

An Order of Crime The Criminal Law of the Independent State of Croatia (NDH) 1941–1945

Abstract: The system of criminal law norms passed in the so-called Independent State of Croatia (NDH) from its inception in 1941 was aimed at creating and maintaining an atmosphere of terror implemented by the Ustasha government. Although the framework of substantive and procedural rules of the Kingdom of Yugoslavia was formally retained, immediately after the establishment of the NDH regulations introducing many new crimes punishable by death were enacted. Defining the “honour and vital interests of the Croatian people” as an appropriate object of criminal law protection enabled the creation of a regime of legalized repression against non-Croat populations, with an extensive jurisdiction of martial criminal justice. In addition to abuse of the court martial mechanism, the criminal character of government was also manifested in the wide application of administrative and punitive measures of sending to concentration camps as well as collective punishment. In line with Radbruch’s thought, the author denies the legal character of the system of criminal law formally established in the territory of the NDH in the circumstances of genocide.

Keywords: Independent State of Croatia (NDH), collective punishment, courts martial, genocide

The legal order of the Independent State of Croatia (*Nezavisna država Hrvatska*, NDH) was not a subject of particular interest to the Yugoslav or, subsequently, the Croatian academic community. In the post-war period the neglect of this stage of law history served the purpose of promoting the Yugoslav policy of brotherhood and unity. But the scholarly community of the Croatian state restored in 1991 has not been too interested in examining this period of more recent Croatian legal history either. There is a similar void when it comes to the system of criminal law norms which were in force in the NDH. In most Yugoslav¹ and, subsequently, Croatian criminal law textbooks one can only find passing references to this period. Thus, P. Novoselec merely observes that “this part of Croatian penal law history is not adequately examined”.² In his otherwise

* igorvu@ius.bg.ac.rs

¹ Thus e.g. the famous textbook by Franjo Bačić makes no mention of this period: *Krivično pravo. Opći dio*, 3rd ed. (Zagreb: Pravni fakultet u Zagrebu, 1986).

² Petar Novoselec, *Opći dio kaznenog prava* (Zagreb: Sveučilišna tiskara, 2004), 47.

very detailed review of the history of Croatian penal law, Ž. Horvatić³ devotes as little as a few sentences to the period of the NDH, and concludes that it was “completely contrary to the standards and traditions of Croatian law in terms of content”.⁴ More recently, a remarkable contribution is an article by Nikolina Srpak on this subject-matter,⁵ and a few papers dealing with the execution of criminal sanctions in the NDH. In any event, sporadic papers looking at the legal order of the NDH are essentially overviews of the form of the legislation in force, which certainly cannot provide a full picture of how this system of norms operated in practice.

NDH substantive criminal law

The fundamental feature of the NDH substantive criminal legislation was the incrimination of criminal offences, and other provisions of a substantive character, by secondary criminal legislation, more specifically, by decrees with the force of law (the so-called law decrees). Specifically, in the newly-created state, criminal law norms – and that was the case with other branches of law too – were not enacted by laws, as acts adopted by the legislature, but rather by decrees passed by the executive authorities (Head of State – *Poglavnik*).⁶ In the NDH, during its existence, no new criminal code was enacted and the criminal legislation continued to rely largely on the provisions of the Kingdom of Yugoslavia’s criminal law, onto which new regulations were grafted by the newly-formed government, as needed.

On 17 April 1941, a mere week after the NDH had been declared, the *Law Decree on the Defence of the People and the State (Zakonska odredba za obranu naroda i države)*⁷ was adopted, as an act which laid “the legal foundations of the

³ Željko Horvatić, *Kazneno pravo. Opći dio I* (Zagreb: Pravni fakultet u Zagrebu, 2003), 106–130.

⁴ *Ibid.* 115.

⁵ Nikolina Srpak, “Kazneno pravo u doba Nezavisne Države Hrvatske (1941.–1945.)”, *Hrvatski ljetopis za kazneno pravo i praksu* 2 (2006).

⁶ “Law decrees shall only be passed by the Poglavnik of the Independent State of Croatia [hereinafter the NDH]. The decrees shall be the following: 1) law decrees, which have the nature of a law; 2) general, regulating issues of a general nature, which do not have the nature of a law; and 3) special, which regulate specific (individual) issues that by law may only be regulated by the Poglavnik.” See Article 1 of the Law Decree on Names of Legal and other Regulations and Regional Decisions (*Zakonska odredba o nazivima zakonskih i drugih propisa i oblastnih rješenja*), *Narodne novine* [Official Gazette of the NDH], no. 160, 23 October 1941.

⁷ *Narodne novine* no. 4, 17 April 1941.

Ustasha legislation sanctioning the terror".⁸ Pursuant to this document, to be considered guilty of the crime of high treason was "whoever in whatever way acts or has acted against the honour and vital interests of the Croatian people or in any way endangers the survival of the Independent State of Croatia or state authority, even if the act is only attempted". The binding interpretation of the Minister of Justice clarified that for the commission of the offence it was enough to act either against the honour or against the vital interests of the Croatian people,⁹ which probably means that some problems with its interpretation were encountered in its application. Nevertheless, the fact that the terms used in it were not authentically clarified despite their vagueness supports the conclusion that such vagueness was probably intentional and that it was exploited in practice.¹⁰ This offence was punishable by death (execution by a firing squad),¹¹ and newly-established *extraordinary people's courts* were adjudicating upon it and trying both *civilians* and military personnel.¹² The procedure was summary, and after the adoption of the *Law Decree on Courts Martial (Zakonska odredba o prijetim sudovima)*, extraordinary people's courts were also trying according to the procedure prescribed for courts martial.¹³

The newly-legislated crime of treason was, as we can see, utterly vaguely defined.¹⁴ While the "survival of the NDH" or "state authority" could be taken to

⁸ Narcisa Lengel-Krizman, "Prilog proučavanju terora u tzv. NDH. Ženski sabirni logori 1941–1942. godine", *Povijesni prilozi* 4 (1985), 3.

⁹ *Narodne novine* no. 24, 10 May 1941.

¹⁰ Fikreta Jelić-Butić, *Ustaše i Nezavisna država Hrvatska 1941–1945* (Zagreb: Liber – Školska knjiga, 1977), 159; Bogdan Krizman, *Pavelić između Hitlera i Mussolinija* (Zagreb: Globus, 1980), 117.

¹¹ The Law Decree supplementing the Law Decree on the Defence of the Nation and the State (*Zakonska odredba o nadopuni zakonske odredbe za obranu naroda i države*), *Narodne novine* no. 22, 8 May 1941.

¹² See Authoritative Interpretation of the Law Decree on the Defence of the Nation and the State (*Mjerodavno tumačenje zakonske odredbe za obranu naroda i države*) of 17 April 1941, *Narodne novine* no. 68, 5 July 1941. The first such court was established in Zagreb, and soon similar courts were also set up in Varaždin, Bjelovar, Osijek, Gospić, Banja Luka and Tuzla, cf. Hrvoje Matković, *Povijest Nezavisne države Hrvatske* (Zagreb: P.I.P. Pavičić, 2002²), 68. The trial chambers had three members.

¹³ See the Law Decree amending the Law Decree on the Defense of the Nation and the State (*Zakonska odredba o promjeni zakonske odredbe za obranu naroda i države*), *Narodne novine* no. 35, 24 May 1941. "It became increasingly apparent in practice that there in fact was no essential difference between the 'extraordinary people's courts' and 'courts martial'. The difference, which under the Decree on Courts Martial was reflected in specifying a particular legal form of the proceedings, was not very manifest in actual practice" (Jelić-Butić, *Ustaše i Nezavisna država Hrvatska*, 160).

¹⁴ Similar also in Srpak, "Kazneno pravo u doba Nezavisne Države Hrvatske", 1125, 1128.

be an appropriate object of criminal law protection, regardless of the possibility for these goods to be violated “in whatever way”, the possibility for the honour or interests of the Croatian people to be violated in whatever way enabled abuse in practice. The vagueness of criminal law norms and indirect derogation from the principle of legality (*nullum crimen nulla poena sine lege*), in the form of ambiguous legal descriptions (*lex certa*), was indeed a characteristic of the criminal law of Nazi Germany as well, just implemented in a more dramatic form,¹⁵ although for a while the possibility of creative analogies also characterized post-war Yugoslav law (under the 1947 Criminal Code – General Part, Article 5, paragraph 3).

It should be noted that many behaviours were subsequently classified as falling under this Decree, based on an arbitrary assessment of the authorities. Thus, for example, just one day after its adoption, a ban was introduced on hiding and withdrawing from trade “all goods constituting basic necessities”, as well as on price increases. Anyone breaching this regulation was punished according to the procedure defined in the said Law Decree “by the strictest penalties, and if necessary, even by the death penalty” (§ 2).¹⁶ Again, the prerequisite for a case to be heard by a special court was the decision of the authorities that legal transactions “harmed vital interests of the Croatian people”, which was a matter of discretion (“if it turns out...”).¹⁷ In many subsequent law decrees, references were also made to the application of the Law Decree on the Defence of the People and the State regarding a set of behaviours (e.g. sabotage in business companies).¹⁸ It should be noted that the Croatian law-maker retained the implementation of the General part of the Criminal Code of the Kingdom of Yugoslavia with respect to this Decree as well,¹⁹ with the exception that its provisions on statute of limitations (Chapter IX) were not applied, and that mitigation of punishment was limited to “less serious cases”.²⁰ At the same time, the Minister of Justice was

¹⁵ The German law-maker lifted the ban on analogy in 1935 – see Thomas Vormbaum, *Einführung in die moderne Strafrechtsgeschichte* (Berlin Heidelberg: Springer, 2011²), 188 – and set forth in the Criminal Code (Article 2) that “whoever performs an action that law has criminalized, or that deserves punishment on the basis of the core idea of penal law, and according to common sense of the nation, shall be punished.”

¹⁶ *Narodne novine* no. 5, 18 April 1941.

¹⁷ Implementing Order of the Law Decree on Punishment of Concealment and Price Increases of Foodstuffs (*Provedbena naredba Zakonske odredbe o kažnjavanju sakrivanja i povisivanja cijena živeža*) of 17 April 1941, *Narodne novine* no. 8, 22 April 1941.

¹⁸ See the Law Decree on Ordinary Operations and the Prevention of Sabotage in Business Companies (*Zakonska odredba o redovitom poslovanju i sprečavanju sabotaze u privrednim poduzećima*), *Narodne novine* no. 17, 2 May 1941.

¹⁹ The 1929 Criminal Code of the Kingdom of Yugoslavia – Criminal Code (*Krivični zakonik Kraljevine Jugoslavije od 1929. godine – Krivični zakonik*), *Narodne novine* no. 47/1929 and 2455/1931.

²⁰ *Narodne novine* no. 17, 2 May 1941.

authorized to prescribe by order the procedure for offences against the people and the state, and to issue a binding interpretation.

As early as May 1941, the *Law Decree on Amendments to the Penal Code of 27 January 1929 and the Law on Amendments to the Penal Code of 9 October 1931* (*Zakonska odredba o promjenama u kaznenom zakoniku od 27. siječnja 1929. i zakona o izmjenama i dopunama kaznenog zakonika od 9. listopada 1931*) was enacted.²¹ It redefined crimes against the survival of the state and against its constitutional order (Chapter XII) and extended the application of the death penalty to the offences in this chapter,²² while replacing the terms used for the criminal law protection of the king and the throne by the term “protection of the Poglavnik”, and changing the characteristics of the legal description in a number of offences. And for those offences for which a relevant sentence of deprivation of liberty (imprisonment or detention) was prescribed, the penal servitude with a much longer duration was prescribed. Although the Criminal Code also prohibited membership of anti-state associations (punishable by imprisonment of up to two years or a fine, Article 161), the Penal Code punished “organizing, assisting, or becoming a member of any kind of society whose purpose would be to spread communism,²³ anarchism, terrorism or a society for the unlawful seizing

²¹ *Narodne novine* no. 19, 5 May 1941. Although the pre-war Yugoslav Criminal Code was applied, it was not named so, but it was renamed to the “Penal Code”. There were several reasons for such renaming, but the decisive one was the fact that the Croatian criminal law doctrine normally used the term “penal” law (offence, action, etc.), and the prevailing belief that the term “criminal” law had developed under the influence of the Serbian legal literature, see Juraj Kulaš, “Da li ‘kazneno’ ili ‘krivično’ pravo?”, *Mjesečnik* 1–2 (1942), 17 ff. In that context, we shall also refer to this regulation during the period of its validity in the NDH (from these amendments to the Criminal Code of the Kingdom of Yugoslavia) as the Penal Code (PC).

²² According to the Criminal Code, the death penalty in this chapter was prescribed only for assassination or attempted assassination of the king, the royal heir to the throne or the regent (Article 91).

²³ Thus, pursuant to the decision of the Summary Court Martial of Colonel Luburić’s Headquarters in Sarajevo, 85 persons were convicted of the criminal offence under Article 98, paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of the Penal Code, for their membership of the Communist Party. The convicted were allegedly ‘organizing, receiving and disseminating the communist propaganda material, giving and collecting the communist red help, procuring and transferring weapons and ammunition to partisans in the forest and organized assault strike squads of five [petorke], all with the aim to topple, by way of violence, crime and terrorism, the social and political order in the NDH, and have, therefore, committed serious punishable acts against the survival, freedom and independence of the Croatian people” (An announcement of the Summary Court Martial of Colonel Luburić’s Headquarters – Sarajevo, Court no. 6-1945 of 29 March 1945. Convictions of 5 March 1945 [Ukp no. 1/1945], 10 March 1945 [Ukp no. 2/1945], 12 March 1945 [Ukp no. 3/1945, Ukp no. 4/1945 and Ukp no. 5/1945], 13 March 1945 [Ukp no. 6/1945], 14 March 1945 [Ukp no. 7/1945], 21 March 1945 [Ukp no. 8/1945 and Ukp no. 9/1945], 24 March 1945 [Ukp no. 10/1945], and 26 March 1945

of power” – by death. Penal servitude for up to 20 years was also prescribed as a sentence for the failure to report preparations for the commission of most of the crimes in this chapter.

Initially, the death penalty was executed by hanging, as under the pre-war law, but it was soon replaced by a firing squad.²⁴ Although these changes provided for *vacatio legis* of 30 days, the Croatian law-maker was eager to speed up their implementation, so a new Law Decree provided for an earlier entry of the amendments into force.²⁵ These amendments derogated from certain criminal law principles which were normal even for those times. For example, the statute of limitations was eliminated for offences against official duty (Chapter XXVIII) “committed after 1918”, which, contrary to the usual criminal law standards, enabled the retroactive application of criminal law to certain offences (e.g. taking bribes) that had already fallen under the statute of limitations pursuant to the then rules.²⁶

Regarding substantive legislation, subsequent decrees were mainly aimed at further intensifying repression and increasing the prescribed penalties. Thus, for example, for many offences against the state (Articles 109–110, 114 of the PC), penal servitude for life or penal servitude was replaced by the death penalty.²⁷ Apart from those decrees that were directly related to the survival of the

[Ukp no. 11/1945, Ukp no. 12/1945 and Ukp no. 13/1945], Vojni arhiv Ministarstva odbrane Republike Srbije [Military Archives of the Ministry of Defence of the Republic of Serbia], Nezavisna država Hrvatska Funds [Independent State of Croatia; hereafter VA, NDH], Box 314, folder 3, document 1/1). Of the total number of people covered by these judgments, one received a prison sentence, 26 were sentenced to penal servitude (lasting between 1 and 20 years), 9 to penal servitude for life, 4 to high-security prison (lasting between 3 months and 5 years) while all the other persons (43) were sentenced to death and executed by the firing squad. By virtue of the Commander’s Decision, one person’s death sentence was commuted to penal servitude for life.

²⁴ See the Law Decree amending the Penal Code (*Zakonska odredba o promjeni kaznenog zakonika*) of 27 January 1929, *Narodne novine*, no. 111, 26 August 1941. In December 1941, however, it was allowed again for the Minister of Justice, in specific cases, to order the execution of the death penalty by hanging (see the Law Decree amending the Penal Code of 27 January 1929 (*Zakonska odredba o preinaci i dopuni kaznenog zakonika od 27. siječnja 1929.*), *Narodne novine*, no. 210, 23 December 1941).

²⁵ See the Law Decree on the Entry into Force of the Law Decree on Amendments to the Penal Code of 27 January 1929 and the Law on Amendments to the Penal Code of 9 October 1931 (*Zakonska odredba o stupanju na snagu zakonske odredbe o promjenama u kaznenom zakoniku od 27. siječnja 1929. i zakona o izmjenama i dopunama kaznenog zakonika od 9. listopada 1931.*), *Narodne novine* no. 36, 26 May 1941.

²⁶ Srpak, “Kazneno pravo u doba Nezavisne Države Hrvatske”, 1122.

²⁷ See the Law Decree amending the Penal Code of 27 January 1929 and the Law Decree of 3 May 1941 on Amendments to the Penal Code of 27 January 1929 and the Law on Amendments to the Penal Code of 29 October 1931 (*Zakonska odredba o promjenama u kaznenom*

new authorities in the circumstances of war, substantive criminal law for the most part was not dramatically modified. Exceptions included criminal offences of *illegal abortion*,²⁸ for which the sentence was significantly increased. Thus, for example, performing an abortion on a pregnant woman at her request was punishable by life imprisonment, while in case it was done against her will, or by a physician or a midwife (but as a repeat offence), the death penalty was prescribed. If the abortion was performed for a fee, besides the death penalty, the property of the perpetrator was confiscated and allocated to a special fund for maternity support. The penal policy on these criminal offences was rigorous, even though the pronounced death sentences were often replaced by long-term penal servitude.²⁹ It should be noted that this did not completely prevent the performance of abortions, since the same decree regulated in detail the circumstances in which a separate body (a commission) could allow abortion on an exceptional basis.

It should be pointed out that, in addition to criminal (penal) offences, in many ministerial orders, relevant misdemeanours (petty offences) were also prescribed, for which the proceedings were conducted by the administrative authorities. It was precisely through the administrative and penal proceedings that drastic measures were implemented, which far exceeded in scope the inferiority of misdemeanours as type of punishable offences. This particularly refers to the fact that, in those cases where any proceedings were conducted in the first place, deportations to concentration camps as a rule were executed in the proceedings conducted by the administrative authorities.

Activity of courts martial in the NDH

During the period of the NDH, ordinary and special courts (extraordinary and courts martial) tried in parallel in criminal matters. The functioning of the judiciary, except for military courts and the Administrative Court, was within the competence of the Ministry of Justice and Religious Affairs. With the creation of the NDH, the organization of ordinary courts did not significantly change

zakoniku od 27. siječnja 1929. i zakonskoj odredbi od 3. svibnja 1941. o promenama u kaznenom zakoniku od 27. siječnja 1929. i zakonu o izmjenama i dopunama kaznenog zakonika od 29. listopada 1931.), *Narodne novine* no. 74, 12 July 1941.

²⁸ See the Law Decree on the Prohibition and Punishment of Induced Miscarriage and Abortion and Amendments to the Penal Code of 9 October 1931 (*Zakonska odredba o zabrani i kažnjavanju uzrokovanog pometnuća i o prekidanju trudnoće, izmjenama i dopunama kaznenog zakonika od 9. listopada 1931.*), *Narodne novine* no. 49, 10 June 1941.

²⁹ See Ana Jura, "Ženska kaznionica u Požegi za vrijeme Nezavisne Države Hrvatske (1941.-1944.)", *Časopis za suvremenu povijest* 3 (2013), 497–498.

except that their previous names were restored.³⁰ So, in end-April, local, district and appellate courts were replaced by “county courts” and “judicial chambers (*sudbeni stolovi*) and high courts (*banski stolovi*)”.³¹ After that, on several occasions, the areas of territorial jurisdiction of certain county courts were reorganized by merging them with other judicial chambers.³² Legal professionals were a scarce resource for the new state authorities, so on several occasions during the war, mandatory availability of “staff in the judicial profession” was extended, regardless of the existing legal rules, in terms of their potential, appointment, promotion, secondment, retirement or even reinstatement after retirement.³³

Ordinary courts in the NDH included the Chamber of Seven (in Zagreb) as the supreme judicial instance, high courts in Sarajevo and Zagreb, more than 150 county courts and, after the establishment of great districts, 19 district judicial chambers.³⁴ Nevertheless, the jurisdiction of ordinary courts in the time of war was not of crucial importance, since almost the entire criminal justice

³⁰ Davor Kovačić, “Kazneno zakonodavstvo i sustav kaznionica i odgojnih zavoda u Nezavisnoj Državi Hrvatskoj”, *Scrinia Slavonica* 1 (2008), 283.

³¹ As one of the arguments that the NDH constituted a state entity in the international law sense, Tomislav Jonjić, “Pitanje državnosti Nezavisne Države Hrvatske”, *Časopis za suvremenu povijest* 3 (2011), 690, offers the fact that the organization of power was quick and smooth: “The network of courts and administrative bodies (police, tax, traffic, etc.) and schools, universities, sports and social institutions continued to function in accordance with Croatian regulations and on behalf of the new state.”

³² Thus e.g. courts in Trebinje, Bosansko Grahovo and Kalinovik were disbanded and their jurisdiction was transferred to courts in Mostar, Livno and Foča (Article 18). See the Law Decree on Changes in Territorial Jurisdiction of Courts in the Areas Covered by High Courts in Zagreb, Sarajevo and Split (*Zakonska odredba o izmjenama prostorne sudske nadležnosti na područjima banskih stolova u Zagrebu, Sarajevu i Splitu*), *Narodne novine* no. 98, 9 August 1941. More significant changes in territorial jurisdiction of the courts also occurred after the demarcation between the NDH and the Kingdom of Italy (see the Law Decree on the Temporary Enlargement of the Territorial Jurisdiction of the High Court in Zagreb, the Judicial Chambers in Dubrovnik, Gospić and Ogulin and the County Courts in Sinj, Knin, Drniš and Omiš [Zakonska odredba o privremenom proširenju prostorne nadležnosti Banskoga stola u Zagrebu, sudbenih stolova u Dubrovniku, Gospiću i Ogulinu i kotarskih sudova u Sinju, Kninu, Drnišu i Omišu], *Narodne novine* no. 135, 24 September 1941), but similar changes were introduced later as well.

³³ See the Law Decree on Mandatory Availability of All Members of Legal Profession (*Zakonska odredba o stavljanju na raspolaganje svega osoblja pravosudne struke*), *Narodne novine* no. 76, 15 July 1941. This option was initially open until 1 November 1941 but after that it was periodically extended until 1 November 1944 (see *Narodne novine* no. 158, 21 October 1941; no. 221, 1 October 1942; no. 251, 3 November 1943; and no. 242, 26 October 1944).

³⁴ Nada Kisić Kolanović, “Ivo Politeo: povijesna stvarnost Nezavisne Države Hrvatske iz odvjjetničke pozicije”, *Časopis za suvremenu povijest* 2 (2013), 265; Kovačić, “Kazneno zakonodavstvo i sustav kaznionica”, 283.

system was in effect transferred from ordinary to special courts.³⁵ Moreover, a question may be raised of the extent in which the activity of special courts in general (extraordinary and courts martial) was a relevant indicator of the exercise of judicial power in a situation where (as early as the summer of 1941), tens of thousands of NDH citizens were being killed without any judicial proceedings, be it before ordinary or extraordinary courts. In the majority of cases, the executions of Serbs, Jews and Roma were carried out as part of a project aimed at their extermination, so it seems that the organization of simulated trials for certain alleged unlawful acts was the choice of more conscientious representatives of some authorities to have any kind of trial in some (isolated) cases rather than a feature of the criminal justice system in the NDH.³⁶ Besides, there was less need to conceal the crimes committed in military operations on the ground by formally conducting proceedings, as opposed to urban areas, where there was a need to ensure some legitimacy for the actions of the authorities through the legal framework. In any event, in such circumstances, there in fact was no real need for a legally regulated penal procedure. This is also demonstrated by the order of the Ministry of the Croatian Home Guard of 22 November 1941, according to which “the commander [Slavko Kvaternik] ordered that, in the future, the following actions are to be undertaken when conducting operations on the ground: 1) Anyone found on the ground with weapons, who does not belong to the Home Guard, Ustasha, gendarmerie and other recognized units, shall be immediately executed. 2) Unarmed citizens who are found on land outside their villages without a special permit, and especially in forests and mountains, shall be considered as harbours of outlaws, and shall be arrested and, as such, sent to concentration camps. 3) The villages from which one was shooting at us shall be burnt down”. Similarly, “if there is an attack on members of the Home Guard or the Ustashes, on postal, road or railway communications or state institutions near a village, the village in question shall be searched, and from all homes where men/fugitives have not been found, all persons (female and male, the elderly and children) shall be taken to concentration camps as hostages. Houses, pos-

³⁵ Jelić-Butić, *Ustaše i Nezavisna država Hrvatska*, 160; Kisić Kolanović, “Ivo Politeo: povijesna stvarnost”, 265.

³⁶ Thus, a report of the Posavje Great District Perfect states that investigations against rebels from the territory of Gradačac County were carried out “in the village of Modrič and in Gradačac, and out of 255 detained persons in Modrič, after individual interrogations 19 were found to have taken active part in the rebellion, while in Gradačac, out of 276 detained persons, 49 were kept in custody, for whom there is evidence that they have participated in the rebellion, some more than others. And these will be brought before a court martial” (*Zločini Nezavisne države Hrvatske 1941–1945*, vol. I of *Zločini na jugoslovenskim prostorima u Prvom i Drugom svetskom ratu. Zbornik dokumenata*, ed. Slavko Vukčević [Belgrade: Vojnoistorijski institut, 1993], doc. no. 277).

sessions, wheat, and the like shall become state property.”³⁷ The population of villages captured in cleansing operations³⁸ were considered to be hostages and, as such, they were taken to concentration camps.³⁹

In most cases, mass liquidations of Serbs were not preceded by any proceedings, be it before an ordinary court or a court martial. Consequently, the criminal legislation in force was not applied to the *perpetrators* of these heinous crimes. Thus, the Report on the state of public security in Opuzen to the Prefect (*Veliki župan*) of the Hum Great District in Mostar, dated 4 July 1941 – which identifies persons arrested on various bases (for fraud, theft and other offences) in the few months from the establishment of the NDH – points out, inter alia, that “in the night of 25 June this year, the Ustashas from the Stolac County brought in 283 persons [Serb peasants from the environs of Stolac] in freight vehicles to the place called Opuzen and executed them on the bank of the Neretva river below the town of Opuzen on account of Serbianism and a Chetnik operation in the County of Stolac.” It is not surprising therefore that the Report concludes that “with respect to the act of executing the Serbs-Chetniks, this station did not conduct any investigation, nor did it take any action in that respect, since they were the same as the Ustashas who performed executions from the areas covered by other stations.”⁴⁰ Similarly, the commander of the area of the Adriatic Division states in his report that the commanders of the Italian garrisons in Gacko (General Luzano) and Nevesinje (General Napolitano) “kindly ask that all the gendarmes in the territory of the counties of Nevesinje and Gacko, who served in these areas at the time of the removal, killing and potential massacre of the Orthodox population, and participated in that either directly or just as the executors of the orders of various commissioners, be removed-transferred from the area as soon as possible. They cite as a reason the need to conduct investigations into various crimes and would not want to arrest uniformed persons and possibly punish them.”⁴¹

Formally, the fundamental regulation of a criminal procedural nature during the NDH was the *Law Decree on Courts Martial*, which, as its name

³⁷ *Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 339.

³⁸ In the reports on actions of the Ustasha units, the term “cleansing” is often encountered, which denotes “killing, setting on fire and plundering committed against the population of the Greek-Eastern faith” (see e.g. *Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 219, *Izveštaj krilnog oružničkog zapovjedništva Gospić od 16. avgusta 1941. godine*).

³⁹ See e.g. *Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 364, Report of the Command of the Drina Brigade (Stožer Drinskog zdruga) of 19 December 1941.

⁴⁰ See *Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 99.

⁴¹ *Ibid.* doc. no. 301. Later, a part of these Ustasha transferred to Bosnia also committed crimes in and around Jajce (*ibid.* doc. nos. 289; 302; 305; 313).

suggests, established *courts martial* as a form of a special justice system.⁴² After the Minister of Justice proclaimed a court martial for each individual area (area of each judicial chamber), this body was vested with jurisdiction to try certain criminal offences. These were offences related to participation in a group that committed violence (Article 154 of the PC), murders (Article 167, paragraphs 1 and 2 of the PC), arson (Articles 188 and 189 of the PC), causing danger by using explosive materials (Article 191 of the PC) or other actions posing a general threat (Article 201, paragraphs 1 and 2 of the PC), posing a threat to various forms of traffic (Articles 206 and 207, paragraph 1, and 209 of the PC), robbery and grand larceny (Articles 326–328 of the PC), failure to surrender fire arms or cold steel at the request of the authorities (Article 2, paragraph 1, item 2, of the Law Decree), as well as the hiding of persons who have committed any of the above offences (Article 2, paragraph 1, item 3, of the Law Decree). For all the above offences, the only punishment prescribed was the death penalty (by a firing squad).⁴³

The proceedings before a court martial were conducted on the motion of the state prosecutor, and under the provisions of the 1929 Code of Court Criminal Procedure. In a chamber comprising three judges, one did not have to be a lawyer, but the presiding judge had to hold a law degree. One of the members of this court had to be from among the Ustasha ranks.⁴⁴ Proceedings were public and oral, with the prescribed mandatory presence of a defence attorney, either retained or court appointed. Against the judgment of a court martial no legal remedy whatsoever was permitted, and an appeal for a pardon did not have suspensive effect. Despite the fact that defence was formally provided for, defence attorneys generally were not informed of the name of the accused and the content of the indictment before the trial.⁴⁵ At the same time, they were not able to communicate with their clients and to examine the case files and exhibits serving

⁴² *Narodne novine* no. 32, 20 May 1941.

⁴³ On the basis of this decree, and the prescribed capital punishment by firing squad for keeping firearms or cold steel without a permit to carry and hold them, citizens were ordered to surrender weapons by no later than 18 July 1941. "All those who fail to surrender weapons within the time limit set in this law decree and the weapons are found on them shall be court martialled and punished by death." The Law Decree on Surrendering Weapons (*Odredba o predaji oružja*), *Narodne novine* no. 70, 8 July 1941.

⁴⁴ Besides two professional judges, "the third judge shall be from among the ranks of the Ustasha" (see the Proclamation of the Court Martial for the Territory of the Judicial Chamber in Sarajevo, *Narodne novine* no. 33, 21 May 1941). Similar provisions were incorporated in the proclamations of other courts martial (e.g. in Zagreb), except that in most cases the decision on the proclamation usually appointed the Ustasha members of the chambers.

⁴⁵ A similar objection was made to the Bar Association of Zagreb by the famous attorney Ivo Politeo, who was designated as a court-appointed defence counsel before the Zagreb court martial (see Kisić Kolanović, "Ivo Politeo: povijesna stvarnost", 266 ff).

as evidence,⁴⁶ so their presence at the trial was more of a cover for a defective procedure whose outcome was determined in advance.

A relevant norm was also the one that allowed the retroactive application of the *Law Decree* to the same criminal offences committed after 10th April 1941, provided that a court martial was proclaimed within three months of its adoption. The first proclaimed court martial was the one for the territory of the judicial chamber in Sarajevo, which invoked this possibility and established jurisdiction over the offences stipulated in this decree committed after 10th April, and that was also done by other courts established in that period. In addition to the court in Sarajevo, courts martial were also established in Zagreb,⁴⁷ Gospić,⁴⁸ Petrinja,⁴⁹ Tuzla,⁵⁰ Bihać,⁵¹ Travnik,⁵² Osijek⁵³ and Mostar.⁵⁴ These courts were active almost throughout the period of the NDH, although it is in the nature of similar special judicial bodies that their existence and operation is exceptional and short. *Criminal charges* on the basis of which courts martial tried were scanty in information in most cases. Thus, in his letter of 14 August 1941 (no. 338),⁵⁵ the Special Plenipotentiary of the Poglavnik for the great districts of Hum and Dubrava in Mostar complained about the deficiencies of criminal charges: "... and without any evidence of the commission of criminal offences, which causes great difficulties and delays in the operation of courts martial, whose duty is to adjudicate swiftly, because in most cases they have to postpone the scheduled hearings due to the lack of evidence and poorly prepared criminal charges."

⁴⁶ Ibid. 267.

⁴⁷ See the Ministerial Decree on the Proclamation of the Court Martial for the Territory of the Judicial Chamber in Zagreb, *Narodne novine* no. 37, 27 May 1941.

⁴⁸ Ibid.

⁴⁹ See the Ministerial Decree on the Proclamation of the Court Martial for the Territory of the Judicial Chamber in Petrinja, *Narodne novine* no. 43, 4 June 1941.

⁵⁰ See the Ministerial Decree on the Proclamation of the Court Martial for the Territory of the Judicial Chamber in Tuzla, *Narodne novine* no. 50, 11 June 1941.

⁵¹ See the Ministerial Decree on the Proclamation of the Court Martial for the Territory of the Judicial Chamber in Bihać, *Narodne novine* no. 54, 18 June 1941. This court was disbanded in March 1943, and a mobile court martial was set up instead (see *Narodne novine* no. 56, 9 March 1943).

⁵² See the Ministerial Decree on the Proclamation of the Court Martial for the Territory of the Judicial Chamber in Travnik, *Narodne novine* no. 59, 25 June 1941.

⁵³ See the Ministerial Decree on the Proclamation of the Court Martial for the Territory of the Judicial Chamber in Osijek, *Narodne novine* no. 60, 26 June 1941.

⁵⁴ See the Ministerial Decree on the Proclamation of the Court Martial for the Territory of the Judicial Chamber in Mostar, *Narodne novine* no. 75, 14 July 1941. This court was disbanded by a ministerial decree of 16 July 1941 (*Narodne novine* no. 79, 18 July 1941).

⁵⁵ VA, NDH, Box 189, f. 39, doc. 1.

It is difficult to determine, in those very exceptional cases in which formal proceedings were conducted before the killing, the proportion in which the jurisdiction in criminal matters was effectively split between ordinary courts and courts martial. Several circumstances contribute to the difficulties in determining this proportion. First, one could not argue that ordinary courts dealt exclusively with “classical” crimes, and courts martial tried only political or similar criminal offences. During the war, courts martial steadily broadened their jurisdiction to include many offences which were not limited to actions against the newly-formed government, or actions that were such only in a rather broad sense; hence, from that angle, a clear line between classical and offences against the state cannot be drawn.⁵⁶ Furthermore, another problem is the fact that the activity of courts martial was bound by the mandatory imposition of capital punishment (with an option to possibly commute it through a pardon into some form of deprivation of liberty). Therefore, even those rare available analytically processed inmate case files of persons convicted in those days do not provide a true picture, since it was not possible to serve a classical sentence of imprisonment in penitentiaries if the death penalty had been previously executed, which happened as a rule. Despite these limitations, there is no doubt that the activity of courts martial outdid the activity of the ordinary criminal justice system by a wide margin. Thus, for example, in her analysis of 57 surviving case files of female prisoners in the Slavenska Požega penitentiary, Jura found that in as much as 57% of the cases the judgment (by rule the death penalty commuted through a pardon to some form of deprivation of liberty) was passed by mobile courts martial.⁵⁷ Ordinary courts (first and foremost, the judicial chambers) as a rule tried cases involving crimes against property or, for example, crimes against life and limb which exhibited no connection with the prevailing war circumstances (e.g. relative to family members).

In June 1941, the *Law Decree on Mobile Courts Martial (Zakonska odredba o pokretnom prijekom sudu)*⁵⁸ introduced the possibility for *mobile courts martial* to be established by the Minister of Justice, in addition to permanent courts martial. The difference between permanent and mobile courts martial

⁵⁶ Thus e.g. in the composition of criminal cases in the jurisdiction of the court martial within the judicial chamber in Sarajevo in 1941, the bulk of a total of 466 registered cases was related to criminal offences under Article 122 (illegal possession of weapons: 112 cases), Article 167 (murder: 53 cases), Article 98 (conspiracy against the state order: 76 cases) of the Penal Code, Article 2, item 2 of the Law on Courts Martial (failure to surrender weapons within the set time limit: 14 cases) and the so-called excessive pricing (price hikes: 34 cases). Excerpt from the Kk register for the case files of the Court Martial in Sarajevo, VA, NDH, Box 87 f. 37, doc. 1.

⁵⁷ Jura, “Ženska kaznionica u Požegi”, 500.

⁵⁸ *Narodne novine* no. 58, 24 June 1941.

was only in the non-territoriality of the latter. Namely, unlike courts martial, whose jurisdiction corresponded to the jurisdiction of the district courts (judicial chambers), the territorial jurisdiction of mobile courts martial depended on the specific needs (of military operations).⁵⁹ In addition to the criminal offences over which mobile courts had jurisdiction, mobile courts martial could also hear cases involving most of the offences against the NDH and its state order (Articles 91–98, 100 of the PC), obstruction of officials in performing official actions (Article 128 of the PC) and insult of the Poglavnik (Article 307 of the PC). Subsequent decrees further expanded the list of these offences.⁶⁰ For all the offences covered by this decree, the punishment was the death penalty by a firing squad. As for the composition of a mobile court martial, the presiding judge had to be an ordinary court judge, while the other two members of the panel, by rule, were from among the ranks of the Ustashas. This circumstance was of decisive importance, because a majority vote of the members of the panel (two out of three votes) was sufficient for the guilty verdict, which practically meant the death penalty. The rules of procedure were defined in a very similar way as those of courts martial. No appeal was possible against the judgment of a mobile court martial, and an appeal for a pardon could not stay the execution. The death penalty was to be executed three hours after the pronouncement of the verdict, and it was specified that all the case files of completed proceedings had to be sent to the Justice Ministry “for archiving” The evidentiary procedure before a mobile court martial was simplified to the extreme, so its pursuance had the sole purpose of providing a formal pretext for the crimes, and in most cases it is questionable whether the killing was preceded by any summary quasi-judicial proceedings whatsoever. Still, we do come across such examples. Thus, the report of the commander of the gendarmerie squad from Petrinja describes the massacre of some 1,200 Serbian household heads in Banski Grabovac which took place on 25 and 26 July 1941 as the result of the operation of a mobile court martial, which right upon its arrival “promptly started working in the open and

⁵⁹ Thus e.g. a mobile court established by virtue of ministerial order no. 42676/1941 covered the territory of the judicial chambers in Bihać, Luka, Derventa, Sarajevo, Travnik, Donja Tuzla and Mostar (see *Narodne novine* no. 76, 15 July 1941). In addition to several mobile courts martial established in Zagreb, such courts were also set up in Sarajevo, Banja Luka, Bihać, Brčko, Derventa and Višegrad (see Srpak, “Kazneno pravo u doba Nezavisne Države Hrvatske”, 1133). The most notorious was the mobile court martial in Zagreb, presided by Dr. Ivo Vignjević (see Rory Yeomans, *Visions of Annihilation. The Ustasha Regime and the Cultural Politics of Fascism 1941–1945* [Pittsburgh: University of Pittsburgh, 2013], 18).

⁶⁰ These are various criminal offences of counterfeiting (Article 225–241 of the PC). See the Law Decree supplementing the Law Decree on the Courts Martial and the Law Decree on Mobile Courts Martial, *Narodne novine* no. 60, 26 June 1941; and the Law Decree amending the Law Decree supplementing the Law Decree on the Court Martial and the Law Decree on Mobile Courts Martial, *Narodne novine* no. 61, 27 June 1941.

handed down convictions, which became enforceable immediately.”⁶¹ Although it is likely that the alleged sequence of actions was only fictitious, for the purpose of fulfilling the duty of preparing a proper report, there is no doubt that even if there were instances of such proceedings being really conducted, they were merely an effort to cover up the committed crimes.

Pursuant to the *Law Decree amending the Law Decree on Courts Martial and Mobile Courts Martial (Zakonska odredba o promjeni zakonske odredbe o prijekom i pokretnom prijekom sudu)* of 5 July 1941, appeals for pardons were sometimes sent by mobile courts martial to the Minister of Justice and Religious Affairs (to Zagreb). The information about the appeals was generally only communicated over the phone, but sometimes, in the case of broken telephone lines, it was also sent by telegrams, often with a supporting rationale.⁶² Thus, in two telegrams sent to this Ministry regarding persons sentenced to death for offences defined in Articles 98, item 1, and 307, paragraph 1 of the PC, a decision is requested on the appeal for clemency, where the court in one case proposed a reprieve citing his “many children and age,”⁶³ while in the other, it cited the fact that the convicted person was “disabled and a notorious alcoholic.”⁶⁴ The fact that the perpetrator was a woman could in practice also have an impact on the potential commuting of a death sentence (as a rule) to penal servitude.⁶⁵ However, in a vast majority of cases, a pardon for persons sentenced to death was not proposed by mobile courts.⁶⁶

Appeals for pardon in individual cases should be distinguished from periodic decisions of the Poglavnik to show mercy on the occasion of the NDH jubilees to an unspecified number of convicted persons based on a general criterion.⁶⁷ Although these decisions, too, were formally classified as pardons, they were actually a form of *amnesty*, granted by the executive branch in the absence of a legislative body. These demonstrations of clemency related solely to the decisions of ordinary courts, and did not apply to many explicitly mentioned criminal offences set out in the ordinary criminal legislation (murder, theft, arson, counterfeiting of money and some other offences), and the criminal offences defined in the decrees on the defence of the people and the state, and on courts

⁶¹ See *Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 155.

⁶² Davor Kovačić, “Osnivanje župskih redarstvenih oblasti u Nezavisnoj Državi Hrvatskoj i djelovanje višeg redarstvenog povjerenstva u Srijemu 1942”, *Scrinia Slavonica* 1 (2005), 272.

⁶³ VA, NDH, Box 308, f. 1, doc. 1/3.

⁶⁴ VA, NDH, Box 308, f. 1, doc. 1/4.

⁶⁵ See Jura, “Ženska kaznionica u Požegi”, 501.

⁶⁶ See e.g. VA, NDH, Box 308, f. 1, doc. 1/7

⁶⁷ See e.g. the Poglavnik’s Decision on Amnesty (*Poglavnikova odluka o pomilovanju*), *Narodne novine* no. 149, 10 October 1941, or the Poglavnik’s Decree on Amnesty (*Poglavnikova odredba o pomilovanju*), *Narodne novine* no. 79, 10 April 1942.

martial or on mobile courts martial. Even there one can find a vague provision which rules out pardon for all those “who committed any punishable act in order to assist in the activities of external or internal enemies of the NDH or its allies”.⁶⁸

The decisions on amnesty sometimes had the form of exemption from criminal prosecution (*abolition*). “The suspension of penal prosecution” was promised to those who “have voluntarily given up outlawry” and turned themselves in to any military, administrative or judicial authorities;⁶⁹ and it was related to the less favourable external and internal circumstances that prevailed especially from 1944. In such cases, outlaws were also offered the prospect of suspension of protective measures applied against their family members (primarily their deportation to concentration camps), based on the decree on protective measures in case of an attack and an act of sabotage against public order and security.

At the end of the day, the fundamental reason for the establishment of permanent and mobile courts martial – the creation and maintenance of an atmosphere of terror that was implemented by the Ustasha government – had a decisive influence on their activity.⁷⁰ Persons who by some chance avoided the death penalty under the decision of a court martial (who were not found guilty of offences they were charged with) did not have to be released; instead, they were sent to concentration camps. Thus, pursuant to a decision of the Mobile Court Martial in Banja Luka (no. 38/1941 of 13 February 1942), eight persons

⁶⁸ See the Poglavnik’s Decree on Amnesty, *Narodne novine* no. 184, 14 August 1943.

⁶⁹ Law Decree on Non-prosecution or on Suspension of Criminal Prosecution against Returning Outlaws and Army Deserters (*Zakonska odredba o nepovađanju odnosno o obustavi kaznenog progona protiv odmetnika i vojnih begunaca, koji se vraćaju*), *Narodne novine* no. 20a, 26 January 1944. The privilege of non-prosecution pertained to those who would turn themselves in to the authorities, at first until 26 May 1944 (see the Law Decree on the Termination of Benefits Defined by the Law Decree on Non-prosecution or on Suspension of Criminal Prosecution against Returning Outlaws and Army Deserters (*Zakonska odredba o prestanku blagodati iz zakonske odredbe o nepovađanju odnosno o obustavi kaznenog progona protiv odmetnika i vojnih bjegunaca, koji se vraćaju*), *Narodne novine* no. 107, 11 May 1944), but this deadline was later extended.

⁷⁰ Thus e.g. in a separate Extraordinary Law Decree and Command, regarding the rumours that a pogrom would occur on St. Vitus Day (28 June) 1941 against the Serb population (“with respect to one part of the population”), Poglavnik Pavelić threatened that “whoever spreads such rumours shall be court martialled” (see *Narodne novine* no. 60, 26 June 1941). Moreover, with a view to preventing this information from being used as a trigger of a larger-scale uprising, gendarmerie stations were given the order to take as hostages and temporarily detain reputable Serbs from their areas around this St Vitus Day (see *Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 109). As mass pogroms against the Serb population were well underway, suppressing the dissemination of the news about these events constituted an additional measure to secure the success of the genocide.

accused of participating in the attack on the gendarmerie station in Krupa on the Vrbas river (4 August 1941) were formally released, since "it was not possible to present sufficient evidence to that effect in the conducted trial, but as they all are extremely suspicious, the Minister of Justice decided by virtue of order no. 8661/42 of 7 November 1942 that the above accused are to be handed over to the above named authority [the District Police Authority in Banja Luka] for the purpose of their deportation to the concentration camp. As a result, the above defendants are brought in with a request for your authorities to escort and hand them over to the Jasenovac concentration camp as suspicious persons."⁷¹

Not only did acquittals not necessarily result in release, but prior *suspension of criminal proceedings* against the defendant pursuant to a decision of the prosecution (mobile court) could lead to deportation to a concentration camp. Thus, in one example of the operation of the Mobile Court Martial in Banja Luka, the proceedings against a defendant for an insult of the Croatian army were suspended because he was under influence at the time of the commission of the offence, but since a similar incident was a repeat offence, he was deported to the "concentration and labour" camp Jasenovac "until the termination of all communist activity".⁷² The person concerned was first sent to the Jasenovac camp together with 19 others,⁷³ and then 14 of them were transferred (for unknown reasons), together with "15 Jews from Prijedor and three arrested persons from Sanski Most", to the camp in Stara Gradiška.⁷⁴

From February 1942, decisions on "detention or investigative arrest" had to be passed for criminal offences that were defined in the decrees on the defence of the people and the state and on courts martial and mobile courts martial.⁷⁵ Against the decisions on *detention*, issued either by judicial or administrative authorities, no appeal was possible, while the termination of detention required an order of the Grand Extraordinary Court or the Minister of Justice. Thus, according to the Register of Arrestees held in police custody in the "Black House"

⁷¹ VA, NDH, Box 173, f. 8, doc. 8/2.

⁷² Letter of the State Prosecutor's Office of the Banja Luka Mobile Court Martial no. 102/42 dated 15 June 1942, VA, NDH, Box 197, f. 4, doc. 28/1.

⁷³ See the Letter of the District Police Authority in Banja Luka no. 1878/42 of 7 August 1942, VA, NDH, Box 197, f. 4, doc. 28/5.

⁷⁴ See the Letter of the Security Police for the City of Banja Luka and the Great District of Sana and Luka in Banja Luka no. 1492/42 of 7 September 1942, VA, NDH, Box 197, f. 4, doc. 28/6.

⁷⁵ See the Law Decree supplementing the Law Decree on the Defence of the Nation and the State of 17 April 1941, the Law Decree on Courts Martial of 17 May 1941, no. LXXXII-148-Z. p.-1941, and the Law Decree on Mobile Courts Martial of 24 June 1941, no. CLXXX-II-508-Z. p.-1941, with all their subsequent modifications and supplements, *Narodne novine* no. 31, 7 February 1942.

in Banja Luka, most of 78 persons held in this facility in June 1942 awaited to be deported to a camp, some awaited proceedings before the mobile court martial, and a smaller number was under investigation.⁷⁶ The length of detention, however, was determined mainly arbitrarily. Thus, in one case, the Vrhbosna Great District Prefect⁷⁷ states in his report submitted to the Ministry of the Interior in Zagreb⁷⁸ that his subordinates refuse to obey orders by arbitrarily determining the length of detention:⁷⁹ “The last paragraph of the report of the police chief is not only in obvious contradiction with the current legislation, but the police chief, in a manner of official communication which has not hitherto been usual in the communication between a lower level and the immediate superiors, also effectively denies obedience by using an inappropriate tone when he stresses that he ‘can take orders solely and exclusively from the Directorate for Public Order and Security in Zagreb, and no one else.’” Similar letters point to frequent frictions between the administrative and the Ustasha authorities, but the ministries usually ignored such complaints.

Persons were often detained completely arbitrarily. Thus, in a letter to the Ministry of the Interior, the county head in Brčko complains about the fact that members of the Ustasha camp in Brčko perform many functions that fall within the competence of the ordinary administrative and judicial authorities, including “evictions from residential premises of certain persons and families although that, too, falls within the competence of the Ministry at the proposal of the administrative authorities”, just as “arrests are made and arrested persons are held in prison for a prolonged period of time without them filing reports to that effect to the ordinary authorities for further action”.⁸⁰

⁷⁶ See VA, NDH, Box 197, f. 4, doc. 28/7/9.

⁷⁷ The administrative division of the NDH into so-called “great districts” was introduced by the Law Decree on Great Districts (*Zakonska odredba o velikim župama*), *Narodne novine* no. 49, 10 June 1941.

⁷⁸ Letter of the Vrhbosna Great District Prefect no. 892/41 of 14 October 1941, Sarajevo, VA, NDH, Box 179, f. 34, doc. 6/1.

⁷⁹ “In § 113 of the Code of Judicial Criminal Procedure, it is clearly defined in which case a suspect can be held in custody; § 116 stipulates that the police authority shall immediately, and no later than within 24 hours, interrogate the detained person; while § 119 of the same code sets out when a decision on investigative arrest is to be taken and who has the competence over it. The report also shows that there were also such persons who were arrested on the orders of the Ustasha Commission, without the material evidence of their guilt being submitted to the police, and despite that they are kept in detention. There is no doubt that in such cases one was supposed to act most rapidly and with necessary caution, and if such persons were deprived of their liberty, then they should not still be kept in prison, if nothing was submitted against them, or if there is no material evidence proving their guilt.”

⁸⁰ See *Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 89.

Although the decrees on the establishment of courts martial and mobile courts martial contained a catalogue of criminal offences which these courts could try, it is obvious that this *numerus clausus* ceased being sufficient as soon as courts martial began operating, since the *Law Decree amending the Law Decree on Courts Martial and the Law Decree on Mobile Courts Martial (Zakonska odredba o promjeni zakonske odredbe o prijekom sudu i zakonske odredbe o pokretnom prijekom sudu)* of 28 June 1941⁸¹ provided for the possibility given to the state prosecutor to also prosecute before those special courts anyone who committed any other criminal offence laid down in the Penal Code, “for whom the state prosecutor has proposed, with the approval of the Minister of Justice and Religious Affairs, to be brought before a court martial or before a mobile court martial”. Indeed, it was thus made possible for these bodies to act arbitrarily in almost any situation provided that certain formal prerequisites were met, regardless of the division of jurisdiction between the systems of ordinary and extraordinary courts laid down by the decrees.

Likewise, although the judgments of extraordinary people’s courts, and permanent and mobile courts martial, could not be set aside by legal remedies, the possibility was introduced in the meantime for “the Minister of Justice and Religious Affairs to refer back any criminal matter, which was finally settled by virtue of a conviction, or a conclusion of an extraordinary people’s court, a court martial or a mobile court martial, to the *Grand Extraordinary People’s Court*” to be heard again.⁸² Contrary to what one might think, this novelty was not introduced in order to give a possibility to wrongfully convicted persons to have their case reopened or, if the death penalty had been executed, to rehabilitate them; instead, it was done to prevent the immediate release of defendants who had received acquittals.⁸³ Grand Extraordinary People’s Courts were established in Zagreb and Sarajevo, with the possibility to hold hearings, if necessary, in other places as well. This court consisted of five judges, who tried by applying the procedure provided for courts martial. Also, in April 1942, the possibility was introduced of applying for the protection of legality (nullity appeals for law defence against final and binding convictions, or conclusions of the Grand Extraordi-

⁸¹ See *Narodne novine* no. 62, 28 June 1941.

⁸² Law Decree amending and supplementing the Law Decree on the Defence of the Nation and the State of 17 April 1941; the Law Decree on Courts Martial of 17 May 1941; and the Law Decree on Mobile Courts Martial of 24 June 1941, *Narodne novine* no. 80, 19 July 1941.

⁸³ In order to prevent this, the obligation was introduced for all extraordinary courts to submit the case files after completing hearings and taking decisions to the Minister for assessment and decision (see *Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 363, Letter of the Ministry of Justice and Religious Affairs of 18 December 1941). The composition of the Grand Extraordinary People’s Court also facilitated desired outcomes of the proceedings, since three out of its five members were Ustasha officials (see Jelić-Butić, *Ustaše i Nezavisna država Hrvatska*, 160):

nary Court, an extraordinary people's court, a court martial or a mobile court martial) by the General Attorney, in the cases of violations of substantive law.⁸⁴

The jurisdiction of courts martial and mobile courts was constantly extended to include new offences.⁸⁵ Thus, under the *Law Decree amending the Law Decree on Courts Martial and the Law Decree on Mobile Courts Martial* of 28 June 1941,⁸⁶ put within the jurisdiction of courts martial were also offences which were related to enemy propaganda, i.e. writing, printing, publishing or disseminating books, newspapers, proclamations, leaflets or images, or making or spreading false statements aimed against state institutions or the Ustasha movement. The breadth of its application was particularly impacted upon by a decree which provided for the punishment of those persons as well who "had on them a leaflet, a book or a newspaper whose content constitutes communist propaganda, or any other criminal offence against the survival of the state or its order, or against the state authorities, or against the Poglavnik, or against those substituting him under the constitution, or against the Ustasha movement, or against Ustasha forces."

For the purpose of maintaining the atmosphere of terror, the ban on disseminating or keeping propaganda material did not only refer to printed material. Moreover, it was not only radio broadcasts against the existing order that were "outlawed" – listening to "the news broadcast by radio stations based in countries that are in enmity with the NDH, or with any of the Axis great powers" or "which are hostile to the current order in the NDH" was also banned.⁸⁷ The death penalty was also pronounced against those who failed to report a change of residence within three days, and that obligation pertained equally to landlords, building superintendents and cotenants in whose house such a person was found.⁸⁸

The expansion of the jurisdiction of permanent and mobile courts martial was related to all aspects of social life; consequently, almost everyone was potentially under threat of capital punishment. Thus, in September 1941, a new law decree⁸⁹ criminalized a whole new range of behaviours and made them punishable by the death penalty only. So, anyone who "for foodstuffs, clothing or any item belonging to basic necessities, or for their labour needed to produce these items, re-

⁸⁴ See *Narodne novine* no. 95, 29 April 1942.

⁸⁵ Matković, *Povijest Nezavisne države Hrvatske*, 68.

⁸⁶ *Narodne novine* no. 68, 5 July 1941.

⁸⁷ Law Decree supplementing the Law Decree on Courts Martial of 17 May 1941, and the Law Decree on Mobile Courts Martial of 24 June 1941, *Narodne novine* no. 72, 10 July 1941.

⁸⁸ *Ibid.*

⁸⁹ Law Decree on the Extension of the Jurisdiction of Courts Martial and Mobile Courts Martial (*Zakonska odredba o proširenju nadležnosti priekog suda i pokretnog priekog suda*), *Narodne novine* no. 134, 23 September 1941.

quests or charges a price in the amount which, as a general price, could undermine the well-being of the country or the population, disrupt the equilibrium of economic life or the social order” was to be brought before a court martial or a mobile court martial. This decree was almost non-implementable due to the scope of the above description, because every resident of the NDH could fall under it. A failure to hand over surplus of wheat, corn, rye, and other grains yields to the authorities, its disposal by the producer or the miller, or sale by bakers or other merchants at a higher price than the one set for bread or flour, also became punishable. Similar rules were further established for exports and illicit sales of cattle, calves, pigs, sheep, goats, horses, and processed animal products, and for taking precious metals, coins, and other valuables out of the country. And as if such a broadly defined criminal zone of illicit trade was not enough, those persons were also put within the jurisdiction of courts martial and mobile courts martial (completely vaguely) “who in any way whatsoever violate or undermine the economic well-being of the Croatian nation or the social order, even if the offence has remained an attempt” (Article 8). In addition to the punishability of an attempt, as a stage of an offence, the jurisdiction of courts martial also covered accomplices (“whoever incites, induces, or assists the commission of any criminal offence, provided for in this law decree”) in the mentioned offences (Article 9).⁹⁰

From 1944, the jurisdiction of courts martial and mobile courts martial was extended to include crimes against property committed in the circumstances of a threat of war or during the periods of air raid alarms.⁹¹ Besides direct perpetrators of these property crimes and their accomplices, the punishment also affected those hiding the stolen property (Article 2).

Collective punishment in the NDH

One of the fundamental principles of any criminal legislation is punishment based on the established individual responsibility, which prevents the punishment of an individual for offences committed by other persons. Contrary to that, the criminal justice system of the NDH provided for collective punishment as well. Collective responsibility was explicitly imposed on the Jews, based merely and solely on their ethnic and religious affiliation. Thus, the extraordinary law decree of 26 June 1941 noted that since “Jews spread disinformation aimed at

⁹⁰ In order to inform the general public about such broadly defined jurisdiction of courts martial and mobile courts martial, all daily and weekly newspapers were under an obligation to publish the text of this Decree on the front page of two consecutive issues, while the radio stations had to air it several times a day (see the Order of the Ministry of the Interior of 22 September, *Narodne novine* no. 134, 23 September 1941).

⁹¹ See the Law Decree on the Extension of the Jurisdiction of Courts Martial and Mobile Courts Martial, *Narodne novine* no. 46, 26 February 1944.

disturbing the public, and by using their well-known speculative methods hinder and obstruct the provision of supplies to the population, they shall be considered to be collectively responsible for that, and therefore proceedings shall be conducted against them, and based on their criminal liability they shall be deported to open-air detention facilities”.⁹² This decree constituted the continuation of the genocidal policies of the NDH authorities, under which the Jews had been forbidden to leave their places of residence, their movement was restricted, their assets systematically plundered, conclusion of legal transactions limited and their layoffs legalized. Pursuant to this decree with the force of law, the Ustasha authorities were making mass-scale arrests of Jews, who were temporarily brought to Zagreb, as a rule, and then, through Gospić, transported by train to camps (Jadovno, Pag, Jastrebarsko, Kruščica near Travnik and Jasenovac).⁹³ The last wave of large-scale group arrests took place in the summer of 1942.⁹⁴

There were also other decrees as well which, in terms of their scope, circumvented the (already) minimum substantive and procedural prerequisites for the operation of courts martial, and allowed the imposition of the death penalty and execution by a firing squad without any previously conducted proceedings if the perpetrator of an attack on life or property was not found. Thus, the *Law Decree on the Procedure in case of Communist Attacks, if the Offender is not Found* (*Zakonska odredba o postupku kod komunističkih napadaja, kad se počinitelj ne pronadje*) of October 1941 stipulated that “when a communist attack on life or property results in the death of one or more persons, and the perpetrator is not found within ten days of the committed act, for each person that was killed, the Ministry of the Interior, Directorate for Public Order and Security in Zagreb, shall order and carry out execution by a firing squad of ten persons from among the ranks of leading communists, as identified by the police”.⁹⁵ This decree was inspired by similar retaliatory measures implemented by the Nazis in the occupied territories, although in its application it was not restricted to communists, but was predominantly applied to the Serb population, regardless of their ideological orientation.⁹⁶ This is corroborated *inter alia* by the fact that the prerequisite for the application of this Decree was that direct perpetrators were

⁹² Extraordinary Law Decree and Command (*Izvanredna zakonska odredba i zapovjed*), *Narodne novine* no. 60, 26 June 1941.

⁹³ Lengel-Krizman, “Prilog proučavanju terora u tzv. NDH”, 8. Women and children were mostly interned in Kruščica, Lobar (near Zlatar), Gornja Rijeka (near Križevci), Tenja (near Osijek) and Djakovo.

⁹⁴ *Ibid.* 9.

⁹⁵ *Narodne novine* no. 142, 2 October 1941. In April 1943, the Decree was amended in such a manner that retaliation was made possible after the lapse of just three (instead of ten) days (see *Narodne novine* no. 82, 9 April 1943).

⁹⁶ See e.g. *Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 329.

unknown,⁹⁷ leaving the possibility of arbitrarily including anyone into its scope. An initiative for retaliation could also come from a local command, and persons to be executed could also be selected from among those who were imprisoned on any ground (hostages).⁹⁸

This Decree was supplanted by another decree at end-1943, which equally contravened the criminal law principles, namely the *Law Decree on Protective Measures in Case of an Attack and an Act of Sabotage against Public Order and Security* (*Zakonska odredba o zaštitnim mjerama zbog napadaja i čina sabotaze proti javnom redu i sigurnosti*).⁹⁹ An administrative body, the Ministry of the Interior, Chief Directorate for Public Order and Security, could “prescribe and apply protective measures provided for in this law decree, namely in cases where public order and security are disturbed by an attack or act of sabotage in which a person was killed, wounded or abducted, or public or private property was destroyed or damaged, and all that may be undertaken if the direct perpetrator is not known or cannot be arrested” (Article 1). “Protective measures” mentioned above included the “execution by a firing squad, and in particularly difficult cases hanging, deportation to labour camps, and confiscation of property which could accompany any of the previous two measures. The prerequisite for the application of these protective measures was that persons against whom they were applied either assisted in an act of sabotage or, regardless of their contribution as accomplices in the act of sabotage, if it was established that they were “persons identified by the police as active communists or outlaws” (Article 3, paragraph 1).

It should be pointed out that these, formally speaking, were, in fact, not criminal sanctions that would be imposed based on the formally conducted criminal proceedings, although the final outcome of the sanctions as a rule was death. Similar to penal law, where the notion of “protective measures” or “security measures” is usually associated with the type of sanctions whose grounds for application imply a certain risk posed by the perpetrator of a criminal offence, and the elimination of that risk by using a specific measure, a similar motive for their introduction can also be recognized here, except that the elimination of risks was achieved solely by the physical elimination of a person. Furthermore, while in the case of “active communists or outlaws” no connection was necessary between the committed act of sabotage and the implementation of a measure, in the case of aiding an act of sabotage, too, the evidentiary process was extremely simplified, because “the police authorities were establishing whether a person assisted in the carrying out of an attack or an act of sabotage”. This Law Decree also provided for collective responsibility. More specifically, protective measures

⁹⁷ Srpak, “Kazneno pravo u doba Nezavisne Države Hrvatske”, 1129.

⁹⁸ See e.g. *Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 345, Telegram of the Second Home Guard Corps of 28 November 1941.

⁹⁹ *Narodne novine* no. 249, 30 October 1943.

could also apply to the spouse, parents and children of aiders and abettors, and communists and outlaws, “if it has been established that they were aware, or that they should have been aware, that their spouses or children or parents were helping in the commission of the act referred to in § 1” (Article 5). Furthermore, although the punishment based on the “ten for one” proportion was abandoned in principle, the inhabitants of the places in which an act of sabotage was carried out could receive a collective fine or another pecuniary penalty. Besides, deportation to the camps was almost unavoidable, since it could also be implemented with respect to those persons “against whom there is a strong suspicion that they assisted in the performance of the acts specified in § 1” (Article 8). After all, as we shall see, deportation to concentration camps could also be used as a form of collective punishment – in relation to family members of alleged outlaws.

Execution of criminal sanctions in the NDH

When the NDH was created, it had four correctional facilities for men (in Lepoglava, Sremska Mitrovica, Stara Gradiška and Zenica), organized on a progressive (Irish)¹⁰⁰ model,¹⁰¹ and one for women (in Zagreb). After the establishment of a concentration camp in Stara Gradiška,¹⁰² the prison in that place was no longer used for serving regular sentences. Regular sentences that consisted in deprivation of liberty (prison, high-security prison, penitentiary, and penal servitude) were executed in prisons in Sremska Mitrovica, Lepoglava and Zenica when convicted persons were males, while female convicts were sent to serve their sentence in the women’s prison, which was transferred from Zagreb to Slavenska Požega a few months after the establishment of the new government.¹⁰³ Only persons sentenced to imprisonment for less than one year in a prison or a high-security prison served their sentence in the prison of the court that had handed down the first instance judgment.

At the time of the establishment of the NDH, inmates of correctional facilities included both those convicted of ordinary crimes, and persons convicted of political criminal offences.¹⁰⁴ By far the largest number of prisoners (about

¹⁰⁰ A progressive system implies a gradual improvement of the status of convicted persons serving their sentence depending on their conduct. Compared to the English variant of the system, the Irish model also included a “Department of Trusties” before release on parole (Djordje Ignjatović, *Kriminologija* 13th ed. [Belgrade: Pravni fakultet Univerziteta u Beogradu, 2016], 177–178).

¹⁰¹ Kovačić, “Kazneno zakonodavstvo i sustav kaznionica”, 288.

¹⁰² See *Narodne novine* no. 40, 18 February 1942.

¹⁰³ See the Schedule for sending convicts to correctional facilities to serve sentences of deprivation of liberty, of courts and of mobile courts martial, *Narodne novine* no. 135, 24 September 1941.

¹⁰⁴ Kovačić, “Kazneno zakonodavstvo i sustav kaznionica”, 289, states that after the establishment of the NDH there were about 1,000 inmates in Lepoglava, including about 70 per-

90 %) was sentenced to penal servitude, while the number of other types of sentences involving deprivation of liberty (except for penal servitude for life) was negligible. In terms of religion, the composition corresponded to the respective shares in the population of Roman Catholics, the Orthodox and Muslims in the territory of the NDH.¹⁰⁵ The structure of criminal offences for which sentences were served, most of the prisoners were convicted of offences against life and limb (nearly 50 %) and of crimes against property (over 40 %), while the persons deprived of liberty under the Law Decree on the Defence of the People and the State accounted for only about 1 %. This figure, of course, is not surprising, since the persons convicted pursuant to this Decree had already been sentenced to death and executed; hence it was not possible to find them in the correctional facility where a sentence of deprivation of liberty was served.

Military (Home Guard and Ustasha) criminal law

The Serbian and Yugoslav Law on the Organization of Military Courts of 27 January 1901 (as amended on 20 March 1909) was amended by the *Law Decree* of 27 June 1941, while military substantive criminal law (Military Criminal Code of the Kingdom of Yugoslavia of 11 February 1930, as amended on 2 December 1931) was also modified by the relevant *Law Decree*.¹⁰⁶ In both cases, relevant terms used in the Serbian and Yugoslav legislation were only replaced by corresponding Croatian terms. Essential amendments were first made to the Serbian and Yugoslav Law on Military Criminal Procedure of 15 February 1901 (as amended on 20 March 1909, 16 October 1915 and 20 March 1919)¹⁰⁷ only to introduce after that amendments to substantive military criminal law as well, which implied dramatic increases in the prescribed penalties.¹⁰⁸ *Home Guard courts* as first instance courts and the *Supreme Home Guard Court* were established,¹⁰⁹ but in late 1942 the Home Guard courts were renamed to courts of the *Armed Forces*.¹¹⁰

perpetrators of political criminal offences, largely communists. Most of the latter were soon murdered.

¹⁰⁵ Ibid. 293.

¹⁰⁶ *Narodne novine* no. 62, 28 June 1941.

¹⁰⁷ See *Narodne novine* no. 64, 1 July 1941.

¹⁰⁸ See the Law Decree on Amendments to the Military Penal Code of 11 February 1930 and the Law on Amendments to the Military Penal Code of 2 December 1931, *Narodne novine* no. 142, 2 October 1941.

¹⁰⁹ See *Narodne novine* no. 11, 14 January 1942.

¹¹⁰ See *Narodne novine* no. 270, 27 November 1942.

Faced with a growing number of people avoiding military duties in Home Guard units,¹¹¹ the Poglavnik introduced *Home Guard courts martial*.¹¹² In addition to the state of war, Home Guard courts martial could also be established, “on an exceptional basis, in a regular situation, but only when the military is used to quell a rebellion, unrest or disorder”. Criminal offences which entailed the imposition of the death penalty (by a firing squad) included the failure to perform Home Guard duties in the war theatre, unauthorized absence from the unit in order to avoid combat, the spreading of defeatism in the ranks, the non-execution of orders accompanied by harmful consequences, participation in a mutiny, etc. A Home Guard senior officer, “taking into account the impact of the offence on the discipline, security and general morale of the Home Guard”, issued a decision (within 48 hours) on whether a particular case was to be heard by an ordinary Home Guard court or a Home Guard court martial. The proceedings before a Home Guard court martial were regulated in much more detail compared to the other courts martial that existed in the NDH.

In July 1942, Home Guard courts were replaced by *war tribunals*.¹¹³ In terms of their basic characteristics, penal offences which these courts tried and the prescribed procedure were consistent with the rules laid down for the Home Guard courts martial. War tribunals could also only impose the death penalty (Article 13, paragraph 1), and no legal remedy was permitted against their decision. By virtue of the Poglavnik’s decision, those members of the armed forces who had committed any offence laid down by the 1930 Military Criminal Code of the Kingdom of Yugoslavia, or by the basic criminal legislation, could also be brought before a war tribunal.¹¹⁴ If a war tribunal did not hand down a convic-

¹¹¹ Initially Serbs, Jews and Roma were barred from membership in the Home Guard units. Slavko Kvaternik, commander-in-chief of the NDH Armed Forces, threatened every commanding officer who should act contrary to this order with being sent to court and tried for treason, cf. Nikica Barić, “Položaj Srba u domobranstvu Nezavisne Države Hrvatske, 1941.–1945.”, *Polemos* 9–10 (2002), 163. In June 1942 the Ministry of the Home Guard established Home Guard Labour Units (DORA), which were composed of Serbs and commanded by Croats. Since these units had to perform labour rather than combat missions, their members were not armed, apart from officers and non-commissioned officers who were Croats. Members of these units were privileged in the sense that their family members could be released from concentration camps (ibid. 168).

¹¹² See the Law Decree on Home Guard Courts Martial (*Zakonska odredba o domobranskim priekim sudovima*), *Narodne novine* no. 25, 30 January 1942.

¹¹³ See the Law Decree on War Tribunals (*Zakonska odredba o ratnim sudovima*), *Narodne novine* no. 148, 6 July 1942. See also the Order of the Minister of the Croatian Home Guard of 10 July 1942 no. III-2206-1942 concerning the beginning of the operation of war tribunals, *Narodne novine* no. 158, 17 July 1942.

¹¹⁴ Law Decree amending and supplementing the Law Decree on War Tribunals (*Zakonska odredba o promjeni i nadopuni zakonske odredbe o ratnim sudovima*), *Narodne novine* no. 152,

tion in a criminal matter, the case file had to be submitted to the *Higher War Tribunal* seated in Zagreb.¹¹⁵

In mid-1943, the following courts were integrated into unitary military courts: *war tribunals*, the regional *war tribunal* and the *summary court martial*.¹¹⁶ War tribunals were established for each brigade, division, and military region. The establishment of a summary court martial in a particular case implied: that an offence was committed that deserves the death penalty, that it was necessary to adjudicate without delay, that no judicial superior as a person who, as a rule, directed judicial proceedings was available, and that witnesses and other evidence were immediately available (Article 8). Members of the panel of judges were from the armed forces. The procedure was regulated in great detail, but this was not true of the summary courts martial which, apart from the rules on the conduct of the trial and the right of the accused to be heard (Article 19, items 1–3), could define “the manner in which they are to proceed at their own discretion”.

These courts applied the relevant regulations of the pre-war military criminal legislation, which were defined for the case of war, or which pertained to the actions of military personnel on the battlefield. However, in the interest of preserving discipline and morale in the army, which were obviously undermined in the meantime, some vague incriminations were also introduced, implying stepped up repression targeting members of military units. Thus, for example, the *Law Decree amending and supplementing the Military Penal Code of 11 February 1930, with all its subsequent amendments and supplements (Zakonska odredba o promjeni i nadopuni vojnog kaznenog zakonika od 11. veljače 1930. sa svim kasnijim promjenama i nadopunama)*,¹¹⁷ allowed with respect to any committed criminal offence the “imposition of the highest measure of the defined type of penalty, by exceeding the prescribed sentence for the predicate criminal act, or the imposition of penal servitude for a prolonged period of time or for life, or the imposition of imprisonment in a penitentiary of up to 20 years, or of the death penalty, especially regarding a criminal offence against discipline or caused by cowardice,

10 July 1942. The proceedings before the war tribunals were modified more substantially by the Law Decree amending and supplementing the Law Decree on War Tribunals, *Narodne novine* no. 190, 25 August 1942.

¹¹⁵ See the Law Decree on the Higher War Tribunal (*Zakonska odredba o Višem ratnom sudu*), *Narodne novine* no. 193, 28 August 1942.

¹¹⁶ See the Law Decree on the Establishment of Unitary Military Courts (*Zakonska odredba o osnivanju jedinstvenih vojnih sudova*), *Narodne novine* no. 87, 15 April 1943, and the Law Decree on the Organization of Military Courts and on Proceedings Before Military Courts (*Zakonska odredba o ustrojstvu vojnih sudova i o postupku pred vojnim sudovima*), *Narodne novine* no. 168, 27 July 1943.

¹¹⁷ *Ibid.*

if this proves necessary for maintaining discipline or security of the relevant military unit". Even more detailed increases in the penalties were defined by amendments to the Military Penal Code for cases of unauthorized absence from the army, desertion, and other offences harmful to the armed forces.¹¹⁸

The Ustashes were exempt from the jurisdiction of the military Home Guard courts. Specifically, the *Ustasha Disciplinary and Penal Court* was set up in Zagreb in August 1941,¹¹⁹ as a court with jurisdiction for punishing crimes and offences provided for by the criminal and military criminal legislation, perpetrated by members of the Ustasha units. This legislation also applied if a crime was committed together with members of Home Guard units. The following penalties were prescribed: the death penalty, penal servitude for life, penal servitude, penitentiary, high-security prison, prison, stripping off ranks and removal from the Ustasha ranks (Article 3). It was stipulated that the criminal (penal) legislation or military substantive criminal legislation was to apply *mutatis mutandis*, while the rules of procedure were defined in the decree itself, but in very broad terms. No legal remedy against the decision of this court was permitted either; still, the Poglavnik could commute the sentence through a pardon, or give complete or partial forgiveness. In late 1942, members of the Ustasha units also came under the jurisdiction of the courts of the armed forces, having jurisdiction over Home Guard units as well, except in cases prosecuted by war tribunals or courts martial, and following that, the Ustasha Disciplinary and Penal Court was disbanded.¹²⁰ Although it is possible to come across decisions of the Ustasha courts martial ruling on crimes of their members committed against civilians, the massive number of situations in which there was no reaction suggests that the institution of proceedings depended on moral beliefs of the unit's superior officer rather than being a standard procedure.¹²¹

¹¹⁸ See the Law Decree amending and supplementing the Military Penal Code of 11 February 1930, with all its subsequent amendments and supplements, *Narodne novine* no. 194, 26 August 1943.

¹¹⁹ See the Law Decree on the Ustasha Disciplinary and Penal Court in Zagreb (*Zakonska odredba o Ustaškom stegovnom i kaznenom sudu u Zagrebu*), *Narodne novine* no. 108, 22 August 1941. In November 1941, a new decree on the Ustasha justice system was passed. See the Law Decree on the Ustasha Disciplinary and Penal Court in Zagreb, *Narodne novine* no. 196, 5 December 1941.

¹²⁰ See the Law Decree on the Termination of Operation of the Ustasha Disciplinary and Penal Court in Zagreb (*Zakonska odredba o prestanku rada Ustaškog stegovnog i kaznenog suda u Zagrebu*), *Narodne novine* no. 48, 27 February 1943.

¹²¹ Thus, in one case, proceedings were conducted before the Ustasha court martial against a member of the 1st Lika Ust. Battalion who had committed a rape in the presence of the victim's mother, mother-in-law and sister. After the criminal report and the proceedings conducted before the Ustasha court martial, the defendant was sentenced to death and executed.

It is interesting to note that, at least in principle, *command liability* of the Ustasha commanders was also prescribed, although it is not possible to infer from the wording of the provision that the legislator had criminal liability in mind. Indeed, anyone was facing the possibility of being tried before a court martial “who has ever committed any violence whatsoever against life or property of any citizen or member of the NDH”. In this regard, it was stipulated that “all ranking officials of Ustasha organizations, and all commanders and deputy commanders of the Ustasha Militia, shall be personally responsible for any incident that would occur in the above sense, and they shall instruct all Ustasha organizations, and bodies of the Ustasha Militia that it is their duty to prevent any kind of incident in the above sense by using all available means. Any member of the Ustasha organization or Militia who is a perpetrator of such crime, shall be immediately executed by a firing squad pursuant to the decision of the Ustasha court.”¹²² In that sense, the *Law Decree on Courts Martial* and the *Law Decree on Mobile Courts Martial* were also amended so as to prescribe the (death) penalty for those who, after 10 April 1941, committed the offence of “having enlisted, or enlisting, as a member of any Ustasha unit, or of having worn, or wearing, Ustasha uniform, without having an honourable and impeccable track record required for an Ustasha”.¹²³

Deportation to concentration camps as a parapenal measure

In November 1941, the *Law Decree on Deportation of Disloyal and Dangerous Persons to Forced Confinement in Concentration and Labour Camps* (*Zakonska odredba o upućivanju nepoćudnih i pogibeljnih osoba na prisilni boravak u sabirne i radne logore*) was adopted.¹²⁴ “Disloyal individuals who are a danger to public order and security, or who could undermine the peace of mind and tranquillity of the Croatian people, or achievements of the liberation struggle of the Croatian Ustasha movement, may be subject to forced internment in concentration and labour camps. Authorized to establish such camps in certain places in the NDH shall be the Ustasha Supervisory Service” (Article 1), which, unlike the

See Letter of the Commander of the Utinja Brigade no. 300 dated 8 May 1942, VA, NDH, Box 113, f. 19, doc. 58.

¹²² Extraordinary Law Decree and Command, *Narodne novine* no. 60, 26 June 1941.

¹²³ *Ibid.*

¹²⁴ *Narodne novine* no. 188, 26 November 1941. The distinction between concentration and labour camps was based on the fact that the concentration camps were intended for temporary detaining persons deprived of liberty until their transfer to the final destination, while the labour camps in practice were sites of mass execution. During 1941 and 1942 in most “labour” camps no work was organized at all (see Lengel-Krizman, “Prilog proučavanju terora u tzv. NDH”, 4).

Directorate for Public Order and Security that performed regular police tasks, performed the tasks of the (secret) police of the Ustasha movement, similar to those carried out by the German Reichssicherheitshauptamt.¹²⁵ The length of this administrative and penal measure, as stipulated by the decree, was defined as a range from three months to three years. The procedure was carried out by the Ustasha police, and no legal remedy against the decision on forced confinement was allowed. The information that someone was “disloyal” or “dangerous” was obtained from reports filed by the administrative and self-government authorities, but above all by the institutions of the Ustasha movement. The amendments to this Decree of January 1945 also introduced the possibility to confiscate movable or immovable property of persons sent to a camp (as well as of those who were already there), “provided that its value is not higher than 500,000,000 kuna”.¹²⁶

Since it was an administrative and penal measure, the deportation to concentration camps did not necessarily involve previously conducted proceedings for a committed criminal offence; the case could be about the violation of any order of the administrative authorities. This is corroborated, for example, by the *Law Decree on Placing Wheat, Corn, Leguminous Crops, and Potato Under the State Monopoly* (*Zakonska odredba o stavljanju žitarica, kukuruza, mahunastih plodova i krumpira pod monopolnu raspoložbu države*),¹²⁷ under which a failure to comply with orders of the Minister of the National Economy could result, in addition to fines and prison sentences, in the implementation of the provisions of the Decree on the “deportation of disloyal and dangerous persons to forced internment in concentration camps” (Article 11, paragraph 1). The regulations of a similar nature were often accompanied, as indeed in this case, by a clause under which it was possible to arbitrarily bring an offender before a (mobile) court martial.¹²⁸ Thus, this Decree, in addition to “regular” misdemeanour sanctions for non-compliance with the issued orders of the administrative authorities in the form of fines and imprisonment for a shorter term, provides for one broadly

¹²⁵ Kovačić, “Osnivanje župskih redarstvenih oblasti”, 258, 261. Unlike the Ustasha Supervisory Service, which had virtually unlimited powers, the Directorate for Public Order and Security had limited rights (*ibid.* 275). These two institutions were merged in early 1943 into the Chief Directorate for Public Order and Security.

¹²⁶ *Narodne novine* no. 10, 13 January 1945.

¹²⁷ In the subtitle: “on the protection of the collection, storage and processing of agricultural products, and the punishment of acts against food security” (*Narodne novine* no. 143, 26 June 1943).

¹²⁸ “If any of these criminal acts violates public morality, because of a heavy breach of the public trust which the offender enjoys in his service, or because of official responsibility of the offender, or if that act seriously threatens important government tasks, due to the magnitude of the damage inflicted, or the danger caused to food security, such offender may be brought before a mobile court martial” (see Article 11, paragraph 3).

defined criminal offence as well, which allows punishment by the death penalty. "Any resistance to the discharge of the duty to surrender agricultural products referred to in §§ 1 and 4, and malicious acts and omissions, directed against food security, especially interfering and impeding agricultural work, unauthorized seizure, damage, destruction and burning of crops and final agricultural produce and their products, agricultural tools, machinery and equipment, damage, burning down or demolition of buildings, unauthorized removal or destruction of cattle, carts, machinery or other assets... shall be put in the jurisdiction of the mobile court martial" (Article 15). It is almost impossible to meaningfully distinguish between "any resistance to the discharge of the duty to surrender agricultural products" as a basis for launching the mechanism of the court martial, and "violations of the provisions of this law decree and provisions of the orders issued pursuant to it" as the basis for imposition of administrative and penal sanctions.

The deportation to concentration camps, as already noted, was not based on a criminal conviction. Such a penalty was not prescribed by the criminal legislation, nor was the establishing of guilt in a conducted criminal proceeding a prerequisite for deportation. Moreover, since the regular outcome of the conducted proceedings before courts martial and mobile courts martial was the imposition of the death penalty, and if, exceptionally, the proceedings before the above courts ended in any other way, at the end of the day it was difficult for defendants to avoid the death penalty, because a defendant could be sent to a concentration camp as a *suspicious* person. Thus, for example, in one case the defendant was accused of shouting "Long live the King, long live Queen Mary and down with Pavelić" while passing by the post office building in Omarska on 24 December 1941. At the hearing held on 16 October 1942 before a mobile court martial the defendant was acquitted, "because the act was committed in the state of drunkenness". However, the Minister of Justice, by virtue of his decision of 27 November 1942 (no. T. 890/1942.-2), ordered the court to hand over the acquitted to the District Police Authority "in order to send him to a concentration and labour camp as a suspicious person".¹²⁹ We can find an identical sequence of actions in the document of the mobile court martial in Banja Luka of 13 February 1942, according to which eight persons were exempt from responsibility "for participating in the attack on the gendarmerie station in Krupa on the Vrbas on 4 August 1941, and cutting telegraph wires in the village of Rekačica. The evidence presented in the conducted hearing was not sufficient to prove that but since all of them were extremely suspicious, Mr. Minister of Justice decided, by order no. 8661/42 of 7 February 1942, for the above accused to be handed over to the aforementioned institution for the purpose of their transfer

¹²⁹ VA, NDH, Box 162, f. 8, doc. 1/3.

to a concentration camp".¹³⁰ Sometimes suspects were transferred to camps even before any hearing whatsoever was conducted. Thus, in one case two persons were "extremely suspicious of having attached to the window of the inn at the railway station in Piskavica 1 a communist leaflet addressed to the soldiers and officers of the Croatian army. They have not been not tried at all but, pursuant to the order of Mr. Minister of Justice dated 11 February 1942 no. 9220/42-VII-140-1942, they are to be transferred as suspicious to the concentration camp Jasenovac".¹³¹

Alleged communist activities were often invoked as the grounds for deportation to concentration camps, although the fact that this mainly affected Serbs and Jews raises the question of the actual motives for such actions. Thus, under the order of the Directorate for Public Order and Security for the NDH dated 30 July 1941, all great districts were instructed "in the interest of public security, to deport to the concentration camp of the District Police Directorate in Gospić all Jews (Christianized or not) and Serbs (who have converted to Catholicism or not) who have been detained under suspicion of communism and against whom no evidence is otherwise available so as to bring them before a court martial".¹³² On the other hand, when it comes to other nationalities, sympathizing with the communist ideology was not always enough to send someone to a concentration camp,¹³³ although the Ustasha government generally did not have much understanding for the Croats or Muslims who were sympathizers of the communist movement.

Deportation to a concentration camp did not have to be based on the suspicion that the deported had committed a criminal offence; instead, as we have seen, by applying the model of collective responsibility, it was enough to be a *family member* of the accused. This was facilitated by the *Law Decree on Combating Violent Criminal Acts against the State, Individual Persons or Property* (*Zakonska odredba o suzbijanju nasilnih kažnjivih čina proti državi, pojedinim*

¹³⁰ Letter of the President of the Mobile Court martial (no. 38/1941), VA, NDH, Box 161, f. 4, doc. 25/1.

¹³¹ Letter of the State Attorney of the mobile court martial in Banja Luka (no. 303/41), VA, NDH, Box. 161a, f. 1, doc. 32. Until their transfer to concentration camps, the mentioned persons were kept in detention (Order on detention no. 5293 of 18 February 1942, VA, NDH, Box 161a, f. 1, doc. 31/5).

¹³² See *Zločini Nezavisne države Hrvatske 1941–1945*, doc. nos. 170 and 178.

¹³³ "All Communists who are Roman Catholics, Muslims and Evangelicals who are in prisons in those areas, should not until further notice be sent to concentration camps without the permission of this Directorate but are to be kept in prisons" (Circular of the Directorate for Public Order and Security of 14 August 1941), *Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 214.

osobama ili imovini) of July 1942.¹³⁴ “Certain family members of persons who, on their own or as part of armed groups, violate public order and security, or threaten the peace of mind and tranquillity of the Croatian people, or commit a violent criminal act against the state, individual persons or property, as well as family members of persons who have fled their homes, may be sent to forced confinement in concentration camps” (Article 1). Family members were understood to mean the spouse, parents, children, and siblings who lived in the same household. Initially, the decision on the transfer to the camps was made by the Ministry of the Interior, Directorate for Public Order and Security, and then (as early as August the same year) by the Ustasha Supervisory Service.¹³⁵ A report had to be filed by the administrative authorities and institutions of the Ustasha movement, while the administrative and penal procedure was conducted by the police authority. No legal remedy or complaint to the administrative court was permitted against this decision. The length of detention in concentration camps could be set within the range from six months to three years. Family members sent to the camps could be deprived of “all their movable and immovable properties in favour of the NDH” (Article 7). Thus, in one case, family members of the “fugitive and notorious Chetnik leader Rade Radić from Jošavka”, namely his wife and children (high school students), were sent to the camp. “There was no real evidence against them to prove that they had taken part in a Chetnik operation, but since their husband and father was a leader of the Chetniks, Mr. Minister of Justice ordered their transfer to the Jasenovac concentration camp as his family members, until the surrender of their husband and father Rade Radić to the authorities, or until it has been unequivocally established that he was killed or died.”¹³⁶

Deportation to a concentration camp could be based on the violation of a whole range of regulations. Thus, the *Law Decree on Extraordinary Measures*

¹³⁴ *Narodne novine* no. 162, 22 July 1942.

¹³⁵ See the Law Decree amending and supplementing the Law Decree on Combating Violent Criminal Acts against the State, Individual Persons or Property (*Zakonska odredba o promjeni i nadopuni zakonske odredbe o suzbijanju nasilnih kažnjivih čina proti državi, pojednim osobama ili imovini*), *Narodne novine* no. 174, 4 August 1942. After disbanding of the Ustasha Supervisory Service, its tasks were taken over by the Command of the Poglavnik's Bodyguard Brigades – security service (see the Law Decree on the Disbanding of the Ustasha Supervisory Service (*Zakonska odredba o ukidanju Ustaške Nadzorne Službe*), *Narodne novine* no. 17, 22 January 1943). Members of this newly-established service were tried by the special court of the Poglavnik's Bodyguard Brigades according to the procedure that was in force for unitary military courts (see the Law Decree on the Establishment of the Court of the Poglavnik's Bodyguard Brigades (*Zakonska odredba o osnivanju Suda Poglavnikovih tjelesnih združova*), *Narodne novine* no. 115, 21 May 1943).

¹³⁶ Letter of the State Attorney of the mobile court martial in Banja Luka no. 180/41, VA, NDH, Box 160, f. 10, doc. 25.

for the Protection of Supply and Nutrition (*Zakonska odredba o iznimnim mjerama za zaštitu obskrbe i prehrane*)¹³⁷ vested the power to supervise the application of all regulations governing food products, raw materials and semi-finished goods with the State Commissioner for the Protection of Supply and Nutrition, who could take any case over from the ordinary administrative authorities and impose by virtue of his decision confiscation of all or part of assets in favour of the state, prohibition to work for a defined period or forever (Article 4), or send the offender “by virtue of his decision, for a period of time which may not be longer than 3 years, to forced confinement or forced labour in concentration and labour camps” (Article 5).

Confiscation of property as a parapenal measure

The repressive unlawful character of the NDH's criminal legislation was not reflected only in the high penalties prescribed for certain criminal offences, or in the frequency of prescribing capital punishment as the only sanction that could be imposed by courts martial. Similar penal effects were also accomplished by other legal consequences, which were not necessarily exactly legislated for the criminal offence in question. That was the case with the penalty of *confiscation of entire property*, which was introduced at the turn of 1941 and 1942, as a legal consequence of breaches of public order and peace, i.e. as a criminal sanction. More specifically, “against persons convicted because they violated public peace, and because they committed a crime against the existing state system, or the constitutional order, or against the NDH armed forces, on their own or as members of armed groups, the court shall in principle stipulate, in the conviction for the mentioned offence, that the property of such persons is to be confiscated in favour of the NDH.”¹³⁸ It was possible to carry out confiscation even without conducting criminal proceedings, only based on a decision of the first instance administrative authority, if a person was out of the reach of the authorities. The decision on the confiscation of property was sent to the State Directorate for Renewal, which managed the property thereafter. No remedy was allowed against this decision either.

However, the most drastic form of infringement on property rights had already been introduced, under the provisions of the racial legislation, shortly after the establishment of the NDH. The NDH racial legislation was modelled, with slight differences, upon racial legislation of Nazi Germany and Fas-

¹³⁷ See *Narodne novine* no. 165, 25 July 1944.

¹³⁸ The Law Decree on Confiscation of Property of Persons Who Violate Public Peace and Order (*Zakonska odredba o oduzimanju imovine osobama, koje narušavaju javni mir i poredak*), *Narodne novine* no. 213, 30 December 1941.

cist Italy,¹³⁹ so regulations targeting Jews and their property were adopted in the early days of the NDH.¹⁴⁰ Thus, *inter alia*, a regulation entitled *Law Decree on the Safeguarding of the Croatian National Property* (*Zakonska odredba o sačuvanju hrvatske narodne imovine*) was promulgated, which declared null and void “all legal transactions between Jews, and between Jews and third parties, concluded in the period of two months before the proclamation of the NDH”, provided that the value of the transaction exceeded the amount of 100,000 dinars. Furthermore, it was prohibited to dispose of real estate and encumber it by legal transactions,¹⁴¹ with the obligation to include the information on one’s religion in the application for approval of sale or encumbrance.¹⁴² Just a few days later, special commissioners were appointed in Jewish-owned companies, while signs banning access to Jews were displayed in shop windows. In parallel to the restrictions on legal capacity, *contributions* became a common method of extorting Jewish (movable) property. Although these were formally “voluntary” contributions in gold, jewellery, or securities supposed to ensure the release of Jews deprived of liberty and their preferential treatment, it in fact was organized extortion aimed at the wealthy members of the Jewish community.¹⁴³

Also, concealing the property belonging to Jews or Jewish businesses was criminalized (being punishable by imprisonment of one to five years and confiscation of assets).¹⁴⁴ The same decree also covered the conclusion of legal transactions for the account of Jews, by hiding from a Contracting Party the fact that the legal transaction was concluded for the account of Jews. In order to enable tracing down their assets, the Jews were ordered to report them to

¹³⁹ Robert Blažević and Amina Alijagić, “Antižidovstvo i rasno zakonodavstvo u fašističkoj Italiji, nacističkoj Njemačkoj i ustaškoj NDH”, *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 2 (2010), 903.

¹⁴⁰ *Narodne novine* no. 6, 19 April 1941.

¹⁴¹ *Ibid.*

¹⁴² Implementing Order to the Law Decree of 18 April 1941, no. 19181-1941 on the Prohibition of Sale and Encumbrance of Real Estate (item 4) (*Provedbena naredba zakonske odredbe od 18. travnja 1941. broj 19181-1941. o zabrani otudjivanja i opterećivanja nekretnina (točka 4)*), *Narodne novine* no. 14, 29 April 1941.

¹⁴³ See e.g. Zlata Živaković-Kerže, “Podržavljenje imovine Židova u Osijeku u NDH”, *Časopis za suvremenu povijest* 1 (2007), 100.

¹⁴⁴ See the Law Decree on the Prevention of Concealment of Jewish Assets (*Zakonska odredba o sprečavanju prikrivanja židovskog imetka*), *Narodne novine* no. 44, 5 June 1941. A special time limit was set subsequently for reporting hidden money (2 August 1941), regardless of the origin of its owner (see the Law Decree on the Duty to Report the Concealment of Money [*Zakonska odredba o dužnosti prijave prikrivanja novca*], *Narodne novine* no. 90, 26 July 1941), with severe penalties prescribed for a failure to comply with the decree.

the Ministry of the National Economy.¹⁴⁵ In such a manner, any disposal of these assets was actually placed under control, because the Ministry had to approve any sale thereof “that exceeds regular household needs,” i.e. in the case of assets of a company, any disposal that exceeded a “regular scope of business” (Article 2). A failure to declare property, or hiding a portion of it, entailed penal servitude (from one to ten years) and seizure (confiscation) of property. On the other hand, in the case of sale of property contrary to the established rules, in addition to its confiscation, the proceedings were also laid down under the *Law Decree on the Defence of the Nation and the State* (Articles 3 and 4). The management of confiscated assets was entrusted to the newly established State Directorate for Economic Renewal,¹⁴⁶ which then delegated the management of revenues collected from the confiscated immovable property to the town and county authorities in whose territory the respective residential buildings and properties were located.¹⁴⁷ Following the declaration of Jewish assets, they were taken away, which was enabled by the *Law Decree on the Nationalization of Assets Belonging to Jews and Jewish Companies* (*Zakonska odredba o podržavljenju imetka Židova i židovskih poduzeća*), since the State Directorate for Renewal was authorized to nationalize by virtue of its decision “the assets of every Jew and each Jewish company, with or without compensation, in favour of the NDH.”¹⁴⁸ This scenario of plunder was common for the whole of the NDH. While this at first only existed as a possibility, on 30 October 1942 a Decree was passed under which “all the assets and all property rights of persons, who in terms of item 3 of the *Law Decree on Racial Affiliation* (*Zakonska odredba o rasnoj pripadnosti*) of 30 April 1941 ... are considered to be Jews, and all the estates of such persons who died after 10 February 1941, with the promulgation of this Decree shall become the property of the NDH.”¹⁴⁹ Essentially, this decree was merely legalization of previously carried out confiscations, which preceded the taking of Jews to execution sites.¹⁵⁰ In order to prevent the possibility of a part of Jewish

¹⁴⁵ See the *Law Decree on Mandatory Declaration of Assets Belonging to Jews and Jewish Companies* (*Zakonska odredba o obveznoj prijavi imetka židova i židovskih poduzeća*), *Narodne novine* no. 44, 5 June 1941.

¹⁴⁶ See the *Law Decree supplementing the Law Decree on the Establishment of the State Directorate for Economic Renewal* (*Zakonska odredba o nadopuni zakonske odredbe o osnutku Državnog ravnateljstva za gospodarstvenu ponovu*), *Narodne novine* no. 114, 29 August 1941.

¹⁴⁷ See the *Decree on the Administration of Jewish Residential Buildings* (*Odredba o upravi židovskih stanbenih zgrada*), *Narodne novine* no. 115, 30 August 1941.

¹⁴⁸ *Narodne novine* no. 149, 10 October 1941.

¹⁴⁹ *Law Decree on the Nationalization of Jewish Property*, *Narodne novine* no. 246, 30 October 1942.

¹⁵⁰ Živaković-Kerže, “Podržavljenje imovine Židova,” 106.

property remaining unconfiscated through being transferred to third parties, the *Law Decree on Verification of the Origin of Assets and Confiscation of Assets Acquired in an Unlawful Manner* (*Zakonska odredba o izpitivanju podrijetla imovine i o oduzimanju imovine, stečene nedopuštenim načinom*)¹⁵¹ was also passed, which enabled the examination of the origin of assets of all those “for whom there is a reasonable suspicion in their environment that they have acquired the assets in an unlawful manner”.

Assets were also confiscated from Serbs on a massive scale.¹⁵² The property owned by Serb institutes and institutions in Sremski Karlovci – the Grammar School, the Stefaneum and the Ecclesiastical Education Fund¹⁵³ – whose name, meanwhile, was changed to Hrvatski Karlovci,¹⁵⁴ became the property of the NDH.¹⁵⁵ The first blow was aimed at the Serbs colonized in the twentieth century. Only a week after the establishment of the NDH, by virtue of the *Law Decree on Real Estate of the so-called Volunteers* (*Zakonska odredba o nekretninama t. zv. dobrovoljaca*), Pavelić confiscated the land which had been allocated to Serbian Army volunteers (Macedonian front) after the First World War, by declaring it to be the property of the Croatian people, without the possibility for the former owners to exercise the right to compensation.¹⁵⁶ This land was distributed to Croat members of the Ustasha movement and others who “played

¹⁵¹ *Narodne novine* no. 137, 26 September 1941.

¹⁵² In addition to the confiscation of property, the *revocation of citizenship* was also used for the purpose of solving the “Serbian question”. More specifically, “persons who emigrated from the territory of the NDH, or left that area for racial or political-ethnic reasons, shall lose their citizenship and national affiliation to the NDH” (see the *Law Decree on the Loss of Citizenship and State Affiliation of Persons Who Emigrated or Left the NDH Territory* (*Zakonska odredba o gubitku državljanstva i državnog pripadništva osobe, koje su se izselile ili napustile područje NDH*), *Narodne novine* no. 178, 9 August 1942). Revocation of citizenship was decided by the Minister of the Interior, and wives and minor children of persons who had left the NDH could also lose their citizenship even if they had remained in its territory.

¹⁵³ Several months later, the scope of this decree was extended to include other immovable property and other assets of Serb institutions in Karlovci (see *Narodne novine* no. 143, 3 October 1941).

¹⁵⁴ All place-names which contained the adjective “Srpski [Serb]” were changed. Thus, e.g., the village of Suho Polje Srpsko became Suho Polje Donje, while Kalenderovci Srpski became Kalenderovci Gornji (see the *Order on the change of names of some places in the counties of Gradačac, Derventa, Doboj and Sarajevo*, *Narodne novine* no. 132, 20 September 1941).

¹⁵⁵ *Law Decree on Taking Over Assets of the “Serb Institutes and Institutions” in Hrvatski Karlovci into the Ownership of the NDH* (*Zakonska odredba o preuzimanju imovine “srbskih zavoda i ustanova” u Hrvatskim Karlovcima u vlastništvo NDH*), *Narodne novine* no. 132, 20 September 1941.

¹⁵⁶ See *Narodne novine* no. 6, 19 April 1941.

a prominent role” in the first days of the coup.¹⁵⁷ According to the data from end-July 1941, 28,000 persons were displaced from Srem alone (predominantly to the other bank of the Sava River).¹⁵⁸

In those cases where it was established that a person had been expelled or left the territory of the NDH, their assets became the property of the NDH.¹⁵⁹ This Decree particularly adversely affected the Serbs who had taken refuge from the Ustasha persecution in Serbia. “The State Directorate for Renewal in Zagreb shall institute a procedure in each case where it has been established that there is movable or immovable property of a person who has left the territory of the NDH, in which a decision shall be taken on that property [...] The State Directorate for Renewal in Zagreb may also initiate such a procedure with regard to the assets of persons who have left the territory of the NDH with the approval of the authorities.”¹⁶⁰ At the same time, in June 1941, the *Order on the Duty of the Serbians to Register (Naredba o dužnosti prijave Srbijanaca)* was issued,¹⁶¹ requiring the Serbs who had moved to the territory of the NDH after 1 January 1900, and were staying in the territory of the NDH, to register with the responsible authorities. The duty pertained to their descendants as well. “Those from among the abovementioned who fail to respond to this call for registration within the set time limit shall be considered prisoners of war and shall be taken to a prison camp” (Article 1, paragraph 4), and the same applied to the failure to report Serbs who were hiding. Furthermore, the *Law Decree on Vacating and Occupying Residential and Commercial Premises for the Reasons of Public Security (Zakonska*

¹⁵⁷ See e.g. the Order of the Command of the Army (Naredba Zapovjedništva kopnene vojske) of 27 May 1941 to the Command of the Slavonski Brod Garrison Battalion (*Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 38). Thus, under the Circular of the State Directorate for Renewal of 9 July 1941, the Camp Officer was expected to supply the Directorate with the answers to the questions such as: “How many Serb estates have so far been vacated or abandoned and where?”; “How many Serb monasteries are there in your territory?”; “How big are their residential and other buildings?”; and “How many Serb priests, monks and other officials of that type are there in your county?” (*Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 105).

¹⁵⁸ Marica Karakaš Obradov, “Migracije srpskog stanovništva na području Nezavisne Države Hrvatske tijekom 1941. godine”, *Časopis za suvremenu povijest* 3 (2011), 814.

¹⁵⁹ Agricultural estates were assigned to the Institute for Colonization in Zagreb, while other types of real estate were transferred to the State Directorate for Renewal or the State Directorate for Economic Renewal. See the Law Decree on the Assets of Persons Expelled from the Territory of the NDH (*Zakonska odredba o imovini osoba izseljenih s područja NDH*), *Narodne novine* no. 96, 7 August 1941.

¹⁶⁰ See the Law Decree on the Assets of Persons Who Left the Territory of the NDH (*Zakonska odredba o imovini osoba, koje su napustile područje NDH*), *Narodne novine* no. 158, 21 October 1941.

¹⁶¹ *Narodne novine* no. 46, 7 June 1941.

odredba o ispražnjenju i naseljenju stambenih i poslovnih prostorija iz razloga javne sigurnosti) allowed the eviction from immovable properties of “dangerous and disloyal persons” for the reasons of “public order, peace and security”.¹⁶² Persons who had to move out were under the obligation to leave the premises no later than noon the next day. Conditions for eviction were therefore identical to those for deportation to a concentration camp.

Criminal offences under racial legislation

We have already noted that racial legislation was also passed in the NDH, with relevant supporting provisions in criminal law.¹⁶³ The provisions of a racial character were incorporated in a number of enacted decrees. Thus, a citizen of the NDH was defined as “a state national of Aryan origin who has proved by his actions that he did not work against the liberation aspirations of the Croatian people and who is willing to readily and faithfully serve the Croatian people and the NDH”.¹⁶⁴ And a person of Aryan origin was “an individual of Aryan descent who descends from ancestors who are members of the European racial community or descends from ancestors belonging to that community outside of Europe.” This is the initial definition of the *Law Decree on Racial Affiliation*,¹⁶⁵

¹⁶² *Narodne novine* no. 42, 3 June 1941.

¹⁶³ With a view to pursuing the racial policies, a special Racial-Political Commission was set up (see the Order on the Organization and Purview of the Racial-Political Commission (*Naredba o ustrojstvu i djelokrugu rada rasnopolitičkog povjerenstva*), *Narodne novine* no. 43, 4 June 1941). Its competences included, inter alia, the “enlightenment of the nation” and drafting of regulations that “deal with racial biology, racial policies and racial hygiene or eugenics”, as well as maintaining relations “with similar institutions in other countries”. In early 1942, the tasks of the Racial-Political Commission were assigned to the Ministry of the Interior (see the Law Decree on Competence for Resolving the Jewish Question (*Zakonska odredba o nadležnosti za rješavanje židovskog pitanja*), *Narodne novine* no. 15, 19 January 1942). All civil servants and holders of academic degrees were required to submit to their superiors declarations of their racial origin and the origin of their spouses (see the Order on the Establishment of Racial Affiliation of Civil Servants and Employees of Self-Governments and Holders of Academic Titles in Liberal Professions (*Naredba o utvrđivanju rasne pripadnosti državnih i samoupravnih službenika i vršitelja slobodnih akademskih zvanja*), *Narodne novine* no. 44, 5 June 1941). Suspicious declarations were forwarded to the Ministry of the Interior and the Racial-Political Commission.

¹⁶⁴ Law Decree on Citizenship (item 2) (*Zakonska odredba o državljanstvu (točka 2)*), *Narodne novine* no. 16, 30 April 1941. A very similar provision, which in fact served as a model, had existed in German law (Reichsbürgergesetz vom 15. September 1935, § 2). See Karl Olfenius, *Die Lösung der Judenfrage im Dritten Reiche (Die wichtigsten Bestimmungen aus der Judengesetzgebung)* (Langensalza: Julius Beltz, 1937), 5.

¹⁶⁵ *Narodne novine* no. 16, 30 April 1941.

which incorporated into the legal order of the NDH, with certain differences,¹⁶⁶ the racial legislation of Nazi Germany.¹⁶⁷ These rules regulated in detail the conditions under which a person was to be considered an Aryan or, conversely, a “Jew” or a “Gypsy,” in terms of their origin and ancestry. At the same time, the *Law Decree on the Protection of the Aryan blood and Honour of the Croatian People* (*Zakonska odredba o zaštiti arijske krvi i časti Hrvatskog naroda*) was enacted, introducing a ban on marriages of Jews and other non-Aryans to persons of Aryan origin. This decree also provided for the crime of desecration of the race, punishable by imprisonment in a prison or penitentiary (without defining the length of imprisonment), if a male non-Aryan had a sexual intercourse with a female of Aryan origin.¹⁶⁸ These rules were intended to prevent the creation of the offspring that would have the same percentage of Jewish blood from parents, up to one quarter. That is why this decree also covered those whose one ancestor up to the second degree was a Jew. On the basis of this decree the Order was also passed prohibiting the employment of females in non-Aryan households, which prevented the engagement of females of Aryan descent “in households of Jews or other persons of non-Aryan origin”¹⁶⁹ if men of non-Aryan origin aged between

¹⁶⁶ The Croatian decree was more lenient in the sense that the Poglavnik could exceptionally recognize to the Jews (and their family members) who had earned credit with the Croatian people before the creation of the NDH, the rights pertaining to persons of Aryan descent (for more detail see Blažević and Alijagić, “Antižidovstvo i rasno zakonodavstvo”, 905 ff). However, only a small number of non-Aryans were recognized such a status by the Ustasha regime; see Nevenko Bartulin, *The Racial Idea in the Independent State of Croatia. Origins and Theory* (Leiden – Boston: Brill, 2014), 149.

¹⁶⁷ After the NDH joined the Tripartite Pact (between Germany, Italy, and Japan) on 15 June 1941, the persons of German nationality in the NDH were recognized a special legal status. “The members of the German ethnic group shall be guaranteed indefinite maintenance of their German nationality and freedom to profess their national-socialist view of life, and undisturbed development of their authentic German folk life and free establishment and maintenance of national and cultural relations with their parent country Germany” (Law Decree on Temporary Legal Status of the “German Ethnic Group in the Independent State of Croatia” (*Zakonska odredba o privremenom pravnom položaju “Njemačke narodne skupine u Nezavisnoj Državi Hrvatskoj”*) [Article 6], *Narodne novine* no. 56, 21 June 1941.

¹⁶⁸ According to Lengel-Krizman, “Prilog proučavanju terora u tzv. NDH”, 14, this criminal offence had its application in practice too, and (probably) the rapist was a member of the guard in the women’s camp Labor, although the crime was qualified as desecration of the race. Although in this case, contrary to the characteristics of the offence as specified by the decree, the offender was of Aryan descent and the victim was non-Aryan, the court sentenced the guard member to six months in prison by applying the analogy (Srpak, “Kazneno pravo u doba Nezavisne Države Hrvatske”, 1138).

¹⁶⁹ *Narodne novine* no. 16, 30 April 1941.

14 and 65 resided or stayed there. The purpose of this decree was to demonstrate that Jews would no longer be able to “exploit” Croats.¹⁷⁰

Although at first glance Serbs were not covered by racial policies and racial laws under the said Decree, they were put in the same category as Jews in many decisions which introduced discrimination.¹⁷¹ Thus, for example, all Serbs and Jews who lived in designated parts of Zagreb were required to move to other parts of the city within eight days, and a night curfew order was also issued prohibiting movement of Serbs.¹⁷² The Ustasha propaganda persistently insisted on there being close ties between Jews and Serbs, claiming that the Jews supported Serbian hegemony and the Karadjordjević dynasty.¹⁷³ On the other hand, such claim did not fit into the non-European origin pattern, so the racial legislation could not be directly applied to the Serbs. Yet, animosity towards the Serbs was the quintessence of the Ustasha ideology, and in that context anti-Semitism and anti-Gypsyism were inferior to the animosity towards the Serbs.¹⁷⁴ In effect, in addressing the “Serbian question,” Pavelić considered Serbs to be flawed Aryans. This view is based on the ideas of the Croatian historian Ivo Pilar, and his 1918 paper “Die südslawische Frage”. He claimed that the Serbs had tainted their Aryan origin by mixing with the indigenous Balkan Vlachs and Roma.¹⁷⁵ Consequently, the Serbs were seen as disturbing the social harmony of the states in which they lived, “a race of bandits” and “destructive nomads” who had come to the Croatian regions “with Turkish troops, as plunderers, as the dreg and garbage of the Balkans.”¹⁷⁶ This was the reason underlying the use of methods on Serbs – who, unlike Jews, were really perceived as a people who “polluted” the living space intended for Croats – which were in fact similar to

¹⁷⁰ Živaković-Kerže, “Podržavljenje imovine Židova”, 100.

¹⁷¹ Nevenko Bartulin, “Ideologija nacije i rase: ustaški režim i politika prema Srbima u Nezavisnoj Državi Hrvatskoj 1941–1945.”, *Radovi Zavoda za hrvatsku povijest Filozofskoga fakulteta Sveučilišta u Zagrebu* 1 (2007), 227 n. 53.

¹⁷² Davor Kovačić, “Redarstvo Nezavisne Države Hrvatske uvodi red na zagrebačkim ulicama 1941. godine”, *Časopis za suvremenu povijest* 2 (2012), 325.

¹⁷³ Boško Zuckerman Itković, “Funkcija protužidovske propagande zagrebačkih novina u Nezavisnoj Državi Hrvatskoj od travnja do srpnja 1941. godine”, *Časopis za suvremenu povijest* 1 (2006), 374.

¹⁷⁴ Alexander Korb, *Im Schatten des Weltkriegs* (Dissertationsschrift, Humboldt-Universität zu Berlin, 2011), 374.

¹⁷⁵ Ustasha propaganda persistently underlined that the Serbs had a considerable admixture of “Gypsy” or “Vlach” blood, see Bartulin, *The Racial Idea in the Independent State of Croatia*, 152; Mark Biondich, “Religion and Nation in Wartime Croatia: Reflections on the Ustasha Policy of Forced Religious Conversions”, *Slavonic and East European Review* 1 (2005), 87.

¹⁷⁶ Bartulin, “Ideologija nacije i rase”, 219 and 227.

those applied for “solving the Jewish question”, except that in the case of Serbs it was more habitually done outside the legal framework.¹⁷⁷

The ban on marriages between Jews and persons of Aryan origin also had its direct criminal law consequence. The *Law Decree supplementing the Penal Code of 27 January 1929 (Zakonska odredba o nadopuni kaznenog zakonika od 27. siječnja 1929)* defined the conclusion of a marriage in contravention of the rules laid down by the Law Decree on the Protection of the Aryan Blood and Honour of the Croatian People as a new criminal offence (Article 291a),¹⁷⁸ punishable by at least six months in high-security prison, together with the loss of citizenship. The decree also provided for the punishment of officials who participated in the conclusion of such a marriage. According to the rationale that supported the adoption of these amendments, the reason for their adoption were cases of alleged circumvention of the regulations on the protection of Aryan blood by Jews converting to Roman Catholicism or Islam.

Meanwhile the Jews were also forbidden to participate in any way in the work of organizations and institutions “of social, youth, sports, and cultural life of the Croatian people in general, especially in literature, journalism, the fine arts and music, town planning, theatre, and film”.¹⁷⁹ Furthermore, they were ordered to change their surnames back to the previous ones¹⁸⁰ in order that mistakes as to the identity and origin of business owners were avoided. As a result, every Jewish shop or another business was supposed to display a special sign on a sheet of yellow paper “16 × 25 cm, with clearly visible words ‘Jewish firm’ in black ink along its length”. Besides, special rules were introduced for external signs to be worn by persons of Jewish descent. “Jews by race older than 14 years of age shall wear, when outside of their homes, a Jewish sign in the form of a round brass plate, 5 cm in diameter. The plate must be painted in yellow with the capital letter Ž [standing for “Židov”, meaning “Jew” in Croatian] in its middle, 3 cm long and 2 cm wide, written in black ink. This sign shall be worn on the left side of the chest, in a visible place”.¹⁸¹

¹⁷⁷ Blažević and Alijagić, “Antižidovstvo i rasno zakonodavstvo”, 903, note that while “in the spring and summer of 1941 people in many Serb villages were killed on a mass scale, almost at their very doorstep, most often without even an effort being made to find some legal justification for the killings, the genocide against the Jews took place more gradually and ‘more rationally’, in several phases”.

¹⁷⁸ See *Narodne novine* no. 162, 25 October 1941.

¹⁷⁹ *Narodne novine* no. 43, 4 June 1941.

¹⁸⁰ See the Order on the Change of Jewish Surnames and on Labelling Jews and Jewish Businesses (*Naredba o promjeni židovskih prezimena i označivanju Židova i židovskih tvrtka*), *Narodne novine* no. 43, 4 June 1941.

¹⁸¹ *Ibid.* Article 8, paragraph 2.

Criminal offences set out in the NDH racial laws basically corresponded to the criminal offences laid down by the German racial criminal legislation, with slight differences in the prescribed penalties. Other effects of racial laws in the subject-matter of criminal law in Nazi Germany were related to: restrictions on abortion, homosexual relationships, allowing castration of sexual offenders and wide-ranging security measures against dangerous and antisocial habitual offenders, prone to repeating their offences.¹⁸² Especially these latter measures enabled the deportation of “antisocial elements” of society to concentration camps, but deportations to camps as a rule occurred, similarly to the situation in the NDH, on the basis of decisions by the administrative (police) authorities.

Although racially based law decrees were generally not passed in relation to the Serb population, as was the case with the Jews, the Ustasha government often ordered local authorities to undertake similar measures restricting certain rights of both Serbs and Jews based on the ethnic criterion. Thus, the Order of the Ustasha headquarters in Mostar of 23 June 1941 stipulated that “more than two Serbs or Jews shall not be allowed to move around the city together”, that “Jews and Serbs in general shall not be permitted to walk together or meet socially”, that “after 8 o’clock in the evening, Serbs and Jews must be in their homes”, that “Jews and Serbs, when shopping, shall have to wait in stores until the Croats have met their needs, and then shop” that “Serbs and Jews shall not be allowed to go to the promenade, nor shall they be allowed to sit in Freedom Square”, and that “Serbs and Jews shall not be allowed to dance in public places”.¹⁸³ In some municipalities, the Ustasha authorities introduced an obligation for the Orthodox population, under the threat of the strictest punishment, “not to leave their village without a white stripe on their left arm, on which PRAVOSLAVAC [Orthodox Christian] has to be written in the Latin alphabet”.¹⁸⁴

A few days before the fall of the NDH, the Law Decree on the Equalization of Members of the NDH in Terms of Racial Origin (*Zakonska odredba o izjednačenju pripadnika NDH s obzirom na rasnu pripadnost*),¹⁸⁵ pragmatically terminated the validity of racial laws, in an attempt to ensure the survival of the NDH under the auspices of the Western Allies.¹⁸⁶

¹⁸² See Siegfried Boschan, *Nationalsozialistische Rassen- und Familiengesetzgebung. Praktische Rechtsanwendung und Auswirkungen auf Rechtspflege, Verwaltung und Wirtschaft* (Berlin: Deutscher Rechtsverlag, 1937), 193–200.

¹⁸³ See *Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 71.

¹⁸⁴ Command of the Ustasha Headquarters for Požega of 12 May 1941 to the municipal government of Velika (*Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 26).

¹⁸⁵ See *Narodne novine* no. 100, 5 May 1945.

¹⁸⁶ Zuckerman Itković, “Funkcija protužidovske propagande zagrebačkih novena”, 367 n. 63.

Genocidal policies as the negation of the legal order

It is questionable whether it is even possible to speak of the order based on law if its foundations were built on rules which bear the stamp of a project aimed at the persecution, religious conversion (Catholicization) or extermination of a large part of the population who happened to reside within the borders of the NDH. It is difficult to accept the view that "NDH legislation did not at all have the character of law" because the NDH, as a creation of the occupation powers, was not a state in the first place.¹⁸⁷ Although the functioning of a legal entity in the circumstances of war, regardless of whether we shall recognize any features of formal sovereignty in that entity or not, is subject to possible restrictions on the rights of its citizens, some respect for their minimum rights has to be found even in such changed circumstances. Despite the fact that certain norms were taken over from the legislation of the Third Reich, the thesis that the legal system was in a way imposed from the outside is inconsistent with the unequivocal support that the Ustasha movement, as the perpetrator of the criminal activity, enjoyed with the majority of the population.¹⁸⁸ In any case, the validity of a regulated system of norms applicable to the population in the territory of a given entity can hardly be viewed in isolation from the policies pursued vis-à-vis the citizens of that entity who by force of circumstance came under its mechanism of coercion.

This is particularly relevant to the issue of the legal status of the Serbs in the NDH because they accounted for a sizeable portion of the total population. According to German sources of May 1941, in the territory¹⁸⁹ where the NDH was established there were 3,300,000 Croats, 1,925,000 Serbs, 700,000 Bosnian-Herzegovinian Muslims, 150,000 Germans, 40,000 Jews and about 170,000 members of other nationalities (Hungarians, Slovenians, Czechs and

¹⁸⁷ Srpak, "Kazneno pravo u doba Nezavisne Države Hrvatske", 1143.

¹⁸⁸ In the initial wave of national enthusiasm, by the end of 1941, the Ustasha movement had 150,000 newly-registered members (Yeomans, *Visions of Annihilation*, 12). The objectives and organization of the Croat "Ustasha" movement were regulated in detail by the Rules on the Mission, Organization, Operation, and Guidelines of the "Ustasha" – Croatian Liberation Movement (*Propisnik o zadaći, ustrojstvu, radu i smjernicama „Ustaše“ – hrvatskog oslobodilačkog pokreta*), *Narodne novine* no. 181, 13 August 1942.

¹⁸⁹ Law Decree on the Eastern Border of the NDH considered as NDH territory the area "from the confluence of the Sava and Danube rivers and upstream the Sava to the confluence of the Sava and Drina rivers; from that confluence upstream the Drina river, and along its easternmost backwaters so that all the islands in the Drina belong to the NDH, to the confluence of the Brusnica Brook and the Drina east of the village of Zemlice; from the Brusnica Brook the border of the NDH runs over land east of the Drina, exactly along the old border between Bosnia and Serbia, such as it was until 1908" (*Narodne novine* no. 47, 8 June 1941). Only Zemun, on the basis of an agreement "with the Great German Reich remains militarily occupied by the friendly German army until the end of the war".

Slovaks).¹⁹⁰ Before the Second World War, Serbs accounted for a relative majority (44 %) in Bosnia and Herzegovina. From the very creation of the NDH, the Serb, Jewish and Roma populations were subjected to terror. The policy of the NDH leadership vis-à-vis the Serbs was not uniform: it ranged from biological extermination (genocide), to spiritual annihilation (forced Catholicization), to physical expulsion from the territory (deportation to Serbia).¹⁹¹ The initial form of solution to the Serbian question, which the government implemented in an organized manner, especially in the first months following the creation of the NDH, was the extermination of Serbs in the territory controlled by the government.¹⁹² The NDH is the only satellite of the Axis powers which killed more non-Jews than Jews during the Second World War.¹⁹³

The policy of *resettlement* for the Serb population to Serbia was implemented by the State Directorate for Renewal. Their deportation was the result of German-Croatian agreements¹⁹⁴ which involved concurrent resettlement of

¹⁹⁰ Jelić-Butić, *Ustaše i Nezavisna država Hrvatska*, 106. Karakaš Obradov, "Migracije srpskog stanovništva", 802, speaks about 1,800,000 inhabitants of the Orthodox faith in the territory of the NDH at the time of its establishment, which roughly corresponds to the 1931 census data.

¹⁹¹ Bartulin, "Ideologija nacije i rase", 225–226 and 233. "Although the doctrine of the so-called thirds was never expressed in writing (to exterminate a third of Serbs, to convert another third to Catholicism and to expel a third), the principles were implemented in practice" (Peter Macut, "Prilog raspravi o vjerskim prijelazima u Nezavisnoj Državi Hrvatskoj na primjeru katoličkog tiska", *Croatica Christiana periodica* 77 (2016), 183).

¹⁹² Minimization of the number of Serb victims, and justification of the committed pogrom by alleged prior crimes of the Serbs against the Croatian population, prevails in recent Croatian historiography. Thus, Jure Krišto ("Navodna istraga Svete Stolice o postupcima hrvatskoga episkopata vezanima za vjerske prijelaze u Nezavisnoj Državi Hrvatskoj", *Croatica Christiana periodica* 49 (2002), 166) emphasizes that "Orthodox propaganda went hand in hand with the propaganda of the Yugoslav government-in-exile. The Yugoslav Ambassador to the Holy See, on the order of his government, asked the Vatican as early as May 17 to 'intervene against the Ustasha massacres'; hence, at the time when, even according to the information available to the Serb circles, there still was no persecution on a massive scale, but there were the Serb insurgency and related crimes. Minimizing the number of Serb victims, and denying the genocidal plan and the responsibility of the Roman Catholic Church also characterizes the more recent doctoral dissertation of a German author (see Korb, *Im Schatten des Weltkriegs*, 18 and 24).

¹⁹³ Jonathan Steinberg, "Types of Genocide? Croats, Serbs and Jews, 1941–5", in *The Final Solution. Origins and Implementation*, ed. D. Cesarani (London – New York: Routledge, 1996), 175.

¹⁹⁴ It was agreed at these meetings that the first from among the Orthodox population to be expelled should be the former Salonika Front (WWI) volunteers, the Serbs originally from Serbia and priests, and then politically unsuitable and affluent individuals; see Karakaš Obradov, "Migracije srpskog stanovništva", 808.

Slovenians to the NDH (in similar numbers),¹⁹⁵ while quotas were negotiated for the number of deportees. The persons designated for resettlement were taken to special resettlement camps, which differed from the concentration camps run by the Ustasha Supervisory Service, and they were allowed to take with them up to 50 kg of luggage and a small amount of money.¹⁹⁶ By 22 September 1941, 118,110 persons had been deported to Serbia,¹⁹⁷ the vast majority of whom was expelled illegally, outside the agreements reached. Soon afterwards, the organized resettlement of Serbs to the territory of Serbia was discontinued, because the German authorities in occupied Serbia assessed that any further enlargement of the population would pose security risks, encouraging an uprising in Serbia.

Another type of the genocidal policies besides physical elimination was the wiping out of Serb *cultural identity*. One of the first measures taken by the Ustasha authorities was the prohibition of the Cyrillic script in the whole territory of the NDH.¹⁹⁸ The use of Cyrillic in public and private life was suspended, as was the printing of books in the Cyrillic script, while all “public signs written in the Cyrillic alphabet have to be removed [...] within three days.”¹⁹⁹ At the same time, under the *Law Decree on the Croatian Language, its Purity and Orthography (Zakonska odredba o hrvatskom jeziku, o njegovoj čistoći i o pravopisu)*,²⁰⁰ it was forbidden to give non-Croatian names and titles to the stores, businesses, institutions, associations and other establishments. It was also forbidden “in pronunciation and spelling to use words²⁰¹ that do not correspond to the spirit of the Croatian language and, as a rule, foreign words, borrowed from other, even similar languages”, and the purpose was to remove Serbianisms from the lan-

¹⁹⁵ The Ustasha government made the forced migration of Slovenians from Gorenjska and South Styria to the NDH conditional upon deportation of an appropriate number of members of the Serbian population.

¹⁹⁶ All valuables and foreign cash were taken away from deportees, except for wedding rings. Reports on the seizure, drawn up in three copies, were intended to create the impression that the seized valuables would be returned one day, but that did not happen; see Karakaš Obradov, “Migracije srpskog stanovništva”, 808–809.

¹⁹⁷ Ibid. 806 and 822.

¹⁹⁸ Law Decree on the Prohibition of the Cyrillic Script (*Zakonska odredba o zabrani ćirilice*), *Narodne novine* no. 11, 25 April 1941.

¹⁹⁹ Implementing Order of the Ministry of the Interior to the Law Decree on the Prohibition of the Cyrillic Script (*Provedbena naredba ministarstva unutarnjih poslova zakonskoj odredbi o zabrani ćirilice*), *Narodne novine* no. 11, 25 April 1941.

²⁰⁰ *Narodne novine* no. 102, 14 August 1941.

²⁰¹ By stipulating that the Croatian official and literary language was the Shtokavian dialect of the Jekavian or the Iekavian variant, the long Ikavian “i” shall be pronounced and written as ie” (Article 4).

guage for political reasons.²⁰² The Ministry of Education set up a special office (a commission) tasked with removing the words that do not correspond to the spirit of the Croatian language and foreign words, and replacing them with local words.²⁰³ Teaching the Cyrillic script in class was subject to punishment.²⁰⁴ “All Serb denominational primary schools and kindergartens” were disbanded after the end of the school year 1940/41 (on 3 June). All school funds “named after Serbian rulers, princes and other representatives and prominent figures of Serbian covenant thought, which was desirous of spreading throughout the Croatian regions” were terminated or renamed.²⁰⁵

At the same time, Serbs were also removed from the civil service. Apart from dismissing practically all Serbs originally from Serbia and Montenegrins from the service, “even those Serbs who remained in the service cannot be in ranking positions and the reasons for their keeping in the service should be accurately and precisely cited, substantiated by evidence of their worthiness and the need for them.”²⁰⁶ The same was done with the Serb and Jewish teachers,²⁰⁷ the plan for the teachers of Serb origin being to send them to concentration camps.²⁰⁸

The elimination of the Serb element in the NDH also involved the obliteration of its *religious identity*. Due to the inability to positively identify the Serb population based on ethnic and racial criteria, the Orthodox faith and the Serbian Orthodox Church were taken to be the fundamental markers of Serb ethnic identity.²⁰⁹ A large number of Serb priests were deported and killed as early

²⁰² Alan Labus, “Politička propaganda i kulturna revolucija u ‘Nezavisnoj Državi Hrvatskoj’”, *Informatologia* 3 (2011), 216.

²⁰³ See *Narodne novine* no. 170, 5 November 1941.

²⁰⁴ See e.g. *Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 336.

²⁰⁵ Changing the titles of school funds, the Ministry of Education, no. 18682/1941, *Narodne novine* no. 74, 12 July 1941.

²⁰⁶ Command of the NDH Government Envoy in Sarajevo of 13 May 1941 to the commissioners of the Poglavnik in Sarajevo, see *Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 28.

²⁰⁷ Statement of the Ministry of Religious Affairs and Education of 16 May 1941 to the education department of the Commission for Bosnia and Herzegovina in Sarajevo (*Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 29).

²⁰⁸ “In the Independent State of Croatia, there still are 2,204 male and female teachers of the Greek-Eastern faith, so the Ministry of Education suggests that they be transferred to concentration camps” (*Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 160).

²⁰⁹ As a way of abolishing the authority of the Serbian Orthodox Church, the collection of the Patriarchate tithe, 10% surtax on the income of the Orthodox population, “from members of the Greek-Eastern faith” was discontinued in the territory of the NDH. See the Order on discontinuing the assessment and collection of the patriarchate tithe at tax offices (*Naredba*

as July 1941,²¹⁰ while in August the same year an order was issued to detain all remaining monks and priests (Serbs and the Montenegrins who considered themselves Serbs), and to deport them, together with their families, to the Caprag camp near Sisak.²¹¹ The Orthodox Church property and places of worship were subjected to total devastation and plunder. Thus, for example, the head of the Croatian State Museum of Arts and Crafts in Zagreb sent a letter to the Vrhbosna Great District Prefect with the request “to take from all the Greek-Eastern churches and church buildings in your great district, prior to their destruction, all portable religious objects, iconostases, icons and other church accessories, and to store them in a safe place.”²¹²

A set of similar measures which the Ustasha government wanted to adopt in the first month of its rule also included the *Law Decree on Conversion from one Religion to Another* (*Zakonska odredba o prelazu s jedne vere na drugu*).²¹³ It repealed all previous regulations that governed the formalities of converting from one religion to another, which each convert had to fulfil before a cleric of his former religion. Under this decree, for conversion to another faith to be valid, it was sufficient for the person who was changing his or her faith to submit a written application to the administrative authorities, to obtain a certificate of filing, “and to fulfil the religious regulations of the recognized religion to which the applicant has converted”. This certificate of “personal integrity” could generally be obtained only by members of the peasantry. Namely, different ways of solving the “Serbian question” were intended to be applied to the members of the Serb population identified as a possible factor of disturbance – “Greek-Eastern teachers, priests, merchants, rich craftsmen and peasants, and the intelligentsia in general.”²¹⁴ If the convert was a minor between 7 and 18 years of age, initially the parents’ statement was required for the conversion,²¹⁵ but after that, in

o ukidanju razreza i naplate 10% patrijaršijskog prireza po poreznim uredima), *Narodne novine* no. 59, 25 June 1941.

²¹⁰ Bartulin, “Ideologija nacije i rase”, 229. See e.g. Filip Škiljan, “Prisilno iseljavanje Srba iz Moslavine 1941. godine”, *Historijski zbornik* 1 (2012), 155.

²¹¹ See *Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 201.

²¹² See *ibid.* doc. no. 235. Similar letters were probably sent to other officials as well, cf. Nikica Barić, “O osnutku i djelovanju Hrvatske pravoslavne crkve tijekom 1942. i 1943. godine: primjer velike župe Posavje”, *Croatica Christiana periodica* 74 (2014), 138.

²¹³ *Narodne novine* no. 20, 6 May 1941.

²¹⁴ See the Circular of the Ministry of Justice and Religious Affairs of 30 July 1941 (*Zločini Nezavisne države Hrvatske 1941–1945*, doc. no. 169). The purpose of targeting the intelligentsia was the physical elimination of the Serb elite in order to plunder their possessions or to prevent their potential campaigning against the policy of Catholicization (Krizman, *Pavelić između Hitlera i Mussolinija*, 120).

²¹⁵ Instructions for Conversion from one Religion to Another, *Narodne novine* no. 37, 27 May 1941.

the case of the father's death or "absence", the consent of the mother sufficed.²¹⁶ From August 1941, the intensity of forced conversion was stepped up, and it was soon to become an important factor of state policies, following the establishment of the Religious Section with the responsibility for activities related to conversion to the Catholic, Protestant and Islamic faiths.²¹⁷ As the name of the Serbian-Orthodox religion was no longer "in line with the new state system", it was officially replaced by the term "Greek-Eastern faith".²¹⁸ The figures regarding the number of converted Serbs vary, and range from about 100,000²¹⁹ up to about 240,000 persons.²²⁰ In most cases the main motive for conversion to Roman Catholicism was the hope of avoiding physical destruction.²²¹

Conversion of Serbs to Roman Catholicism was also supported by the fact that Roman Catholic priests appointed to parishes received a monthly aid of 3,000 kuna from government funds on account of those who had converted to Roman Catholicism faith.²²² Later on, a special arrangement was made for the payment of state aid to the Roman Catholic and Greek Catholic clergy of Croat nationality.²²³ The Ustasha policies were not only passively supported by

²¹⁶ Law Decree supplementing the Law Decree on Conversion from one Religion to Another (*Zakonska odredba o dopuni zakonske odredbe o prielazu s jedne vjere na drugu*), *Narodne novine* no. 170, 5 November 1941.

²¹⁷ Matković, *Povijest Nezavisne države Hrvatske*, 70.

²¹⁸ Ministerial order on the name of the "Greek-Eastern faith" no. 753/1941 (*Ministarska naredba o nazivu "grčko-istočne vjere"*), *Narodne novine* no. 80, 19 July 1941.

²¹⁹ Bartulin, "Ideologija nacije i rase", 230; Biondich, "Religion and Nation in Wartime Croatia", 91 and 111.

²²⁰ Jelić-Butić, *Ustaše i Nezavisna država Hrvatska*, 177.

²²¹ Matković, *Povijest Nezavisne države Hrvatske*, 69. It should be mentioned that a more recent Roman Catholic theological interpretation of the reasons for conversion also refers to "the response to Orthodoxization of Croats in the 1918–1941 period", "theological reasons", "Orthodox believers brought up in the Catholic spirit" and "historical reasons – returning to the faith of the fathers (Grgo Grbešić, "Prijelazi Židova u katoličku crkvu u Đakovačkoj i Srijemskoj biskupiji od 1941. do 1945.", *Croatica Christiana periodica* 52 (2003), 156 n 7).

²²² Law Decree on State Aid to the Clergy of Parishes and Parish Branches Established for Settlers and Converts to the Catholic Faith (*Zakonska odredba o državnoj pomoći dušobrižnicima župa i župnih izpostava, osnovanih za naseljenike i prelaznike na katoličku vjeru*), *Narodne novine* no. 188, 26 November 1941. This amount was later topped up by a special allowance (see the Order on the Payment of the Special Allowance to the Clergy of Parishes and Parish Branches Established for Settlers and Converts to the Catholic Faith, *Narodne novine* no. 102, 8 May 1942).

²²³ "By virtue of a special order, on an exceptional basis aid shall also be granted to foreign nationals of different ethnicity" (see the Order on the Payment of Aid to the Roman Catholic and Greek Catholic Clergy (*Naredba o izplati pomoći rimokatoličkom i grkokatoličkom svećenstvu*), *Narodne novine* no. 24, 29 January 1942).

the Roman Catholic clergy, but part of the Croatian clergy also took direct part in massacres.²²⁴

For those Serbs who were not Catholicized there was a project of the *Croatian Orthodox Church*. It was established in April 1942²²⁵ and its Constitution was passed by the Poglavnik on 5 June the same year.²²⁶ The Croatian Orthodox Church “is one and autonomous (autocephalous). The dogmatic and canonical tenets of Holy Orthodoxy shall apply to it” (Article 1). The first patriarch and bishops of the Croatian Orthodox Church were appointed by the Poglavnik, while in the next election for Patriarch the Poglavnik chose among three nominated candidates-bishops, at the proposal of the Minister of Justice and Religious Affairs. As provided for by this act, the Electoral Council consisted of the bishops of the Croatian Orthodox Church, the dean of the Orthodox Theological Faculty in Zagreb, the head of the Orthodox Section at the Ministry, and five members of the Croatian Orthodox Church appointed by the Poglavnik. All bishops and priests of the Croatian Orthodox Church had to take an oath of allegiance to Croatia and the Poglavnik. Aid similar to the special state aid provided to the Roman Catholic and Greek Catholic clergy who ministered to the converts to Roman Catholicism, was also provided to the priests of the Croatian Orthodox Church.²²⁷ The project of the Croatian Orthodox Church, however, turned out to be a failure in view of the negligible number of Orthodox priests who joined it.

It should be noted that, following the model of Nazi Germany, totalitarian forms of salutation were adopted in the school system and the public administration. Thus, the school disciplinary regulations for high school students,²²⁸ setting out student rules of conduct towards adults, imposed a way in which familiar adults and teachers were to be greeted. “The way of greeting from now on shall be as follows: both male students (without taking their caps off) and female students shall greet by raising their right hand in a forward move to the eye level, with fingers outstretched. When the greeted person says in response to

²²⁴ Biondich, “Religion and Nation in Wartime Croatia”, 80.

²²⁵ See *Narodne novine* no. 77, 7 April 1942.

²²⁶ See *Narodne novine* no. 123, 5 June 1942.

²²⁷ See the Order of the Ministry of Justice and Religious Affairs of 30 July 1942, no. 1810-Z-1942 on the Payment of State Aid to the Croatian Orthodox Church Priests, Their Widows and Their Orphans (*Naredba Ministarstva pravosuđa i bogoštovlja od 30. srpnja 1942. broj 1810-Z-1942 o izplati državne pomoći svećenicima Hrvatske pravoslavne crkve, njihovim udovicama i njihovoj sirotčadi*), *Narodne novine* no. 169, 30 July 1942.

²²⁸ School disciplinary regulations for students of classics-program and general-program grammar schools, teacher-training and civil schools, *Narodne novine* no. 137, 26 September 1941. A similar regulation was also introduced for students of secondary vocational schools (see *Narodne novine* no. 158, 21 October 1941).

the salute: 'For the homeland!' a male student shall answer: 'We are ready!', and so shall a female student: 'We are ready!'" (Article 38, paragraphs 3 and 4).²²⁹ With the establishment of the Ustasha Youth (modelled on the Hitlerjugend), the entire Croatian youth aged from 7 to 21 years became its integral part.

Concluding considerations

Considering all the above-described effects of the genocidal policies pursued by the Ustasha regime against the Serbs, Jews and Roma, the biological survival of persons belonging to these groups was threatened throughout the NDH. The form of the criminal law norms built into this system of (non)values certainly contributed to this. The fact that the "honour and vital interests of the Croatian people" were also defined as *objects of criminal law protection* determined the fate of the Serbian people in particular, which due to its being a sizeable population was recognized as a foreign body posing a threat to the Croatian living space. Vital interests of the Croatian people did not include coexistence with the Serbian people, unless persons belonging to it renounced their national, religious and cultural identity, thus becoming "acceptable" fellow citizens. At the same time, their status of citizens was called into question unless there was a will from their part to readily and faithfully "serve" the Croatian people, and if no actions against its "liberation aspirations" were undertaken. The decree which recognized citizenship only to persons of Aryan descent also contributed to this. To the extent in which such origin was denied to persons belonging to the disputed nations (Jews and Roma), or to the contested one (Serbs), state policies implemented Catholicization, or measures for biological and physical removal from the territory of the NDH.

The enforcement of the Criminal law of the NDH was characterized by heavy reliance on the operation of the special judiciary, especially of permanent and mobile courts martial, which could only impose the death penalty. Yet, even these quasi-judicial bodies operated in just a small number of cases, despite the fact that one of their members had to be from among the Ustasha ranks. Most of the mass executions of civilians that took place in the territory of the NDH, committed by the Ustasha members – although this circumstance could not

²²⁹ This type of salutation also applied to all departments and institutions within the public administration. "All civil servants regardless of their status, in the office and outside the office, shall use a single greeting and a response to the greeting: (We are) ready! In addition to the loud greeting in the office and outside the office, all civil servants shall salute each other by concurrently raising the right arm at an angle of 45°, i.e. so that the outstretched arm makes half of the right angle with the horizontal line. The hand must be fully extended with fingers and thumb pressed together" (see Instructions on Salutation by Civil Servants, *Narodne novine* no. 28, 4 February 1942). Finally, the duty to raise his right hand was imposed on every man passing by a soldier on sentry duty (see *Narodne novine* no. 77, 7 April 1942).

possibly convalidate the perpetrated crimes – were not the executions of capital punishment previously imposed by a court martial in some kind of conducted proceedings – they were just plain murders. Organized pogroms of Serbs, Jews and Roma, as well as of communists and political opponents of the regime, were also committed by way of deportation to concentration camps. Although it formally was an administrative and penal measure, in terms of its nature and consequences it was a security measure in disguise, justified by the threat posed by “disloyal and dangerous persons”. Confiscation of assets in terms of its effects also constituted a parapenal measure which could be imposed both as a measure of administrative authorities and as a criminal sanction.

The question of the possibility that a system of legal rules is not founded on the idea of justice and the equality of citizens constitutes one of the central themes of the twentieth-century philosophy of law, and a topic of interest to criminal law, especially from the perspective of a possible conflict between the principles of legality and legitimacy. This question was discussed, especially from the perspective of possible justification for crimes committed during Nazi Germany, by the German philosopher and professor of criminal law Gustav Radbruch. Addressing the question of the duty to apply unjust positive law in his 1946 article “Statutory Non-Law and Supra-Statutory Law”, Radbruch wrote the following: “The conflict between justice and legal certainty may well be resolved in this way: The positive law, secured by legislation and power, takes precedence even when its content is unjust and fails to benefit the people, unless its conflict with justice reaches such an intolerable degree that the statute, as ‘flawed law’, must yield to justice. It is impossible to draw a sharper line between cases of statutory lawlessness and statutes that are valid despite their flaws. One line of distinction, however, can be drawn with utmost clarity: Where there is not even an attempt at justice, where equality, the core of justice, is deliberately betrayed in the issuance of positive law, then the statute is not merely ‘false law’, it lacks completely the very nature of law. For law, including positive law, cannot be otherwise defined than as a system and an institution whose very meaning is to serve justice.”²³⁰ Extreme non-law that negates any equality among citizens – is no law at all. The lack of respect for fundamental rights and the genocide against own population render the criminal law order established in the NDH devoid of any legal character, regardless of the fact that the violence was committed in

²³⁰ For more detail see Gustav Radbruch, “Gesetzliches Unrecht und übergesetzliches Recht”, in B. Spaić, ed., *Pravo i pravda. Hrestomatija*, 2nd ed. (Belgrade: Pravni fakultet Univerziteta u Beogradu, 2017), 113–120. The so-called Radbruch formula was applied by the German Supreme Court in many cases concerning Nazi Germany’s law. Thus, for instance, in one case this court found that a German officer who had shot and killed a soldier who had been a fugitive from the firing squad could not invoke (Himmler’s) authorization, under which any armed soldier could shoot a deserter without a trial, and characterized his action as objectively unlawful.

an organized manner by the state authorities. For that reason, it cannot really be characterized as a (criminal) law order, but as an order founded on crime and criminal injustice.

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