The Historical Context of the Death Penalty in Croatia

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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.