

Historical Context of the Death Penalty in Serbia

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ABSTRACT

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

KEYWORDS

death penalty, political crimes, socialist period, execution, Serbia.

Contextul istoric al pedepsei cu moartea în Serbia

REZUMAT

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

>> judiciar și modul în care ideologia comunistă l-a influențat. În cele din urmă, articolul rezumă influența Consiliului Europei asupra abolirii pedepsei cu moartea și a fluxului către apărarea valorilor umane comune.

CUVINTE CHEIE

pedeapsa cu moartea, infracțiuni politice, perioada socialistă, execuție, Serbia.

I. INTRODUCTION

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

Speaking specifically of Serbia, which was then a part of Yugoslavia, political opponents were put to death in the post-war era, especially those who publicly spoke against the communist ideology and the totalitarian system. Terror and repression, as well as the disregard for fundamental rights to due process during trials, characterised the socialist era. The number of people directly affected by the use of death sentences to execute political opponents is still unknown. Political leaders voluntarily and arbitrarily passed legislation when the socialist regime was still in power. Additionally, the Socialist Republic of Yugoslavia, at the time, was ruled by legal particularism because of the several national republics of which it was composed. The regulation of the death penalty is typically vague at the level of the constitution or law. This makes the judicial system seem even more arbitrary. It was up to the courts to impose punishment, and although there were precautions, such as warnings, security measures, and instructional measures in addition to punishment²—particularly the death penalty—they were almost never used.

1 Luka Tomašević: Church and capital punishment, *Crkva u svijetu: Crkva u svijetu*, 3/2002, pp. 280–295.

2 Veljko Delibašić (2010): *Najstroža kazna u Krivičnom zakonu Republike Srbije u periodu od 17.11. 2001. godine do 9.3. 2002. godine*, Pravo-teorija i praksa, Beograd, p. 98.

II. CRIMES

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

At the beginning of the 20th century, part of what is today Serbia was part of the Kingdom of Serbia. Thus, it became part of the constellation of European states where the first political parties were founded. The May Coup³ in 1903, bringing Karadorde's grandson, King Peter I, to the throne, opened the way for parliamentary democracy in Serbia. This initiated a period of parliamentary government and political freedom, which was interrupted by the outbreak of the liberation wars.

On the initiative of Prince Aleksandar Karadorđević, the draft of the Serbian Criminal Code entered into force in 1860.⁴ At the beginning of the 1900s, it was the main source of regulating criminal law, which included provisions on the death penalty. In the first chapter, the Code differentiates 11 types of punishment, including the death penalty. Death, corporal punishment, monetary fines, and imprisonment were stipulated as the main sanctions, while deprivation of title, confiscation, bans on specific actions, and expulsion were prescribed as secondary sanctions. The Code included 16 capital offences: various forms of murder and robbery leading to death, as well as treason. Even though capital punishment was reserved for serious violations of state organisations as well as for intrusion on the human body, in 1863, the death penalty was re-introduced for theft and certain other crimes. However, theft was no longer considered a capital offence in 1902.

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

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

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

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

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

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

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

Furthermore, in 1923, there were some initiatives by Yugoslav women's organisations to abolish the death penalty. Unsurprisingly, these were also unsuccessful. As the parliamentary system, which was the lead political system at the time, failed to promote national unity, on 6 January 1929, King Alexander declared a manifest. He established a royal dictatorship and took control of all existing state organs. In his manifest, the king declared that the Parliament had become a nuisance due to political abuse and that he, as the guardian of national unity, had to abolish the 1921 Constitution and dissolve the National Assembly.⁷ Once a dictatorship was declared, it was easier to harmonise laws since parliamentary procedures were avoided. Following the principles of the neoclassical school, he aimed to unify substantive criminal laws after the proclamation of dictatorship. Nevertheless, a new criminal code was initiated with the establishment of the Kingdom of Serbs, Croats, and Slovenes and enacted on 27 January 1929.⁸ Built on more modern ideas than the French, German, and Italian criminal codes, it served as a great example of all codes of the European continent.⁹ In the Code also other types of sanctions appeared in addition to the aforementioned punishments which were differentiated into main and secondary sanctions. As expected, the death penalty was the main punishment prescribed for murder, manslaughter, and qualified murders. Additionally, several property crimes and other qualified crimes were punished by death.

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

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

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

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

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

in the death penalty.¹⁰ During World War II, Yugoslavia suffered tremendous human losses, losing more than one million people, mostly civilians.¹¹ Since many crimes were political in nature, special regulations on military courts were adopted in May 1944.¹² The decree gave them jurisdiction over crimes that were directed against the liberation struggle of the people of Yugoslavia, against the achievements and interests of that struggle, and against the criminal acts of military personnel and prisoners of war. These provisions included some exceptions prescribed in Article 2 for acts that fell under the jurisdiction of the Higher Military Court.

In 1945, the Law on Criminal Offenses Against the People and the State¹³ was enacted. Considering the period in which it passed, the death penalty was mostly prescribed for war crimes but also for political and capital crimes, including theft of the government's property and aggravated murder and robbery. The legislative body at the time, the Anti-Fascist Council for the National Liberation of Yugoslavia, was characterised by arbitrariness and passed laws without legal procedures. The following law was the Impermissible Speculation and Economic Sabotage Prevention Act, enacted on 23 April 1945.¹⁴ This law incriminated every activity that aimed to benefit from the exploitation of extraordinary military circumstances (impermissible speculation). The law went one step further and criminalised activities that called into question the functioning of economic companies or actions which were directed against the state's economic policy (sabotage). Perpetrators were considered a high threat to the system, and as such, they were prosecuted and given the strictest possible punishment, which included the death penalty and forced labour.¹⁵

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

10 Agata Fijalkowski: The Abolition of the Death Penalty in Central and Eastern Europe, *Tilburg Foreign Law Review*, 1/2001, pp. 62–83.

11 Mark Biondich: Religion and Nation in Wartime Croatia: Reflections on the Ustaša Policy of Forced Religious Conversions, 1941–1942, *The Slavonic and East European Review*, 1/2005, pp. 71–116.

12 Veronika Bilková: Divided We Stand? The AD HOC Tribunals and the CEE Region, *American Journal of International Law*, 1/2016, pp. 240–244.

13 The Law on Criminal Offenses Against the People of the State from 14 August 1945. Archives of Yugoslavia.

14 Impermissible Speculation and Economic Sabotage Prevention Act from 23 April 1945. Archive of Yugoslavia.

15 Nada Kisić-Kolanović: Pravno utemeljenje državnocentralističkog sistema u Hrvatskoj 1945.–1952. godine, *Časopis za suvremenu povijest*, 1/1992, pp. 49–99.

16 Kisić-Kolanović (1992): p. 7.

17 Zdenko Radelić: 1945 in Croatia, *Review of Croatian History*, 1/2016, pp. 9–66.

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

The repression coerced by the existing regime eased, and the use of the death penalty declined, which led to the new Yugoslav Criminal Code in 1951.²⁰ With this law, the legislation enumerated the specific crimes for which capital punishment was prescribed. Most were concerned, as the authorities interpreted, with resistance to the existing system and were so-called political crimes with high ideological motivation. The Criminal Code prescribed counter-revolutionary attacks on social and state organisations as a starting point for defining crimes with strong political motivations. Furthermore, political crimes mostly included espionage and other war crimes, such as endangering the territorial integrity and independence of the state, undermining the military and defence power of the state, murdering representatives of the people's government and social organisations, and armed rebellion. Aiding the enemy was an extremely serious offence that involved serving the enemy's army during wartime, helping the enemy during wartime, and political and economic cooperation with the enemy. It was also illegal to oppose the government and perform acts such as participation in hostile activities against the Federative People's Republic of Yugoslavia, sabotage, association against the people and the state, refusal to execute orders, and counteracting the superior. Lastly, acts such as assault on a military person on duty, failure to respond to the call for military service, evasion of military service by deception, failure to fulfil duty during combat, weakening of combat morale, and other particularly serious crimes against the people and the state were also punishable by death at that time because the army was seen as one of the pillars of the state.

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

18 Criminal Code from 1946. Archives of Yugoslavia.

19 Radelić (2016): p. 20.

20 Criminal Code from 1951. Archives of Yugoslavia.

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

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

The Criminal Code²² was reformed in 1959. This alleviated the severity of criminal legislation and limited the potential use of the death penalty. These newly drafted criminal law regulations introduced stricter criminal justice systems. Even though the number of capital crimes was reduced and the death penalty for property crimes was completely abolished, all the offences listed above remained the most serious and were still punishable by death. However, the Amendment prescribed the possibility of imprisonment for the same crime and prescribed the death sentence as an alternative sanction. Thus, it was left to the court’s discretion to decide the proper punishment.

The new Yugoslav Constitution²³ was passed in the Serbian legal framework. Its provisions proclaim that life should be inviolable. Furthermore, the Constitution’s stipulation limited the death penalty to rare circumstances and was an exceptional type of punishment for the gravest criminal offences under federal law. The Criminal Code, which was changed in 1959, was still in force; therefore, the Constitution did not stipulate any other provisions regarding specific crimes. The novelty was the strengthening of certain procedural rights, such as the right to an appeal and the right to a defence. Unlike the legislation, the Constitution of 1963 showed the first signs of recognising and respecting human rights.

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

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

23 Yugoslav Constitution from 1963. Archives of Yugoslavia.

The subsequent constitution of the SFRY,²⁴ adopted in 1974, contained many identical regulations. Similar to the 1963 Constitution, it once more affirmed that life is sacred and established the death penalty as the ultimate punishment for the gravest types of crime. These provisions were supported by the Penal Code of the Socialist Federative Republic of Yugoslavia in 1977.²⁵ The Penal Code specifies that the death sentence is not the primary punishment for a crime. Moreover, it followed the provisions of the Constitution, prescribing the death penalty for only the most serious criminal acts, mostly political and war crimes, when provided for by federal law. At this point, socialism was still the ruling regime in Yugoslavia, and even though it had started to fade, capital punishment was still broadly defined, considering frequent encounters with dissenters. Capital punishment was widely spread and imposed for a number of crimes, with an emphasis on crimes committed against the basis of the socialist self-management, social system and the security of the Social Federative Republic of Yugoslavia. A special accent was put on political crimes focusing on the protection of the territory, such as counter-revolutionary endangerment of the social system, acknowledging capitulation and occupation, endangering territorial integrity, and endangering independence. Not supporting the state with actions such as preventing the fight against the enemy, serving in the enemy's army, and assisting the enemy, but also undermining the military and defensive power and violence committed out of hostile motives against the SFRY were criminalised. Furthermore, the crimes that were enlisted were armed rebellion; terrorism; destruction of important establishments in the national economy; sabotage; espionage; and dispatching and transferring armed groups, arms, and ammunition into the territory of the SFRY. Strong state repression also forbids hostile propaganda, inciting national, racial, or religious hatred; discord or hostility; and violations of territorial sovereignty associated with hostile activities (against the people and the state). Evidently, death was a punishment reserved mostly for war and political crimes, while provisions remained general, without specific details. While the tendency in the pre-war period was to extend the scope of capital punishment to protect high-ranking political figures, in the post-socialist period, Central Eastern European countries argued that the death penalty was an effective way to fight organised crime and other kinds of offences.²⁶

In 1980, the federal government was weakened and could not cope with rising economic and political challenges. At that time, lawyer Srđa Popović²⁷ from Belgrade sent a petition to Yugoslav authorities with a proposal to abolish the death penalty. However, this petition was unsuccessful. A year after Tito's death, the Society for the Death Penalty was established in Belgrade. However, their work was banned by the authorities. In the years that followed, Serbian nationalism increased when, finally, in January 1990, the League of Communists of Yugoslavia was dissolved, and republican communist organisations became separate socialist parties. With the newly formed

24 Yugoslav Constitution 1974. Archives of Yugoslavia.

25 Penal Code from 1977, Official Gazette of SFRY.

26 Fijalkowski (2001): p. 82.

27 Available at: <http://www.smrtinakazna.rs/en-gb/topics/abolitionism.aspx> (accessed on 18.12.2022).

state, the Socialist Republic of Yugoslavia, a new constitution²⁸ was passed in 1992. It proclaimed human life to be inviolable and forbade the death penalty for crimes prescribed by the feral law. The Constitution of the Federal Republic of Yugoslavia, which consisted only of Serbia and Montenegro, on 6 April 1992, abolished the death penalty for crimes prescribed by federal laws (genocide, war crimes, political and military crimes, etc.), but the federal units retained the right to prescribe the death penalty for acts within their jurisdiction (murder and robbery). The partial abolishment marked a new historical period in which Serbia strived for democracy. This alteration was confirmed when the legal provisions governing the death penalty stipulated in the Penal Code of 1977 were amended in the Criminal Code in February 2002²⁹ by the National Assembly; therefore, the death penalty was completely abolished. Finally, the same issue was reiterated in the new Constitution of Serbia,³⁰ which states, “[t]here is no death penalty in the Republic of Serbia.”

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

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

28 The Constitution of Socialistic Republic Yugoslavia, Official Gazette, No. 48/94.

29 Criminal Code, Official Gazette, No 85/2002.

30 Constitution of the Republic of Serbia, Official Gazette, No. 98/2006.

31 Jakšić, Davidović (2013): p. 530.

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

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

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

IV. MEANS OF EXECUTION

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

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

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

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

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

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

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

V. CASE LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. CONCLUSION

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

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

42 Available at: <https://www.republika.rs/hronika/hronika/360659/poslednja-smrtna-kazna-u-srbiji-johan-drozdek> (accessed on 2.12. 2022).

43 Available at: <https://newsbeezer.com/serbiaeng/johan-shot-ivan-6-for-a-terrible-crime-and-when-he-discovered-the-motive-shock-followed/> (accessed on 21.12.2022).

44 Available at: <https://newsbeezer.com/serbiaeng/johan-shot-ivan-6-for-a-terrible-crime-and-when-he-discovered-the-motive-shock-followed/> (accessed on 21.12.2022).

45 Rajko (2010): pp. 337–344.

force until 2002 when all provisions regarding death sentences and their execution were deleted through an amendment. The main motive for this abolition was to ensure the acceptance of the Federative Republic of Yugoslavia in the Council of Europe. The Council of Europe strongly condemned the use of the death penalty. They emphasised numerous times that death sentences conflicted with both international and European human rights provisions. The death sentence became perceived as an unequal punishment against human dignity. However, this does not prevent crimes from reoccurring. No legal system is immune to judicial mistakes that can result in the deaths of innocent people. Considering the strong influence of Europe, and as the Penal Code was amended in 2003, Serbia signed and ratified Protocol No. 6⁴⁶ to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty drafted on 28 April 1983.⁴⁷ Article 1 of the Convention stipulates that the death penalty should be abolished. No one shall be condemned to such a penalty or be executed. Even though this protocol still allowed the death penalty in times of war in the instances laid down in the law and in accordance with its provision and respected reservations, it emphasises the prohibition of derogations of provisions regarding death sentences. In the same year, Serbia ratified Protocol No. 12⁴⁸ of the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty in all circumstances outlined in Vilnius on 3 May 2002.⁴⁹ In contrast to Protocol 6, it forbids the death penalty under all circumstances and eliminates the possibility of reservations. Finally, with the passage of the law on the ratification of the aforementioned protocols and other documents pertaining to respect for human life and dignity, the Serbian legal system abolished the death penalty.

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

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

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

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

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

50 Fijalkowski (2001): p. 81.