

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁸¹ *Ibid.* Article 8, paragraph 2.

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

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

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

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

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

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

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

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

Genocidal policies as the negation of the legal order

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

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

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

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

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

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

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

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

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

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

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

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

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