

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

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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 problematice 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 vyšetřování 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 Krajujevac 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 Cornelia 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, hardly 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 fundamentals 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 Antonín Zápotocký during the years between 1953–1957 granted only two; Antonín Novotný during the years between 1957–1968 granted uncertain numbers; Ludvík 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. Slovaks 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 Tehlárík 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 Sláňký 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, 252²⁸ (according to some authors 269²⁹) 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.

“If 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 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).