásának 140. évfordulója tiszteletére*, Dialóg Campus, Budapest, p. 47.
6 Bertalan Szemere (1841): *A büntetésről s különösebben a halálbüntetésről*, A Magyar Kir. Egyetem Betűivel, Buda, pp. 162–164.
7 Iván Nagy (ed.): *Országgyűlés Képviselőházának Naplója XIII. kötet*, 309/1875, pp. 279–280.
8 Gergely Szalóki: Halálbüntetés a Csemegi-kódexben, *Belvedere Meridionale,* 10/2008, pp. 42–43.

the attention of the codifiers of the Belgian Criminal Code.[9] After examining the issue of capital punishment, the Belgian legislature followed a practical approach and stated that capital punishment was considered necessary at that moment. This approach was followed at the creation of the 1878 Criminal Code. The reasoning of the Act expressed that the current public security conditions in Hungary required capital punishment. Thus, given the climate, capital punishment was included in the Criminal Code but was limited to only two crimes: high treason (Article 126) and murder (Article 278). According to the Csemegi Codex, there were several ways to commit high treason, but only paragraph one was punishable by death. In this case, the perpetrator must murder or deliberately kill the king, or they must have attempted either of these acts. Thus, the legislature punished completed and attempted high treason equally. Some criticised this approach as implying that the completed form (when the king dies) of the crime is not more serious than its attempted form (when the king does not die);[10] this is at the least questionable. The other crime, sanctioned by capital punishment, was a predetermined homicide. The rationale for this was that the Act makes a psychological distinction between murders that are predetermined and those that are not, but this difference in predetermination does not necessarily mean that the perpetrator would be executed solely based on his motive, rather, the circumstances have to be so morally questionable that a milder penalty as defined in the 89–92 articles cannot be applied (these will be explained in the next chapter). As we can see in the Csemegi Codex, the death penalty during peaceful times is only imposed on the most vicious crimes, and only in their most serious cases. The Csemegi Codex was a complex piece of legislation that did not aim to use capital punishment as a mere tool for political revenge, but more as a necessary but not desired form of sanction.

2. Period of wars

To clarify the article, I will briefly discuss the two wars. This extraordinary period started with the 1912 acts[11] that made capital punishment a more common sanction; at this time, martial courts were introduced. The next significant change occurred at the end of the war. After the devastating loss resulting from the war, Hungarian communists under the leadership of Béla Kun took power with a *coup*, and the Hungarian Soviet Republic was announced. During the terrible 133 days of the regime, criminal law went backward, and the death penalty was introduced for many crimes. The next event worth mentioning was the Horthy[12] period. The Kingdom of Hungary was re-established, and Miklós Horthy became Hungary's reagent. This was quite an ambivalent

9 1878. V. Act reasoning.

10 Ákos Pálvölgyi (2018): *A szabadságvesztés-büntetés felfüggesztésének ingamozgása a magyar büntetőjogban a Csemegi Kódextől napjainkig*, Pécsi Tudományegyetem Állam- és Jogtudományi Kar Doktori Iskola, Pécs, p. 48.

11 These were the: 1912. XXXII. Act on the code of military criminal procedure for the common forces, 1912. XXXIII. Act on the code of military criminal procedure of the armed forces, 1912. LXIII. act on exceptional measures in the event of war.

12 Miklós Horthy was an admiral and the regent of the Kingdom of Hungary between 1920 and 1944.

period, as there was a return to the Csemegi Codex's regulations. However, there was an increase in the number of crimes that were punishable by death. With the help of the martial courts, the number of people who were actually sentenced to death has also increased; these changes were definitely contrary to the aim of the Csemegi Codex. This, along with the outbreak of the Second World War, worsened the situation, and even more, crimes that were tried by martial courts attracted capital punishment.[13] These periods were devastating in our history, as individual lives were not at the forefront of the fight for power. Unfortunately, these tendencies have not been uncommon over the subsequent 60 years.

3. The period after the Second World War

In 1944, Soviet troops entered Hungary, and from then on, Soviet occupation began. This was marketed as a temporary situation, but the continued presence of Soviet troops for 45 years proved otherwise. Within this period, the Csemegi Codex was still in force, but other legislation made it possible to carry out executions outside the scope of the crimes punishable by death in the Codex. To fulfil its primary objective of punishing the crimes of the war, the interim national government[14] adopted the 81/1945 Decree on the people's courts, the 1.440/1945[15] Decree that modified the 81/1945 Decree, and the 5.900/1945[16] Decree that also modified the 81/1945 Decree.[17] The 81/1945 Decree adopted two crimes—war crimes and crimes against the people—but only certain war crimes were punished by death. A retroactive effect was applied to these crimes. In the 1.440/1945 Decree, the scope of war crimes was extended, and from then on, every war crime was punishable by death.

In the following months, new government decrees were implemented to increase the number of crimes punishable by death.[18] To this group of decrees belongs the 6.730/1945[19] Decree that included certain cases of price-gouging abuse (this crime was defined in 1920. XV. Act related to price-gouging abuse). Accordingly, the crime is committed by selling certain products over the maximum price, profits over reasonable

13 Zoltán J. Tóth (2010): *A halálbüntetés intézményének egyetemes és magyarországi története*, Századvég Kiadó, Budapest, pp. 253–276.
14 The government was elected by the interim parliament in 1944.
15 1.440/1945 Decree on amending and supplementing the 81/1945 Decree on the people's courts.
16 5.900/1945 Decree on the supplementation of the rules concerning the proceedings against an absent accused person and the representation of the public prosecution in the context of the administration of justice.
17 Zoltán J. Tóth: A halálbüntetésre vonatkozó magyarországi szabályozás a rendes és a rendkívüli büntetőjogban
a II. világháborút követő években, valamint az államszocializmus első évtizedében, *Miskolci Jogi Szemle,* 1/2008, p. 88.
18 I'm going to discuss these according to the very thorough collection of Professor Zoltán J. Tóth in his book titled: A halálbüntetés intézményének egyetemes és magyarországi története (Universal and Hungarian History of the Institution of the Death Penalty).
19 6.730/1945 Decree on the increased penalties for price gouging abuse.

profits, and so on.[20] This was later modified 8.800/1946[21] Decree[22] and became punishable by death. The next decree worth mentioning is the 9.480/1945 Decree prohibiting the export of goods of public necessity without authorisation. The most severe punishment was only applied when the act seriously harmed or jeopardised the interests of public services and in the case of commercial intent.[23] This decree was followed by the 60/1946 Decree, [24] which aimed to severely punish the sale of stolen goods if these goods were connected to public transport or if the goods were the result of a robbery.[25]

4. The First Period of the Hungarian People's Republic and the 1956 Revolution

After the war ended, the idea of parliamentary elections became topical. This materialised in November 1945. Despite all the efforts of the Communist Party, the smallholder's party won by a landslide, and Zoltán Tildy became prime minister and, later, in 1946, president of the republic. The smallholder government was facing challenges from the get-go as the communist were using "*salami slicing tactics*" against them. In 1947, the members of the Communist Party took power in the blue ballot elections. Later in 1949, the totalitarian government adopted a new constitution based on the 1936 Soviet constitution, establishing the Hungarian People's Republic.

At the beginning of this era, several new laws were adopted that enabled capital punishment outside the scope of the Csemegi Codex. These new laws were adopted to reflect the ideologies of the new leadership. The first of these was the 4/1950 Decree-law on criminal law protection of the planned economy. As its name suggests, this law aimed at prescribing the death penalty for acts against the planned economy and when the act caused particularly serious damage, or when it was committed against certain factories of particular importance, or acts committed by a person multiple times.[26] The second piece of legislation worth mentioning is the 24/1950 Decree-law on criminal law protection of social property. The idea of the decree-law was rooted in the 1948 *novella* (amendment) of the Csemegi Codex, which made the theft of the property of state factories punishable without considering the value of the stolen items.[27] In line with its ideological background, this legislation aimed to protect the assets of the state, institutions managed by the state, cooperatives, and assets under the control of these entities. Theft of social property was punishable by death if it had caused particularly

20 1920. XV. Act on the price gouging abuse.
21 8.800/1946 Decree on the criminal law protection of the economic order.
22 Tóth (2008): p. 95.
23 9.480/1945 Decree prohibiting the unauthorised export of articles of public utility.
24 60/1946 Decree on the more serious punishment of selling stolen goods.
25 In addition to the crimes that I have listed above there was a special legislation, namely the 1948. avi LXII. Act that regulated the military crimes of which several were punished by death. Due to the length constraints and the different focus of the article I'm not going to discuss these in detail.
26 Tóth (2008): p. 102.
27 Sándor Madai (2013): A társadalmi tulajdon fokozottabb büntetőjogi védelme egykor és most, in: Balázs Gellér, Zoltán Csige (ed.): *Békés Imre emlékkötet,* Tullius kiadó, Budapest, pp. 100–101.

serious damage and if the perpetrator was engaged in such theft multiple times, or if it was committed as part of a criminal organisation. Setting fire or blowing up social property and the robbery of such property in cases that resulted in particularly serious damage were also punished by death. This law was a very good representation of the decades that came, as it made a clear distinction between social and private property and placed a clear emphasis on social property.

However, the most significant change in this period was the adoption of the new general part of the Criminal Code with the 1950. II. Act.[28] This was a key step in cutting ties with the "bourgeois" heritage of the Csemegi Codex and having a piece of legislation that serves the socialist needs. The new General Part's 30th article listed sanctions and capital punishment within it. The reasoning of the 1950 II Act explained that although the death penalty would eventually become obsolete, the current status of society required it.

In the autumn of 1956, university students began gathering to express their demands for necessary changes in the country, but peaceful protests were met with violent responses from the state protection authorities. On the night of 23 October, the leadership called for Soviet help which arrived in the days that followed. The occupying Soviets were met with brave resistance but eventually overpowered Soviet troops prevailed on November 4th.

János Kádár assumed power in 1956 and he voiced that new laws must be created to punish the participants in the revolution. These new decree-laws, on the surface, preserved the image of legality; however, in reality, they very much lacked it.[29] This period saw the renaissance of extraordinary courts, and summary procedures were introduced in the 22/1956 Decree-law.[30] The next law worth mentioning was that of 28/1956 Decree-law on the order of summary proceedings that allowed these procedures in the case of the following crimes: murder, intentional homicide, arson, robbery, crimes of intentionally damaging factories of public interest or factories serving the public's necessities of life, unauthorised possession of firearms, ammunition explosives, or explosive substances. This law only provided for the summary procedure and did not impose capital punishment for these crimes, but this was soon changed. Two days later, the 32/1956 Decree-law[31] was adopted amending the 28/1956 Decree-law with the provision that capital punishment shall be imposed if the perpetrator is found guilty.

5. The 1961 Criminal Code

In the Hungarian history of capital punishment, 1961 was a special year for multiple reasons. First, this was the year when the last deadly trial of the revolution ended; this was the final year of the special courts in Hungary; and third, this was the last year

28 1950. II. Act on the general part of the Criminal Code.
29 Szilveszter Csernus: A törvényesség álruhájába bújtak 1956 véreskezű megtorlói, *Múlt Kor,* 2021. Available at: https://mult-kor.hu/a-torvenyesseg-alruhajaba-bujtak-1956-vereskezu-megtorloi-20211104 (accessed on 29.12.2022).
30 22/1956 Decree-law on simplifying criminal proceedings for certain crimes.
31 32/1956 Decree-law on amending the 28/1956 Decree-law.

of the Csemegi Codex as a new complex Criminal Code was adopted. The New Criminal Code was enacted in the 1961. V. Act.[32] According to the reasoning of the Codex, even though socialist ideology is against the institution of capital punishment, it had to remain a sanction because the fight against capitalists cannot do without it. Looking at the previously discussed 1950 general part, we can observe similarities. Both legislations declare that capital punishment should not be maintained, but the current climate does not allow for its abolition. On the surface, it looked like a genuine commitment towards future abolition, but in reality, both systems kept it as an intimidation tactic and a tool to eliminate those against the system.

The special part of the Code sanctioned 31 crimes with capital punishment. Within the scope of this article, this is the period with the most crimes punishable by death, but a mere number that does not consider actual practice does not show the full picture.

The first group of crimes punishable by death included nine crimes against the state. These were conspiracy (Art. 116), from which the five most serious cases could be punished by death, three classified cases of rebellion (Art. 120), more serious cases of damage that could be committed only by certain people against the people's republic (Art. 124), classified cases of destruction (Art. 125), assassination (Art. 126), classified cases of high treason (Art. 129) (high treason just like in the Csemegi Codex was included in the new Code but obviously with a different substance), support of the enemy (Art. 130), certain classified cases of espionage (Art. 131) and the final one was committing these crimes against any other socialist state (Art. 133). The classified cases in most of these crimes were a) causing serious consequences or b) committed during a war. The second group of crimes that could theoretically have been sanctioned by capital punishment were crimes against peace or humanity. Both crimes remained theoretical, as neither was committed since their inclusion in the Code.[33] The two crimes punishable by death were genocide (Art. 137) and classified cases of war atrocities (Art. 139). The eight most common crimes sanctioned by death belong to the third group of crimes. These were certain classified cases of prison mutiny (Art. 186) and classified cases of murder (Art. 253). The other six common crimes mentioned in the Code are somewhat different from these two. Not surprisingly, the socialist regime formulated criminal law to meet its needs and introduced capital punishment for certain crimes that derogated the socialist property structure. These six crimes attracted capital punishment when they were committed against social property theft (Art. 291), embezzlement (Art. 292), fraud (Art. 293), misappropriation (Art. 294), and when it caused particularly serious damage to public property, public nuisance (Art. 190), and robbery (Art. 299). According to the new Code, these crimes were just as dangerous to society as the previously listed crimes. The reason behind this was attempted to be explained in the reasoning of the Code that said these crimes deserved punishment by death, as they undermined the basic socialist structures.[34]

32 1961. V. Act on the Criminal Code of the Hungarian People's Republic.

33 Tóth (2010): p. 300.

34 Zoltán J. Tóth: A büntetőjog normalizálódása és az abolíció eszméjének térhódítása Magyarországon: a halálbüntetés szabályozása a '60-as évek elejétől a '80-as évekig, *Debreceni Jogi Műhely,* 3/2007.

In Hungarian criminal law, this was the first Code to include military crimes. Twelve of these crimes involved punishment by death. These were absconding during war (Art. 312), classified cases of absconding abroad (Art. 313), abdication from performing military service during war (Art. 315), certain cases of mutiny (Art. 316), insubordination to an order during war (Art. 317), violence against a superior and the environment during service (art. 318), violation of the guard during a war situation (Art. 326), violation of the rules of standby during a war situation (Art. 327), misconduct on behalf of the commander during war situation by not providing a capable resistance (Art. 331), abdication from performing a battle obligation in a serious manner (Art. 332), jeopardising battle readiness resulting in a particularly serious disadvantage (Art. 334) and violence against a military envoy (Art. 338).

6. The softening of the dictatorship

Finally the last period to discuss is how the totalitarian regime began to turn away from the use of capital punishment. The two laws that represented this theoretical change were 28/1971 Decree-law,[35] which amended the 1961 Criminal Code and the 1978 new Criminal Code. The first step in the process was the 28/1971 Decree-law. This amendment repealed six crimes and introduced one that could be sanctioned by death; from this point onwards, 26 crimes were punishable by death. The biggest achievement of this legislation was that it repealed those provisions of the Code that allowed capital punishment for the crimes of theft, embezzlement, fraud, misappropriation, public nuisance, and robbery. This significant move represented both ideological and economic changes in the country. However, this amendment not only removed obsolete ideas but also reflected the new challenges of life. As a result, the unlawful seizure of an aircraft was introduced as a new crime that could be punished by death if it resulted in someone's death (Art. 192).

Even though the 1961 Criminal Code, at its adoption, provided adequate protection to society, it later became increasingly evident that there was a need for a large-scale overhaul of criminal law as times were changing.[36] The new sanction system of the 1978. IV. Act[37] was more refined than the previous Code but still included the death penalty.[38] Leading legal scholars of the time, such as József Földvári and Tibor Horváth, believed that the general preventive function of capital punishment was not a sufficient reason why it could not be abolished.[39] Nevertheless, capital punishment remained, and an explanation for this can be found in the reasoning of the Code. Accordingly, the socialist system aims to abolish capital punishment, but this is currently not

35 28/1971 Decree-law on amending and supplementing the criminal code.
36 Ferenc Nagy (1981): *Az új Büntető Törvénykönyv szankciórendszerének egyes kérdései,* A Szegedi József Attila Tudományegyetem Állam- és Jogtudományi Kara, Szeged, p. 5.
37 1978. IV. Act on the criminal code.
38 Mihály Tóth: Az új btk bölcsőjénél, *Magyar Jog,* 9/2013, p. 526.
39 József Földvári (1970): *A büntetés tana*, Közgazdasági és Jogi Könyvkiadó, Budapest, p. 107.

possible.[40] Looking back at the previous legislation of the socialist era, it is evident that this explanation remains the same. Although the regime has been moving towards the future abolition of capital punishment for the last 30 years, real action was not taken until the regime changed. The number of crimes punishable by death did not change; however, the crimes themselves did. As in the 1961 Code, it is expedient to classify crimes into groups. The first group of crimes punishable by death included the nine crimes against the state. These were ordinary cases of support of the enemy (Art. 146) and of committing the crimes in this chapter against any other socialist state (Art. 151). In addition to these, there were the classified cases of conspiracy (Art. 139), rebellion (Art. 140), damage (Art. 141), destruction (Art. 142), assassination (Art. 143), high treason (Art. 144), and espionage (Art. 147). Regarding these classified cases, most of the crimes remained the same, but the number of classified cases punishable by death was significantly reduced compared to the 1961 Code. From this point onwards, only the most dangerous acts to society were sanctioned by death. In contrast, crimes against humanity have changed more significantly. Instead of the previous two crimes that were sanctioned by death, this Code included four, namely genocide (Art. 155), violence against civilians if it caused death (Art. 158), criminal warfare (Art. 160), and violence against military envoys (Art. 163). As we can see, compared to the times before the Codex, the crime of war atrocity was repealed, but three new crimes were introduced in this group. The next group consists of three common crimes, which were classified cases of murder (Art. 166), the new crime of terrorism (Art. 261), and the unlawful seizure of an aircraft (Art. 261). It is worth noting that the previous crime of prison mutiny was removed from crimes punished by death, as it was transformed into a different crime. Finally, the last group of crimes that were punishable by death included ten military crimes compared to the previous twelve. Some of them, such as absconding (Art. 343), mutiny (Art. 352), insubordination to order (Art. 354), violence against a superior and the environment of service (Art. 355), and abdication from performing a battle obligation (Art. 365), mostly remained the same. The crimes of abdication from service (Art. 346), refusal of service (Art. 347), misconduct in service (Art. 348), jeopardising battle readiness (Art. 363), and misconduct on behalf of the commander (Art. 364) were either newly introduced or significantly reworked.

III. MEANS OF EXECUTION AND OTHER FACTORS

1. Csemegi Codex

According to the 21st article of the Csemegi Codex, the execution had to be carried out in a closed space by hanging. If we look at the reasoning of the act, we can see that it

40 Ágnes Gócza (2015): Gondolatok az 1978. évi IV. törvényben szabályozott büntetések előkészítéséről – különös tekintettel a halálbüntetésre, in István Koncz, Ilona Szova (ed.): *PEME XI. Ph.D. – Konferencia*, Professzorok az Európai Magyarországért Egyesület, Budapest, p. 62. Available at: https://dea.lib.unideb.hu/server/api/core/bitstreams/c2582005-7cdb-4430-9ef9-9cad0f5ffbe5/content (accessed on 29.12.2022).

proposes that the execution should be performed by guillotine.[41] Károly Csemegi, the author of the Codex, as opposed to previous practices in Hungary, proposed the use of guillotines in the drafts.[42] This idea was rejected by the Parliament as they deemed it unnatural to Hungarian practice, so subsequently, we stayed with hanging,[43] and this, with some exceptions, remained the same until death penalty was abolished. Another contested issue was whether the execution should be performed in a closed space or in front of a crowd. The reasoning of the Codex mentions that abolitionists argue that the only reason for keeping the death penalty in place is its deterrent force; thus, if the execution is carried out behind closed doors, it loses this force. This reasoning provides the answers to this question. First, it states that it is inhumane to make someone's death a public event; second, public humiliation would make the already most serious punishment even more severe, this not being the aim of the legislator; and third, the argument of the abolitionist is flawed, as it would mean that only those are affected by a deterrent nature who are there, and those who are not present will not be affected. The reasoning points out that physically witnessing the execution is not crucial, as the deterrent effect of capital punishment is achievable by making the execution public knowledge. With this Codex provision, the period when executions were public events ended.[44] The process of execution is further regulated by the attachment of the 2106/1880 Decree of the Minister of Justice and the 1896 XXXIII. Act,[45] which is the procedural act of the criminal Code. According to this legislation, the day of the execution is decided by the royal prosecutor, followed by a public announcement. Following this, the prison doctor examines the condition of the person on death row and stops the execution if there is something that hinders the process; if the person is not deemed unfit for execution, then he gets 24 hours to say his goodbyes. The next morning at the execution, the royal prosecutor or its deputy assigned to the case, the high court judge, the administrative body's representative, the prison officer, the priest, and the two doctors had to be present. Another provision of the Procedural Act that tries to make the execution as humane as possible prohibits the individual facing execution from seeing the individual who is next on the death row and prevents the individual who is next in line from seeing the individual facing execution. In addition, there were possibilities for others to be present during the execution. With the permission of the royal prosecutor, males other than the already eligible family members and attorneys could be physically present to witness the execution.

Another interesting issue is the limitations of the people who could be executed. The 22nd article of the draft proposed postponing the execution of a pregnant woman until she gave birth; however, this was not eventually included in the Codex, as the Parliament deemed it too obvious to be included. In contrast, what was included in the Act was the 87th article that prohibited the execution of people under the age of 20. Here,

41 1878. V. Act reasoning.
42 Judit Kisnémet: A halálbüntetés története Magyarországon, *Magyar Rendészet*, 6/2015, p. 110.
43 Tóth (2010): p. 247.
44 Péter Balázsy: Szemelvények a halálbüntetés történetéből, *KRE-DIT,* 1/2018. Available at: http://www.kre-dit.hu/tanulmanyok/balazsy-peter-szemelvenyek-a-halalbuntetes-tortenetebol/ (accessed on 29.12.2022).
45 1896. XXXIII. Act on the criminal law procedure.

the 1896 Procedural Act has to be mentioned again as, in addition to those under 20 years old, it also outlaws the execution of mentally ill and pregnant women.

Finally, two factors that could alter the use of capital punishment are worth mentioning. First, the Code provided the king with the opportunity to grant a pardon to an individual who had been sentenced to death. Obviously, with the change in power, this also changed, and this right was granted to persons who held other positions. Second, criminal liability lapsed in the case of the two crimes after 20 years, and the enforcement of the sanctions lapsed after 25 years.

2. The period after the Second World War

As mentioned previously, the interim national government adopted the 81/1945 Decree on People's Courts, the 1.440/1945 Decree, and the 5.900/1945 Decree. The initial 81/1945 Decree was silent on the means of execution. However, the 1.440/1945 Decree that modified it stated that the death penalty should be carried out either by hanging or by firing squad in a closed space, but this must be done without excluding the public. Thus, the rope and closed space are similar to those in the Csemegi Codex, but the firing squad and the opportunity for the public to attend are different. The idea in the latter probably lies in the fact that these crimes were considered highly condemned by the interim government so that these executions could be regarded as a victory to them. However, by still keeping this behind closed doors did not make it a public humiliation. If the appeal was not possible or the pardon was not granted, then the execution had to be carried out within two hours. The method of execution was later refined by the 1.750/1946 Decree[46] which stated that if the execution by hanging faces difficulties, then it has to be done by a firing squad.[47] This Decree can be considered a step back to the traditional means of execution defined in the Csemegi Codex.

The limitations on the people who could be executed also differed from the regulations of the Csemegi Codex. Initially, the 81/1945 Decree stated that juveniles could not be executed for the crimes listed in the Decree. This changed with the 1.440/1945 Decree, and from then on anyone older than 16 years (when committing the crime) could be punished by death.

Concerning pardons, the 81/1945 Decree states that capital punishment pronounced by people's courts can be changed to 10–15 years of imprisonment by pardon. This was later changed with the 1.440/1945 Decree, and from then on, the convict or their attorney had to seek pardon, and a death sentence could only be changed to lifelong forced-labour or, if physically impossible, life imprisonment. In addition, the appellate court of the People's Court could decide not to grant the convict pardon if they did not find sufficient basis; this provision made the pardon system rather void.

46 1.750/1946 Decree on the death penalty by a bullet.
47 Tóth (2010): p. 282.

3. First Period of the Hungarian People's Republic and the 1956 Revolution

As mentioned earlier, a new general part of the Criminal Code was adopted in 1950. This new legislation did not regulate capital punishment in detail. Nevertheless, it included some interesting provisions. Regarding people who could be punished by death, the Act stated that in the absence of special laws, instead of the death penalty, life imprisonment should be used if the perpetrator was older than 18 but younger than 20. This provision provided special protection for those between the two age groups, but it was not absolute protection. Also, this suggests that a person under 18 years could not be subjected to capital punishment. This was confirmed by the Act on the Entry into Force of the General Part,[48] as it declared that the death penalty could not be imposed on the perpetrator if he was younger than 18 years.

The second noteworthy issue that the general part discussed in its 25th article is that crimes punishable by death lapse after 15 years. But the new general part did not regulate the duration for the enforcement of sanctions. This was included in the Act on the Entry into Force of the General Part, which determined it to be 20 years. Compared to the Csemegi Codex, both periods were five years shorter.

Interestingly, the methods of execution were not defined in the Code but in the Act on The Entry into Force of the General Part. The Act, just as in the periods after the war, declared that executions should be carried out in a closed space by hanging, but where there are difficulties, then it must be done by a firing squad.

According to the 6/1956 Government Decree,[49] those sentenced to death in the show trials of the revolution had to be executed within two hours. Even though these trials very much lacked legality, there was still the possibility of giving a pardon. The judges had to decide unilaterally to decline the pardon. If they did not, the presidential council[50] decided on the matter.

4. The 1961 Criminal Code

It is worth mentioning that the Codex did not use capital punishment as an absolute sanction in any of the crimes; rather, it was always an alternative sanction. Surprisingly, there were no provisions on the means of execution in the 1961. V. Act, but in the 8/1962 Decree-law on criminal procedures. This newly adopted Decree-law did not significantly change the previous procedural rules, and the same was true in the case of mean execution.[51] The execution still had to be carried out in a closed space using a rope or by firing squad.[52]

48 39/1950 Decree-law on the entry into force of the general part of the criminal code.
49 6/1956 Government Decree on the detailed rules of the summary courts.
50 This was the collective head of state during the Soviet-type dictatorship.
51 Judit Kovács, Zsolt Nagy: A társadalmi változások hatása a büntető eljárási szabályokra a rendszerváltás után, 2/2001. Available at: http://jesz.ajk.elte.hu/kovacs6.html (accessed on 29.12.2022).
52 8/1962 Decree-law on the criminal procedure.

Similar to the procedural act of the Csemegi Codex, the new Criminal Code also sets the minimum age for sentencing someone to death at 20 years. The Code in the same article also mentioned the opportunity for a pardon, which, when successful, changed capital punishment to 20 years imprisonment. The rules of the pardon were further regulated in the previously mentioned procedural Decree-law stating that execution could only occur if the pardon was not granted. Moreover, those who could not have been executed were extended by the procedural act to pregnant woman or a mentally ill woman until they give birth or recover from their state.

The third interesting issue, connected to capital punishment, on which the Act contains provisions, is lapsing. According to the new Code, the criminal liability for crimes that can be punished by death lapses after 20 years. Furthermore, according to the Code, the enforcement of capital punishment lapses after 20 years.

5. The softening of the dictatorship

As mentioned in connection with capital punishment, the first sign of the softening of the Soviet-type totalitarian regime was in the 28/1971 Decree-law. Capital punishment was already an alternative sanction in the Code, but the Decree-law additionally introduced life imprisonment as an alternative to the death penalty. This can be found in the reasoning of the amendment, which states that, life imprisonment shall be used if there is still a chance that the perpetrator will change for the better, as opposed to capital punishment, which should only be used if there is no chance that this change will occur.[53]

As explained in the last subchapter, the 1961 Code provided an opportunity for a pardon, and if it was successful, capital punishment was changed to 20 years imprisonment. With the Decree-law, possibilities were extended; from this point onwards, life imprisonment was also an option.

Most of the rules relating to capital punishment were kept from previous legislation, as they were deemed appropriate by the lawmakers. Accordingly, the new Criminal Codex did not bring about changes in the execution process. As in the past, capital punishment was carried out in closed spaces by hanging or firing squads.

IV. COURT PRACTICE

1. Csemegi Codex

As previously mentioned, in the case of the Csemegi Codex, the legislature aimed to use only capital punishment in the most serious cases. This was reflected in the competencies of the courts, as not all of them were competent to decide on cases where the death penalty could be applied. If we take a look at the 1897. XXXIV. Act on the entry into force of the Criminal Procedure Code, we can observe that trials of crimes that are

53 Kálmán Györgyi (1984): *Büntetések és intézkedések*, Közgazdasági és Jogi Könyvkiadó, Budapest, p. 209.

punishable by death must be held in front of a jury.[54] The lowest level at which these cases were decided was the high court, where juries were established. According to the 1897. XXXIII. Act on the jury; the jury consisted of three judges and 12 juries.[55] Also, in line with the legislator's aim, the Csemegi Codex provided several opportunities for courts to use less serious sanctions instead of the death penalty. In Articles 91 and 92, the Codex states that capital punishment can be changed to life imprisonment if the extenuating circumstances are dominant. Moreover, if the extenuating circumstances are so predominant that even the previous case is too harsh, then capital punishment can be changed to 15 years of imprisonment. As a result of the aim of the Code, the few crimes that could be punished by death, and the possibility of the courts not imposing a death penalty, it was very rarely used. The data that found predates the scope of the article, but I believe it is still important to mention this, as it represents the attitude of the courts until the introduction of martial courts.[56] Between 1880–1899, according to Fayer Laszló's research, there was, on average, no more than one execution per year.[57] Furthermore, no individual was sentenced to death between 1885 and 1900.[58] This peaceful climate changed before the war and new legislation like the 1912. LXIII. Act on Exceptional Measures in the Event of war[59] that responded to the dark clouds on the horizon, made capital punishment a lot more common. Subsequently, this practice was then carried on. However, still, counting in these different times in the 30 years before the war, only 38 people were executed.[60]

2. The period after the Second World War

During World War II, the ideological climate changed in Hungary, which brought about some changes in the courts. The 1945 Ministerial Decree introduced people's courts. From then onwards, two types of courts—regular and people's courts—functioned simultaneously.[61] However, only the latter could sentence a person to death for a war crime. If we look at the position of the courts in these cases, it is interesting to observe that the 81/1945 Decree states in the 5th article that less serious sanctions can be applied if the previously mentioned 91st and 92nd articles of the Csemegi Codex

54 1897. XXXIV. Act on the entry into force of the criminal procedure code.
55 1897. XXXIII. Act on the juries.
56 Kisnémet (2015): p. 112.
57 Ádám Békés (2020): A Csemegi-kódex büntetéstani tételei tovább élnek-e a jelenlegi büntetéskiszabási gyakorlatban?, in Attila Horváth (ed.): *A Csemegi-Kódex megalkotásának 140. évfordulója tiszteletére,* Dialóg Campus, Budapest, p. 70.
58 Tibor Horváth (2001): Az Első Magyar Bűntető Törvénykönyv és Kodifikátora: Csemegi Károly, in Barna Mezey (ed.): *A praxistól a kodifikációig. Csemegi Károly emlékére (1826–1899),* Osiris Kiadó, Budapest, p. 31.
59 This legislation gave the government the chance in case of a war or in case of a situation of a potential war to implement new legislations that are necessary to combat the war crisis without asking the opinion of the parliament.
60 *A Büntetési Eszközök (Formák) és Végrehajtásuk Története*, p. 67. Available at: https://jogikar.uni-miskolc.hu/files/5956/Tansegedlet_Kriminologia%20mesterkepzes_Ponologia_2.pdf (accessed on 29.12.2022).
61 Palló (2020): p. 55.

are fulfilled, in addition to this any less harsh sanctions in the Decree can be applied too. This initial attitude changed shortly after the 1.440/1945 Decree repealed the aforementioned provision of the 81/1945 Decree. Instead, the decree stated that capital punishment can only be a sanction for those crimes in the criminal code and only if capital punishment is the only sanction proportionate to the nature of the crime and to the degree of culpability. This article, to some extent, tries to emphasise the ultimate nature of capital punishment, but as we will see later, the numbers do not reflect this. In addition, contrary to the 81/1945 Decree and the Csemegi Codex, the Decree prohibits the use of a different sanction according to the 92 article if extenuating circumstances are predominant. Also worth mentioning is the 5.900/1945 Decree that allowed people's courts to sentence someone to death when they are absent and prohibited them from appealing such decisions. Thankfully, this controversial provision guaranteed that when the "sentenced" was caught, they had to be brought in front of the People's Court to decide on a new trial or to uphold the decision. Concerning the courts, the issue of appeal is also worth mentioning. The 81/1945 Decree initially made it possible to appeal every death sentence, but the 1.440/1945 Decree changed it. This Decree made it impossible to appeal against half of the war crime cases in which the perpetrator was sentenced to death. According to the available data, the People's Court between 1945 and 1948 executed 160 people[62](this number is most likely much higher as court statics did not always reflect reality).[63] This drastic change in the number of executions was also attributed to the structure of the People's Courts and their attitudes, as war crimes were often broadly interpreted.[64] It is also worth mentioning that these courts made decisions with government influence. The government made several lists of alleged war criminals to help the People's Courts. After four years, these courts stopped working in 1950, but the persecution of war criminals continued.[65]

When we discuss the courts in this period, the usury courts that decided on the price-gouging abuse cases defined in the 6.730/1945 and 8.800/1946 decrees must also be mentioned. Special courts were regulated in the 1947. XXIII. Act on special councils of usury courts.[66] These courts consisted of five people, the president, selected by the justice minister, and four labour judges appointed for six months.[67]

62 Mihály Soós (2004): A háborús és népellenes bűntettek feltárásának forrásai a történeti levéltárban, in György Gyarmati et al. (ed.): *Trezor 3. Az átmenet évkönyve 2003,* Állambiztonsági Szolgálatok Történeti Levéltára, Budapest, pp. 81–106.
63 Kisnémet (2015): p. 113.
64 Balázsy (2018).
65 Soós (2004): pp. 81–106.
66 Zoltán J. Tóth: The death penalty in Hungary following World War II, *Jogelméleti Szemle,* 3/2020, pp. 77–78.
67 At this period beside the regular, the people's and the usury courts summary courts and military tribunals functioned too.

3. First Period of the Hungarian People's Republic and the 1956 Revolution

The General Part of the 1950 Act states in its 51st article that sanctions, in general, can be mitigated if they are in line with the purpose of the penalty or if the extenuating circumstances make it necessary. In the new general part death penalty is not an absolute sanction, and it specifies that it can be changed to life imprisonment or 10–15 years in prison.

Although this overlaps with previously mentioned times, it is worth mentioning that between 1947 and 1953, at least 196 people were executed by both ordinary and special courts. This is approximately the same annual number as in the first few years after the war.

As mentioned, summary courts were set up in 1956 for many crimes in which capital punishment could be imposed. The previous rules of the summary court were deemed obsolete by the regime as they did not serve their aims. A new Government Decree, namely the 6/1956, was adopted to regulate the new summary court procedures. From this point onwards, the summary courts consisted of three judges: one professional and two lay judges.[68] During this period, the regime aimed to intimidate the public. The show trials were great tools in the hands of the leadership to achieve their goals. The decision to pursue criminal proceedings against individuals usually came from the party of Mátyás Rákosi, who admitted this himself.[69] These trials were not only directed by the party but also the cases were made up, evidence was fabricated, and confessions were forcefully extracted from the people. In summary, trials in a substantial number of cases completely lacked legality. Summary courts stopped working in 1957; however, until then, at least 70 people had been executed.[70] However, the pursuit of those involved in the revolution continued even after the summary courts ended. The tool of choice in this process was the resurrected People's Courts. These newly reinstated courts, which decided on the same crimes as those in front of the summary courts, consisted of one professional judge and two lay judges or, in higher instance cases, one professional judge and four lay judges.[71] Between 1956 and 1961 (the year of the last execution connected to the revolution), 367 people were executed, of which at least 269 were directly connected to the revolution.[72] Within the scope of this study, these were the deadliest years.

68 Zoltán J. Tóth: A rögtönbíráskodás története Magyarországon a XIX–XX. században, I*ustum Aequum Salutare*, 4/2017, p. 175

69 Attila Horváth: Koncepciós perek Magyarországon, *Bonum Publicum*, 3/2015, p. 54.

70 Tóth (2010): p. 294.

71 34/1957 Decree-law on the councils of people's courts and on the regulation of certain aspects of court organisation and criminal procedure.

72 Szilveszter Csernus: Százak kivégzését, tízezrek internálását és százezrek megfigyelését hozta az 1956 utáni megtorlás, *Múlt Kor,* 2020. Available at: https://mult-kor.hu/szazak-kivegzeset-tizezrek-internalasat-es-szazezrek-megfigyeleset-hozta-az-1956-utani-megtorlas-20201104?pIdx=4 (accessed on 29.12.2022).

4. The 1961 Criminal Code

The new Criminal Code declared in the 64th article that capital punishment should only be imposed if the aim of the punishment cannot be reached with alternative sanctions. The adoption of the Code was a key step toward legality. Even though the trials, in some cases, were still used as a form of revenge by the regime, the number of executions decreased significantly. Between 1961 and 1971, when the "*softening of communism*" began, approximately 70 people were executed.[73] This means there were approximately seven executions per year, which is much less than in the five years after the revolution, when the number of executions was 70 per year.

5. The softening of the dictatorship

With changes introduced by the 1971 amendment, the number of executions decreased. Between 1972 (entry into force of the amendment) and July 1979 (entry into force of the new Codex), only 20 executions were carried out.[74] This translates to a yearly average of 2–3 executions.

The 1978 Criminal Code carried on the previous practices, and the tendency of executions decreased. Between 1979 and 1990 (the year of abolition), 28 executions were conducted, which is the yearly average of three executions. The last executed person in the history of Hungary was Ernő Vadász, who was sentenced to death for murder.

V. ABOLITION

The issue of the abolition of capital punishment came up multiple times throughout Hungary's history, the most substantial of which occurred during the 1848 revolution and at the beginning of the 20th century. During the regime change, the issue of abolition became a prominent question.[75] The key driver of this change was the Anti-Death Penalty League which consisted of lawyers, church representatives, and other intellectuals. The League was responsible for spreading the message that capital punishment was inhumane and obsolete. The League was trying to convince the parties in parliament to support the idea of abolition, but as this was a controversial issue, the parties did not dare to stand behind it, so the League took the matter to the Constitutional Court.[76] In 1990, the Constitutional Court declared capital punishment unconstitutional. This decision was based on the grounds that capital punishment violated Article 54

73 *Az 1945–1988 között magyar bíróságok ítélete alapján kivégzettek* (Persons executed by sentence of Hungarian courts between 1945–1988). Available at: https://neb.hu/asset/phpFBKtvm.pdf (accessed on 29.12.2022).

74 Persons executed following sentences of Hungarian courts between 1945–1988. Available at: https://neb.hu/asset/phpFBKtvm.pdf (accessed on 29.12.2022).

75 Tibor Horváth (1992): A halálbüntetés abolíciója Magyaroroszágon, in Károly Tóth (ed.): *Emlékkönyv Dr. Cséka Ervin egyetemi tanár születésének 70. és oktatói munkásságának 25. évfordulójára,* Szegedi József Attila Tudományegyetem, Szeged, p. 231.

76 Horváth (1992): pp. 233.

of the Constitution, which declared the principle of the right to life, and that no one can be subject to torture, cruel, inhuman, or degrading treatment or punishment.[77] With this, capital punishment was abolished in Hungary.

VI. CONCLUSION

After a thorough discussion of capital punishment in Hungary over the last century, it is essential to draw up conclusions. Following the article's structure, the conclusion would begin with a summary of the comparisons that were discussed.

Beginning with crimes punished by death, two interesting observations can be made. The idea behind including capital punishment in the sanctions system has remained almost the same over the last 100 years of application. The reasoning of the Csemegi Codex deemed it necessary for security conditions at the time, thus implying that a change in the situation would bring about abolition (and it was not wrong, as the idea of abolition was very real at the beginning of the 20th century). This stance was carried on in the 1950 new general part, which acknowledged the fact that capital punishment would not be necessary in the future, but was necessary at the time. Then the new 1961 Criminal Code stated that the "*death penalty is not something that should be kept, but still, current situations don't allow for its abolition*". Finally, just like all previous legislation, the 1978 Criminal Code unsurprisingly said that abolition is on the horizon, but it is now impossible. Throughout these periods, legislators had the idea of abolition, but it hasn't materialised.

The second issue worth addressing is the actual crimes sanctioned by death. The Csemegi Codex which represents the modern attitude of the period and the debate over the use of capital punishment, punished only the two most serious crimes and their most serious cases by death. The periods that followed until the introduction of the 1961 Criminal Code were represented by the proliferation of laws; the Csemegi Codex was still in place, but most of the crimes that were punishable by death were contained in separate laws, and their number was constantly changing. From 1961 onwards, the crimes that were punishable by death were only included in the codes; this period also saw the intrusion of communist ideology into the code, mostly in the form of six crimes that were against the socialist property structure. Starting with the 1971 amendment, there was a decrease in the number of crimes punishable by death and the influence of ideology in the code, as this legislation repealed the six previously mentioned crimes. The process of making capital punishment "*ultima ratio*" was started by the 1971 amendment and was later refined by the 1978 criminal Code. Thus, we can say the *ultima ratio* nature of capital punishment in terms of the crimes has a framed structure as the starting and ending point of the analysed period represents it best, and the periods in between derogated from this function of capital punishment.

In connection with other factors, the most interesting issue, in my opinion, was the means of execution. As mentioned, the draft of the Csemegi Codex planned to use guillotine, which was later deemed unnatural to Hungarian practices. From this point

77 23/1990. (X. 31.) Constitutional Court decision on the unconstitutionality of death penalty.

onwards, the means of execution remained the same, except that carrying out an execution with a firing squad became an alternative option. After analysing the period of the article, I would say that the most permanent feature of Hungarian law in terms of capital punishment was the use of hanging.

Another issue worth highlighting in connection to this chapter is how the minimum age limit of capital punishment has changed. The Csemegi Codex was set at 20 years of age. Then, during the stormy after-war period, it was set to 16; then, in the 1950 General Part, it was raised to 18, and then, with the 1961 Criminal Code, it returned to the original 20.

The final issue discussed was the position of the courts. This was especially important to discuss, as laws are one thing, but what the court does within legal limits is another. Before World War I courts rarely sentenced people to death, and capital punishment was not used for political advantage. This significantly changed after the war: capital punishment was used very often, and the influence of leadership was also relevant. However, the worst period undoubtedly occurred after the Hungarian Revolution of 1956. At that time, courts were not places where justice was served, as political directives drove the cases. This partially changed with the 1961 Criminal Code; from this point onwards, the number of executions declined, but the regime still had an influence. The real changes came from the 1971 amendment and the 1978 Criminal Code. The last 20 years of capital punishment were quite modest, and executions were not that popular.

As we can observe, the aforementioned framed structure is true for all aspects discussed in this article.

VII. FINAL REMARKS

This article discusses the last century of capital punishment in Hungary. Looking at the content of the article, it is exciting to see how different capital punishments can be in certain periods. Comparing the laws of the analysed period we could also see that these differences towards the use of death penalty were heavily influenced by the current political thought. In some cases, it was a valid means of punishment, whereas in others, it was a form of oppression. This punishment's long and changing history ended in 1990 when the Constitutional Court deemed it unconstitutional.

A Brief History of the Death Penalty in Romania Between 1900 and 1990

ÁGOTA SZEKERES
Ph.D. student, University of Miskolc,
Central European Academy
E-mail: szekeres.agota@centraleuropeanacademy.hu

ABSTRACT
There is little, and sometimes unclear, information about the history of the death penalty in Romania in the years between 1900 and 1990. It is difficult to estimate the number of people sentenced to death, and it is almost impossible to do the same for those who were found guilty and sentenced to death, but not executed. Insufficient information and mystification hinder public perception, and the few scientific publications on the subject are filled with inconsistencies that make what is known about it even more uncertain today. From what we have been able to find, we can conclude that the death penalty became widespread in the years before World War I and with every "change of season" (the instauration of the royal dictatorship and the Soviet-type totalitarianism), the laws also changed, including the death penalty. In this article, we examine the crimes for which the death penalty was imposed, the method of execution, the exceptions to the death penalty, the courts that sentenced people, and provide a brief overview of the prisons where this type of punishment was applied.
KEYWORDS
death penalty, Romania, royal dictatorship, Soviet-type dictatorship.

O scurtă istorie a pedepsei cu moartea în România între 1900 și 1990

REZUMAT
Există puține informații și uneori neclare despre istoria pedepsei cu moartea în România între anii 1900–1990. Este dificil de estimat numărul persoanelor condamnate la moarte și este aproape imposibil a estima numărul persoanelor care au fost găsiți vinovați și condamnați la moarte, dar neexecutați. Informațiile insuficiente și mistificarea împiedică percepția publicului, iar publicațiile științifice pe această temă sunt pline de inconsecvențe care fac ceea ce se știe astăzi despre pedeapsa cu moartea și mai incert. Din ceea ce am putut afla, putem concluziona că pedeapsa cu moartea a devenit des folosită înainte de Primul Război Mondial și că, cu fiecare „schimbare de anotimp" (instaurarea dictaturii regale și a totalitarismului de stil sovietic), legile, inclusiv pedeapsa cu moartea s-au schimbat. În acest articol, vom examina infracțiunile pentru care a fost aplicată pedeapsa cu moartea, modalitatea de executare, excepțiile de la pedeapsa cu moartea și instanțele care au condamnat persoanele, precum și o scurtă prezentare a închisorilor în care se aplica acest tip de pedeapsă.
CUVINTE CHEIE
pedeapsa cu moartea, România, dictatura regală, dictatură de stil sovietic.

I. INTRODUCTION

The death penalty is a legal practice in which a person is sentenced to death as punishment for a specific crime. This is also known as capital punishment. It is one of the most popular methods of punishing criminals and includes hanging, electric shocks, lethal injections, and firing squads.

The main objective of the death penalty is to limit the number of atrocious crimes committed by returning to the source and terminating the criminals. The death penalty remains a legal punishment imposed by a court for violating the law in some countries. The procedures for carrying out the death penalty differ from one country to another and from one period to another.

The history of the death penalty in Romania is crucial for understanding the capacity of the law and the humanism behind it.

Our study focuses on the period from the quasi-abolition of the death penalty under the Penal Code in 1865 to its literal abolition in 1990. This period is sufficient for an in-depth study as it is the most turbulent period regarding the death penalty.

In Romania, the death penalty fluctuated in terms of harshness and application and was the most strident during the Soviet-type dictatorship. Even during this period, attempts were made to abolish it before the 1990s. The death penalty, as a form of punishment, was widely applied during dictatorial periods as it survived the royal dictatorship and Soviet-type totalitarian regime.

In modern society, the idea of using the death penalty as a punishment remains relevant. It is still used in some parts of the world, including developed countries, such as the USA. In Romania, the death penalty has been abolished, but occasionally, the idea of reintroducing it has emerged from society.[1] This article aims to present the history of the death penalty in Romania and recall the forgotten horrors of this punishment and the hardships necessary to abolish it.

II. HISTORICAL OVERVIEW

Our brief historical presentation begins with the Romanian Kingdom. In 1900s Romania, from the perspective of the death penalty, the Military Code of 1873 was in force during wartime. King Charles' royal dictatorship opened doors to the death penalty during peacetime and crimes against the royal family. As the royal dictatorship ended, new rules were introduced. The death penalty was active in Romania in the first half of the Soviet-type totalitarian regime. Its beginnings were dominated by the problem of dealing with war criminals, which frequently took the form of retribution, a covert means of punishing fascists and communists' erstwhile political adversaries. Legislation relating to the death penalty was expanded in 1949 to include several economic and political offences. The peak in the number of executions occurred in 1958 and

1 Roxana Trandafir, Dragoș Pârgaru, Valentina Dinu, Florin Bobei: Studiu privind percepția studenților la Drept asupra pedepsei cu moartea, *Forum Juridic*, 3/2020, p. 14.

1959 when the highest rates of execution were recorded from 1944 to 1990. Leadership changes typically led to a revision of the Penal Code and a change in death penalty policies. In this way, we can see a different Penal Code under the ruling of Stalinist-influenced Gheorghe Gheorghiu-Dej and Marxist-Leninist Nicolae Ceaușescu.

III. CRIMES

1. Before the Soviet-type totalitarian regime

The first penal code for modern Romania was implemented in 1865. The French Penal Code of 1810 significantly influenced this code.

It was regarded by the doctrinaires of the day as the mildest Penal Code in Europe and was influenced by France and Prussia's penal laws. The death penalty, corporal punishment, and property seizures were not permitted. This was in effect until 31 December 1936 when various amendments were made throughout those 71 years. On 11 March 1864, during arguments before the General Assembly, Vasile Boerescu, the official rapporteur of the Penal Code, stated,

> *"[t]he commission suppressed the death penalty from our law. This barbaric punishment, which does not correspond to the moral and exemplary purpose that a punishment should have, and is in disagreement with the rights and power of society, is only written in our law without it being executed for many years. Its suppression, however, not only cannot bring us the slightest disturbance as the nonsense claims, but I believe it will not even give place to the discussion, for its suppression exists, in fact, in a tacit way, by a consent generally, by the power of public opinion, by the sweet and humanitarian morals of our people. Nevertheless, it was time for this punishment, which had disappeared for many years, to disappear from the law. While other more civilized peoples doubt and do not dare to suppress this punishment, I am proud to say that the Romanians are the first to suppress it in practice and will be among the first to suppress it in law. And yet, relatively speaking, in our State, far fewer crimes are committed and in a far less cruel manner than in other more civilized states where this punishment exists both in deed and in law!"*[2]

The Penal Code was published and proclaimed on 30 October 1864 and gained effect on 1 May 1865. The harshest penalty was hard labour for life, as stated in Article 7. Portugal abolished the death sentence in 1867, while the Netherlands did the same in 1870, making Romania one of the first nations in contemporary Europe to abolish the death penalty in 1865.[3]

The 1866 Constitution, inspired by the liberal Belgian model of 1831, made it clear in Article 18 that the death sentence could not be reintroduced. Under the Constitutions of 1866 and 1921, the application of the death sentence was prohibited, except

2 National Archives of Romania. Available at: https://artsandculture.google.com/story/hwVxSnR9-PMIJw?hl=ro, (accessed on: 20.11.2022).

3 Csaba Lőrincz, József Kabódi, Barna Mezey (2005): *Büntetéstani alapfogalmak,* Rejtjel Kiadó, Budapest, p. 60.

in cases provided for by the Military Penal Code during wartime.[4] The death penalty was banned until 1938, except for a few military offences covered by the Military Code during the First World War. During this period, the death penalty was only used for wartime crimes, as stated in the Military Code.

The new Code for Military Justice was enacted in 1873. It should be noted that this was a copy of the French Army's Code of Combat Justice in 1857 and not an original development of the national school of law.[5] The law was introduced in the Romanian army in 1873 and amended by Decree No. 1256 on 14 May 1881;[6] Decree No. 1304 on 25 March 1894;[7] Decree No. 1025 on 3 March 1906;[8] and by the law of 21 December 1916,[9] which was repealed on 28 December 1916.[10]

The death penalty under the law was applied during wartime and not during peacetime. This is described in the annotation of Article 144. The general command of the Constituency can suspend the execution of the decision under the condition of immediately informing the Ministry of War. In the annotation, Article 144 is the exact copy of Article 150 of the French Code. In France, there was a need to include this text, because there was a death penalty even during peacetime. In the Romanian code, "*we do not have the death penalty in peacetime*"[11] and the suspension can only take place in extreme cases with heavy punishments, such as criminal penalties, and not at all in the case of correctional penalties. For this, it is necessary to report to the Minister of the Army, who will assess whether it is necessary to ask for Royal Clemency or proceed with an appeal for annulment.[12]

The only legal standard in Romanian society that guaranteed the death penalty for at least 24 military offences on the date that Romania enlisted in the First World War was the Code of Military Justice. In this setting, the death penalty was seen as an essential tool because it offered a speedy resolution and a certain result, as opposed to imprisonment, which would have encouraged soldiers to break rules to avoid the horrors of the frontlines.[13]

One of the most important changes to the Code of Military Justice was the introduction of a provision that, in times of war, the right to appeal could be suspended regarding the solutions adopted by permanent war councils. With the entry of Romania into

4 Ioan Muraru, Simina Tănăsescu (2019): *Constituția României. Comentariu pe articole. Ediția a 2-a*, C.H. Beck, Bucureşti, p. 176.
5 Liviu Corciu: Codicele (codul) de justiție militară și modificările sale în perioada premergătoare Războiului de Întregire, *Buletinul Universitatii Nationale de Aparare „Carol I"*, 3/2021a, p. 22.
6 Decree No. 1256 of May 14, 1881 (Official Gazette No. 40/1881)
7 Decree No. 1304 of March 25, 1894 (Official Gazette No. 290/1894)
8 Decree No. 1025 of March 3, 1906 (Official Gazette No. 271/1906)
9 Decree from December 21, 1916, repealed on December 28, 1916 (Official Gazette No. 224/1916)
10 Constantin Manolache, Iustin Nistor, Toma Tomița (1936): *Codul justiției militare și legile speciale aferente adnotat cu jurisprudențele instanțelor de casare militară și civilă și cu note de doctrină*, Triajul, București, p. 7.
11 Manolache, Nistor, Tomița (1936): p. 104.
12 Manolache, Nistor, Tomița (1936): p. 104.
13 Liviu Corciu: Courts Martial and the Code of Military Justice of the Romanian Army in World War One, *Strategies XXI*, 6/2021b, p. 374.

the war, as mentioned previously, the right to appeal was suspended by High Royal Decree 17 No. 2930, from September to 16/29, 1916.[14]

The death penalty in the Code of Military Justice (1873) was used for the following crimes: treason, espionage, provocation of desertion to the enemy, crimes or offences against military duty, insubordination, revolution, and rebellion (however, in all cases provided for in this chapter, the death penalty is given only to the instigators or leaders of the rebels and the highest-ranking military), abuse of authority, desertion of the enemy, theft, looting, destruction, the devastation of edifices, and murder.

Under Charles II's reign, a new era of royal dictatorship began, which also left its mark on the law.

The 1938 Constitution, also known as Charles II's authoritarian Constitution, broke the tradition of abolishing the death penalty. It introduced the death penalty through Article 15 and simultaneously amended the Criminal Code (Charles II Code) to align it with the Constitution, making the death penalty a universal punishment.[15]

In the chapter "*Crimes and misdemeanours of a common nature to the Criminal Code and the Military Code*" of the Code of Military Justice from 1937, multiple crimes were punishable by death. Their structures and compositions were very similar to those of their predecessors. In the Military Code of 1937, betrayal and espionage, rebellion and offences, and murder were punishable by death. In Chapter 2 regarding crimes and offences against discipline and order in the army, insubordination, cowardliness, abuse of authority, disobeying the call and desertion, robbery, destruction, devastation, particular crimes of the navy, and military aeronautics were punishable by death.

Article 15 of Romania's 1938 Constitution declared that death sentences would be used in times of war, following the Code of Military Law. However, the Council of Ministers has the authority to decide on applying the provisions during peacetime for attacks on the Sovereign, Members of the Royal Family, Heads of Foreign States, and dignitaries of the state in connection with the exercise of their functions, cases of robbery with murder, and political assassination.

During the reign of Charles II, in addition to the Military Code, a new Criminal Code was created that entered into force on 1 January 1937. These included for the first time, educational measures for young delinquents and safety measures to combat dangerous situations. Compared with the previous code, which had 422 articles, the new code had 608 articles. Another difference is that the consequences are significantly more challenging. This code remained in effect until 1969 and experienced multiple alterations due to regime changes from Charles II's regime (1938–1940) to the Soviet-type totalitarian regime. For example, the adoption of the death sentence in 1938, the age of criminal responsibility starting from 12 years rather than 14 years, the inclusion of special criminal laws during WWII (stealing during bombings was punished considerably more severely), and the introduction of the death penalty. The penal code of 1936 was reissued in 1948, with revisions made by Law No. 16/1949.

The death sentence was abolished after the country's liberation on 23 August 1944 when Romania joined the Allies. The death penalty was re-introduced in 1945 for war

14 Corciu (2021a): p. 24.
15 Muraru, Tănăsescu (2019): p. 176.

crimes against peace and humanity.[16] At the end of World War II, the right to life was given greater recognition in international treaties, and the death penalty was outlawed. Although the treaties secured the right to life, thus was not absolute, as the right to life could be denied under extreme circumstances through the death penalty.[17] This began a turbulent period regarding the usage of the death penalty.

2. The death penalty under Gheorghe Gheorghiu-Dej

With the rise of the Soviet-type totalitarian regime in 1945, two statutes were introduced to address crimes punishable by death.

The first was the law "*[f]or the prosecution and punishment of criminals and war profiteers*"[18], where Art. 3 stated that the death penalty could be used for facts provided in Article 1.[19] Article 1 specified who can be categorised as war criminals. Here, we find eight possibilities: For example, in paragraph a) a war criminal was defined as a person who has subjected prisoners and hostages of war to inhumane treatment, contrary to international law. The second law was "*Law No. 312 of April 24, 1945 to Pursue and Punish Those Responsible for the Country's Disaster or War Crimes*." Art. 3 declared that people who are guilty of the facts provided by Article 2 paragraphs a) to j) will be punished with death or hard labour for life. Paragraphs a)–j) emphasise the growing power of Soviet-type totalitarian regimes. For example, paragraph a) states that those who decided to declare or continue the war against the Union of Soviet Socialist Republics (USSR) would be punished by death or hard labour.

The year 1947 marked the end of the Romania of individualist mentalities, and the liberal political and economic structures built over the previous century gave way to a collectivist development model. Western involvement in the nation ended with the signing of a peace treaty in February 1947,[20] which confirmed the conditions of the 1944 armistice and gave Northern Transylvania officially back to Romania.

The Romanian People's Republic was declared on 30 December 1947 when King Michael, Charles II's son, was forcibly abdicated. The abdication was promulgated in Law No. 363 on 30 December 1947 establishing the Romanian state in the form of the Romanian People's Republic. The Law further stated in Article 1 that the Assembly of Deputies took note of the abdication of King Michael I and his descendants.[21] Now in power, the members of the Communist Party could hasten the Sovietization of Romanian society. The totalitarian regime did not refer to the death penalty in the 1948,

16 Radu Stancu: The Political Use of Capital Punishment as a Legitimation Strategy of the Communist Regime in Romania. 1944–1958, *History of Communism in Europe*, 5/2014a, pp. 106–130.
17 Muraru, Tănăsescu (2019): p. 177.
18 Decree No. 50/1945.
19 Official Gazette No. 17/1945. Available at: https://www.derechos.org/intlaw/doc/roulegea50.pdf (accessed on: 20.11.2022).
20 Treaty of Peace with Romania, Official Gazette No. 2/1947.
21 Law No. 363/1947 for the establishment of the Romanian State in the Romanian People's Republic.

1952, and 1965 constitutions. The section on the rights of Romanian citizens did not state that it was prohibited, nor was the capital sentence accepted.[22]

A new Penal Code was enacted; however, it did not include the death penalty. Nevertheless, as the Communist Party seized power, Penal Code provisions helped transform this legal document into a hollow political tool. The Penal Code was changed through Law No. 16/1949, which provided for the death penalty. On 13 January 1949, a Law of Capital Punishment was enacted. Several capital crimes were established. Some of these were crimes against the state. This new law stated that crimes such as treason, trading state secrets, conspiring, sabotaging the economic progress of the Romanian People's Republic (as in destruction), and acts of terror were punishable by death. This law punished not only the author of the crime but also the instigators, those who were complicit, and those who aided the concealment of the crime.

Decree No. 199 issued on 12 August 1950 made some changes to Law No. 16 of 15 January 1949 regarding "*crimes that endanger the security of the state*." The new decree grouped all the economic crimes stipulated in Law No. 16/1949 under the name "*sabotage of the development of the national economy*"; there is evidence regarding the execution of one person for this type of crime in 1952.[23]

In 1953, Decree No. 202 re-defined the latter crime: undermining the national economy, as a capital crime "*when the actions determined or could determine severe consequences.*" The actions were

> *"undermining national economy through the use of state institutions or factories, or the sabotage of their normal activity, as well as using or sabotaging them for the benefit of their ex-owners or interested capitalist organizations."*[24]

Three people were executed between 1951 and 1953 for crimes against humanity.[25] Following the adoption of the amendments, records show that between 1952 and 1957, six people were executed for treason, one for plotting against state interests, and three for acts of terror.[26]

In 1956, an attempt was made to abolish capital punishment. The short period of attempted restoration of legality was defined by Stalin's death in the USSR and the Hungarian Revolution. These happenings also impacted Romania, one of its results being the legal proposal of 5 July 1956 by A. Bunaciu, A. Alexa, and Al. Voitinovici I, Gh, Maurer and Gh. Diaconescu, the later Minister of Justice, who have attempted to abolish

22 Alina Duduciuc, Ilarion Țiu: Constituția și opinia publică: consensul social privind pedeapsa cu moartea, *Sfera Politicii*, 7/2010, pp. 41–52.
23 Radu Stancu (2013): The Political Use of Capital Punishment in Communist Romania between 1969 and 1989, Peter Hodgkinson (ed.): *Capital Punishment. New Perspectives*, Ashgate, Surrey, pp. 337–357.
24 Decree No. 202 for the Modification of the Penal Code of the PRR, Official Bulletin, 14 May 1953. No. 162.
25 Stancu (2014a): pp. 106–130.
26 Stancu (2014a): pp. 106–130.

capital punishment.[27] Internally, the repercussions of the Hungarian revolution acted as a stimulant, supporting the hard Soviet stance adopted by Romanian leader Gheorghe Gheorghiu-Dej in 1956.

Two fundamental issues have guided his political activities. First, there was a concern that revolutionary and anti-communist movements and feelings would emerge in Romania based on the Hungarian model, putting the state in peril. Second, he was concerned that due to the destalinization process, he would be deposed and replaced by a new anti-Stalinist leader. Consequently, the Romanian leader sought measures to increase his political power by exerting tight control over the state and society and subjugating them to his own unique authority.[28] Ultimately, the abolition of the death penalty was merely an attempt and was never fully actualised.

3. The consequences of the Hungarian revolution in Romania

The revolution in Hungary alerted the Romanian Workers' Party (PMR) to possible manifestations. Thus, through Decree No. 469 of 30 September 1957, the crime of conspiracy against the social order was codified. As a result of the plenum of the Central Committee of the PMR. held from June 9–13, 1958, Decree No. 318 of 21 July 1958 which improved the content of several crimes and the terms of Decree No. 199/1950, was issued. The fact of initiating or constituting, in the country or abroad, organizations or associations whose purpose was to change the existing public order in the State or the democratic form of government, or acting within such an organization or association, or joining them, was criminalized by Decree No. 469/1957. The fixed penalty eliminated the fear of any conspiracy: "*death and confiscation of property*" in the case of Decree No. 469/1957 and Decree number 318/1958, which explicitly targeted the crime of creating gangs for terrorist or sabotage purposes.[29]

When Gheorghiu-Dej modified the Penal Code with Decree No. 318 on 17 July which significantly amended the Penal Code, he began a fresh wave of repression even though prominent jurists argued and attempted to abolish the death penalty in 1956.

In 1958, contacting foreigners in order to destabilise state neutrality or an act of war was deemed a capital offence. This was an apparent reference to Nagy Imre's (Hungarian communist politician who later became the leader of the Hungarian Revolution of 1956) efforts during the 1956 Hungarian Revolution that were made more pressing by the retreat of Soviet occupying forces that summer, which caused the state to crack down on internal dissent.[30] Decree No. 318/1958 widened the definitions of "*economic*

27 Stancu (2014a): p. 126.

28 Carmen Rijnoveanu (2007): The Impact of Hungarian Revolution of 1956 on Romanian Political "Establishment", in "*The Crisis of the '50s- Political and Military Aspects" – Proceedings of the Romania-Israeli seminar*, IDF- Department of History, Tel Aviv, pp. 6–21.

29 Valentin-Stelian Bădescu: Unele considerații privind dreptul penal românesc în perioada regimului comunist. Tranziția postcomunistă şi reconstrucția justiției române. Poziții actuale privind identitatea națională şi procesul integrării europene, *Acta Universitatis George Bacovia, Juridica*, 1/2019, p. 14.

30 Rijnoveanu (2007): p. 8.

sabotage" and "*hooliganism*", and a fierce campaign against economic criminality raged for the next two years, with 87 executions recorded, 28 of them for embezzlement.[31]

The decree covered the terms of various prior decrees from 1949 to 1958. However, it also included many political offences that were newly punishable by death, and in most cases, the death sentence was the only punishment. Art. 184–192 defined treason in various manifestations, such as leaking state secrets or any conduct against an allied state. Article 188 dealt with capital offences committed during the war, whereas paragraphs 190–192 dealt with treason committed by public officers and other civilians. Article 194 alluded to espionage cases, but the capital penalty was only imposed on foreigners who had committed most of the above offences.

Another important category of capital offences were the crimes against a state's internal security. Article 207 referred to terrorist crimes, and Article 209 broadly defined cases of undermining the national economy, which were already punishable by death under Decree No. 202/1953 in more severe cases. Most of these crimes were previously specified in the Penal Code, but not as capital crimes. According to Art. 236, the application for embezzlement was limited to cases with a prejudice of more than 100,000 lei (in this period, the highest banknote printed and issued was the 100 lei, the "*Scânteia*"[32] newspaper was 30 bani for six, the "*Făclia*"[33] newspaper was 20 bani for four pages. For reference, 100 bani equals 1 lei; from another source, 2500 lei was the price for a cow[34] or less if the actions posed a severe social hazard or were repeated). This attempt was punishable by death. In some situations, uprisings were punished by death under Article 210, while rebellions and military usurpation were similarly penalised under Articles 211 and 212. Article 262 defined rebellions against the Legislative Assembly as punishable by death if the activities resulted in a person's death. Art. 320 provided for the death penalty for crimes committed within Romania by members of a gang formed outside the country "*if robbery or murder were committed or attempted.*"[35]

Although a new penal code was not enacted until 1969, various pieces of legislation amended the previous code. The death penalty was further extended to particularly serious cases of homicide by Decree No. 469 of 20 September 1957 and at least one individual was executed for this crime that year.

Art. 464(1) provided that

> *"[m]urder committed with premeditation, if due to this the deed presents a particularly serious character or murder committed through cruelty or torture, is punishable by death. With the same punishment, the murder of two or more people at once or through different actions is sanctioned".*[36]

31 Stancu (2014a): p. 115.
32 Scânteia. Organ al Comitetului Central P.M.R., 1958, No. 4277.
33 Făclia. Organ al Comitetului Regional Cluj, al P.M.R. și a Sfatului Poporului Regional, 1958, No. 3497.
34 Anonim interview, made by the author of the article on 28.12.2022.
35 Decree No. 318/1958.
36 Decree No. 469/1957, p. 230.

It is critical to note that this is the first time exceptionally serious cases of homicide have been punished by death during peacetime.

The usage of the death penalty peaked in 1958 and 1959, with 32 executions in 1958 and 55 in 1959. There were 28 executions related to embezzlement and 24 related to terror attacks. The era of direct repression ended in 1962–1964 with the liberation of most political prisoners. Thus, a new death sentence policy was initiated.[37]

4. The death penalty under Nicolae Ceaușescu's administration

Under Nicolae Ceaușescu's dictatorship, a new Penal Code was enacted in 1969. Romanian authorities paid much more attention to international organisations and conventions during this period. The Economic and Social Council of the United Nations asked member states on 26 November 1968, through Resolution No. 2393, "*to provide careful legal safeguards for those accused of a crime punishable by death.*"[38] Two years later, on 20 May 1971, another resolution, No. 1574, stated that

> *"the main objective to be pursued is that of progressively restricting the number of offenses for which capital punishment may be imposed with a view to the desirability of abolishing this punishment in all countries."*[39]

The 1969 new Code increased the accuracy of the legal provisions. More sophisticated forms of coercion such as house detention and isolation replaced cruel imprisonment, prison camps, and torture.[40] The death penalty has been used in crimes against state security, public wealth, the battlefield, peace, and humanity. For the first time in Romania, the concept of crime was defined as the deed that constitutes societal danger and is committed with guilt. At that time, the tripartite separation of crimes had been abandoned. However, significant criminal law institutions, such as the plurality of crimes or factors that eliminate the criminal nature of an act, were added. Another breakthrough was the systematisation of criminal law sanctions regarding punishments, safety precautions, and educational programs. This Code was in effect until 31 January 2014 and underwent numerous necessary amendments after 1989 to reflect the new democratic society.

There were 28 capital crimes in the 1969 Penal Code, fewer than in 1952. Seven were wartime crimes (e.g. capitulation, leaving the battlefield, leaving the ship, lowering the flag, and collision). Treason and terrorist attacks—particularly serious cases of

37 Radu Stancu: Ideology and Repression in Romania in the Decade Before the Adoption of the Penal Code of 1969. Case Study: The Economic Criminality and the Application of Capital Punishment, *Revista Economica*, 6/2014b, p. 120.

38 Quinquennial Report of the Secretary-General of the U.N. on Capital punishment (1975), pp. 3–9. Available at: http://humanrightsdoctorate.blogspot.com/2010/07/secretary-generals-quinquennial-reports.html (accessed on: 20.11.2022).

39 Quinquennial Report of the Secretary-General of the U.N. on Capital punishment (1975), pp. 3–9.

40 Stancu (2013): p. 126.

homicide, undermining the national economy, and theft of state property—were also punishable by death. The death penalty was reintroduced for embezzlement. The new Code defined legal provisions more accurately than its predecessors.

During the Soviet-type totalitarian regime, the Criminal Code established the death penalty only in theory; there were instances where it was applied only as determined by the legislation in force. Between 1977 and 1988, 96 people were executed, 93 of whom had particularly serious cases of homicide. During the same period, 34 death sentences were commuted over 25 years in jail. No single woman was executed during or before the Soviet-type totalitarianism began.[41]

As the regime paid much more attention to international organisations and conventions during this time in 1972, 1981, 1984, and 1988, amnesties were given in connection with the death penalty to prove the humanitarianism of Ceaușescu's regime. Amnesty Decree No. 11 on 26 January 1988 was meant to mark Ceaușescu's 70th anniversary. Many consider these amnesties as the last attempt to keep the regime alive.

According to information provided by the Romanian Government to the United Nations Secretariat,[42] 22 death sentences were imposed and 16 executions were carried out between 1974 and 1978. In this material, Romanian authorities state that each case was related to crimes against persons.

Nevertheless, Amnesty International has learned of death sentences imposed during this period for crimes other than murder: on 27 August 1976, Radio Bucharest reported that Nicolae Ilies and Bogdan Jordanescu had been sentenced to death by the Military Court of the Bucharest Territory for high treason and revealing state secrets. In 1983, at least 13 people were executed, five of them for stealing large quantities of meat and two others for stealing public property.[43] The Supreme Court upheld several sentences, and the Council of States rejected requests for clemency.

Another case was that of Florentin Scaletchi, the captain of the ship "*Uricani*", who had been sentenced to death by a military court in Bucharest on 28 March 1986 after he tried to sail the ship to Turkey without permission and thus leave the country illegally. He was charged with treason, conspiracy against the security of the state, and exploitation of his position on the navy and of naval property.[44]

Tensions between the regime and the population peaked in 1989. On December 25, with the power shifts, the Ceaușescu couple was the last to be sentenced to deathand executed in Romania. An essential milestone in these changing times was the abolition of the death penalty through Decree-Law No. 6 of 7 January 1990, the modification and repeal of some provisions of the Criminal Code, and other normative acts. With this Act, the death penalty ceased to exist under Romanian legislation.

At the time of the adoption of the 1991 Constitution, which is still in force today, the death penalty had already been abolished to emphasise the deeply humanistic character of the regime established in Romania by the revolution and to implement the

41 Duduciuc (2010): p. 49.
42 Amnesty International (1987): *Romania: Human Rights Violations in the Eighties*, Amnesty International Publications, London, p. 32.
43 Amnesty International (1987): p. 32.
44 Amnesty International (1987): p. 32.

proposals made by the citizens in Decree No. 6 of 7 January 1990. The aforementioned decree provides the following.

> *"Art. 1 – The death penalty provided for some crimes in the Criminal Code and special laws is abolished and replaced by life imprisonment.*
> *Art. 2 – From the date of adoption of this decree-law, all the provisions regarding the death penalty from the Criminal Code, the Code of Criminal Procedure and other normative acts, apart from those provided in art. 4, are considered to refer to the penalty of life imprisonment.*
> *Art. 3 – Death sentences, applied by decisions that have remained final but not executed, are replaced by life imprisonment, according to the procedure regarding the replacement of this punishment."*[45]

The Decree above left no room for interpretation. The death penalty was definitively abolished, its abolition was absolute, and no exceptions could be accepted. At the same time, we can see that the sentences in which the death penalty was imposed and which remained final are replaced by the imposition of a life sentence.

IV. MEANS OF EXECUTION

The means of execution in Romania remained constant throughout the study period. However, the circumstances in which it was applied changed over time.

1. Before the Soviet-type totalitarian regime

The Military Justice Code came into force on 27 April 1873. It included the organisation of military tribunals, their material competence, the trial procedure before the war councils, the trial procedure in absentia and those tried in absentia, and the punishments that could be applied, such as the content of crimes specific to the military. The Council of War pronounced that the death penalty would be executed by a firing squad. "*Every person who is sentenced to death by a council of war shall be shot*", according to Art. 181 of the Code of Military Justice. This was an important provision because, of all the ways to carry out this sentence, hanging has historically been reserved for criminals.[46] In 1937 the Code of Military Justice, in its Title I, "*[a]bout punishments and their effects*", declares in Art. 454 that the death penalty applies only during wartime and is executed by a firing squad.

Regarding the way the executions took place, on 5 February 1940, Decree No. 236 of the Head of the State was promulgated, which prescribed the death penalty executed by a firing squad for persons who committed the crimes of possession of weapons, ammunition, and explosives without authorisation, looting of public warehouses of materials intended for war, theft of ammunition, weapons from barracks, warehouses or factories of the State, exhortation through verbal or by any means at demonstrations or actions of a plotting nature against the existing political or social order in the State,

45 Decree No. 6/1990.
46 Corciu (2021b): p. 374.

sharing or distributing the wealth of others, tax exemption, the fight with the class, the use of weapons from buildings or shelters on members of the government or public authority, unlawful occupation of public buildings, unlawful destruction of public utility installations, printing, writing, drawing or multiplying manuscripts, manifestos, sketches or anything containing incitements to a plot against state order.[47]

Article 18 of Regulation No. 12 of 27 April 1942 *"[o]n the rules to be followed when executing the death penalty"*, provided that convicts should be tied to the gallows and their eyes should be covered. In Article 19 of the same regulation, the group commander had the power to give orders for the preparation of weapons, aims, and fire, which were executed with military-type weapons.[48] These articles were also included, with minor changes in subsequent regulations.

2. Under Gheorghe Gheorghiu-Dej

The 1958 execution regulation introduced a few changes compared to the one already in use since 1942. The clemency petition had to be formulated within 24 hours, and not 48 hours after the appeal was rejected. Before 1958, convicts had rights to a priest and to meet their relatives, an opportunity to write a will, and the right to have a glass of alcohol. These were all removed with the introduction of the new 1958 law. From this point on, only a few people were allowed to be present during the execution, such as legal representatives and medical examiners. As previously mentioned, the execution was performed using a firing squad, and the convict had to be blindfolded.[49]

3. Under Nicolae Ceaușescu's administration

In 1969, with the introduction of the new Penal Code, a few details regarding execution changed. After the final sentence was delivered, there was a period of five working days for the filing of a clemency petition (*zile libere*) to be addressed under the new regulations for the execution of the death penalty, which were incorporated into the general law for the execution of penalties in 1969, based on Article 31. Under the 1969 Penal Code, Military Tribunals attempted political cases. The method involved the firing of a squad.

V. EXEMPTIONS

In this chapter, we will see that death penalty exemptions were mainly used for pregnant women, women with young children, and minors. There have also been attempts to widen the exemptions for older persons, but as we will see, this was not in the interest of the governing parties.

47 Ioan Chis, Alexandru Bogdan Chis (2017): *Drept executional penal – Suport de curs*, Universitatea Nicolae Titulescu, București, p. 31.
48 Gheorge Buzatu (2021): *Maresalul Antonescu la judecata istoriei*, Mica Valahie Press, Buchurești, pp. 28–30.
49 Stancu (2014b): p. 128.

1. Before the Soviet-type totalitarian regime

In the Code of Military Justice from 1937, Art. 454 provides for a delay in the application of the death penalty; it states that pregnant women will be executed after giving birth.

2. Under Gheorghe Gheorghiu-Dej

The 1958 Execution Regulations also provide some exemptions. If the convict was a pregnant woman, the execution was postponed by nine months after the child's birth compared to the previous legislation where the mother was executed immediately after birth. The explanation is that, in this way, the baby is spared from his or her mother's stress and fear of execution, and the baby has a greater chance of survival. However, no cases of executions of women were recorded, although examples of capital sentences exist: in May 1948 Cosma Aurelia's death sentence was commuted in March 1944; Spanu Sabina from Prirogia also received a commutation of 20 years of forced labour for her capital sentence for murder in 1965.[50]

3. Under Nicolae Ceaușescu's administration

A few exceptions to the use of the death penalty were provided for under the Penal Code of 1969. Art. 54 provided that if an individual was a minor when the offence was committed, they were excluded. The deterrence impact was deemed ineffective, and re-education was possible[51]. Pregnant women or women with children under three years could not be executed[52]. In certain situations, the sentence was permanently commuted rather than suspended until the child was born or turned three. The reasoning was that the mother's psychophysical state while awaiting execution would be detrimental to the child's life. In this instance, the sentence was modified to 25 years. According to a report from the Ministry of Justice, Prosecutor General, and President of the Supreme Tribunal, 27 similar proposals for people over 60 years of age were rejected during discussions over the Penal Code.[53]

VI. COURTS AND PRISONS

As harsh as the death penalty may sound, it was not the only means of oppression. The use of the death penalty increased considerably over the 100 years studied, as had several different methods and techniques of oppression. Examples include

50 Stancu (2014b): p. 128.
51 Vintilă Dongoroz (1976): *Explicații teoretice ale Codului de Procedură Penală Romană. Partea Specială. Volumul II*, Editura Academiei Republicii Socialiste Romania, București, p. 26.
52 Amnesty International (1987): p. 32.
53 Radu Stancu (2017): *Pedeapsa cu moartea în România comunistă*, Editura Cetatea de Scaun, București, p. 165.

extrajudicial punishment, torture, labour camps, and juvenile re-education programs. In many respects, the judge had numerous alternatives to satisfy the regime's needs and extend persecution. The death penalty was widespread in Romania. However, it was sometimes a more humane method than labour camps or re-education programs.

1. Before the Soviet-type totalitarian regime

Based on the 1873 decree, martial courts pronounced death sentences for the first time in 1916. The strategies used by the councils of war and, later, martial courts, sought to deter any potential act of indiscipline by any available means.

The legal system was altered to strip people of any sense of security or prospective support. When new judges were appointed, the entire court system evolved into a governmental weapon.[54]

2. Under Gheorghe Gheorghiu-Dej

Judges from the interwar era who had their legal education overseas, particularly in France and Italy, were replaced by labourers and activists who had completed a six-month legal education. Particularly, with the court's assistance, they nationalized property, made arrests, and imprisoned dissidents. Some rulings mandated the execution of persons possessing large amounts of gold that were allegedly meant to finance acts against the totalitarian state but were not turned over, as well as rulings that confiscated wealth.[55] As soon as the members of the Communist Party assumed power, the process of subordinating justice, one of the top priorities of the new regime, began. A judicial panel would comprise two professional judges and seven representatives of the people, according to the Law of 31 March 1945 concerning the trial of war criminals. Later, the Law of 24 November on the organisation of the judiciary expanded the employment of such judicial panels.

Law No. 312 of 24 April 1945 relating to the pursuit and punishment of individuals responsible for the country's calamity or war crimes published on April 24, 1945, declared in Article 3 that anyone who committed the acts specified in paragraphs a)–j) of Article 2 will face death or life in prison. The People's Court made factual determinations required by law. According to Article 13, court proceedings were to be conducted in Bucharest. The Minister of Justice could issue judgment panels in cities where other Courts of Appeal were located. Although Bucharest was chosen as the location of the People's Court headquarters, the statute allowed the Minister of Justice to hold additional council meetings where the tribunal was located. However, the Minister of Justice Lucrețiu Pătrășcanu only contributed to the creation of an outsourced council in Cluj, to which he subordinated the cases originally under the jurisdiction of the courts

54 Dragos Calin, Horatius Dumbrava: The Evolution of the Judicial System in Romania During the Past 60 Years, *Revista Forumul Judecatorilor*, 1/2009, p. 1.

55 Calin (2009): p. 2.

in Târgu Mureș, Oradea, Brasov, Sibiu, and Timișoara.[56] There were two courses in Romania, one in Bucharest and one in Cluj-Napoca. According to the Decree of the Minister of Justice, the construction of the institutional structure of the Peoples' Court of Cluj-Napoca began on 20 July 1945 and was supervised by the State Secretary of Justice Avram Bunaciu.[57] The legal foundation for these trials was a special war crimes law passed on 21 April 1945 which delegated jurisdiction over responsibility for the country's misfortune and war crimes to two extraordinary *ad hoc* People's Tribunals. Trials have been conducted in the case of several war crime prosecutions. The Courts of Appeal rendered verdicts after the People's Courts were terminated under Statutes 455/1946 and 291/1947.

At this time, in addition to being found guilty, convicts were always subjected to complete property confiscation (*confiscarea averii*), which also applied to any property that the convicts' immediate families acquired after 1 September 1940. They were denied the right to exercise their political rights for a specified period (*degradare civică*).[58]

After the post-war trials, legionaries (members of the militant revolutionary fascist movement and political party founded in 1927) were once again a topic of discussion. Some were re-arrested between 1958 and 1959, and fictitious sham trials were conducted. In 1959, the Military Tribunal of Bucharest issued sentences No. 62 and 83, which resulted in the deaths of ten persons.[59]

In addition to the death penalty, there were other methods of punishing people who opposed the regime. One of these cases was the Pitești prison experiment, which began in 1949, and is a prime example of how the death penalty exploited a repressive climate created by the authorities.[60] This was the re-education of mainly student members of former opposition parties through extreme torture. The crux of the matter, however, was the forced transformation of victims into the torturers of their colleagues, a brainwashing program that, according to the most conservative estimates, affected more than 1000 prisoners. The experiment was terminated in 1952 after a covert trial.[61]

3. Under Nicolae Ceaușescu's administration

Executions took place in the prisons of Jilava and Rahova during the "*ceauşist*" era. Archival documents contain information about Jilava's "*Fort 13*" prison, a facility designed specifically for the execution of death sentences. Fort 13 was part of the military construction for the defence of the capital, built at the beginning of the twentieth century, and later received the destination of a prison after the peasants' revolt of 1907, serving as punishment for the rioters. It was later utilised as a military prison for persons who failed to report for recruitment in World War I or committed crimes

56 Szabolcs Kovács, A romániai népbíráskodás jogi háttere és működésének főbb problémái, *Clio Műhelytanulmányok*, 1/2018, p. 13.
57 Kovács (2018): p. 13.
58 Decree No. 2514/ 1945.
59 Stancu (2014b): p. 36.
60 Stancu (2014b): pp. 30–31.
61 Alin Muresan (2011): *Pitesti. Cronica unei sinucideri asistate*, Polirom, Iași, p. 26.

punishable by death, which were killed in the "*valley of peaches*" nearby.[62] The executions were conducted inside a subterranean firing range in Rahova.

The Council of the Front of National Salvation formed in the wake of the 1989 revolution established a special Military Tribunal for the Ceaușescu pair. Victor Antanasie Stanculescu, Deputy Minister of Defence, presided over it. Following rapid trials, they were charged with committing genocide (indicted for the murder of more than 60000 victims), undermining government power, diverting attention by destroying public property, attempting to flee the country with a sizable sum of money, and harming the national economy.[63]

4. Penitentiaries

Romania had 44 main penitentiaries and 72 forced labour camps for political prisoners during Soviet-type totalitarian regime. The General Directorate of Penitentiaries oversaw these institutions.

4.1. Types of prisons[64]

Re-education penitentiaries – characterised by the application of torture methods in order to convert convicts to communist ideology: Suceava, Pitesti, Gherla, Târgu Ocna, Târgşor, Braşov, Ocnele Mari, Peninsula.

Prisons for the extermination of the political and intellectual elite: Sighet, Râmnicu Sărat, Galați, Aiud, Craiova, Braşov, Oradea, Pitesti.

Labor camps: Danube-Black Sea Canal (Peninsula, Porta Albă, Salcia, Periprava, Constanța, Midia, Capul Midia, Cernavodă), labor colonies in Balta Brăilei.

Triage and transit prisons: Jilava, Văcăreşti.

Remand prisons: Rahova, Malmaison, Uranus.

Prisons for women: Mărgineni, Mislea, Miercurea Ciuc, Dumbrăveni.

Penitentiaries for minors: Târgşor, Mărgineni, Cluj.

Hospital Penitentiaries: Târgu Ocna and Văcăreşti.

4.2. Forced work

Working conditions in the camps and colonies were the most difficult. The convicts were forced to work until they were exhausted. Approximately 80,000 people "*worked*" in camps at the start of the 1950s and 40,000 along the Danube-Black Sea Canal. Forced labour camps and deportation centres were also present throughout the country, with the majority concentrated in the south-eastern part of the Romanian Plain and southern Dobrogea.[65]

62 Chis, Chis (2017): p. 30.
63 Stancu (2017): pp. 194–196.
64 Ionut Alexandru (2021): *Sistemul Penitenciar din România: 1945–1989*, Institutul de Investigare a Crimelor Comunismului în România, București, pp. 1–3. Available at: https://www.academia.edu/10372110/Sistemul_penitenciar_1945_1989 (accessed on: 20.11.2022).
65 Alexandru (2021): pp. 1–3.

4.3. Numbers

Service "*C*" of the Ministry of Interior (MAI) provides data on the number of deaths among those under investigation or in detention from 1945 to 1964: deaths in detention – 3,847, of which 203 occurred during investigations, 2,851 occurred during sentence execution, 137 were sentenced to death and executed, and 656 died in labour camps. In this example, it should be noted that the press in the Soviet-type totalitarian regime systematically attempted to conceal the extent of the repression. According to the Presidential Commission for the Analysis of Communist Dictatorship in Romania, over 600,000 people were convicted on political grounds between 1945 and 1989. The overall number of direct victims of repression is estimated to reach 2 million.

> *"The difficulty of the estimate stems from the Security, Prosecutor's Office, Militia, Border Guards, Army, and other repressive authorities' systematic concealment of information regarding the fate of many of these fatalities."*[66]

Although the number of people imprisoned for political reasons decreased dramatically after the 1964 liberalisation, the phenomenon was not completely eliminated. In the 1980s, there were still political prisoners in Aiud, Poarta Albă, and Jilava, and the system began to conceal arrests based on political criteria using common law legal frameworks. Multiple files show convictions against State Security between the late 1960s and 1989.[67]

VII. CONCLUSION

Considering the death penalty in its entirety during the 100 years studied, we can see that it was used most frequently under the Soviet-type totalitarian regime to eradicate those who opposed communist ideology, although we do not have exact figures. The totalitarian period can also be divided into two periods: the period of Gheorghe Gheorghiu-Dej, and the period of Ceaușescu. When Dej was in charge, the death penalty was applied more frequently and dynamically. It started with war criminals and extended to political and economic crimes in 1949. Dej's position was shaken by Stalin's death and the Hungarian Revolution of 1956, which created the possibility of abolishing the death penalty, but without success.

Later, Ceaușescu reduced the use of the death penalty by establishing labour camps and using various methods to force people to obey his wishes. The 1969 Penal Code clarified the confusion regarding the death penalty, which also helped reduce the number of deaths. Ceaușescu also wanted to maintain a good image of himself and his regime for the UN and especially the USA because he wanted investors to invest in Romania.

66 Alexandru (2021): pp. 1–3.
67 Alexandru (2021): pp. 1–3.

Over the past 100 years, crimes have followed a pattern of changes in ideology. Initially, the death penalty was imposed for crimes against the state to consolidate the Soviet-type totalitarian regime. In the late days of Ceaușescu's regime, it degenerated into punishment for stealing meat.

In contrast, the means of execution remained unchanged during the study period. This method of execution was quick and effective, which may explain its immutability. In Ceaușescu's time, much emphasis was placed on "*appearing humane*" and doing things in the spirit of human rights as much as possible, thus, death by firing squad was not changed.

Subsequently, exceptions to the death penalty were added to the penal code, which was a significant step forward for human rights.

Although the death penalty was used less frequently in the last few years of the Soviet-type totalitarian regime, we can see that it was used as a political tool from the beginning of the royal dictatorship in 1938 until the end of totalitarianism in 1989.

Pentru autori

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