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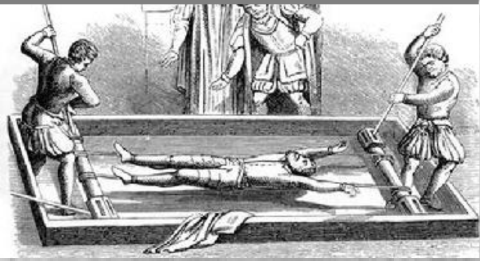

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WOMEN, CRIME AND PUNISHMENT IN THE PORTUGUESE LAW OF THE ANCIENT REGIME IN THE EARLY

Modern Criminal Law in the European Southwest, the offender´s intention, the quality of his reasons, his judgement, and the facts that he could present to justify himself as the age, the social condition and the sex, were for the judges only several circumstances whose overall examination allowed to define the measure of the penalty. In this sense, either by legally relevant facts of social life or through institutes of illegality, guilt or punishment, circumstances could change the abstract frame of the crime. Therefore, the offender´s responsibility would be partially measured while considering such circumstances that today have received a general and systematic treatment in the Law.

When it came to women, there was an understanding of the feminine that today no longer express itself but in this period appears completely grounded and institutionalized. In general, we can say that the opinion of the modern jurists was based on the women's lesser dignity, fragility, and lasciviousness. The first, responsible for subjecting women to the tutelage of men, was based on the natural and biological foundations of Aristotle, Plato, and São Tomás de Aquino and, mainly, on the plurality of justifications of the Jewish tradition (nature, history of creation and original sin). The second, in addition to equating women with the rustic and minors by classifying them as naturally ignorant, considered them fragile intellectually and physically, due to this impotence to impose themselves on the masculine. The latter, served as a pretext for jurists to claim immodesty, lust and, consequently, the wickedness of women. Thus, the natural fragility of the woman's spirit and will, as well as her inability to withstand the rigor of certain penalties, would often lead to a justification for non-culpability. Decency was also sometimes invoked as a penalty definition criterion.

The main purpose of this essay is to provide some explanation about the specificities of the regulation of female transgressions during the Old Portuguese regime. It addresses some considerations regarding the criminal capacity of women through the investigation of both the concept of crime and related punishment in order to fully understand the concept of responsibility. The arrangement of the crimes in each of the mixed criminal matters (divine, natural, and positive) also contributed to the determination of the delinquent´s culpability.

The Criminal law of this period was marked by the pluralism of orders and jurisdictions, coexisting, in the same space, legislation, doctrine, judicial law and local custom. It is important to highlight that a great part of the Law of Western European Kingdoms came from a legal unit so-called Ius Comunne, based on provisions from Roman Law and Canon Law, that combined with the Ius Propium or royal origin unravelled the conflicts of the realm until the systematisation of the criminal code. Furthermore, the judges arbitrium was enormous in this age. The judges did not distinguish the problems of responsibility from all the other circumstances that they should assess therefore the penalties were adherent and intrinsic to each offence and must be defined according to the particular nature of each crime.

To conclude, on the one hand it analyses the philosophical doctrinal construction of this ancient concept of inferiority that disseminated through modernity, and on the other hand, it contributes to the knowledge concerning to the Criminal Law in Portuguese Ancient Regime.

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ODMERAVANJE, IZRICANJE I IZVRŠAVANJE KRIVIČNIH SANKCIJA NAD ŽENAMA STAROG RIMA

Savremeno društvo satkano je od modernih ustavnih i demokratskih principa, koji kao centar svog postojanja ističu naglašenu potrebu za očuvanjem načela jednakosti među građanima. Ova težnja uobličena je kroz institut zabrane diskriminacije, koji onemogućuje razlike u međusobnom položaju ljudi, na osnovu svojstava koja nisu relevantna za njihovu poziciju u pravnom prometu, ili pred represivnom vlašću država (poput pola, starosti, rase, veroispovesti i sl.). Shodno navedenom, čoveku današnjice bilo bi nepojmivo da kaznene norme građanskog ili krivičnog prava nad njim budu primenjivane na blaži ili stroži način samo na osnovu onoga što čini njegov građanskopravni identitet. Kako ova vrsta svesti dugo nije bila prisutna u brojnim delovima sveta, na osnovu emancipacije ljudi, uočljivi su oni segmenti svakodnevnog života u kojima je težnja ka jednakosti najviše i uznapredovala, a jedno od vodećih na tom putu jeste kažnjavanje učinilaca krivičnih dela. Jedno od ljudskih, čak urođenih svojstava, na koje niko od nas ne može uticati, a koje je često bilo jedno od rukovodećih merila na planu odmeravanja i izricanja sankcija, jeste pol. Naime, u brojnim istorijskim izvorima o različitim civilizacijama, možemo saznati kako su, pre svega žene, često lošije prolazile unutar kaznene politike, za ista ili, po težini ostvarenog neprava, slična učinjena krivična dela. Ono što se nesumnjivo navodi kao jedan od razloga za tu vrstu tretmana nad njima jeste njihova potlačena građanska pozicija spram muškaraca.

U ovom radu, autor će navoditi primere sprovođenja kaznene politike nad ženama, sa akcentom na civilizaciju Starog Rima, te na taj način istaći različitost u njihovoj poziciji u odnosu na pripadnike muškog roda, ali i na slojevitost izricanja kaznenih mera među njima (u zavisnosti od društvenog sloja kome su pripadale – robinje, strankinje, rimske građanke). U pojedinim delovima rada, u meri u kojoj je to neophodno, autor će navesti i primere recepcije određenih krivičnih sankcija iz ostalih civilizacija Starog veka, među Stare Rimljane, kako bi komparativni metod proširio i na odnos represivne vlasti prema ženama Starog Rima, u odnosu na one koje potiču iz drugih delova Sredozemlja. U obzir dolazi analiza, za to vreme, uobičajenih krivičnih sankcija, poput smrtne i telesnih kazni, različitih oblika izvršenja na ličnosti, taliona, imovinskih kazni, proterivanja, kako bi analiza teme unutar rada bila što potpunija i sveobuhvatnija.

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OBLICI KAŽNJAVANJA U RIMSKOM PRAVU U PERIODU CARSTVA

Sa razvojem rimskog prava, uporedo se razvijao i sistem kažnjavanja za nepoštovanje normi koje su predstavljale sastavni deo istog. Možemo reći da je svoj „procvat“ ova oblast doživela upravo u periodu kada je Rim bio na vrhuncu moći i kada je predstavljao najjaču imperiju antičkog sveta.

Upravo su prvi carevi (od kojih je nesumnjivo najveću ulogu nosio Oktavijan Avgust) radili na usavršavanju sistema kažnjavanja, kako Rim više nije činio isključivo jedan narod, nego mnoštvo različitih, koji su sa sobom nosili i drugačiju kuluturu, verovanja, pa i pravne sisteme.

Pojava hrišćanstva, koja se poklapa sa prvim vekom postojanja carstva, je umnogome uticala na razvoj samog sistema kažnjavanja, jer su se, kako to rimski pravnici navode, hrišćani tretirali kao „posebna vrsta kriminalaca, pa su samim tim podlegali i posebnim kaznama“ (Epistulae X. 96, Plinije Mlađi). Plinije Mlađi u svom delu, na primer, navodi kako su hrišćani imali čak tri pokušaja da se pokaju pred carem i da tim postupkom budu oslobođeni daljeg suđenja.

Ipak, kako je carstvo u III veku pretrpelo ozbiljnu ekonomsku krizu, a samim tim i velike potrese unutar samog pravnog sistema, carevi su, velikim delom, uređenje oblasti kažnjavanja uzeli u svoje ruke (masovno ubijanje hrišćana, Neronovo spaljivanje političkih neprijatelja, bacanje istih u reku Tibar i mnoge druge stvari su bile postavljene u „zakonske okvire“).

Upravo se u ovom periodu rimskog carstva možemo upoznati sa najraznovrsnijim oblicima kažnjavanja prekršaja pravnih normi (ne samo u vidu mučenja, što je, pojavom ostalih kazni, relativno „zamiralo“, nego i u korišćenju prekršilaca zakona kao „učesnika“ u opasnim igrama sa divljim životinjama ili teško naoružanim gladijatorima). Upravo su ovakve „manifestacije“ u periodu poznog carstva dobile javni karakter i, možemo reći, status „zabave“.

Nebrojeni su spisi postklasičnih rimskih jurisprudenata u kojima se opisuju ovakve činjenice i iz kojih o istim možemo podosta doznati.

Dok se najvišim slojevima (pripadncima carske porodice, carevim najbližim ljudima) moglo „progledati kroz prste“ i gde se kazna mogla maksimalno ublažiti (najčešće bi to bio progon u daleki kraj carstva ili na neko ostrvo), robovi i niži slojevi građanastva pak takve privilegije nisu uživali. Neosnovana smrt gospodara, na primer, lako je činila da će prvi osumnjičeni biti njegov rob (mada je poznat i masakr iz I veka, gde je Senat naredio ubistvo čak 400 robova zbog nepoznatog uzroka smrti njihovoga gospodara!).

U ovom radu autor neće samo prikazati koje su vrste kazni postojale u rimskom pravu u periodu carstva, već će se osvrnuti i na to kako su se one primenjivale na različite društvene slojeve, u različitim delovima carstva i kako je došlo do unapređenja rimskog pravnog sistema njihovim daljim razvitkom (što se, ipak, odrazilo samo u prvim vekovima postojanja carstva).

Cilj ovog rada je da se studenti upoznaju ne samo sa oblicima kazni koje su postojale u periodu casrtva, već i da njihovom analizom i osvrtom na različite aspekte njihove primene pomenuti pravni sistem mogu uporediti sa ostalim pravnim sistemima staroga veka, ali i da razmotre uticaje koji su se možda delimično očuvali i u srednjevekovnim pravnim sistemima (poput vizantijskog, koji predstavlja „naslednika“ pravnog sistema starog Rima).

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ZATVORSKA KAZNA U ZAKONU ,,O ZAŠTITI JAVNE BEZBEDNOSTI I PORETKA U DRŽAVI'' KRALJEVINE SRBA, HRVATA I SLOVENACA IZ 1921. GODINE

Još od momenta nastanka Kraljevstva Srba, Hrvata i Slovenaca 1. 12. 1918. godine njen unutrašnji politički život bio je isprepletan sukobima. Najuočljivija trvenja bila su među srpskim i hrvatskim strankama i političkim delatnicima. Donekle je to bila posledica drugačijeg razvitka političke kulture u Habzburškoj monarhiji odnosno Kraljevini Srbiji, suprotnih interesa ali i na posletku različitog poimanja koncepta državnog uređenja, unitarnog sa jedne i konfederalnog sa druge strane.

Međutim primarni izvor unutrašnje nestabilnosti u prvim godinama jugoslovenske kraljevine nije predstavljao srpsko-hrvatski spor, koji je uistinu u kasnijem periodu doživeo svoju negativnu kulminaciju, već je to bila nova politička opcija, Komunistička partija. Komunisti, na talasima Oktobarske revolucije i sveopšteg revolucionarnog stanja u Evropi, već od prvog momenta izražavali su apsolutno protivljenje u pogledu najvažnijih socijalnih, državnih i političkih pitanja oko kojih je među ostalim političkim delatnicima jugoslovenske države postojao manji ili veći konsenzus. O tome govori i program sa Drugog kongresa u Vukovaru iz juna 1920. godine, kada je stranci i zvanično dato ime Komunistička partija Jugoslavije, gde se između ostalog govori da se ova partija zalaže za uspostavljanje sovjetske republike po modelu diktature proleterijata i na osnovu prethodnog iskustva nasilno sprovedene revolucije u Rusiji. Socijalni i ekonomski status nižih slojeva društva i prevashodno radnika u posleratnom periodu u jugoslovenskoj kraljevini nije bio na zavidnom nivou što je bila posledica kako ratnih razaranja tako i uopšte slabe razvijenosti pojedinih krajeva. Komunistička partija je ovo htela na svaki način da eksploatiše te joj je putem podrške i organizacije štrajkova i protesta loš socijal-ekonomski status naorda poslužio kao mehanizam putem kog je želela da svoju podršku omasovi ali i da dodatno destabiliše državu i njen poredak. Uspeh takvog delovanja bio je očigledan te je Komunistička partija na prvim izborima za Ustavotvornu skupštinu dobila veliku podršku od 12,4% tj. 58 mandata što ju je činilo praktično trećom najjačom političkom opcijom u tom momentu. Vlada je na svaki način pokušala da zaustavi jačanje Komunističke partije i stane na put vođenju takve perfidne političke borbe te je 29. decembra 1920. godine donela akt, naredbu pod imenom Obznana kojom je de facto zabranjen rad komunističke organizacije i svaki vid širenja njihove propagande. Istine radi u pravnoformalnom smislu Obznana nije bila do kraja valjana jer gotovo da Privremeno narodno predstavništvo o njemu nije ni raspravljalo, imala je samo potpis Predsednika Ministarskog saveta Milenka Vesnića što za dokumente te prirode nije dovoljno jer je obavezan i potpis kralja i nikada nije objavljena niti u jednom službenom glasilu već je široj javnosti bila dostupna putem letaka. Međutim, zaobilaženje pravne procedure kod donošenja ovakvih i sličnih akata bio je gotovo manir svake vlade tokom vanustavnog perioda jugoslovenske kraljevine. Takvo stanje odavalo je utisak da ne postoji sveopšta ravnoteža u pogledu zakonodavne i izvršne vlasti što je za demokratiju i demokratski razvoj jedne zemlje dosta traumatično. Obznana je nesporno imala za cilj zastrašivanje pristalica Komunističke partije, međutim ona je dovela samo do još većeg revolta kod pretežno mlađih komunista. Kao odgovor na Obznanu komunisti su posegnuli za terorističkim aktima i atentatima na najviše državne funkcionere. Tako je 28. juna 1921.godine pokušan atentat na Kralja Aleksandra Karađorđevića, dok je 21. jula 1921. godine tvorac Obznane i ministar unutrašnjih poslova Kraljevine Srba, Hrvata i Slovenaca Milorad Drašković ubijen od strane pristalica Crvene pravde, najekstremnijeg dela komunističke organizacije.

Ovakav sled događaja državnom vrhu Kraljevine SHS poslužio je kao dobar povod da započne novu fazu jače i energičnije borbe protiv Komunističke partije. Sa tim u vezi, ušlo se u postupak donošenja zakona ,,O zaštiti javne bezbednosti i poretka u državi'' čime je i zvanično trebao biti zabranjen rad Komunističke partije dok bi njihovi skupštinski mandati bili ukinuti. Sam postupak donošenja bio je indikativan, pojavljivali su se pojedini proceduralni prestupi, istina ne kao na primeru Obznane, koji su ukazivali na veliki interes i želju

državnog vrha da se ovaj zakon što pre uvede u pravni život. Tako je na insistiranje vlade, pozivajući se na važeći Ustav, prihvaćeno da se o zakonu raspravlja po skraćenom postupku. Neki od razloga bili su upravo citiranje člana 133. Ustava u kome se između ostalog kaže da je ovaj zakon iz sfere unifikacije zakonodavstva a da se o takvim zakonima raspravlja po skraćenom postupku i da se o njegovom prihvatanju skupština izjašnjava rezolucijom. Drugi razlog odnosio se na činjenicu da se putem ovog zakona vrši dodatna revizija Obznane putem koje ona dobija jasniju i precizniju pravnu formu. Negodovanja i rasparave na sednici Parlamenta je bilo u određenoj meri i u tome su se isticali poslanici Komunističke parttije, koji su u radu Parlamenta aktivno učestvovali do momenta izglasavanja ovog zakona. I pored toga zakon je gotovo neometano donesen 2. avgusta 1921. godine čime je i zvanično Komunistička partija stavljena izvan pravnih okvira i poslata u ilegalu.

Zakon je po svojoj prirodni bio izuzetno strog, što se moglo uočiti već u članu 1 koji je brojao sedam tačaka. Kroz tih sedam tačaka eksplicitno su navođene inkriminišuće radnje poput ubistva ili pokušaja ubistva poltičkih delatnika, širenja komunističke propagnde, udruživanja, pomaganja takve ili slične organizacije na bilo koji način finansijski ili logistički, širenje propagande i izazivanje pobune među regularnim oružanim snagama, diverzija na objektima od javnog značaja, povezivanja sa licima ili listovima u inostranstvu čiji je cilj podrivanje državnog poretka i nabavka oružja ili drugih predmeta radi ostvarivanja ovih radnji. Za preduzimanje ovakvih delatnosti pretila je smrtna kazna ili kazna zatvora do 20 godina uz konfiskaciju predmeta. U članu 2 se takođe spominje kazna zatvora do 20 godina za svakog ko je znao da se krivična dela iz člana 1 pripremaju, a na vreme nije otkrio državnim vlastima. Član 6, u cilju opšte javne bezbednosti, navodio je kaznu zatvora do 3 meseca i mogućnost prinudnog rada za svakog ko je svojim ponašanjem remetio javni moral. Član 7 definiše kaznu zatvora za svakoga ko spravlja ili nagovara na spravljanje rasprskavajuće materije u cilju izvršavanja kako krivičnih dela iz člana jedan ovog zakona tako i uopšte, dok je član 8 za ovlašćena lica koja neadekvatno koriste rasprskavajuće materije i time dovedu u opasnost imovinu, život ili zdravlje drugih propisivao zatvorsku kaznu do godinu dana. Član 11, u vezi sa štrajkom, određivao je kaznu zatvora do godinu dana svakome ko bi sprečavao drugog na obavljanje svoje delatnosti. Ovaj član se dotakao i neprijavljenih okupljanja gde je onima koji se ne raziđu zaprećeno kaznom od godinu dana zatvora i plaćanjem novčane kazne. Članovi 12, 13, 14 prožeti su gotovo istom zatvorskom kaznom od godinu dana uz plaćanje novčane kazne za svakoga ko u javnosti ili uopšte putem znakova ili natpisa poziva na rušenje postojećeg državnog poretka i javnog mira, ko prisustvuje manifestacijama koje pozivaju na ovakve akte ili ko se ne raziđe sa skupa na koji je vlast zbog svog karaktera zabranila. Član 15 bavio se pitanjem organizacija koje će se rasturiti u slučaju da se dokaže njihov protivzakoniti cilj i delovanje, dok će se njihovi pravni zastupnici kazniti zatvorskom kaznom od godinu dana i novčano.

Član 19, u vezi sa nadležnošću sudova, propisivao je da u pogledu krivičnih dela iz ovog zakona sude redovni sudovi, po hitnom postupku i na osnovu ličnog sudijskog uverenja. Dakle, ovim zakonom su obuhvaćene gotovo sve najrestriktivnije mere definisane Krivičnim zakonikom Srbije 1860. godine koji je uredbom iz 1919. godine važio na teritoriji cele jugoslovenske kraljevine. Strogost zakona i jasna poliička pozadina neupitno su upućivali na njegov cilj, bespoštedna borba i rigorozno sankcionisanje svih komunističkih, ekstremnih grupa kojima ni teroristički akti nisu bili strani. Treba navesti da se ovaj zakon nije puno razlikovao od sličnih zakona donošenih u država zapadne Evrope koje su takođe strahovale od nereda i opšteg revolucionarnog talasa koji je tada postojao. Sve ovo nam ukazuje na činjenicu da se gonjenje komunista ipak nije vršilo zbog same politike koju su zastupali već zbog načina na koji su se za tu politiku borili.

Primena zakona i restriktivnih mera, bar iz ugla vladajućih struktura, bila je više nego uspešna jer se gotovo gotovo deceniju i više na prostoru jugoslovenske kraljevine nije formirala ozbiljnije organizovana komunistička ćelija. Premda su u Kraljevini SHS prilike bile takve da je ona gotov ulazila iz krize u rizu, te je ovaj zakon nakon bujanja novih ekstremnih grupa i tragičnih Račićevih pucnja u skupštini bio dodatno revidiran i proširen a sve u cilju zaštite države, što je često izgledalo sizifovski jer unutrašnju stabilnost i demokratski proces jugoslovenska kraljevina nikada nije u uspela da obezbedi u punom kapacitetu.

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"PRINCEPS QUI DELATORES NON CASTIGAT, IRRITAT" *ACCUSATORES* AND *DELATORES* DURING THE EARLY PRINCIPATE BETWEEN LAW AND POLITICS

The *lex Iulia iudiciorum publicorum* of 17 B.C. certified the definitive success of the *quaestiones perpetuae* as ordinary means of delivering justice in criminal matters (*ordo iudiciorum publicorum*). However, without a modern public prosecution system, the activation, and the proper functioning of this system of administration of justice rested completely upon the initiative of a private citizen. Acting as representative of the community, he would have to took on the task of bring action and presenting the case (this one, mostly, by the means of a lawyer) in front of the jury panel against a person accused of having committed a crime. To encourage the reporting of crimes, the *leges iudiciorum publicorum* usually provided for some form of awards to the accusers who successfully managed to convict the indicted person.

As expected, this system started soon to show its limitations. During the late Roman Republic, the sources prove us that it was not uncommon that persons were indicted not because they had committed a crime, but for other and less noble reasons. As an example, the indictment was used to hamper political and personal enemies, to promote one's political career by accusing someone famous or simply tempted by the economic outlook granted by prizes given to successful accusers. The only statutory bulwark against these conducts was the *crimen calumniae*, established by a *lex Remmia* (late II century B.C.-early I century A.D.). Under the provisions of this law, whoever brought false charges was barred from the possibility to exercise ever again the right to accuse anyone else (*ius accusandi*), but this was easily avoidable by simply dropping the accusation before the verdict.

In the early Principate, the number of criminal proceedings soared, especially related to the *crimen maiestatis*, as it started to encompass also conducts felt as threatening to the new imperial regime and was used by the emperors as a tool to hit their – real or perceived as such – enemies and consolidate their rule over the Roman state. The estate of those convicted for *maiestas* was to be seized, part of it went to the accuser but the most part was to be bestowed upon the *aerarium* (later, the *fiscus*), so the political usefulness of this crime was intermingled with the financial gain granted to the public treasury.

Meanwhile, Augustus' marital legislation compelled men and women between certain ages to wed and procreate, enforcing these provisions with penalties such as the incapability to inherit partially or totally. To carry out these, Augustus introduced a new type of proceeding, called *vindicatio caducorum*. A citizen acted on behalf of the Roman state, similarly to the accuser in the criminal proceedings of the *ordo iudiciorum publicorum*, specifically the *aerarium*, so that the latter could seize those assets (called *bona caduca*), giving part of it to the *delator* as a prize for his activity. Over time, the use of the *vindicatio caducorum* was extended to include claims concerning the *bona vacantia* (the property which a person left at his death without having disposed of it by will, and without leaving any *heres*, claimed by the state), the *bona damnatorum* (the goods of the convicted) and other kind of claims of ownership of goods by the *aerarium* and the *fiscus*.

The successors of Augustus found themselves in a tough situation. On one hand, they could not do without the fundamental activity carried out by the *delatores* (the term was used to indicate both criminal and fiscal accusers). On the other one, these were despised by the public opinion and the emperor had to be seen as an enemy of the *delatores*. They had to seek a balance between these two instances, sometimes protecting and subsidising them, sometimes condemning them in public.

My intervention aims at pointing out the different, and usually conflicting, actions taken by the emperors until Trajan to approach this problem, as stated by the Roman sources of those years (mainly Suetonius, Tacitus and Pliny the Younger).

I'll focus on the trials of the new extraordinary jurisdiction, showing how the emperors did not adopt a systematic approach to restrict the *delatores'* activity, favouring a case-by-case approach, intervening sometimes to impose exemplary punishments to sanction the rashness of the accusers, sometimes to mitigate the harshness of the penalties imposed by the Senate exercising its judicial function or by other imperial officials. Besides the *lex Remmia*, until 61 A.D. there were almost no changes in the *ordo iudiciorum publicorum* to tackle this problem, but in the same year the *senatus consultum Turpillianum* was passed. The senatorial Decree provided – among other things – that criminal accusers could not drop charges freely anymore in front of the *quaestiones perpetuae*, but they had to ask the authorization to do so from the court (*abolitio*), otherwise they should have been punished (*tergiversatio*) with the same penalty provided by the *lex Remmia* for the calumniators. One of the aims of this *senatus consultum* was to compel the accusers to think before acting, since they could not escape unpunished anymore from the trial. The Turpillian decree was later extended by means of another senatorial decree to the *vindicatio caducorum* and so was applied also against the fiscal *delatores*. Later – as showed by the Severian lawyers – its area of application was also broadened to the *cognitiones extra ordinem*, when these were judging on crimes originally established by the *leges iudiciorum publicorum*.

I'll also outline the main actions taken by the emperors concerning accusers and *delatores* not connected to pending trials, how the emperors shifted between (often collective) punishments, like the banishment of fiscal *delatores* from the city of Rome, but also rewards, to try to give a complete picture of this subject.

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THE ROLE OF PUNISHMENT IN THE POLITICAL AND LEGAL THOUGHT OF MONTESQUIEU

Charles Louis de Secondat, Baron de La Brède et de Montesquieu French philosopher, jurist, and thinker commonly known as Montesquieu was perhaps the most important thinker of the Age of Enlightenment. His concept of the tri-partite division of power still underpins every democratic system today, which are concurred in the Stanford Encyclopedia of Philosophy:

Montesquieu was one of the great political philosophers of the Enlightenment. Insatiably curious and mordantly funny, he constructed a naturalistic account of the various forms of government, and of the causes that made them what they were and that advanced or constrained their development. He used this account to explain how governments might be preserved from corruption. He saw despotism, in particular, as a standing danger for any government not already despotic, and argued that it could best be prevented by a system in which different bodies exercised legislative, executive, and judicial power, and in which all those bodies were bound by the rule of law. This theory of the separation of powers had an enormous impact on liberal political theory and on the framers of the constitution of the United States of America.

Nevertheless, ideas and proposed solutions other than those relating to constitutional law remain, as they were, in the background. This paper aims to analyse the role and function of penalty and punishment in Montesquieu's political and legal thought.

Taking up the topic of the function of punishment in Montesquieu's political and legal thought will allow grasping this important issue – from the point of view of both the Enlightenment and modern times – of the role of the state in punishment and the available means at its disposal.

The author relies on his own analysis of Montesquieu's writings and other works, especially: *Persian Letters* -1721, The Spirit of Law -1748, *Defence of "The Spirit of Law"* - 1750, *My Thoughts* - 1720-1755, as well as analysis of the achievements of international (English and French) and Polish doctrine and writing (the author is Polish).

The biography of Montesquieu is also an important context for the present research. After all, in 1716 he inherited the office of Président à Mortier in the Parlement of Bordeaux, which was at the time chiefly a judicial and administrative body. For the next eleven years he presided over the Tournelle, the Parlement's criminal division, in which capacity he heard legal proceedings, supervised prisons, and administered various punishments including torture.

The focal point of this paper is a structural analysis to decompose and separate, the complex notion of punishment in Montesquieu's political and legal thought into simple elements. The author mainly uses the following methods of legal research in his work: the historicaldescriptive method, the hermeneutic method, and the method of axiological analysis. The anticipated outcome of this research is a systematized and crystallized conception of punishment in Montesquieu's political and legal thought.

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USTAVNOPRAVNI OSNOV SMRTNE KAZNE U USTAVNOJ ISTORIJI SRBIJE

Pravo na život predstavlja elementarno ljudsko pravo. Ono je jedno urođeno, prirodno pravo, neodvojivo od čovekove ličnosti. Zbog toga ovo pravo uživa najvišu pravnu zaštitu kako niko ne bi bio lišen života proizvoljno. Stoga je nužno na ustavnom nivou obezbediti garancije prava na život. Ustavno pravo na život, kao i druga ljudska prava, predstavlja granicu delovanja države. Ovo je posebno važno u kontekstu postojanja smrtne kazne u sistemu krivičnih sankcija. Smrtna kazna je jedna od nastarijih krivičnih sankcija. Međutim, ona predstavlja negaciju prava na život. Zbog toga u XIX veku pod uticajem abolicionističkih učenja dolazi do ukidanja smrtne kazne u mnogim sistemima ili pooštravanju uslova za njenu primenu. Zabrana smrtne kazne u ustavu postaje način garantovanja prava na život.

Imajući u vidu značaj prava na život i zabrane smrtne kazne, ovo izlaganje posvetićemo ustavnim odredbama o smrtnoj kazni u srpskoj ustavnoj istoriji. Sretenjski ustav iz 1835. godine, Turski ustav iz 1838. godine i Namesnički ustav iz 1869. godine ne sadrže zabranu smrtne kazne. Za Sretenjski ustav i Turski ustav se može reći da je to očekivano, shodno duhu vremena u kome su doneti. Odredbe o smrtnoj kazni se u našoj ustavnosti javljaju prvi put u Ustavu Kraljevine Srbije iz 1888. godine (Radikalskom ustavu). Ovim ustavom je zabranjena smrtna kazna za političke krivice, ali su predviđeni izuzeci, tj. bilo je moguće izreći smrtnu kaznu iako se radilo o političkim kriivčnim delima (atentat ili pokušaj atentata na kralja ili članove kraljevskog doma, političko krivično delo koje je izvršeno u sticaju sa drugim krivičnim delom za koje jeste propisana smrtna kazna, krivična dela za koja se po vojnim zakonima može izreći smrtna kazna). Zakonodavac je ustavom bio ograničen prilikom propisivanja smrtne kazne, ali uz bitne izuzetke. Ove odredbe su bile predmet široke rasprave u Ustavotvornom odboru.

Ustav Kraljevine Srbije koji je kralj Aleksandar Obrenović oktroisao 1901. godine je u većoj meri ograničio zakonodavca u propisivanju smrtne kazne. Ovim ustavom je bilo predviđeno da se smrtnom kaznom može kazniti samo ubistvo s predumišljajem, hajdučija, atentat na vladaoca ili članove njegovog doma, i slučajevi koji su predviđeni vojnim zakonom. Zakonodavac je bio ograničen taksativno navedenim krivičnim delima, po sistemu zatvorene liste, s tim da je veća sloboda zakonodavca postojala jedino kod propisivanja krivičnih dela u vojnim propisima.

Nakon kraja vladavine Obrenovića 1903. godine, na snagu je umesto Oktroisanog ustava iz 1901. godine vraćen Ustav iz 1888. godine, uz određene izmene. Međutim, odredbe o smrtnoj kazni nisu menjane.

Iste odredbe su nastavile da važe i za vreme Ustava Kraljevine Srba, Hrvata i Slovenaca (Vidovdanskog ustava) iz 1921. godine, jer su praktično prepisane iz Ustava iz 1903. godine, uprkos opsežnoj raspravi koja je postojala u Ustavotvornom odboru za izradu ovog ustava. Ipak, iako je to značilo da za političke krivice nije mogla biti propisana smrtna kazna u krivičnom zakonu, iste godine kada je usvojen ovaj Ustav, donet je Zakon o zaštiti javne bezbednosti i poretka u državi, kojim su radi borbe protiv komunističkih i anarističkih ideja bila propisana određena krivična dela. Za ta krivična dela je bila propisana smrtna kazna ili kazna zatvora u trajanju do 20 godina. Na taj način je specijalnim zakonom predviđena smrtna kazna za kriivčna dela koja imaju političku konotaciju, a izvan redovnog krivičnog zakonodavstva. Sa ustavnopravnog aspekta ovaj zakon je važan i zato što je on suštinski predstavljao ograničenje političkih sloboda, pod pretnjom smrtne kazne ili dugogodišnje robije.

Naš poslednji ustav predsocijalističke građanske ustavnosti, Ustav Kraljevine Jugoslavije (Septembarski ustav) iz 1931. godine je napravio korak unazad, budući da se uopšte nije bavio pitanjem smrtne kazne, te je ovo pitanje u potpunosti ostavio volji zakonodavca.

Kada je reč o socijalističkom periodu naše ustavnosti, Ustav FNRJ iz 1946. godine ne sadrži odredbe o smrtnoj kazni. Ustav SFRJ iz 1963. godine je predviđao da su život i sloboda čoveka neprikosnoveni, a da se smrtna kazna može izuzetno predvideti samo saveznim zakonom za najteža krivična dela i da se može izreći

samo za najteže oblike takvih dela. Na ovaj način je bilo omogućeno da se smrtna kazna propiše samo saveznim, a ne i republičkim krivičnim zakonodavstvom. Međutim, smrtna kazna je prema Ustavu mogla biti propisana za najteža krivična dela, što je pravni standard podložan različitim tumačenjima, a posebno prilagođavanju ideološkom momentu. Ipak, ovaj Ustav je po prvi put izričito predvideo pravo na život čoveka, a propisivanje smrtne kazne ograničio jer ona predstavlja izuzetak od prava na život. Slične odredbe su postojale i u Ustavu SFRJ iz 1974. godine, s tim da je izostala formulacija da se smrtna kazna može predvideti samo saveznim zakonom, pa su i republike mogle svojim krivičnim zakonodavstvom predvideti smrtnu kaznu.

Po obnavljanju građanske ustavnosti, Ustav SR Srbije iz 1990. godine je preuzeo odredbu Ustava SFRJ iz 1974. godine. Usledio je Ustav SRJ koji propisivanje smrtne kazne nije ograničio samo na najteže oblike teških krivičnih dela, već je predvideo da se smrtna kazna ne može predvideti za krivična dela koja se propisuju saveznim zakonom. To znači da je smrtnu kaznu bilo moguće predvideti samo zakonodavstvom država članica.

XX vek je doneo ustavne promene koje su u potpunosti zabranile smrtnu kaznu u Srbiji, najpre kroz Povelju o ljudskim i manjinskim pravima i građanskim slobodama, donetoj u okviru Državne zajednice SCG 2003. godine, a što je sledio i važeći Ustav Republike Srbije iz 2006. godine.

Posmatrano sistematskim metodom, za pitanje smrtne kazne su od značaja i neke druge odredbe koje su našle mesto u našim ustavima, kao što su načelo *nullum crimen nulla poena sine lege*, načelo da kazne izriču isključivo sudovi, načelo jednakosti građana, pravo okrivljenog na odbranu, načelo nezavisnosti sudstva i sl. Radi se, dakle o načelima krivičnog materijalnog i krivičnog procesnog prava, ljudskih prava i sudske vlasti. Pored toga, za primenu smrtne kazne je od značaja institut pomilovanja, a davanje pomilovanja je standardno ustavnopravno ovlašćenje šefa države.

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EKONOMSKE SANKCIJE U MEĐUNARODNOM PRAVU NA PRIMERU SAVEZNE REPUBLIKE JUGOSLAVIJE 1992-1996.

Kada govorimo o sankcijama u međunarodnom pravu uglavnom se misli na represivne mere koje imaju za cilj da određenog nosioca međunarodnih prava i obaveza primoraju na poštovanje međunarodnopravnih normi i pravila koja taj subjekt krši ili ugrožava svojim činjenjem, odnosno nečinjenjem. Iz tog razloga ovaj rad je posvećen jednoj vrsti tih sankcija, a to su ekonomske sankcije. Savezna Republika Jugoslavija se u periodu od maja 1992. do novembra 1996. godine našla na udaru teških ekonomskih sankcija koje je uvela međunarodna zajednica zbog navodnog mešanja državnog rukovodstva SRJ u ratne sukobe na prostoru tadašnje Bosne i Hercegovine. Ekonomski sunovrat Savezne Republike Jugoslavije pod ovim sankcijama, koji je trajao pune četiri godine, doveo je do potpunog ekonomskog kolapsa privrede i ekonomije, osiromašenja građana i uništenja opšteg životnog standarda, ekonomske blokade i hiperinflacije, nedostatka osnovnih životnih namirnica, goriva, lekova, energenata. Ekonomska blokada koja je bila obavijena ratnim vihorom u potpunosti je razorila državu koja je već godinama unazad počivala na poljuljanim temeljima posrnule privrede i ekonomije. Autor će u radu pokušati da objasni čitav splet događaja koji su po narod i tadašnju državu imale jedne od najrigoroznijih ekonomskih sankcija koje je međunarodna zajednica izrekla na samom kraju 20. veka protiv jedne evropske države.

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THE EVOLUTION OF PUNISHMENT IN THE CODES OF THE CONGRESS KINGDOM OF POLAND IN THE FIRST HALF OF THE 19TH CENTURY

Much has already been written about the history of Polish criminal law. However, due to the variety of legal systems under which Poles lived in the nineteenth century, many research topics still remain unexplored. It seems that an interesting issue is the evolution of penalties in the codifications of the Congress Kingdom of Poland, established at the Congress of Vienna in 1815. The history of this Russian-dependent country is interesting in itself, especially if one looks at the growing Polish national liberation movement of the time and, simultaneously, the large group of Poles openly advocating close cooperation with the Russians. The evolution of punishments in the codifications of the time appears to show this interesting period in a new light.

The subject of the study is two penal codifications: the Penal Code of the Kingdom of Poland and the Code of Main and Corrective Penalties, as well as all their modifications and changes introduced over the years. The analysis of the development of the institution of punishment should be based on the broader historical context of the complicated realities of the Polish lands under Russian rule. However, in order to gain a better understanding, it is also necessary to verify the historical sources describing the execution of these punishments. This will make it possible to answer the research questions: How did penalties evolve in the penal codifications of the Kingdom of Poland? How did penalties affect people? To what extent were they a political tool and a method used to repress uncooperative subjects? How did the institution of punishment in these codifications look in comparison with the rest of Europe during the discussed period?

After years of wars with Napoleon, often fought under the banner of Poland's liberation, the great powers decided to (at least to some extent) meet the expectations of the Poles and grant them some autonomy. The furthest in this direction was Emperor of Russia Alexander I, who became King of Poland, the ruler of a theoretically independent state with its own liberal constitution and linked to Russia only by the person of the ruler. This attempt at a peaceful, relatively conciliatory taming of the Poles' independence aspirations was also reflected in the legislation of the time - the aforementioned constitution, as well as in the penal codification.

The Penal Code of the Kingdom of Poland of 1818 can be considered the result of a compromise. It contained some definitely modern elements, such as the tri-division of offences into felonies, misdemeanours and offences (which had already been present in the legislation of the Duchy of Warsaw). On the other hand, however, it retained archaic corporal punishment, including flogging, the preservation of which was one of the main demands of the nobility. Therefore, it is included in the group of codes of the so-called transitional era - from feudalism to capitalism.

Differences can also be seen in the ideological field. This is because the Code was, as recommended by the authorities, modelled on the Austrian legislation. This is often presented in the literature as an example of the Polish elite's obedience to the new king. However, the Code also contained extremely liberal elements, such as the principle of *nullum crimen sine lege*. Although it was defined somewhat imprecisely, it should still be regarded as an example of liberal tendencies.

In terms of penalties, the Code introduced the main penalties: the death penalty, life imprisonment, temporary fortified imprisonment of 10 to 20 years and heavy imprisonment of 3 to 10 years. In addition, the Code also included a catalogue of corrective punishments: house of correction from 8 days to 3 years, public detention from 8 days to 3 years, corporal punishment from 16 to 120 times and fines. Police penalties were a separate category: fines, police custody and house arrest for up to 8 days, corporal punishment for up to 16 times. At the same time, it should be noted that the individual penalties of imprisonment

(aggravated by pillory, stigma, chaining and others) were very different. The death penalty came in two versions: hanging or beheading. As if this were not enough, the code also provided for additional penalties such as forced labour. After 1831, the penalties of confiscation and exile were also added. This was directly related to the defeat of the November Uprising and served to legitimise the repression of its participants.

Despite the harsh punishments typical of the Enlightenment era, the Code was a manifestation of a liberalising compromise, which unfortunately did not last long. This was due to a change in the political situation after the November Uprising and, as a consequence, the introduction of mass Russification and the deprivation of autonomy for the Congress Kingdom. One of the consequences of these events was a change in the criminal laws applicable in the Congress Kingdom. They were significantly expanded and sharpened in the Code of Main and Corrective Penalties, which abolished the Penal Code of the Kingdom of Poland and introduced legal tools of repression against activists or sympathisers of national liberation circles.

This act was a decisive step backwards in terms of the solutions it adopted. The punishment system was also further developed. The Code implemented the so-called theory of discouragement - its severity was to discourage subjects from opposing the tsarist authorities in any way. This was to be achieved, among other things, by an almost unbelievably complex and extensive system of main and corrective punishments. Punishments of exile, divided into degrees, were numerous. The penalty of deprivation of public rights was also introduced, which had a similar effect to that of the civil death known from the French system. In addition, confiscation, corporal punishment, dishonourable punishment and even ecclesiastical penance can be mentioned.

In the light of the above, a certain trend in evolution can be discerned. It seems legitimate, therefore, to lean into this problem in detail. For this purpose, it is necessary to analyse not only the legal acts themselves and set them in historical reality, but also to verify their application and the effect they have had on those punished. Due to the historical-legal nature of such a study, it may serve both to better understand historical processes and to add a certain voice to the discussion on the history of Polish criminal law.

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OSTRACISM – „PUNISHED“ BY DEMOCRACY

Ostracism was a political instrument used in Ancient Athens during the 5th century BC, with the purpose of fighting tyranny in favor of strengthening democracy. It represented a form of banishment of an unwanted persona from the city-state of Athens, for the period of 10 years, without any further punishments or charges. The Athenian citizen was to be exiled from Athens (and the whole of Attica) because of his political actions, for his power and influence were considered to be a danger for the harmonical democratic system.

The subject of this paper is the question of the nature of ostracism as a political measure, its introduction to the Athenian legal order, the regulation and the procedure, and finally, its replacement with *graphe paranomon*. In order to give a brief analysis of the institution of ostracism, the paper will be based on both Ancient Greek sources and contemporary scholarly literature.

Ostracism was used only in the 5th century BC, and during its entire existence it was used very few times. Both literary and archeological sources testify to the origin of ostracism. The procedure ceased to exist in the 4th century BC, and it is considered that it was replaced with a special court procedure initiated by *graphe paranomon*, a type of public lawsuit, i.e., suit against contrary to the laws.

The views of legal and historical scholars differ in their understanding of ostracism. It can be said, however, that ostracism was not a punishment in the sense of criminal law (even though, at first glance, it resembles it) – it was a political „punishment“ directed towards a „guilty“ individual. Plutarch writes that ostracism is not to be considered a penalty, however, many other of his descriptions of ostracism are recognized as uncertain.

The question is what the precise motive for the ostracism was. Although Aristotle, in the Constitution of the Athenians, states that ostracism was based on the suspicion that the powerful ones were to become tyrants, interpretations of modern scholars find that ostracism existed for the purpose to maintain the stability of polis' leadership and to resolve conflicts between the members of the elite.

The ecclesia, which consisted of all the free citizens with the ability to vote, held the voting for ostracism once a year, with the required quorum of 6000. The voting was in the form of a two-round election – the first round being the one for making the decision on the need of ostracism (the requirement was the simple majority), and the second held as a negative referendum (with the requirement of plurality).

Ancient Athens gave democracy to the civilization and the priceless is its' value which was left to the society and law. However, a short period of its' history was marked by ostracism as a questionable and possibly unjust legal mechanism, that is, a political idea which could perhaps be of greater danger to legal and political balance than in favor of its protection.

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„ZAKONITOST“ POLITIČKOG TERORA - PRIMER SOVJETSKOG SAVEZA U MEĐURATNOM PERIODU

Krivičnom pravu, kao ius puniendi države, istorijski je imanentna opasnost od zloupotrebe koja je uglavnom značajnija nego u drugim granama prava. Pred zakonodavcem u krivičnopravnoj materiji je uvek delikatan zadatak. On, s jedne strane, treba da odredi koja su to najviša dobra jedne zajednice koja bi trebalo zaštiti i, s druge strane, način na koji će se ta dobra zaštiti. Izvestan broj dobara – kao što je ljudski život – štitila je uglavnom svaka pravom uređena zajednica. No, istorija obiluje primerima zloupotrebe krivičnog prava u svrhe zaštite, ne društvenih dobara, već političke pozicije izvesnih pojedinaca ili grupa.

Primer Sovjetskog Saveza (SSSR) u međuratnom periodu nudi obilje primera kako se krivično pravo može izroditi u mehanizam „kaznene industrije“. O brutalnosti sovjetskog kaznenog sistema napisane su stotine tomova istoriografije, kao i neka od najboljih dela distopijske književnosti. Sa pravne strane pak, značajan je uvid u to koliko se ekstenzivno pojedine pravne norme mogu tumačiti, te kako se na osnovu njih čisto nasilničke akcije mogu smatrati formalno zakonitim.

Krivično pravo SSSR-a, nastalo na jednoj od najznačajnijih revolucija u istoriji, od samog početka je bilo pod snažnim uticajem specifično boljševičke socijalističke misli. Najvažniji teoretičar početnog perioda i jedna od najvažnijih sovjetskih ličnosti uopšte, Vladimir Ilič Lenjin, imao je osobeno revolucionaran pristup krivičnog prava. Od samog početka sumnjičav prema vekovima starim principima, kao što je nullum crimen nulla poena sine lege, temelj sovjetske krivičnopravne misli imao je velike izglede da pruži mogućnost zloupotrebe u budućnosti.

Tehnika pisanja krivičnopravnih normi sovjetskog zakonodavca, izradila je neke od najelastičnijih pravnih formulacija dvadesetog veka. Zakonske definicije termina kao što su „kontrarevolucionarnost“, „izdaja“, te pripremne radnje koje podrazumevaju „bilo koju vrstu organizacione aktivnosti usmerene ka izvršenju krivičnih dela protiv države“, uz neizbežno stroge kazne poput streljanja, konfiskovanja celokupne imovine ili progonstva, pravnicima nude plodno tle za raspravu o pitanju zakonitosti takvih normi. Sovjetski kazneni sistem, uz, doduše, nemali broj drugih primera u istoriji, služi kao potvrda dobro poznatog pravila: čak i vlastodršci koje pravo ne sputava ni u čemu, svoja dela pokušavaju da utemelje u pravu.

Glavna teza rada je da istorija ekstremnih primera nudi najjasniji uvid u moguće razmere instrumentalizacije krivičnog prava u političke svrhe. Lišeno svoje primarne, zaštitne funkcije, krivično pravo je pogodno da postane gotovo svemoguće oružje za razračunavanje sa političkim protivnicima. Pažnja će biti posvećena specifičnostima vrlo strogih sovjetskih sankcija. Analiziraće se procesni mehanizmi koji su omogućili brzinu i lakoću osude miliona ljudi u relativno kratkim vremenskim periodima. Rad se primarno bavi primerima iz primene Krivičnog zakonika RSFSR iz 1927, koji je dopunjen 1934 – u vreme pripreme i početka velikih političkih čistki u Sovjetskom Savezu.

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PUNISHMENT AS A MEAN OF OPPRESSION AGAINST FREE MEDIA

The paper examines the use of punishment as a mean of oppression against free media in the Yugoslav period. First, the period of great media freedom in the Kingdom of SHS is analysed, as well as the changes that reduced media freedom after the pronouncement of the Kingdom of Yugoslavia. After the Second World War, which was followed by the communist revolution, the role of the media changed completely, as did the legislation that regulates them. The media was understood as a means of spreading official ideology and party propaganda. Special emphasis is placed on the suppression of the opposition press (which took place simultaneously with the suppression of the opposition in 1945 and 1946). After the complete establishment of communist regime, the suppression of dissident attempts at social criticism, as well as the emigrant press, has followed.

At the beginning of the nineties, an apparent democratization was implemented, but the government technology remained the same. The first opposition media appeared, but they did not gain much influence and were under pressure from the beginning. Over time, the opposition media began to grow stronger, which is why the Law on Information was passed in 1998, with the aim of financially destroying the opposition media.

The paper shows punishment as a mean of influencing the media, but also analyses informal ways of suppressing the media, emphasizing that they are most often used side by side. The most interesting form of informal control is the decision of the printing house workers to refuse to print unsuitable books and newspapers. Finally, the provisions of the Law on Information from 1998 are analysed, as the peak of state repression of the media.

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LAW, PUNISHMENT AND SANCTIONS IN BASQUE LAW

This paper is focused on the study of punishments and sanctions in the Basque legal system. Specifically, regarding the territoy of Biscay and the various laws, norms and ordinances that were in force during the 13th-19th centuries.

Firstly, there is a presentation of the territory, whose capital city is Bilbao, and the different laws and regulations that were used during those years. All of them are of Basque origin and were used exclusively in this territory. Next, the most common punishments and sanctions are discussed. Moreover, concrete examples, which took places during those centuries, are giving. In order to do so, documents from different archives are used. I consider the latter to be very important as that documentation is the practical reflection of the legal theory.

The objective is to give a vision of Basque criminal law from a theoretical point of view, but also its practical part in the examples that can be found in the archives.

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NASILNIČKI KRIMINALITET I KRIVIČNE SANKCIJE U KRALJEVINI JUGOSLAVIJI

U radu će biti prikazani statistički podaci o stopi kriminaliteta u Kraljevini Jugoslaviji u periodu od 1929. do 1940. godine. Podaci izneti u radu prevashodno su zasnovani na podacima navedenim u Statističkim godišnjacima Kraljevine Jugoslavije, koji su izdavani za period od 1929. godine do 1940. godine od strane Opšte državne statistike. U ovom periodu izdato je 10 tomova, tačnije 10 godišnjaka koji su predstavljali svojevrsni skup statističkih podataka vezanih za podatke od značaja, kao što su podaci o stanovništvu (popis stanovništva iz 1921. i 1931. godine), privredi (uključujući podatke o poljoprivredi, industriji, saobraćaju, trgovini), prosveti, kulturi, državnoj upravi (obuhvatajući podatke o vojsci i mornarici, činovništvu i državnim finansijama), ali i bogate navode o kriminalitetu u državi. Podaci o kriminalitetu na području Kraljevine prikazani su kroz praksu okružnih i prvostepenih sudova, sreskih sudova i kaznenih zavoda. Podaci o kriminalitetu podrazumevaju dosta bogatu evidenciju i podatke o vrsti krivičnog dela i sankcijama izrečenim njihovim učiniocima, ali i podatke o osuđenim licima kao što su pol, starost, veroispovest, pismenost, narodnost… Autor će pokušati da analizom dostupnih podataka predstavi jednu celokupnu i detaljnu sliku o nasilničkom kriminalitetu, tačnije o prekršiocima i sankcijama na koje su osuđeni.

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WITCHCRAFT IN LAW OF THE FIRST REPUBLIC OF POLAND (SIXTEENTH - EIGHTEENTH CENTURY) - CAUSES AND EFFECTS, OCCURRENCE, TRIALS, PENALTIES

Poland, inter alia, due to the Warsaw Confederation signed in 1573, ensuring freedom of religion, is often called *a country without stakes*. While in other European countries, especially in the West, pogroms of witches, witch trials, widespread panic and witch hunts were a mass phenomenon, in Poland such events had much less resonance.

However, one should consider whether or not such situations did not happen in practice at all. Accordingly, if they did in fact occur, it must mean that the law of the time could not have been indifferent to them.

Law, often described as the basic regulator of social life, tries and has always been trying to react and not remain indifferent to issues which are important from the point of view of those in power and widely understood society or the elites.

My paper aims to address this problem and aims to be an answer to the question of whether, despite the declarations and the image of Poland as a *state without stakes* currently existing in the Polish national and historical consciousness, witchcraft trials really occurred, and if so - although they were not as common as in other countries - to present the best known and the best described witchcraft trials in early modern period of Polish history.

Having taken into consideration the confirmed presence of such a state, I will look for reflection of these phenomena in the legal status of the Republic of Poland in the early modern era. I will focus on how the law tried to define and describe similar phenomena, how the trials in such and similar cases looked like from the point of view of criminal law and if and under what conditions penalties were imposed.

I will also try to compare this problem with a broader European perspective, highlighting the reasons for the penalization of this phenomenon and its later decline.

As I have mentioned above, this is not only a Polish problem, but a pan-European one, and, having taken into account the events of 1692 in Salem, Massachusetts, it can also be described even as a global phenomenon.

The research method is comparative work with Polish historical sources as well as studies and achievements of the Polish history of the political system with a connection to its European context.

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COERCION, PUNISHMENT, VIOLENCE IN THE RUSSIAN HISTORY OF LEGAL AND POLITICAL DOCTRINES OF THE XX CENTURY: GENERAL TRENDS AND CROSS-CUTTING THEMES

My research analyzes the attitude of Russian representatives of the philosophy and theory of law of the XX century on the topics of coercion in law, punishment for offenses and violence.

I will specifically note: my research does not pretend to be completeness, the achievement of which was not set as a purpose of the research. And is complete, exhaustive research of political and legal thought even possible? It is definitely impossible that I will prove in my narration. My research lacks the political and legal ideas of many outstanding lawyers of the past. The political and legal ideas of the scientists of the Grand Duchy of Finland, the Kingdom of Poland, the Asian territories of the Russian state, etc. also remained unconsidered in my narrative.

In my research, I have identified several general trends and cross-cutting themes in the development of Russian philosophy and theory of law of the XX century. Given the purposes I have set, I have decided that my narrative will not be chronological. Following the chronological order of the narrative sequentially by historical epochs (which were most often associated with the activities of rulers) is not able to completely show the development of philosophical and theoretical-legal thought. The chronological narrative is not able to describe the cross-cutting themes of the legal and political doctrines of scientists who lived on the territory of the Russian state in the XX century.

In the research, I repeatedly give examples from the history of the legislation of the Russian state (for example, from the Criminal Code of the Russian Soviet Federative Socialist Republic of 1926). The research provides assessments of legal monuments by their contemporaries.

The research presents the political and legal ideas of not only scientists, but also cultural figures such as Leo Tolstoy (1828-1910) and Anton Chekhov (1860-1904). I would like to note that many of the persons represented in my research were students or teachers of Saint-Petersburg (formerly Leningrad) University - the oldest working university in the territory of the Russian state. I would like to add that I pay great attention to the political and legal ideas of Academician of the Russian Academy of Sciences, lawyer and creator of the libertarian legal theory of law Vladik Nersesyants (1938-2005).

In my application, among the general trends and cross-cutting topics that I have analyzed, I especially want to highlight the part of the research that is devoted to countering the use of the death penalty. Some representatives of Russian philosophy and theory of law were characterized by a position on countering the use of the death penalty. For example, in my research it is told about Nikolay Tagantsev (1843-1923), a professor at the Faculty of Law of St. Petersburg University. In his scientific arguments, he mentioned not only doctrinal theoretical arguments in favor of the abolition of the death penalty, but he also mentioned the practical foreign experience of Italy, Holland, Belgium. I would like to note that in my research I am referring not only to the political and legal ideas of lawyers, but also to the ideas of human rights defenders and public figures. The humanist, Nobel Peace Prize laureate Andrey Sakharov (1921-1989), who, having no special legal education, allowed lawyers to look at the unprofessional legal society and the public opinion, which is very often dramatically different from the opinion of lawyers. In my opinion, I would like to highlight the most consistent and academically reasoned (by referring to the political and legal ideas of Immanuel Kant and his concept of equivalence) opinion on the place of the death penalty in the modern system of punishments, which was shown by Vladik Nersesyants.

In my application, among the general trends and cross-cutting topics that I have analyzed, I especially want to highlight the part of the research that is devoted to new interpretations of political and legal doctrines of the past. The Russian philosophy of law is characterized by numerous intentional revision and

distortion of thoughts written by philosophers and legal theorists of the past. Especially such activities were characteristic feature of the socialist stage of the development of law and the state. This part of my research examines in detail the attitude of Vladimir Lenin (Ulyanov) (1870-1924), a graduate of the Law Faculty of St. Petersburg University, to the concepts of "violence" and "law". In my research, I show the changes in the interpretations of the political and legal ideas of Vladimir Lenin, which were carried out by scientists in the XX century. This part of my research analyzes the unscientific intentional distortion of legal terms and constructions after the death of Vladimir Lenin in the conditions of perverse abuse of the legal dictionary, which was carried out with the aim of justifying with the help of legal categories of non-legal phenomena. My conclusions are confirmed by the research of Professor of the Faculty of Law of St. Petersburg University, Genevra Lukovskaya (born 1939), who argued about the infinity of possible scientific interpretations.

In conclusion, I would like to say that my research contains other parts devoted to general trends and cross-cutting topics in the Russian history of legal and political doctrines of the XX century. My research talks about the attitude of Russian scientists of the XX century to the executors of punishments. I analyze the thesis "violence begets violence", that was frequently used in the Russian history of legal doctrines. I describe the attitude of scientists and cultural figures of the XX century to the conditions of serving sentences by offenders.

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TELESNE KAZNE U SRBIJI U 19. VEKU

Na samom početku rada objašnjava se poreklo telesnih kazni u srpskom pravu. Autor zauzima stanovište da su ove kazne velikom delom relikt prošlosti i da su preuzeti iz srpskog srednjovekovnog prava u koje su opet mnoge od tih kazni uneti pod utacajem Vizantije, čime se opovrgava stav nekih pravnih istoričara o zaostalosti slovenskih naroda i surovim kaznama u pravnim sistemima slovenskih zemalja. Zatim će biti iznet stav autora da ovakva surovost kazni u Srbije Prvog srpskog ustanka zapravo potiče od činejenice da je reč o državi u kojoj je ratno stanje redovno stanje i da je državni aparat još uvek nedovoljno izgrađen, a svest narod primitivna. Ovome u prilog govori i preuzimanje dela krivičnih sankcija iz austrijskog vojnog zakonodavstva.

Veliki procenat osuda na telesne kazne biće prisutan i u periodu između 1815. – 1840. godine. Uzrok ovakvom stanju treba tražiti u malim zatvorskim kapacitetima, nedostatku sredstava za izgradnju zatvora, ali i generalnoj prevenciji putem zastrašivanja stanovništva. Ono što je takođe indikativno je da je telesna kazna, ali i sistem krivičnih sankcija u Srbiji prvi put detaljno regulisan u Ustrojeniju sudova okružnih tek 1840. godine. Regulisanje ove materije u organizacionom aktu dovoljno govori o stanju pravosuđa Srbije toga vremena. Postojanje dve vrste telesnih kazni boja štapova i boja kamdžijom doneklo uvodi red u ovo oblasti,ali kaznena politika i dalje ostaje surova. Policijska uredba iz 1850. godine će precizno definisati priemnu telesnih kazni u odnosu na pol i starost učiinilaca krivičnih dela. Veoma je značajno napomenuti da su pojedine kategorije stanovništva bile isključene iz primena telesnih sankcija, pa su tako Turskim ustavom iz 1838. godine sveštenici i činovnici izuzimaju od primene ovih kazni dok čć uredbama iz 1842., dok je krug lica koja se za dela iz nehata nemogu osuditi na telesnu kaznu bio propisan još 1833. godine. Ova materija biće dopunjavana uredbama iz 1842. i 1850. godine. Zanimljivo je da se Policijskom uredbom iz 1850. godine određuje i karakter lica kojima treba izreći telesnu kaznu, kao i to da izracenje telesne kazne zavisi od prethodnog ponašanja učionioca dela. Od 1853. godine loše zdravstveno i telesno stanje biće osnov za zamenu telesne kazne novčanom.

Što se tiče telesnih kazne pre donošenja Krivičnog zakonika jasno možemo razlikovati tri vrste boj, kamdžiju i rogozu i šibu. Pravilo je bilo da se batananje štapovima primenjuje samo na odrasle muškarce, ali se ovo ne može bezrezervo uzeti, jer postoje dokazi koji govore u prilog postojanju izuzetaka. Kamdžija i rogoza služile su za kažnjavanje žena i maloletnika, dok je šiba bila predviđena za najteže prestupe. Najteži oblik šibe mrtva šiba je u suštini bila supstitut za smrtnu kaznu i učestalost njene primene je rasla linearno sa stopom kriminaliteta u društvu. Ipak, ova kazna će biti prva telesna sankcija koja će biti zvanično ukinuta. Do njenog ukidanja doći će 1859. godine usled njene nepopularnosti i odbijanja građana da učestvuju u procesu njenog izvršenja. Postojanje presuda koje predviđavaju kaznu sakaćenjem je pre izuzetak nego pravilo.

Za razliku od prethodnih krivičnopravnih propisa koji se pre svega oslanjaju na srpsko običajno pravo i austrijske vojne propise Krivični zakonik Srbije iz 1860. godine pod uticajem nepostajanja telesnih kazni u Pruskom, i Bavarskom krivičnom zakoniku zadržava samo jednu telesnu kaznu-boj.Interesantno je da se postajanje telesne kazne zajedno sa nekom drugom kaznom zapaža i pre donošenja Krivičnog zakona. Što se tiče članova 32 i 33. KZ koji regulišu način izvršenja krivične sankcije za prestupe ponovo se vodi računa o starosti, polu i zdravstvenom stanju osuđenog, samo se sada izvršenje telesne kazne ograničava na skitnicu, slugu, šegrta, nadničara, kradljivca i pustahiju. Polako prodire shvatanje da se ova kazna treba izricati samo izuzetno, jer je njen preventivni efekat, kao i efeakt resocijalizacije krajnej diskutabilan. KZ je zabranjeno i izricanje telesne kazne licima starijim od 50. godina, a li je osnivanjem prekih sudova tri godine kasnije ovo ograničenje ukinuto. Od 1863. godine sse barem formalno ukida javno izvršenje telesne kazne, da bi 1873. godine telesne kazne bile prognane iz srpskog krivičnog prava.

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KAZNA U ZAKONIKU PETRA I PETROVIĆA NJEGOŠA

U radu će biti proučeni i objašnjeni aspekti kaznene politike vladike i četvrtog po redu vladara Crne Gore iz dinastije Petrović Njegoš – Petra I, koji je bio glavni inicijator pisanja prvog zakonika tog tipa u crnogorskoj pravnoj istoriji (1798). Prethodila mu je tzv. Stega kao prvi pisani novovekovni pravni spomenik u Crnoj Gori, ali je bila više deklarativnog karaktera, nastala kao pravni izraz stvaranja jedinstvene političke zajednice nakon pobeda u bitkama na Martinićima i Krusima (1796). Zakonikom Petra I, na tragu i legitimitetu Stege, to jedinstvo dobija formalnopravne okvire i dalje se institucionalizuje formiranjem prvih državnih organa, u prvom redu zajedničkog sudstva. U radu će biti izložena analiza Zakonika opšteg crnogorskog i brdskog u kontekstu i duhu vremena kad je pisan (kraj 18. veka), izvori iz kojih je stvaran, namera zakonodavca, cilj i svrha zakonika, a posebno će biti elaboriran primetan uticaj običajnog prava i kosovskog mita u Zakoniku.

Pravna istorija Crne Gore predstavlja važan deo ukupne pravne istorije srpskog naroda. Ona seže u veoma daleku starinu, sve do vremena slovenskih seoba na Balkansko poluostrvo iz vremena ranog srednjeg veka i formiranja prvih slovenskih država (među njima bila je i Duklja), preko država Nemanjića, Balšića i Crnojevića u tzv. razvijenom srednjem veku, sve do epohe dinastije Petrović-Njegoš u novom veku. U pravnoj istoriji poslednji period je ostavio najznačajniji trag. Pored Zakonika Petra I, važni su i Zakonik Danila I (1855), Opšti imovinski zakonik za Crnu Goru (1888) i Ustav Knjaževine Crne Gore (1905). Kroz sve navedene periode u razvoju crnogorskog prava provejava duh običajnog prava kao očita konstanta i inspiracija, posebno za potonje kodifikacije.

Zakonik Petra I ima izrazitu običajnopravnu podlogu. Može se reći da su uticaj običaja, istorijska svest i kosovski mit presudno oblikovali normativni tekst kodifikacije. Crna Gora je poslednja srpska zemlja koja je pala pod vlast Osmanskog carstva i prva koja se nje oslobodila. U svesti Crnogoraca se tokom vekova borbe urezao Kosovski mit o Milošu Obiliću i Vuku Brankoviću kao dve suštinske suprotnosti srpskog istorijskog apeirona, zbog čega je izdaja, kao što će se videti u radu, najglasnije žigosana. To i jeste jedan od povoda za pisanje Zakonika o kojem govorimo. Samo je jedan opšti pravni spomenik mogao pomoći ondašnjoj Crnoj Gori, podeljenoj zavađenim plemenima i stešnjenoj od moćnog i neblagonaklonog suseda, Osmanskog carstva.

O liku i delu vladike Petra I najčešće se govori iz ugla njegove uloge u pravoslavnoj duhovnosti, što ne čudi s obzirom na činjenicu da ga je narod još za života video kao „svetog vladiku“, a crkva upamtila kao Svetog Petra Cetinjskog. Ovim radom, između ostalog, želimo da kao pravnici skrenemo pažnju i na izuzetne pravne domete Petra I Petrovića Njegoša. U radu iznosimo tezu da je njegova zakonodavna inicijativa odigrala ključnu ulogu u konsolidaciji Crne Gore kao celine i utrla put svakoj daljoj državnoj izgradnji Crne Gore u prav(n)om smislu reči. Petar I je sjedinjavao Crnu Goru kletvom, krstom i zakonom.

Zakonik opšti crnogorski i brdski, kao što je na početku rečeno, fokusira se na krivično-pravne odredbe i reguliše primenu različitih, često i nemilosrdnih sankcija za različita ponašanja koja tretira kao protivpravna, kao što su krađa, ubistvo, silovanje i izdaja. Jedan od ciljeva Zakonika bilo je i suzbijanje krvne osvete i neovlašćene samopomoći. Kao glavne sankcije figuriraju progonstvo, fizičke i imovinske sankcije i gotovo neizostavna infamija (trajan gubitak časti, kroz izricanje kletve od samog vladike). Kletva koja je uneta u tekst Zakonika sa današnjeg stanovišta može izgledati neobično, međutim u vremenskom kontekstu i stepenu razvoja tadašnjeg crnogorskog društva, kao i činjenice da država u nastajanju nije imala izgrađen monopol fizičke sile, postaje jasno zašto se zakonodavac opredelio za tu vrstu pravnog izraza. Čini se da je to urodilo plodom, pošto je većina stanovništva ipak zazirala od nedozvoljenih radnji, posebno kad je kletvom ojačana zapovest upućena od takvog duhovnog autoriteta kakav je bio Sveti Petar Cetinjski.

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KAZNE U DOBA ŠPANSKE INKVIZICIJE

Da bi se u jednom društvu održao red i mir i da bi se obezbedila sigurnost svih članova društvene zajednice, potrebno je postojanje odgovarajućeg mehanizma koji bi kontrolisao odnose među njima i kažnjavao sve koji bi svojim ponašanjem narušavali prava drugih. Upravo u tome leži svrha prava – da podstiče na mir i ponašanje u skladu sa višim, društveno prihvaćenim vrednostima. Ali, nije pravo uvek usamljeno u toj ulozi, već u nekim društvima i religija ima važnu ulogu u regulisanju ponašanja pojedinaca, usmeravajući ih ka onim vrednostima i standardima koje, prema svom učenju, smatra idealnim za jednu sigurnu i moralnu zajednicu. Šta se dogodi kada se te dva lica društva, pravno i religijsko, spoje u jednoj instituciji, koja u svojim pokušajima da zavede red, pređe sve granice, pogazi opšteprihvaćene vrednosti, i postane upravo ono protiv čega se i sama bori? To je pitanje na koje ovaj rad treba da odgovori.

Primer za to jeste Inkvizicija - zloglasna institucija unutar Rimokatoličke crkve, koja je postojala od 1478. do 1834. godine, a cilj iste bio je kažnjavanje onih koji su smatrani nehrišćanima. Valja naglasiti i da je sama ideja takve institucije nastala i ranije, 1232. Kada je papa Grgur IX poslao inkvizitore u Francusku, što će takođe biti obuhvaćeno u radu.

U čitavom pokretu učestvovale su i svetovna, i crkvena vlast, tako da se upravo tu vidi spoj prava i političke vlasti sa religijom. Istrebljivanje jeretika i svih onih koji su bili osumnjičeni da slede verska učenja različita od zvaničnih učenja rimokatoličke crkve, pomagala je državna vlast, a papa Inokentije IV 1252. zvanično je odobrio mučenja pri iznuđivanju priznanja od navodnih jeretika tokom inkvizicije, papskom bulom koja se nazivala *Ad extirpanda*. Zatvarao je oči i na ubijanja povraćenih „jeretika“, spaljivanjem na lomači, koje je bilo samo jedan od mnogih ekstremnih kažnjavanja tokom inkviticije, sa kojima bi se detaljnije upoznalo u radu.

Samo presuđivanje odvijalo se brzo i javno na gradskim trgovima. Nije se davalo prostora nikakvim raspravama, dokazivanjima, dovoljno je bilo samo postojanje optužbe, a osuđenici nisu bili ni upoznati sa svedocima.

Istina je da crkva nije imala blagonaklon stav prema onima koji su imali slobodnije mišljenje po pitanju vere i čitava uloga inkvizicije bila je da se stavi do znanja da crkva ne štiti jeretike, već ih predaje u ruke državnih zakona.

Rad bi obuhvatao i ime prvog velikog inkvizitora u Španiji, Tomaza de Torkbemada, “Generala inkvizicije“, u čije se vreme odvijao najbrutalniji progon nehrišćana u 15. veku. On je pored svih surovih mera kažnjavanja uveo i metodu javnog ruganja, koja se sprovodila pogrdnim kostimima, na kojima se nalazio prikaz zmija i prizora iz pakla. Takav metod nazvan je „sanbenito“.

Tema španske inkvizicije treba da prikaže ne samo jedan nemili istorijski period u kom su se osuđenici kažnjavali na izuzetno okrutne načine, već treba da rasvetli i to kako je izgledala simbioza svetovnog i religijskog, otelotvorena u jednoj od najmoćnijih institucija rimokatoličke crkve, koja je bila njena svrha i na koji način su opravdavani njeni postupci.

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NACIONALNO SEČIVO FRANCUSKE – AMBIVALENTNI REVOLUCIONARNI SIMBOL

Na donjem kraju gubilišta visokog dva i po metra bile su pričvršćene dve uspravne, paralelne šipke čiji su vrhovi bili učvršćeni jakom poprečnom gredom. Na njoj se nalazio debeli gvozdeni prsten, kroz koji je prolazio konopac koji učvršćuje i drži teg, na kojem se nalazilo oštro sečivo koje se širi u trougao tako da udara strmo, postrance, pa nijedan centimetar sečiva ne biva neiskorišćen.

Kao jedan od najbrutalnijih načina egzekucije i simbol Francuske revolucije – giljotina, prvi put je upotrebljena 25. aprila 1792. godine prilikom lišavanja života Nikola Peletjea, drumskog razbojnika. Stvaranje giljotine je neodvojivo od dubokih promena u francuskom kaznenom sistemu. U jeku debate o reformi pravosuđa, poslanicima je predstavljen predlog zakona koji je podneo lekar i namesnik Žozef Ignas Giljoten. Najviše se govorilo o članu br. 6: on predlaže da se svi osuđeni na smrt bez izuzetka pogube na isti način. Njima će biti odsečene glave „učinkom jednostavnog mehanizma."

Giljotenov predlog savršeno ilustruje viziju zakonodavca. Cilj je, pre svega, da se stavi tačka na krivične postupke starog režima. Zahteva se egalitarna smrtna kazna. Giljoten suprotstavlja generalizaciju odsecanja glave diferencijaciji metoda ubijanja prema zločinu i društvenom statusu osuđenog.

Četiri godine nakon predstavljanja Narodnoj skupštini, giljotina oličava mnogo više od novog alata krivičnog pravosuđa. Na giljotini su, nakon bezuspešnog pokušaja bekstva u Belgiju, pogubljeni i francuski kralj Luj XVI i njegova žena, kraljica Marija Antoaneta. Ukupan broj poginulih na giljotini tokom Francuske revolucije seže i do 25.000. Procena je da posle posle pada sečiva dotok kiseonika u mozak opstaje još sedam sekundi, što može značiti da odsečena glava još uvek vidi i čuje nakon što se egzekucija obavi.

Autor će se pozabaviti i spravama koje su prethodile giljotini, a shodno tome da je smrtna egzekucija imala mnogo oblika u zavisnosti od zločina i društvene kategorije zločinca, kao i proceni da li je giljotina zaista najbezbolniji način pogubljenja. Kakav je odnos tvorca „nacionalnog sečiva Francuske" prema istom i kako je ono zauzelo značajno mesto u pravnom sankcionsanju i istoriji uopšte? Da li je bilo problema prilikom sprovođenja smrtne kazne giljotinom i da li su žene bile u povlašćenijem položaju?

U radu će autor, nadalje, obuhvatiti centralne događaje Francuske revolucije koji su obeleženi sečivom giljotine. Kako se narod Francuske odnosio prema ovoj spravi i kako su izgledale francuske ulice u doba terora? Dalje, autor će izneti i to kako su Robespjer, centralna figura revolucije, kao i njegovi sledbenici, zaneseni revolucijom, prevideli špijune, špekulante i izdajnike oko sebe.

Robespjer je ubeđivao sebe i druge da sve što revolucionarna vlada radi, radi za dobro naroda, pa je i on sam, pored giljotine, na kojoj će i sam završiti, ostao čuvar i simbol tekovina revolucije u njenim najtežim vremenima. Međutim, cena slobode koju je platio zajedno sa svojim vođama bila je ogromna.

Da li je giljotina bila zaštitni znak i simbol okrutnosti ili jedino prikladno rešenje – da se svi zločinci pogube na poptuno isti način, uz smanjenu količinu bola, uzimajući u obzir načine egzekucije koje su prethodile – spaljivanje na lomači, lomljenje na točku, čerečenje, i brojne druge morbidnosti?

Giljotina se nije zadržala samo u granicama svoje domovine Francuske, već je uzela maha i u Belgiji i Nemačkoj, u kojoj je izvršeno čak 47 smrtnih kazni posredstvom ove naprave.

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SMRTNA KAZNA U RUSIJI OD OKTOBARSKE REVOLUCIJE DO POČETKA 21. VEKA

Tokom skoro celog 20. veka u Rusiji je postojala takva vrsta sankcije kao smrtna kazna. U međuvremenu, razvoj humanizma i teorije ljudskih prava postepeno su doveli do promene stavova države i društva, uključujući i kulturu ruskog prava, o ovoj vrsti kazne. Zadatak ovog rada je da pokaže kako se promenilo mišljenje o upotrebi smrtne kazne u SSSR-u i Rusiji i da li je moguće vratiti i primeniti ovu vrstu kazne danas?

Od početka postojanja sovjetske vlasti, stav prema smrtnoj kazni bio je dvosmislen. Jedan od prvih dekreta sovjetske vlasti bio je Dekret o ukidanju smrtne kazne (ili Uredba drugog Sveruskog Kongresa Sovjeta o ukidanju smrtne kazne na frontu u 1917.). Međutim, tada je 1918. kazna vraćena u sistem sankcija.

Kroz istoriju Sovjetskog Saveza postojala je smrtna kazna, sve do njenog "blokiranja" od strane Ustavnog suda Rusije, sa izuzetkom perioda od 1947. do 1950. Čak i dinamikom izrečenih presuda do najviše kazne, može se reći da se stav prema smrtnoj kazni promenio prema njegovom isključenju.

Nakon raspada Sovjetskog Saveza i početka udaljavanja Ruske Federacije od ideja socijalizma, stavovi o potrebi primene smrtne kazne počeli su se takođe ozbiljno menjati. Kao rezultat početka ratifikacije mnogih međunarodnih ugovora u demokratskoj Rusiji, državna vlast je morala da prihvati ideju da odbije upotrebu smrtne kazne. U Krivičnom zakoniku Ruske Federacije od 13.06.1996. smrtna kazna je uključena u sistem kažnjavanja, iako se smatra isključivom mjerom. U tome je pomogao Ustavni Sud Ruske Federacije (u presudi od 2. februara 1999. godine, N 3), koji je zabranio imenovanje (pa izvršenje) ove vrste kazne bez učešća porote na sudovima u svim regionima države. Danas smrtna kazna ostaje u sistemu kažnjavanja (u Krivičnom zakoniku RF i Ustavu), međutim praksa Ustavnog suda zapravo je zabranila imenovanje i izvršenje te sankcije.

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DEPRIVATION OF LIBERTY AND MENTAL HEALTH - CONTEMPORARY CHALLENGES AND STANDARDS, AND THE HISTORICAL PATH TO THEIR FORMATION

The purpose of the speech is to present the discrepancy between the measures applied to people who have committed a crime and the methods of adequate rehabilitation, for which mental health concerns are of decisive importance. The author also wants to address this issue in light of the historical evolution of enforcing criminal responsibility for people diagnosed with mental disorders.

Although the problem of the possibility of enforcing the criminal liability of people with mental disorders was recognized many years ago, it remains a challenge for modern legal systems, including the Polish criminal law system. The possibility of enforcing criminal liability against people who suffer from mental disorders requires an answer to the imputability of such persons for their acts. This aspect requires the presentation of the historical evolution of the construction of guilt. It leads to the distinction between situations in which the court can attribute this guilt to the perpetrator, and those attributing responsibility are impossible due to the disease.

Guilt, understood as the offender's relationship to the act is a fundamental concept of modern criminal systems. However, until very recently, at the beginning of the second millennium, objective liability, independent of guilt, prevailed widely. Responsibility was linked to the effects of behavior, regardless of whether it was possible to attribute guilt to the one who caused the effect.

The association of punishment with guilt occurred as late as the medieval period. We attribute it to the influence of canon law, in which the concepts of sin and atonement have their own much more profound meaning, not limited to mere recompense.

In early times, people found the genesis of mental illness in the human environment and thought about insane people as possessed by demons. Until the 19th century, people commonly assumed that mental illness caused criminal behavior and did not clearly distinguish criminal behavior from insane behavior.

As the years passed, people created various tests to acquit specific individuals from the rigors of criminal law. The purpose was a distinction between crimes committed consciously by sane people and acts whose perpetrators were unable to direct their behavior due to mental illness rationally. Insane asylums, where inhumane conditions prevailed, were gradually replaced by places where the mentally ill could get adequate help.

Contemporarily in Poland, according to the Law of August 19, 1994, on the Protection of Mental Health, *mental health is a real personal good of a person. Protecting the rights of people with mental disorders is one of the state's responsibilities*; the Polish Executive Penal Code stipulates that in the case of mental illness, the court shall grant a break in the execution of the sentence until the cessation of the obstacle.

However, according to the Ombudsman's 2019 speech on proposed changes in the treatment of mentally ill prisoners, there are still situations in Poland where sick people, despite the disclosure of the disease and the position of the doctor-psychiatrist, have not been released to receive treatment.

A significant problem that the author presents is the high-profile case of prisoners convicted of the most atrocious sex crimes placed in a facility in Gostynin indefinitely after serving their prison sentences.

Another issue is the role of mental health care in rehabilitating prisoners whose mental state was not bad enough to be placed in therapeutic centres or whose mental problems began to manifest themselves while serving their prison sentences.

For a long time, until the 19th century, imprisonment was preventive rather than repressive. Only when the understanding of the purpose of punishment changed, which began to shift from retaliation to corrective punishment, did deprivation of liberty begins to take on an increasingly important role in the catalogue of punishments. With the historical evolution of punishment, which to ensure the smooth functioning of the penal system should not only be an inconvenience but also create an effective mechanism for individual prevention, thinkers recognized the critical role of rehabilitation.

Nowadays, despite the goal of rehabilitative purpose of imprisonment, according to statistics from the Ministry of Justice in Poland, more than 50 percent of those sentenced to suspended imprisonment return to crime as early as the first year after the sentence becomes final. More than 25 percent of convicts commit another crime within five years of their first sentence.

It is worth emphasizing that mental health is a fundamental element of a person's dignified functioning, which implies his healthy functioning in society. Restriction of liberty is not able to remain indifferent to the mental condition. It is essential to distinguish between situations in which mental disorders appeared even before committing a criminal act and those in which serving a prison sentence implied the development of mental disorders.

The author concludes the paper with a reflection on the dysfunctions of contemporary imprisonment arrangements and the main challenges that more efficacious methods would have to address.

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CRIMINAL LAW CONSEQUENCES OF COPYRIGHT INFRINGEMENTS

The paper analyses the consequences of Hungarian copyright infringement from several angles. In the first part, it will show why the Hungarian legislator decided to introduce criminal and civil sanctions against copyright infringers in the 19th century and why it introduced the institution of copyright experts on the Prussian model. The second part analyses Hungarian judicial practice between the First and Second World Wars.

The first Hungarian Copyright Act, which was passed between 1838 and 1884, contained not only substantive copyright law but also substantive criminal law (e.g. fines, imprisonment, confiscation), civil law claims (damages, determination of the fact and amount of enrichment, later preliminary measures, imprisonment, prohibition from repeating or continuing the infringement, non-material damage, publication of a judgment in a periodical, injunction) and rules of civil procedure. The progressive approach to copyright law differed from the general procedural rules in three important respects. The first reform was the free weighing of evidence, which meant that the court was not bound by the weight of each type of evidence (witness, inspection, expert, etc.) as defined by law. This principle only became generally applicable in Hungarian civil procedure from 1894. The other major departure from the general rules was the jurisdiction of the courts. In the Article 19 of the Hungarian Copyright Act of 1884 [and the same in the Copyright Act of 1921], usurpation was a crime, including a misdemeanour, yet in copyright suits a civil court also decided on the punishment. The third procedural peculiarity was the determination of the amount of damages. Between 1884 and 1915, under the general rules, it was possible to prove damages by oath.

From 1915 onwards, the principles of hearsay, immediacy, publicity and ex officio evidence were introduced in civil proceedings, and the various forms of oath were abolished - the role of the oath was reduced to that of corroboration of testimony, and from 1953 it was abolished altogether.

A peculiarity related to evidence was the Copyright Expert Committee set up in Budapest (and Zagreb) of scholars, writers, artists, booksellers, printers and other competent individuals. The committee was responsible for answering questions put by the court. Its chairman and members were appointed by the Minister of Religion and Education. The Committee could only declare the damage suffered and the amount and extent of the loss of profit from 1915 onwards.

The first initiative to create a copyright law in Hungary was taken in 1838, modelled on the then newly adopted Prussian Copyright Act of 1837. From that time onwards, the authors of the Hungarian copyright law proposals required the use of experts in litigation, since a copyright lawsuit may raise questions which can only be answered by a practicing printer, publisher, translator, photographer, architect, sculptor, craftsman, who is not only familiar with the tricks of his trade but also with general professional conventions. However, the proposals for compulsory acceptance of expert opinions or arbitration by a panel of experts also highlight the presumably negative experience of litigation and judges in the past. Despite the measures taken during the reform period, the Hungarian legal system was characterised by cumbersome and complex litigation; lawyers with excellent oratory but often inadequate legal knowledge could drag out trials for decades, while judges were helpless bystanders. Closely related to this was the fact that judges were typically elected or appointed, their appointment was made subject only to the judicial oath, and, unlike lawyers, judges were required by law to have a legal qualification, along with a thorough knowledge of domestic law, only from 1869, and the practical examination for judges became equivalent to the bar exam only from 1913. Thus, the authors of the proposals did not dare to leave the complicated and initially written copyright litigation to the talkative lawyers and passive judges, and the adoption of Prussian, and later German, legislation ensured that those involved in publishing and the arts could maintain their professional influence.

After all this background, the paper will discuss several judgments on criminal liability in the interwar period.

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THE HISTORY OF SANCTIONS FOR WIZARDY AND WITCHCRAFT – A SPECIAL LOOK ON THE SALEM WITCH TRIALS

In this article, the author investigates the subject of trials and retributions for individuals accused of witchcraft throughout history, and in this piece of work in particular she thoroughly investigates one of the most famous witch trials – the Salem Witch Trials, connecting all the discoveries from the quest for comparative historic findings to the very real and monumental event that this trial was.

She starts by laying out the founding influences on the introduction of the crime of witchcraft into legal systems, predominantly covering the ancient roots of the fear of witches and magic and also the first evidence and evolution of what we can now call penalties for wizardry and witchcraft. She examines the paths this type of crime led in ancient Mesopotamia, Egypt, and Rome (the history of sanctioning, accusations, and proving techniques), but also questions whether or not some of its elements were ever worshipped and looked favourably upon in any of those civilizations, in order to inspect if there is a tendency to trade between fear and admiration in accordance to and depending on cultural circumstance and ruling political forces.

Then, she introduces the basic principles of the trial procedures that came about later in history leading up to the famous Salem trials. In this part, she allows a special focus on American and European judicial processes for supernatural crimes by examining their intertwined and mutual influence, contemplating which of their segments were outlines of said trials and which were also shaped by specific historic events parallel to the Salem trials.

Finally, in the titular part of the essay the author commits to a thorough analysis of the Salem trials, covering the focal points of the legal procedures and most notably the punishments that followed for the guilty – further scrutinizing their execution, its purpose and impact on future generations of youth, as well as the particular choice of execution methods and their symbolism. In a fragmented collection of sources, she picks out the most trustworthy and connects the dots that became parts of a whole, while especially acknowledging the aspects of the trial that later became legendary motives in American, and later even the world's popular culture. The deadliest witch hunt in the history of colonial North America, the Salem witch trials took an interesting route and in this article, the author covers everything from the method of collecting accusations, the two-layered jurisdiction, the different times and dates of carrying out executions to the fact that not all of the condemned awaited their timely punishment. She largely points out the impact the religious air in politics had on this important moment in history and draws a relation between the comparative legal and historic findings at the beginning of the text and those empirical at its end, making a point of exactly how and why mass hysteria affects clear judgment even in lawful associations and in the end prompts a conclusion that points to a connection sensationalism has always had with sanctioning policies in societies all around the globe.

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KAŽNJAVANJE PRELJUBE U SRPSKOM PRAVU U SREDNJEM I NOVOM VEKU

Odnos krivičnog prava i morala oduvek je bio predmet rasprave u teoriji. I krivično pravo i moral vrednuju i sredstvima koja su im na raspolaganju utiču na ponašanje pojedinca u društvu. U početku, prevagu je odnosio moral, koji je u sintezi sa religijskim normama u velikoj meri uticao na život ljudi. Formiranjem državnog aparata u najranijem periodu ljudske istorije, nosioci vlasti svoj legitimitet ostvaruju i donošenjem prvih pravnih propisa. Kako se društvo razvijalo do današnjice, tako se i odnos morala i prava menjao sa promenama epoha, brojnim istorijskim turbulencijama koje su drastično menjale živote ljudi. Proučavanjem pojma preljube možemo uočiti kako se odnos prava i morala menjao.

U skladu s temom, radi se o analiziranju pojma preljube korišćenjem istorijskopravnog, političkog, filozofskog i sociološkog pristupa u srpskoj pravnoj istoriji. Da bi se dobio bolji uvid u predmet rada, biće reči i o položaju žene i muškarca od srednjeg veka do danas.

Do donošenja Dušanovog Zakonika, društveni život u Srbiji bio je uređen Zakonopravilom Svetoga Save. Od velikog značaja su bile i povelje koje su vladari davali manastirima. Običajno pravo se primenjivalo u izvesnoj meri. Car Dušan Nemanjić je bio pod jakim duhovnim uticajem svetogorskih monaha isihasta, te je to imalo odraza i na sadržinu njegovog Zakonika. Zaključak je da je srpsko srednjovekovno pravo bilo pod velikim uticajem religije i običaja. Učenje Istočne pravoslavne crkve postavlja svetinju braka na uzvišen pijedestal. Brak muža i žene predstavlja oličenje saveza između Boga i ljudi. Polna ponašanja koja nisu u skladu sa učenjem Crkve, ona je težila suzbijati na razne načine. Braku se pristupalo sa strahopoštovanjem. Stari Zavet predviđa smrtnu kaznu za preljubnike. Povreda bračne vernosti predstavljala je u nekim slučajevima, kao što je predvidela Ekloga, i krivično delo zaprećeno telesnom kaznom. Preljuba je u srednjem veku bila i brakorazvodni uzrok. Brak je idealno okruženje za podizanje potomstva. Dušanovim zakonikom propisana je obaveznost crkvenog braka, uz blagoslov duhovnika. Moralna i religijska shvatanja imaju jako veliki uticaj na polni identitet pojedinca.

Vaskrsnućem srpske državnosti s početka devetnaestog veka oživljava i zakonodavna delatnost. Donošenjem Srpskog građanskog zakonika 1844. i Kaznitelnog zakonika za Knjaževstvo Srbiju 1860. primetan je prodor ideja iz Evrope koje su došle u sukob sa mentalitetom patrijarhalnog društva koje je i dalje bilo vezano za religiju i običaje.

Radi sagledavanja regulative bračnih odnosa, jako je bitno osvrnuti se i na položaj žene i muškarca kroz istoriju. Srpski građanski zakonik je bio relativno nepovoljan po položaj žene. Nakon Drugog svetskog rata novi poredak doneo je i tekovine pravne ravnopravnosti polova. Uticaj Crkve na duhovni život ljudi je znatno opao. Zaključuju se sve više građanski, a sve manje crkveni brakovi. Tome je u određenoj meri doprineo i prodor ideja seksualne revolucije koja je sistematski prodiranjem u sve aspekte kulturne i duhovne manifestacije identiteta čoveka zadala jak udarac dotadašnjim vrednovanjima moralne komponente polnosti i bračnih obaveza. Potrošačko društvo sa sobom nosi i način razmišljanja običnog čoveka koji sve vrednuje u novcu, te ne stupa u brak ako nije finansijski sposoban da izdrži izdatke podizanja dece. Ostavljanje potomstva više nije u prvom planu. Brak gubi na značaju, sve je više razvedenih brakova. Pravo je dosta tolerantno po pitanju mogućnosti prekida braka. Generalno, pravo manje zadire u privatnu sferu pojedinaca. Preljuba danas, i ako u izvesnoj meri trpi moralnu osudu, ne podleže nikakvom vidu krivičnopravnog kažnjavanja.

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STAROSNA GRANICA KRIVIČNE ODGOVORNOSTI U JUGOSLOVENSKOM KRIVIČNOM PRAVU

Društvena realnost, u cilju primene pravnih mehanizama zaštite njenih osnovnih vrednosti, zahteva da se u mnogim oblastima odrede starosne granice. Ta potreba postoji još od Justinijanovog doba, te je kasnije, kroz nastanak prvih škola krivičnog prava, dobila svoj puni smisao. Kako ranija, tako su se i savremena zakonodavstva, uz određenu relativizaciju, najčešće opredeljivala da se za starosne granice uzme u obzir kalendarski uzrast koji se manifestuje u broju navršenih godina života. Uprkos svim nedostacima takvog pristupa, koji će detaljno biti objašnjeni u radu, prihvatio se metod definisanja starosnih granica u apsolutnom smislu, uz postojanje različitih starosnih limita u različitim granama prava. Ne zaboravljajući uticaj istorijskih, kulturnih i društvenih potreba, vodilo se računa o tome da ličnost sa određenim uzrastom stiče potrebne osobine koje su od značaja za oblast o kojoj je u konkretnom slučaju reč.

Pažnja autora usmerena je normativni značaj starosnog doba u krivičnom pravu, s obzirom da se određeni starosni minimum definiše kao *conditio sine qua non* za mogućnost da učinilac krivičnog dela bude krivično odgovoran. Samim tim, ako postoji krivična odgovornost učinioca krivičnog dela, daje se odgovor i na pitanje koji će se tip krivičnog postupka voditi prema njemu, te ako su ispunjeni određeni uslovi, koje krivične sankcije mu se mogu izreći i primeniti sa ciljem praktičnog ostvarivanja njihove svrhe. Tom prilikom, treba istaći i da se određivanje starosne granice krivične odgovornosti smatra samo delimično krivičnopravnim pitanjem, s obzirom da mu se pridaje širi – socijalni sadržaj. U prilog tome govori da neadekvatna društvena reakcija, kao i preterana reakcija pravnog sistema, mogu da utiču na pojavu i potencijalno teške posledice maloletničke delinkvencije na određenom prostoru i u određenom vremenu. Efekti generalne i specijalne prevencije ne ostvaruju se u svom punom kapacitetu kroz propisivanje, izricanje i izvršenje kazni kao kod punoletnih lica, već kroz pružanje pomoći, zaštite i nadzora u okviru kojeg će maloletnik izgraditi sistem moralnih i društvenih vrednosti koji će mu omogućiti da prepozna nedozvoljeno ponašanje, te usvoji principe mehanizama zaštite, kako sopstvenog bića, tako i celokupnog društva čiji je član.

Uzroci maloletničke delinkvencije su brojni, a neki od najčešćih su: prezaposlenost roditelja koja onemogućava vršenje adekvatnog nadzora nad decom, siromaštvo, postojanje potrebe maloletnika da samostalno pribavlja dodatna sredstva za život, ratna i posleratna dešavanja, te potreba za iznenadnim migracijama, izloženost nasilju, dostupnost psihoaktivnih supstanci i vatrenog oružja, postojanje kriminalnog okruženja i slično. Autor je usmeren ka identifikovanju društvenog i pravnog položaja maloletnika u jugoslovenskom periodu, jer je to jedan od perioda koji na adekvatan način oslikava posledice koje iz ovih uzroka proizilaze. Tadašnje stanje maloletničkog kriminaliteta bilo je zabrinjavajuće, uzimajući u obzir znatno povećanje broja krivičnih dela maloletnika, značajniji procenat maloletničkih recidivista, kao i nedovoljno efikasnu saradnju funkcionalno određenih krivičnoprocesnih subjekata postupka.

Polazeći od trenutka nastanka Kraljevine Jugoslavije, sa pažnjom usmerenom najviše na period tokom i nakon donošenja jedinstvenog Krivičnog zakonika za celu zemlju 1929. godine, uočava se da se maloletnici, tom prilikom, izdvajaju kao posebna kategorija učinilaca krivičnih dela, što je praćeno odgovarajućim krivičnopravnim normama. Pored lica koje nema navršenih 14 godina, a koje se ne može goniti i kazniti, zakonodavac toga perioda razlikuje još i mlađe i starije maloletnike, te definiše njihov krivičnopravni status. Mlađim maloletnicima (lica od 14 do 17 godina) mogle su se izreći vaspitne mere sa ciljem prinudnog vaspitavanja i popravljanja, a u slučaju starijih maloletnika (lica od 17. do 21. godine) isključivo je bilo moguće izricanje kazne, izuzev smrtne, uz propisano izvršenje u posebnim kaznenim zavodima. Mnogi autori smatraju da je reč o normama koje spadaju u red najnaprednijih toga doba, ali njihova primena u praksi nije bila moguća zbog nedostatka ulaganja finansijskih sredstava u izgradnju i održavanje kaznenih zavoda za maloletnike.

Postojanje potrebe za posebnim sistemom vaspitnih i kaznenih mera prema maloletnim učiniocima krivičnih dela u okviru jedinstvenog kaznenog sistema definisanog u okvirima Krivičnog zakonika, prepoznato je od strane predstavnika zakonodavstva socijalističke Jugoslavije. U prilog tome govori da je osnovni cilj bio ostvarivanje prevaspitavanja i popravljanja maloletnih učinilaca krivičnih dela, a bez primene kazni propisanih za punoletne učinioce krivičnih dela. Tom prilikom, autor smatra da je neizostavni deo analize zakonodavstva ovog perioda i njegov pokušaj da se arbitrarnost utvrđenih kalendarskih starosnih granica ublaži, ne zaboravljajući da Ustav iz 1946. godine propisuje da se punoletstvo od tada stiče ne sa 21. godinom, već sa 18 godina. Time se ostvaruje sužavanje kategorije starijih maloletnika.

Donošenjem noveliranih odredbi Krivičnog zakonika Federativne Narodne Republike Jugoslavije (KZ FNRJ) od 1951. godine, koje su stupile na snagu 30. juna 1959. godine, s primenom od 1. januara 1960. godine, uočava se postojanje dva pravca ublažavanja navedene arbitrarnosti. Jedan od njih se sastojao u potpunoj zabrani izricanja i primene kazne maloletničkog zatvora u odnosu na mlađe maloletnike, tj. mogućnosti njenog izuzetnog izricanja u odnosu na starije maloletnike kao učinioce krivičnih dela. Drugi pravac ogledao se u tome da se već ustaljenim kategorijama, kategoriji mlađeg maloletnika i kategoriji starijeg maloletnika, dodaje još jedna nova. U pitanju je kategorija mlađih punoletnih lica čiji je položaj, uz ispunjenost određenih uslova, mogao biti izjednačen sa položajem maloletnika. To je bilo moguće ukoliko maloletni ili punoletni učinilac krivičnog dela u vreme suđenja nije navršio 21 godinu, a njegova duševna razvijenost odgovarala je razvijenosti maloletnika. To bi značilo da je u njegovom slučaju izuzetno mogla biti izrečena odgovarajuća vaspitna mera.

Autor, vršeći poređenje navedenih jugoslovenskih i sadašnjih zakonodavnih rešenja u okviru maloletničkog krivičnog prava, uočava da je trenutno važeći Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica utemeljen na decenijama propisanim i primenjivanim odredbama jugoslovenskog zakonodavstva. Tom prilikom, uočava postojanje niza terminoloških nedoslednosti koje su posebno istaknute u čl. 65 Zakona o izmenama i dopunama KZ FNRJ iz 1959. godine, te istom zakonskom rešenju u čl. 72 Krivičnog zakonika Socijalističke Federativne Republike Jugoslavije (KZ SFRJ) i čl. 72 Krivičnog zakonika Savezne Republike Jugoslavije (KZ SRJ), kao i izostanak decidnog navođenja krivičnopravnog osnova krivičnopravne neodgovornosti lica mlađih od 14 godina.

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KAZNE ZA KRIVIČNA DELA PROTIV LIČNOSTI I IMOVINE PROPISANE DUŠANOVIM ZAKONIKOM

Kazna se tokom vremena izdvajala kao najznačajnija vrsta krivične sankcije, koja je propisana za najveći broj krivičnih dela. Smatra se zakonom propisanom merom društvene reakcije prema učiniocu krivičnog dela u svrhu zaštite čoveka i drugih osnovnih vrednosti.

Stefan Dušan rođen je 1308. godine, a 1346. godine u Skoplju je proglašen i krunisan za grčkog cara.

Dušanov zakonik (u daljem tekstu: Zakonik) smatra se najbitnijim pravnim spomenikom srednjovekovne Srbije. Na Spasovdan, 1349. godine održan je srpski državni sabor u Skoplju, na kome je proglašen deo Zakonika koji obuhvata 135 članova. Može se reći da je tada ozakonjena i Skraćena Sintagma, kao i Justinijanov zakon, jer se dobro očuvan Zakonik nalazi kao celina zajedno sa navedenim propisima, tako označena u Rakovičkom prepisu. Na drugom srpskom državnom saboru održanom 1354. godine proglašen je drugi deo Zakonika, koji obuhvata članove 136-201, sa uočljivim novelama. Car Dušan je hteo da pokaže da njegov Zakonik predstavlja inovaciju u pravnom sistemu srpske srednjovekovne države i da njegova uloga nije bila uloga prevodioca, već da je imao aktivniju ulogu kao kodifikator a koja se ogledala u samostalnosti njega kao zakonodavca koji će doneti nov zakon za svoju državu. Krivična dela koja se pominju u Zakoniku su tokom vremena, od strane istraživača koji su proučavali Zakonik, podeljena u nekoliko grupa i to: krivična dela protiv države-vladara, krivična dela protiv crkve i religije, kao i krivična dela protiv ličnosti i krivična dela protiv imovine, koja će biti predmet ovog rada uključujući kazne propisane za ista.

Tokom srednjeg veka, srpsko pravo je poznavalo sistem kažnjavanja privatnopravnog karaktera u vidu kompozicije i to globe, prvo u stoci a zatim u novcu. Vizantijsko pravo je u tom periodu poznavalo kazne koje su bile javnopravnog karaktera. Da se menja karakter kazni u srpskom pravu, uočava se u periodu oko 1220. godine, gde se Žičkoj povelji navodi kazna koja ima javnopravni karakter. U poveljama manastira sv. Đorđa iz 1258. i 1300. godine pominju se globe koje imaju takođe javnopravni karakter, sa unapred propisanim iznosima u perperima. Sa druge strane, u vizantijskom pravu se u XIV veku uočava približavanje slovenskim shvatanjima, obzirom na to da primenjuju sistem novčanih globa. Smrtne kazne, telesne kazne i kazne lišenja slobode su bile karakteristične za vizantijsko pravo, a ovakav način kažnjavanja imao je uticaja na srpsko pravo. Tako se primena telesnih kazni, doduše u određenom slučaju, pominje kod kažnjavanja bogumila za vreme Stefana Nemanje. Uprkos tome, srpska država je dugo godina telesne kazne smatrala kao nešto strano, gde je kralj Milutin 1308. godine vodio borbu sa Dubrovčanima oko kažnjavanja smrtnom kaznom, gde su Dubrovčani na kraju popustili. Ukoliko pogledamo Dušanov zakonik iz 1349. godine, primetićemo veliki uticaj Vizantije u pogledu sistema kazni koji je, čini se, preuzet u potpunosti. Kazne koje su bile propisane su bile smrtna kazna, koja se izvršavala vešanjem ili spaljivanjem, zatim telesne kazne poput sečenja ruku, nosa, jezika, kao i batinanje i tamnica. Da Dušan nije prekinuo srpsku tradiciju kažnjavanja, ogleda se u tome što su Zakonikom bile propisane i kazne poput vražde i globe u određenom iznosu perpera. Zakonikom iz 1354. godine propisane su još neke kazne za određena krivična dela, ali takođe u duhu vizantijskog prava, poput vešanja strmoglavo ili vađenja jednog ili oba oka. Pominje se takođe vražda i globa u određenom iznosu ali i konfiskacija imovine.

Predmet krivičnopravne zaštite odnosno dobara za čiju povredu je bila propisana kazna Zakonikom su ljudski život, zdravlje, vera, imovina, lična sloboda, čast – opšta i polna, telesni integritet i trgovina. Kao što se može primetiti, širok je spekar dobara koja su bila obuhvaćena zaštitom Zakonika, ali su neka od ovih dobara bila posebno izdvojena.

Grupi krivičnih dela protiv života, tela i ličnosti pripadaju ubistvo (vražda), telesne povrede i uvreda, a neki autori navode i silovanje. U okviru same norme navođene su kazne za pomenuta krivična dela, uz

uočljivu razliku u kažnjavanju u zavisnosti od staleške pripadnosti. Kazne koje su bile izricane su varirale od novčanih kazni, do telesnih i smrtnih, o čemu će kasnije biti više reči.

U pogledu krivičnih dela protiv imovine, navedenoj grupi pripadaju krivična dela razbojništvo (gusa) i krađa (tatba). Kazne propisane za ova dela bile su izuzetno stroge, a odgovornost se u nekim slučajeva proširivala i na celo selo, u vidu raseljavanja. Za krivično delo paljevine uočava se alternativna kazna, gde se selu ostavlja mogućnost da optira između dve vrste kazni, u zavisnosti da li je delo izvršeno sa umišljajem ili iz nehata.

Takođe, pored kazni za određena krivična dela, potrebno je spomenuti i krivičnu odgovornost koja je u Zakoniku veoma prisutna u vidu kolektivne odgovornosti. Za veliki broj krivičnih dela odgovornost za postupanje pojedinca snosi kuća ili selo. Moglo bi se reći da se taj vid odgovornosti posmatrajući sa savremenijih aspekata smatra zastarelim i nerazvijenim, ali čini se da je ispravnije reći da je nerazvijenost bila pre ekonomska nego pravna , imajući u vidu da je u to vreme srpsko stanovništvo uglavnom živelo u kolektivima, gde je pripadnost zajednici bila bitan uslov za opstanak. Sledstveno tome, čini se logičnim zbog čega je za veliki broj krivičnih dela kolektiv bio krivično odgovoran pre nego pojedinac.

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DISHONOURABLE DISCHARGE FROM THE ARMY IN THE MILITARY CRIMINAL LAW OF CZECHOSLOVAK LEGION IN RUSSIA

In my paper, I am going to focus on the topic of the exclusion from the army in the system of criminal law used by the Czechoslovak legion in Russia during its involvement in the Russian Civil War.

Czechoslovak legion in Russia was the largest part of a volunteer-based armed body of Czech and Slovak anti-Austrian resistance during the World War I. It has taken part in the fighting on the Eastern Front and later became stranded in Siberia after the newly formed Bolshevik government signed separate peace with the Central Powers and the German army occupied Ukraine in the early 1918. Being cut off from all the Entente countries, while also officially being an autonomous part of the French army, the legions had to find a way to operate on their own in most areas, including establishing their own courts. This became even more necessary when the Chelyabinsk incident sparked an armed conflict between Czechoslovak army core and the Red Army that lasted up until early 1920.

In the period from February 1918 to the summer of 1920, the Legion created a specific system of courts which at its peak consisted of three instances – regimental courts, divisional courts and the corps court, serving as kind of a supreme court. These judicial bodies followed an improvised procedure, which stemmed from a number of regulations and commands based on a combination of French, Russian and Austrian regulations complemented with entirely new additions introduced by legionnaires themselves. Legislation substituting a criminal code was created in a similar way.

Amongst the sentences which could have been imposed on those convicted of a crime, the two considered most severe were death sentence and dishonourable discharge (the literal translation of the punishment's name would be „exclusion from the army”). Although Czechoslovak legions were definitely not the only army which allowed its soldiers to be dishonourably discharged, it seems odd that this was considered one of the two highest sentences, given the fact that e.g. severe imprisonment (severe confinement with bread and water only) existed alongside it.

This attitude had its roots in both the personal and legal consequences of being discharged from the Legion.

On the personal level, discharge was supposed to mean a public humiliation as membership in this army was supposed to be a matter of prestige. Also, being excluded from a voluntary organisation was meant to create a stain on the honour of the discharged individual.

On the legal level, originally, this meant a transfer into a POW camp (as most legionnaires were former Austro-Hungarian POWs). Later, the discharged individuals were instead assigned to labour units organised from POWs with residence within the borders of now independent Czechoslovakia. After the war this also affected granting of the status of a legionnaire according to Act no. 462/1919 Sb. and governmental regulation no. 151/1920 Sb. which demanded proper discharge as a condition. Being denied from receiving the status meant exclusion from a number of benefits, such as preference when applying for a job as a clerk or in the armed forces, or retirement allowances.

In the paper, I plan to analyse the practice of dishonourable discharge in the Czechoslovak legion in Russia, specifically, how it was used by legionnaire courts, how it affected those subjected to it and if there was a way to reverse its consequences.

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ODMJERAVANJE KAZNE – ANALIZA RJEŠENJA U KAZNENOM ZAKONU ZA BOSNU I HERCEGOVINU OD 26. VI 1879. GODINE

U svakoj uređenoj društvenoj zajednici postoji određena pravila koja definiraju ponašanje pripadnike te iste zajednice, a koja su nametnuta od strane društva (odnosno, države) u cilju jamčenja jednakosti i sigurnosti članova zajednice. Kazna, koja se ogleda u oduzimanju ili ograničavanju određeni prava i sloboda osobe koja je prekršila društvom nametnuta pravila ponašanja, je jedan od načina na koji se može osigurati poštovanje tih pravila. Društvo je državi povjerilo monopol fizičke prinude, te je stoga država jedini entitet koji raspolaže pravom na kažnjavanje – *ius puniendi*. Odmjeravanje kazne počinitelju društvenoneprihvatljivog djela je postupak u kome nadležni organ – sud ili organ uprave, određuje najprikladniju kaznu počinitelju djela držeći se u datom trenutku predviđenih ciljeva kažnjavanja. Odmjeravanje kazne jedno od ključnih pitanja krivičnoga prava.

Istorija odmjeravanja kazne je duga i zanimljiva. U najranijim društvima kazne su često predstavljale osvetu, retribuciju za počinjeno djelo, te su najčešće imale eliminacioni karakter. Vjerovalo se da je princip taliona (tzv. „nečelo oko za oko – zub za zub“) najbolje mjerilo pri određivanju kazne licu koje je povrijedilo ili ugrozilo pravnozaštićeno dobro. Kazne su, u skladu sa tim principom isto odmjeravane svim počiniteljima istih protivpravnih djela. Stari su Rimljani, pak, smatrali da se kazna treba odmjeriti u skladu sa razinom povrijeđenog dobra, dok su se u srednjem vijeku koristitli tzv. „osudom“ kako bi se odgovarajuća kazna odredila. Tehnike i metodi odmjeravanja kazne su se vremenom razvijali i prilagođavali novim okolnostima i drugačijem dobu. Tako su prve moderne države usvojile zakonski (sudski i administrativni) sistem, zakonsku i sudsku praksu, preporuke sudova i drugih organa.

U ovome radu će biti razmatran pristup odmjeravanju kazne u Kaznenom zakonu o zločinstvima i prestupcima za Bosnu i Hercegovinu iz 1879 godine, koji je nekoliko puta noveliran. Pored toga što će težište rada biti na prvom bosanskoherecgovačkom kaznenom (krivičnom) zakonu, posebna pažnja će se posvetiti uporednopravnoj analizi rješenja u Kaznenom zakonu iz 1852. godine (*Strafgesetz 1852*), koji je poslužio kao model Kaznenog zakona za Bosnu i Hercegovinu, te zakonima koji su regulirali oblast materijalnog rkivičnog prava pojedinih država koje pripadaju kontinentalnoj porodici prava – njemačkom, francuskom, srpskom, crnogorskom, ruskom i turskom. Zanimljiv nam je i koncept nacrta Kaznenog zakona o zločinstvih, prestupcih i prekršajih za Hrvatsku (tzv. Derenčinov nacrt ili Derenčinova osnova), koji će jednim dijelom, također, biti predmet ove rasprave. Kako odmjeravanje kazne danas zauzima središnje mjesto unutar krivičnopravne nauke, smatramo da će sadržina ovoga rada biti zanimljiva kako današnjoj pravnoj nauci, tako i praksi, a sve sa ciljem upoznavanja sa povijesno-historijskim razvitkom ustanove odmjeravanja kazne u krivičnom pravu.

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KRIVIČNI ZAKONIK IZ 1929.

Kraljevina Jugoslavija doživjela je vidne promjene tokom početka dvadesetog vijeka u oblasti krivičnog zakonodavstva jer je u tom periodu došlo do ujedinjenja krivičnih zakonika i svih ostalih zemalja u jednu cjelinu. Prije nego što je donesen Krivični zakonik iz 1929. kao glavni izvori krivičnog prava bili su zakonici različitih zemalja. Na prostoru Srbije je to bio Krivični zakonik iz 1860. godine, u Crnoj Gori Krivični zakonik iz 1860. godine, na području Vojvodine važio je Krivični zakonik Ugarske iz 1878. godine, dok je u preostalim državama (Hrvatska, Slavonija, Dalmacija, Slovenija i Bosna i Hercegovina) na snazi bio Krivični zakonik Austrije iz 1848. godine. Najveći problem je bio pravni partikulaizam. U želji da se objedini čitavo krivično zakonodavstvo na teritoriji Kraljevine Jugoslavije, odlučeno je da se odredbe Krivičnog zakonika Srbije iz 1860. prenesu na cijelu teritoriju dok ne dođe do stvaranja novog zakonika. Ako uzmemo u obzir vremenski period od skoro 70 godina koji je protekao između KZ Srbije iz 1860. i KZ Kraljevine Jugoslavije iz 1929. jasno je da su nužne posljedice toga razlike između ova dva zakonika.

Tema ovog rada prventveno će biti analiza ovih zakonika kroz uporedno pravni i istorijski metod. Ukazano je, takođe na probleme koji su pratili proces prevazilaženja pravnog partikularizma i na rezultate koji su postignuti. Trebalo je temeljno reformisati zastarjele zakonske tekstove, izraditi nove odgovarajuće zakone. Sa druge strane bilo je potrebno, što je moguće brže, izjednačiti zakone kako bi se obezbjedilo nesmetano funkcionisanje pravnog saobraćaja.

Jedan od osnovih ciljeva zakonika bio je da se društveni konflikti svedu na podnošljivu mjeru, da se sve norme ravnopravne odnose na muškarce i žene na prostoru cijele države. Takođe, namjera da se pojedine vrijednosti i ciljevi suštinski za državu očuvaju i poštuju. U zakonu se javljaju pojedine novine kada je riječ o načinu izvršenja kazne, kao i precizni uslovi koji su neophodni da bi se izrekla sankcija. U posebnim odjeljcima zakona nalaze se odredbe kojima se reguliše protivpravna radnja maloletnih lica kao i sankcije koje ih prate.

U krivičnom zakonu iz 1929. definisani su neki novi bitni pojmovi, koji nisu bili definisani u prvim godinama, sudska praksa je utlavnom slična onoj koja je bila i za vreme ustanka (nedovoljna organizovanost, nezakolje, arbitrernost, samovolja, sa dosta ostataka arhaičnih formi i sadržaja y pravu, itd.), ali ce kasnije značajnije mijenja. Vidjećemo kraću analizu nastanka, razvoja i sadržaja nekih od ovih istituta, kako sa obzirom na propise o njima, tako i s obzirom na njihovu praktičnu primjenu.

Odnosiće se na kazne, mjere bezbjednosti, odmjeravanje kazni i krivična djela nova koju su uvedena u zakonik iz 1929 godine.

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CRIME WITHOUT PUNISHMENT – THE RIGHT OF PARDON IN POLAND THROUGHOUT THE YEARS

The right of pardon is known in history for ages and is still used in many countries around the world. The essence of the right of pardon is the authority to free the convicts from their punishment or at least to mitigate its time or size in penal cases. In most legal systems that authority was given to the entities belonging to the executive branch of power, especially to the head of states (monarchs or presidents). Premises of the usage of the right of pardon are very often not strictly precise, giving the authorized entity a wide range of freedom in using its right. Exercising the right of pardon does not overrule the court's decision, neither does it undermine the guilt of the convict. Under ideal conditions it shall be used as a tool to free a convict from his punishment because of some special circumstances that when are considered, make punishment unjust or unnecessary in that case.

Before the II World War, both Polish constitutions (that were drastically different in terms of the scope of the authority given to the President) admitted the right of pardon to the President. Also during the communist regime, the right of pardon existed, but it was not performed by president (as by the most of the time such entity did not exist) but by Council of State – a collective body performing the duties of the head of state.

Under the current Constitution, the right of pardon is an exclusive prerogative of the President of Republic of Poland. That prerogative can be executed with almost no restrictions and constitutional provision concerning the right of pardon is written in a very laconic style. Bearing in mind, that presidential power in III Republic of Poland is highly limited and role in the political system is mainly representative, the right of pardon is one of the few exemptions from that rule, as it is extraordinarily discretional.

The existence of the right of pardon and its constitutional regulations brings a lot of questions. Isn't it unproportional interference of the executive branch into the judicial power? Or does it indeed provide more justice into the legal system of the state? But can releasing of the convict be fair? Is that institution equal and accessible for everyone, or is it limited only for the wealthiest people in the country? Is it a transparent procedure or is it open to some sort of political influences that highly affects that institution?

The focal point of the following paper is to answer the questions stated above in the context of the history of regulation, and most important usage of the right of pardon in the II Republic of Poland, People's Republic of Poland and III Republic of Poland. Basing on and referring to previous Polish constitutional and practical experiences author wishes to present his opinion about the most important and probably also controversial aspects of the right of pardon in its past and present shape.

The fundament of the following paper is the historical-descriptive method strongly supported by the thesis made in the doctrine of constitutional and penal law. Conclusions will be also supported by empirical and analytical method of research.

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KAZNENE ODREDBE U ZAKONOPRAVILU SVETOG SAVE

Ličnost Svetog Save u našoj nauci je često predmet istraživanja, sporenja i svojatanja različitih škola mišljenja. Bio je učenik Vizantije, ali istovremeno se borio za emancipaciju svog naroda i naroda Balkana od vizantijske hegemonije. Najbolji pokazatelj toga je Zakonopopravilo, njegovo najobimnije pisano djelo, a ujedno i najvažniji srpski srednjovjekovni pravni spomenik. Svetosavski nomokanon kao mješoviti zbornik crkveno-svjetovnog prava s početka trinaestog vijeka predstavlja srpsku redakciju pojedinih vizantijskih propisa.

Sastavljajući Zakonopravilo Sv. Sava je koristio veliki broj grčkih zbornika, jer sam sklop građe ovog pravnog zbornika isključuje mogućnost postojanja nekog jedinstvenog grčkog nomokanona koji je poslužio kao izvornik. Prvi srpski arhiepiskop sastavljajući ovaj pravni zbornik preuzimao je sve ono što je bilo neophodno srpskoj crkvi i državi, ali vodeći računa o srpskom običajnom pravu koje je do tada važilo. Prvi dio, tzv. kanonski, obuhvata šest uvodnih i prva 44 poglavlja u kojima se nalaze kanonske odluke vaseljenskih i pomjesnih sabora, kao i pravila (kanoni) svetih otaca. U građanskom dijelu nalazi se preostalih 20 poglavlja i u njima su sadržani propisi pretežno građanskog prava, ali i poredak određenih liturgičkih radnji poput sv. tajne pokajanja (53. poglavlje) i čina proskomidije (54. poglavlje). Istraživanje kaznenih odredbi u srpskom srednjovjekovnom pravu uglavnom se zasniva na analizi Dušanovog zakonika, raznih povelja srpskih vladara i ugovora sa gradom Dubrovnikom. Analiza najveće rukopisne pravne knjige i najvažnijeg srpskog srednjovjekovnog pravnog spomenika – Zakonopravila Sv. Save – uglavnom izostaje. Drugi dio ovog djela, tzv. građanski, sadrži mnogobrojne odredbe vizantijskih careva i Mojsijevog zakonodavstva u kojima je moguće pronaći različite propise o kažnjavanju. Osvrtanjem na kazne koje postoje u Zakonopravilu Sv. Save, kao i njihovim poređenjem sa ostalim dostupnim izvorima tog perioda će se ukazati na osobenosti krivičnog prava nemanjićke Srbije.

U ovom radu će se, između ostalog, uporednopravnim metodom, napraviti paralela između krivičnih odredbi u Zakonopravilu Svetog Save i savremenog krivičnog prava kao i predstaviti razlike između njih. Savremena pravna nauka definiše krivično pravo kao granu prava koja reguliše opšte uslove krivične odgovornosti i predviđa krivična djela, kao i kazne za ta djela. U srednjem vijeku bilo je drugačije. Srednjovjekovno srpsko pravo ne poznaje jedinstvenu definiciju krivičnog djela. U tom periodu postojali su mnogobrojni izrazi za krivično djelo kao protivpravnu i društveno opasnu radnju. Jedna od osnovnih karakteristika srednjovjekovnog prava u Srbiji u pogledu kazni je nejednakost staleža. U srednjovjekovnim pravnim sistemima kao opštepoznata i uobičajena stvar javlja se različito tretiranje pojedinih slojeva stanovništva – ne samo u pogledu prava i obaveza već i u pogledu kažnjavanja krivičnih djela.

U daljem radu biće riječi o različitim kaznama koje su primjenjivane u srednjovjekovnoj Srbiji, a proističu iz Zakonopravila Sv. Save. Iz perspektive modernog čovjeka srednjovjekovni sistem kažnjavanja je okrutan, jer poznaje tjelesne kazne koje je društvo u međuvremenu odbacilo. One su u srpskom pravu postojale od davnina. Istraživači srednjovjekovnog srpskog prava smatraju da u zakonskim spomenicima koji su nastali prije Dušanove kodifikacije nije postojala smrtna kazna i da se ona tek uvodi Dušanovim zakonikom. Krivičnopravne norme Dušanovog zakonika bile su pod velikim uticajem vizantijskog prava, u kojem je postojala smrtna kazna, pa je ova vrsta kazne prihvaćena i kod Srba. Zbog zanemarivanja samog sadržaja Zakonopravila u nauci se obično pogrešno smatra da mnoge krivičnopravne odredbe u srpskoj državi potiču iz vremena cara Dušana. Zaboravlja se da je Zakonopravilo Sv. Save, koje je starije od Dušanovog zakonika, zasnovano na vizantijskim izvorima i da predstavlja srpsku redakciju vizantijskih zbornika crkvenih kanona i građanskih zakona. Većina ostalih kazni u Zakonopravilu Sv. Save odnosi se na prestupe kojima se ugrožavaju autoritet i poredak crkve, uz državu najvažnije organizacije u srednjem vijeku.

Cilj ovog rada jeste stavljanje akcenta na nepravedno zapostavljene krivične odredbe u Zakonopravilu Sv. Save.

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KAŽNJAVANJE PRELJUBE U DUŠANOVOJ KODIFIKACIJI

Kaznena politika srednjeg veka, kao i faktori koji su na nju uticali su zahtevna i široka tema, s obzirom na tako dug vremenski period i količinu izvora koje nam nudi. Kažnjavanje seksualnih delikata u srednjem veku, sa posebnim osvrtom na Dušanov zakonik i poseban akcenat na preljubi kao takvoj, biće glavna tema ovog rada. Koristeći više izvora, istražujem gde se to i u kom kontekstu pojavljuje ovaj pojam, kakvu težinu ima u određenim okolnostima i u kakvoj je srazmeri u odnosu na ostale njemu slične delikte .

Zakonodavstvo Stefana Dušana cara Srba i Grka od dr. Aleksandra Solovjeva, u poglavlju koje nosi naziv Krivično pravo u Dušanovom zakonodavstvu , u posebnom delu bavi se *krivičnim delima protiv moralnosti*. Iako u DZ postoji malo takvih odredaba, svega dva člana, vizantijsko crkveno i svetovno pravo obiluje istim. Među njima je svakako i preljuba, koja se ujedno smatra zločinom protiv moralnosti i svetosti, te se naročito kažnjava. Brakolomnici bi se kažnjavali oštrim telesnim kaznama. Izuzetno, ako muž uhvati ljubavnike in complexu, mogao je ljubavniku punopravno oduzeti život.

Teodor Taranovski, u svom delu *Istorija srpskog prava u Nemanjićkoj državi*, u poglavlju o krivičnim delima protiv vere, pominje povredu verskih propisa o braku iznetih u *Žičkoj povelji*. Interesantna okolnost je usvajanje krivičnog dela protiv vere od svetovnog prava. Istim pitanjem se bavi kada govori o krivičnom delu protiv ličnosti, za koje je takođe predviđena svetovna kazna.

Kao i u svakom drugom segmentu prava i u ovoj oblasti možemo preispitivati uticaj romejskog prava na srednjovekovno srpsko pravo. Matija Vlastar u *Sintagmi* spominje preljubu među *pohotnim delima*. Kazna uskraćuje preljubniku svetu pričest na osamnaest godina, koja je vremenom smanjeno na sedam godina. Onaj kome je žena bila preljubnica ne može postati sveštenik. Građa Skraćene Sintagme je pažljivo prerađena. Iz nje su redaktori ispustili sva crkvena pravila, koja su pripisana svetovnim zakonskim naslovima. Kontkretno, brakolomnici se tu kažnjavaju batinanjem, šišanjem (kao infamijom) i odsecanjem nosa. Kazna lišavanja slobode, zatvaranjem u manastir takođe je upražnjavana. Muž ženi može da oprosti, ali i da je otera. Ono što posebno naglašeno u *Dušanovom zakoniku* je deo u kom se govori o bludu vlastelinke s njenim čovekom. Verovatno zbog osetljivog pitanja staleške časti. Pooštrene kazne sakaćenja ili čak smrti vešanjem, rezervisane za sebra, odlika su strogog stava DZ prema ovom činu. Ono što je interesantno je da u obrnutom slučaju zakonik ćuti, te se ne spominje kazna koja bi usledila za vlastelina koji siluje sebarku, za razliku od Skraćene sintagme, koja propisuje odsecanje nosa i konfiskaciju trećine imovine.

Čitanjem ovih redaka o srednjovekovnom zakonodavstvu, prvestveno o *Dušanovom zakoniku*, javlja se više pitanja. Koja je razlika između preljube i bluda u očima srednjovekovnog zakonodavca? Sfera svetovnih ili crkvenih kazni? Kakav je odnos zakonodavca prema preljubi kao seksualnom deliktu? Ističe se svakako i pitanje staleške časti i pitanje ženske časti kao i položaja žene uopšte.

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THE ROLE OF SANCTION IN THE PSYCHOLOGICAL THEORY OF LAW BY LEON PETRAŻYCKI

Leon Petrażycki was born in 1867, at that time the Polish lands were divided between three neighbouring powers. Leon Petrażycki was born in the Russian partition, he studied law at the University of Kiev, as a brilliant student he was sent to a scientific scholarship to Berlin, where he wrote his first scientific dissertations, he then continued his education path at the universities of Heidelberg and Paris. He returned to Russia afterwards, where he was soon to take up a position as a docent at the University of St. Petersburg. After Poland regained its independence in 1918, Leon Petrażycki went to Warsaw, where he created the first chair of sociology of law in Poland within the walls of Warsaw University. Later on he soon became a vice-president of the International Sociological Institute in Paris.

Leon Petrażycki, the father of Polish sociology of law, is considered the founder of the psychological theory of law. He treated law and morality as emotional experiences, which are actualized according to the fact of their experience by individuals.

Petrażycki understood sociology as a theory of social development. He argued that a social change is moving toward the reign of universal, pure and rational love between people.

In light of the above understanding of sociology, I would like to analyse the role of sanctions in the legal system. In the course of my presentation, I will focus on what sanction is for the legal system in the sense of Leon Petrażycki's theory, what role it plays and whether it will always be necessary for a legal system to function properly.

Leon Petrażycki assumed that people adapt to social life on three levels - species, personal and social. As the effects of social adaptation, law and morality gain a relevant position for the organization of a collective life. Petrażycki placed both of these phenomena in the realm of psychic phenomena. Among the psychic phenomena, Petrażycki distinguished emotions - he defined them as having a dual sensation-drive nature. Petrażycki gave the greatest importance to ethical emotions, the consequence of which was the emotion of duty. Humans experience ethical emotions as internal constraints on their natural, selfish inclinations.

In Petrażycki's theory, emotions gave rise to experiences. From ethical emotions arose legal and moral experiences. Morality in his conception was to produce in man a sense of duty, while law aims to expand the awareness of the existence of one's own rights. In addition, Leon Petrażycki also divided legal experiences into experiences of official law and experiences of intuitive law. The former are the result of the existence of an external legal norm, while the latter are a person's ideas about what is right at a given moment.

According to Petrażycki, if the differences between the two types of law exceed certain limits - a revolution occurs. At the same time, according to Petrażycki, the law itself is transient, it exists because the human psyche is not sufficiently adapted to social life. The task of law is to make itself superfluous and disappear. According to Petrażycki, law will disappear when it has fulfilled its educative function - it will create a society based on love, unnecessary legal norms or sanctions to secure norms.

As long as the desired state of social adaptation is not achieved, the law should act motivationally and educationally by eliminating socially undesirable behavior. Evidence of the law's effective action is the lifting of sanctions when a certain behavior turns into a habit. As the educational function of the law is fulfilled, the normative system adapts to the achieved level of the social psyche. As the human psyche becomes better adapted to the conditions of social life, sanctions are relaxed, the size of punishments and coercive measures is reduced.

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PUNISHMENT AS A MEASURE OF SALVATION OF THE ″INNER SELF“

The article is devoted to the problems of the implementation of criminal liability measures through punishment as a method of intimidation and the introduction of a new measure to improve the punishment procedure in the Republic of Belarus in the field of mental health.

As you know, mental health is a state of mental well-being that allows people to improve with stressful situations in life, realize their potential, successfully study and work, as well as contribute to society. It represents a continuous continuum, individual for each person, within which a person is faced with a complex of factors of varying degrees of complexity and experiences different levels of stress, which leads to very different potential social and clinical consequences for each individual.

In the course of the research, theoretical and applied issues arise and proposals are made to solve them. The authors propose a new approach to considering the reverse side of punishment by working out deformed attitudes of consciousness and providing psychological assistance to convicts. During the study, the following problems were identified: the majority considers punishment as a means of social revenge; there is an imbalance expressed in ignoring the search for the root cause of criminal activity; the occurrence of negative consequences that affect the resocialization of convicts and the fact of the repetition of crimes. The features and areas of activity focused on improving the level of correction and re-education of convicts are highlighted. Proposals are made to improve the penal enforcement process, namely, the method of influencing the human psyche while serving a sentence in order to eliminate socially dangerous behavior and resolve the conflict of the inner self. Getting into extraordinary living conditions, human consciousness is able to move from one state to another. After serving the sentence, this condition remains the same, which, in fact, is the problem, as a consequence, which is the generation of new forms of crime.

Crime is a phenomenon of deviant behavior that poses a high danger to the people around the offender and is therefore prosecuted by law. It is worth noting that the fact of punishment has a different effect on convicts. This trend is quite individual due to the peculiarities of the psyche of offenders. The fact of influence on the psychological component of an individual presupposes the provision of professional psychological or psychotherapeutic assistance by qualified specialists in this field. This trend will accompany the elimination of those untreated areas of the nervous system and mental health of the individual that were formed before or during the serving of the sentence. In the modern world, insufficient attention is often paid to a person's mental health, which leads to an increase in mental illnesses.

From the above, it can be concluded that in society, for the most part, the problems of the physical state of the individual are recognized. However, as you know, mental health is a reflection of the state of physical health. Often, the psychological behavior of convicts serving sentences under conditions of restriction of liberty, imprisonment for a certain period and life imprisonment is amenable to significant restructuring, as a result of which a person not only cannot exist, live and develop in a format corresponding to the norm, but also generally does not understand the degree of illegality of the act committed by him. The authors' have come to the conclusion that correction requires overcoming psychological barriers, taking into account the mechanisms of psychological protection, achieving the correct perception of punishment by the convicted, forming attitudes of repentance, repentance, since, in the development of knowledge, the new arises only on the basis of the old, as a cognitively deeper, more meaningful and more adequate norm of comprehension and understanding. To correct a guilty person means to implement its value reorientation, to include in the sphere of its shame and conscience the previously violated social value. The purpose of modern society is to find the root cause and prevent the consequences entailing it, and not just the result of illegal activity.

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GUIDELINE ON CRIME AND PUNISHMENT: A SYSTEMATIC APPROACH TOWARDS *LIBRI TERRIBILES*

The following paper aims to present the issue of systematic interpretation of Justinian criminal law on the basis of a structural analysis of book 48 of the Digest, which is part of the so-called *Libri Terribiles*. The interpretative path presented here is characterised above all by its particular didactic value, a fact that has not escaped the attention of scholars involved in the analysis of Roman law in recent times.

Although the complex problem of extracting the branch of criminal law from the Roman law system is far beyond the scope of this text, certain interpretative assumptions underlying the view presented here cannot be ignored. The distinction between *delicta* and *crimina*, for this is what the problem can be reduced to, is not identical in Roman jurisprudence to the modern division into branches of civil and criminal law. In fact, the *criterium divisionis* allowing a given unlawful act to be defined as *delictum* or *crimen* under Roman law is the type of execution. As Maria Luisa Biccari points out, *delicta* fell within the scope of a private trial, whereas *crimina* fell within the scope of a public trial.

The scope of the present work will be limited to an analysis of public law and the catalogue of *crimina* contained in book 48 of the Digest that opens with the title *De publicis iudiciis*. The very first sentence of this passage indicates that the problem of distinction signalled above is not clear-cut, as not all *crimina* belong to public law, but only those sanctioned by *public leges*. Hence, the conclusions presented here revolve around the presentation of a systematic interpretation of public criminal law consisting in indicating and justifying the scope of the „general part" and the „special part" extracted from Book 48 in the course of the analysis.

A similar approach has been a subject of criticism in the literature on some occasions. Such a critical view was based primarily on the allegation of an anachronism of transplanting the modern concept of the „general part" (here: general part of the criminal law) into Roman law. However, this research is to prove that given accusation is misplaced. For it is undoubtedly one thing to project modern concepts onto ancient institutions, and quite another to make use of the accomplishments of centuries of jurisprudence or even modern interpretative tools to gain a deeper understanding of Roman law. Thus, it has been already pointed out by F. Schulz that „the historian is permitted to investigate the ideas working behind the scenes even if the actors themselves were not conscious of them."

As briefly explained above, the main purpose of this paper is to prove that a systematic and structural interpretation of criminal law is not only useful in relation to modern law systems but it does equally well find its justification in Roman law. Indeed, the title *De publicis iudiciis* should serve as a kind of interpretative guideline leading through the paths of crime and punishment in the public criminal law of the Justinian's Digest.

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POLISH SYSTEM OF PENALTIES IN THE REGULATIONS FROM 20TH AND 21ST CENTURY DEPENDING ON THE HISTORICAL IMPACT AND PUNISHMENTS' FUNCTIONS

The main goal of this project is to analyse the impact which has been made on the regulations associated with penalties in the criminal law by the current historical circumstances. This concept stems from the remark that when it comes to the legislation its social and functional aspects are always taken into consideration, both directly and indirectly.

It is noticeable that these days the law doctrine frequently focuses on the issues like amendments or comparisons to other foreign solutions, ignoring a little bit how influential the political and economical background is. Having seen that its research was not enough, I decided to widen the perspective from which we can describe the law, especially the part of the criminal law that deals with the penalties.

What is going to be analysed is the choice which has been made when it came to legislate and then to use the criminal code in Poland in 1932, 1969 and 1997. It will be answered which historical factors were crucial and influential in the context of chosen punishments. Additionally, there will be also touched the issue connected with the current plans and decisions of Polish authorities who are eager to modify the catalogue of penalties in the criminal code from 1997.

Katarzyna Sójka-Zielińska, who represents Polish legal history doctrine, made a division of functions that punishments are ought to realise. First of all, she pointed to a repressive aim which has a source in the absolute theories in the criminal law. Then she noticed some functions that were based on the utilitarian theories (named also as the relative ones) among which were factors like prevention, resocialization and compensation.

This division is undoubtedly useful during the research about requirements that are made of law depending on the historical period. Beside the problems that were described above it is also going to be verified in the project which function of the penalties was dominating in the concrete criminal Polish code. Then it should be thought over which were the reasons that some purposes were relevant in the specific time in Polish history.

The 20th century was significant for Poland because of the various periods that historians distinguished. One of them mentioned as a 'interwar period' is characteristic mainly because of the difficulties connected with the need to create a new order of law taking into account the solutions that had been obtaining for years of the annexation. It should be underlined that the penal code from 1932 (named as a "Makarewicz's Penal Code") is nowadays described as a big success of Polish legislation.

In the context of this research it could be claimed that the second relevant period in the 20th century in Poland is the Polish People's Republic. Thinking about this part of Polish history, people naturally concentrate on the impact that Russians made on the local politics, law and culture. Without a doubt, analysis of the penalties' regulations from the penal code from 1969 needs to incorporate the perspective of the ideology represented by the communist authorities.

Finally, the regulations about the punishment from the criminal code from 1997 are obviously worth being verified in the light of the above. Consequently, it is going to be analysed how historical changes, especially political ones, influence the law norms about penalties.

In the 20th century in Poland there was a visible problem that we can generally name as the domination of foreigners and lots of kinds of independence. Despite ending up with that, these days the authorities also try to modify the regulations about penalties because of their own vision of law. This observation leads to the question or even to the research problem 'how big is the role played by the

punishment in the law and politics'. Verifying that, it would be beneficial to consider the affection of historical factors strongly associated with the functions of penalties that are supposed to be priority ones in the particular time.

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PUNISHMENT FOR THE CRIMES OF SORCERY IN MEDIEVAL SERBIAN LAW

Despite a largely successful Christianization in the 9th century, a fair share of non-Christian practices had remained preserved in the religious landscape of medieval Serbian states. Some of them were integrated from the "popular religion" into official church doctrine, similarly to other Slavic peoples, such as the attribution of various powers of old pagan gods to Christian saints. Others, however, were vehemently opposed and prosecuted by the new church (and state) authorities.

One of these practices, which had had significant impact even with the peoples that were Christianized at an earlier date, such as the Rhomaians, were various forms of sorcery. To start this analysis, it is first necessary to understand the broad scope of the term used, as well as its importance in the legal sources in medieval Serbian church and state law. Various other criminal acts – crimes against the faith – can be systematized under this moniker. These are, for example, the casting of spells and guessing the future via unholy powers, which inherently offend the dogmas of the Church.

The reason for their criminalization lies mostly in their opposition to the Church's teachings. Their perpetrator, the "magician", as he is mentioned in the Code of the pious Emperor Stefan from 1349, (art. 109) and in other sources, uses various magical formulas to influence events and summon (mis)fortune. His "pair" from the same norm, the "poisoner", is the one who, in order to provoke the same effect, aside from the abovementioned, uses different concoctions to harm others. These crimes were deemed so heinous that they needed to be normed in the Code, despite them being clearly mentioned in the previous sources of law. Their punishment was to be "according to the Law of the Holy Fathers" – the Zakonopravilo of Saint Sava.

In fact, the entire legal treatment of this matter comes from an even earlier legal tradition - Eastern Roman law. The penal provisions are included in the "Zakon gradski" from the Zakonopravilo of Saint Sava, itself a translation of the Procheiron (tit. 39, "On punishments"). Thusly, the first written law on these subjects from the early 13th century. It mentions the sorcerers, poisoners and "those who make sacrifices to cast spells" as those who are to be punished for their grievous actions against the faith. The punishment had almost always been capital – the perpetrator would have been cut down with a sword.

Two parts from Emperor Stefan's tripartite (the Code and the Abbreviated Syntagma) also mention several instances of crimes of sorcery. The Code, apart from the cases mentioned in art. 109, speaks about those who seek to exhume dead bodies and burn them, from fears of them turning into vampires or werewolves (art. 20). Superstitions aside, this norm also enters the realm of sorcery because of the perpetrators. Although the punishment is collective – a fine for the village in which the ritual took place, there is a presumption that the ceremony must have been led by some proficient in the "dark arts". Only one situation of individual responsibility is mentioned: when the said leader is a priest (!), in which case he is to be stripped of his priesthood. The Syntagma has an entire chapter (M-1) and an additional article dedicated to said matter, which extrapolates previous canonical and state norms on different types of sorcery.

The aim of this paper is to follow the developments of church and state law in the matters of criminalizing and punishing sorcery in the relevant time and geographical frame, with special reference to the severity of punishment and different forms of acts that were criminalized.

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DEATH PENALTY IN THE SECOND POLISH REPUBLIC

The major aim of this paper is to present the evolution of the death penalty in the Second Polish Republic. One of the greatest achievements of the Polish judiciary was establishing a new penal code in 1932 that combined the foreign legal systems used at the Polish territory before gaining the new-found independence in 1918, as well as included some newly-introduced domestic regulations.

Not only was it about the coherence of the legal system that combined five different ones that had been used in the area of The Second Polish Republic, but also about creating an own efficiently functioning legal framework of the newly-established country seemed to be a major goal of the lawmakers. On the wave of social changes at that time a couple of legal institutions were included in the newly-created penal code.

The capital punishment was, however, inflicted even before the year 1932, based on foreign penal codes that had been used before, as well as on local customs. Since the ban of death penalty has been commonly considered as a one of the brightest point in the legal history, the aim of the paper is, moreover, to show the development of human rights (Polish penal code significantly narrowed the scope of its application, as well as focused on technical aspects of imposing the punishment). Due to lack of the statistics, it is impossible to compare how many people were sentenced to death before and after 1932, nevertheless, comparing acts of law suggests that the tendency of strictly limiting such form of punishment. Indicating on the fact that only one among five crimes that the death penalty was predicted to, is a common crime (murder), one may see what the real intention of the Polish law-maker was. Even though – due to political reasons – death penalty was actually a common punishment even after 1932, the legal standing, according to acts of law, was being vitally changed in the Second Polish Republic.

Comparing it with legal standing before 1932, one may easily spot what the tendency was. The limited catalogue of crimes, legal framework of the procedure of death penalty, rules judicial procedure or the right of mercy are just a couple of examples. The aim of this paper is not to elaborate on the capital punishment from today's point of view, but to evaluate changes that have been done in Polish criminal law in the interwar period and to present the direction that had been taken to realise the idea of human rights. As a modern code at that time, the regulations about the death penalty perfectly show the development of Western legal thought.

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THE ORIGIN AND DEVELOPMENT OF PRISON SENTENCE IN EUROPEAN COUNTRIES OF THE MODERN ERA

Imprisoning people began to be practiced very early, even in the first organized human communities, as soon as the conditions were created for societies to be able to provide the necessary surplus food for prisoners. Even the oldest legal systems recognized prison as the way to isolate people and limit the freedom of movement. Historical data show that there were prisons in Mesopotamia, China, India, Persia, Egypt, ancient Greece, Rome, and later in the Middle Ages, when various fortresses, cellars and wells were used as dungeons with unbearable living conditions.

Prison existed in its institutional form even before it was systematically used as a punishment. According to the oldest legal sources, confinement was used in ancient Egypt between 2050 and 1786 BC. In that period, imprisonment had more of an economic function and limited the movement of slaves. Even in the Roman times, people were imprisoned for debts. Those prisons were called "debt's prisons" and they were used to ensure debt collection. Debt slavery was also known in ancient Greece and other countries. In the ancient times, the prison was intended for the custody of persons awaiting trial or the execution of one of the sentences (death penalty, exile penalty, corporal punishment or property punishment).

This practice continued throughout the Middle Ages and even then, imprisonment mostly did not serve as a punishment, although it is noticeable that some forms imprisonments could be regarded as such. For example, the well-known medieval law of Charles V from 1532, called "Carolina", provided the sentence of life imprisonment. Nevertheless, in those times, there was no systematic punishment by deprivation of liberty.

First prisons, similar to the ones we know today started to appear in the modern era. According to the available data, it is believed that the first prison was founded in 1553 in England, in London´s Bridwell Castle, which was converted into a prison for vagrants, idlers and beggars who were considered a public threat. Later, this prison was also used for persons who committed various criminal acts. Relatively quickly, in 1559, a prison which was used for vagrants and criminals was established in Amsterdam, thus beginning the period of the so-called Dutch system. A little later, in 1697, prisons were founded in Bremen and Danzig, and in the middle of the 18th century, a prison for boys was formed in Hamburg. Imprisonment was the answer to the increase in the number of crimes and criminals between the 16th and 18th century, and in the same period, due to the lack of labor force, prison sentence was also imposed for minor crimes. Therefore, prisoners were forced to work to serve the needs of local economies. From the beginning of the 18th century in England, a prison sentence was applied for rape, and in Denmark, a life sentence could be imposed for murder. However, these punishments were rare and exceptional, and had more of an administrative role.

In the period from the 15th-17th century, various institutions for the accommodation of vagrants, beggars and criminals were rapidly formed in most European countries, which appeared on a massive scale, as a result of migration from the countryside to the cities. Because of those large migrations and the lack of jobs in the cities, migrants, for the sake of existence, began to commit various criminal acts, and some began to commit crimes as a profession, thus representing a major social problem. For these reasons, the establishment of these institutions began throughout European countries, especially in England, Germany, the Netherlands and France - the countries that had a significant role in the development of modern imprisonment. In the beginning, these institutions received only vagrants and beggars. Later, in the first half of the 17th century, their differentiation began, as some of them started to receive only criminals, thus acquiring the function of real penitentiaries (prisons) for convicts. In the 16th and 17th century, imprisonment appears "quietly", as a transitional form, to the imprisonment of the 18th century, which truly served as a punishment for criminal acts.

In my paper, I will focus on the development of the prison sentence and prison systems in Europe of the modern era, simultaneously dealing with the legal solutions related to the prison sentence in the European legislations. Special attention will be paid to the European countries where the prison first developed as an institution of punishment, which was later adopted by all other European countries, as well as to the crimes for which a prison sentence could be imposed. The paper will also contain a brief overview of the development of imprisonment in the Ancient times and Middle Ages.

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THE TRIAL OF JOZEF TISO

After major social changes such as a revolution or a war event, the society often feels the need to punish those who are connected to the previous system. However, in the criminal law, there is a principle that retroactivity is not permitted, i.e. it is generally not possible to punish anybody for an action which was not forbidden at the time it was committed. While it can be argued that some crimes should not be left unpunished, it can still arouse a controversy when e.g. a former head of the country is punished by the new regime, as their supporters would often think that it was a political trial.

Jozef Gašpar Tiso was born on 13th October 1887 in Bytča in modern Slovakia, then part of Kingdom of Hungary, in a religious Slovak family. He studied at grammar schools in Žilina, Nitra and studied Catholic theology at a prestigious college Pazmaneum in Vienna, graduating and becoming a priest in 1910. In 1918, Slovakia became part of the new (First) Czechoslovak Republic; there, Tiso became a member of the restored People's Party, later Hlinka's Slovak People's Party – HSĽS, which was generally a conservative political party protecting the Slovak national interests and seeking Slovak autonomy. He has been a member of parliament and even a minister in the inter-war period, being considered one of the more moderate members. Nevertheless, in the late 1930's, as the political atmosphere in the whole region was changing due to Hitler's rise in Germany, Tiso also shifted more towards more extreme views. In 1938, after the death of Andrej Hlinka, he became the leader of HSĽS. In October 1938, Munich Agreement was signed and Czechoslovakia had to make great concessions, including losing its territory, to Nazi Germany, but also Poland and Hungary. Tiso became the Prime Minister of Slovakia (as a newly established autonomous region). Only a few months later, in March 1939, Slovakia declared independence, while Germany occupied the Czech lands a day later. Tiso then became the first president of the country, which has never got full international recognition, as it was deemed to be a Nazi Germany puppet state.

As a head of the Slovak State, Tiso was arguably at least politically responsible for its actions. The regime in the state was not democratic (HSĽS, together with marginal parties of Hungarian and German minorities, were the only political parties allowed), authoritarian, and has adopted fascist and anti-Semitic policies. The regime was probably less cruel than many of its allies, and most Slovaks arguably did not live in terror, which is often emphasized by apologists of the regime. Meanwhile, more than two thirds of Jews living in Slovakia have been murdered, their assets have been "aryanized" (confiscated), and when the Slovak National Uprising began in 1944, the regime has brutally suppressed it. Whole Slovak villages, such as Kľak, were destroyed and thousands of Slovaks were murdered by German army which came to help with defeating the uprising. At this time, Tiso's own position has already been severely weakened – the real power in Slovakia was held by occupational German forces. Finally, in 1945, Tiso has left the country, escaping to Austria, then to Germany, where he was captured by the United States army and, eventually, extradited to Czechoslovakia.

The trial itself began on the 2nd December 1946 before the National Court in Bratislava, which was a special judicial body made for judging the crimes against the state. Tiso was accused of a long list of crimes, including breaking up the First Czechoslovak Republic, collaborating with the Nazi Germany, conducting the war against the Soviet Union and the Allies, fighting against the Slovak National Uprising or deporting the Slovak Jews into the German concentration camps. Tiso's defense attorneys, Martin Grečo and Ernest Žabkay, tried to argue either that Tiso had not knew what had been happening, or that he had been acting under duress. The trial lasted for several months, but eventually, Tiso was sentenced to death by hanging, and executed on 18th April 1947.

More than 75 years after his execution, Tiso remains one of the most controversial figures of the modern Slovak history. The post-war Communist regime clearly condemned him, labeling him a "clerofascist", and using him in anti-Catholic and anti-religious propaganda. Meanwhile, after the Velvet

Revolution in 1989, in which the communists lost their rule over Czechoslovakia, a wave of Slovak nationalism rose, which meant also attempts for rehabilitation of Tiso and claims that he was a Slovak national hero and a martyr, he did not deserve to die and his trial was a political one, where the sentence had been decided before it started.

In my submission, I am going to look into the trial of Jozef Tiso, comparing it to similar trials which happened in Czechoslovakia or in other countries after the Second World War, and questioning whether it can be called a political trial. I am also going to research the mentions of Jozef Tiso, his trial and his sentence, in the contemporary newspapers and publications, but also in the more recent discourse. My aim is not to judge Jozef Tiso myself, but rather to look into the nature of the trial and its consequences, as dispassionately and impartially as possible.

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INTERNATIONAL RESPONSIBILITY FOR THE VIOLATION OF THE REFUGEES' RIGHTS

International responsibility is a special institution that differs from responsibility under domestic law. Compliance with domestic legislation is ensured by the possibility of using the coercive apparatus, while there is no such mechanism in international relations. The international legal norms and principles themselves serve as a guarantee of compliance with the international legal order. Since each State is a sovereign unit in international communication, the regulation of the international relations is carried out collectively by the States themselves.

International law has long known such general principle, according to which any damage caused must be compensated. The final part of the first written bilateral agreement that has come down to us – the treaty of 1296 BC between the Egyptian Pharaoh Ramses II and the Hittite king Hattushil III – provided for a kind of sanctions for its violation: "May the house, the land, and the slaves of the one who breaks these words perish". This formula expressed the consequences for the violation of the contract. This proves that the institution of international responsibility was already given great importance in very distant times and that moral responsibility was considered more significant than material losses.

Of particular importance today are the issues of responsibility for the deliberate violation of the norms and principles of international law, for crimes against peace and humanity, violation of fundamental human rights and freedoms.

The preservation of peace and the protection of human rights are closely interrelated. Violation of fundamental human rights always leads to adverse consequences, it is human rights violations that are one of the main reasons for people seeking asylum in other States. Therefore, respect for human rights, as well as knowledge of international human rights law, is a necessary condition for preventing refugee flows and solving related problems.

Asylum seekers and refugees have all the rights and fundamental freedoms proclaimed in international human rights treaties. The central element of international refugee protection is the right not to be forcibly returned in circumstances that could endanger someone's life or freedom.

Modern refugee flows are very often not the result of direct persecution. The reasons for seeking refuge at present include ethnic conflicts, natural disasters and extreme poverty. As a result, many of today's refugees are not covered by the definition contained in the 1951 Refugee Convention, which includes only victims of persecution on the basis of race, religion, citizenship, belonging to a certain social group or political beliefs. This definition is made in the context of the situation of the post-war years and does not take into account many of the situations in which refugees find themselves today. As a result, some countries, especially in Africa and Latin America, have expanded the definition of the term "refugee". However, in many other countries most of the applications are rejected on the basis of a strict interpretation of the definition.

Refugees are much more likely to face human rights violations so the Office of the United Nations High Commissioner for Refugees (hereinafter – UNHCR) was established to protect the rights of refugees. The main task of the UNHCR is international protection – ensuring that refugees are not forcibly returned to a country where they have reason to fear persecution, as well as ensuring the protection of the basic rights of refugees.

The present situation is such that it is quite difficult to ensure full compliance with international human rights standards. The mechanisms of international responsibility that actually exist, compared with the measures used to enforce the norms of domestic legislation, seem rather weak and ineffective.

International legal responsibility is understood as negative legal consequences that occur for a subject of international law as a result of violating an international obligation. Subjects of international legal responsibility are only subjects of public international law.

The obligations imposed on States by virtue of human rights norms are: to comply, protect and fulfill. The State may be held liable for non-compliance with any of these obligations.

The obligation to comply requires the State to refrain from any measure that may interfere with or worsen a person's enjoyment of their rights.

The obligation to protect requires the State to take all necessary measures to protect individuals under its jurisdiction from violation of their rights by third parties.

The obligation to fulfill requires the State to take measures to ensure that individuals under its jurisdiction can enjoy all the human rights, otherwise the State is obliged to provide material assistance.

A State is responsible for human rights violations in the international arena only if it has failed to provide the alleged victim with adequate and effective protection through its courts or administrative authorities. The international protection of human rights is auxiliary in nature compared to the available national mechanisms.

International legal responsibility occurs for the commission of an international human rights offense; in the application of sanctions of international legal norms to the offending State; is associated with certain negative consequences for the offender; is aimed at ensuring international law and order in the event of a massive and systematic, gross violation of human rights or protection restoration or enforcement of the rights of an individual or a group of persons; implemented in the field of international legal relations.

Thus, the refugee problem, in its close relationship with the protection of human rights, continues to be a challenge to the international community. While the States hosting refugees must continue to fulfill their obligations to ensure their protection and contribute to the creation of an environment of tolerance towards representatives of other peoples, the States of origin of refugees are obliged to prevent actions that give rise to mass departure of the population.

If the main causes of mass withdrawal are human rights violations, then the solution to the problem may consist in constant monitoring of the course of events by the UN human rights bodies, condemnation of violations by the international community and the appointment of special rapporteurs to study specific situations and prepare recommendations.

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„THEY STOLE MY PIG" - CRIME REPORTS TO EPISTATĒS PHYLAKITŌN IN PAPYRI FROM 1ST CENTURY ROMAN EGYPT

Ἐπιστάτης φυλακίτων (*epistatēs phylakitōn*) literally means the commander of *phylakitai* (watchmen, guards) what by part of the scholars was translated as the chief of police. This function arose in Egypt in Ptolemaic period (323 - 30 BC) and dealt with many tasks such as crime scene investigation, collecting evidence, hearing of the witnesses, arresting and transportation of suspects. Apparently, he was in power to settle disputes and impose punishments, or at least in power to initiate proceedings in order to do so.

More than 30 papyri with petitions to *epistatēs phylakitōn* have survived to our time, most of them being part of the Archive of Petitions from Euhemeria (P. Ryl. II 124-152). Papyri allow us to see the practice of law with accuracy and authenticity unmatched by any other sources of knowledge of antiquity, thanks to the direct transmission of texts.

Such a unique catalogue of texts can shed light on the subject of crime in antiquity. Unlike most legal sources, they show what was considered a crime by the victims of such acts. The typology of wrongs that can be reconstructed on the basis of these documents includes mainly theft and assault, although in some cases combined with, for example, destruction of property or demolition of walls.

However, in the eyes of the complainants or officials, did the above-mentioned acts have anything to do with Roman *furtum* or *iniuria*? Barely after 60 years of Roman rule we can observe the relation between wrongs committed by common people and delicts known to Roman jurists.

The report of a crime always included, in addition to the identification of the addressee and the complainant, a description of the events and a request for an investigation. Suspects are not always named, but a request for an appropriate punishment is sometimes included. Unfortunately, these are not specifically mentioned, but it is nevertheless possible to attempt to reconstruct the relevant punitive measures on the basis of other sources known to us.

One of the many questions worth asking is whether we are already dealing with the influence of Roman law, or even with the application of Roman legal norms, at such an early period. The absence of the office of *epistatēs phylakitōn* in papyrus documents after 42 CE suggests the disappearance of this typical for the Greek world institution after the first decades of the Roman rule. Their role seems to have been taken over by other officials and Roman soldiers.

The paper will show types of wrongs provided by above-mentioned documents and reconstruct how they differ from and what they have in common with Roman law institutions. This can be done with cases handed down some 2,000 years ago, which will provide, as if through a window, a glimpse of the ancient justice system.