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Herausgegeben von  
Zoran Pokrovac  
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Vittorio Klostermann  
Frankfurt am Main  
2012

## Rechtsprechung in Osteuropa

Studien zum 19. und frühen  
20. Jahrhundert

Herausgegeben von Zoran Pokrovac



Vittorio Klostermann  
Frankfurt am Main  
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

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Mit diesem Sammelband, dem sechsten der Reihe »Rechtskulturen des modernen Osteuropa. Traditionen und Transfers«, beenden wir die Veröffentlichung der Forschungsergebnisse des im Jahr 2004 vom Max-Planck-Institut für europäische Rechtsgeschichte von der damaligen Institutsdirektorin Prof. Dr. Marie Theres Fögen ins Leben gerufenen, gleichnamigen Forschungsprojektes. Mit der maßgeblichen Unterstützung der VolkswagenStiftung ist ein weit gefächertes Forschungsnetzwerk entstanden, das Wissenschaftler aus allen Regionen Osteuropas zusammenführte. In personeller Hinsicht lagen die Steuerung des Netzwerks und die wissenschaftliche Gesamtverantwortung in den Händen eines im Frankfurter MPIeR angesiedelten wissenschaftlichen Teams, das von Frau Fögen geführt wurde. Sie wurde dabei in besonderer Weise vom leitenden Projektmitarbeiter Dr. habil. Tomasz Giaro unterstützt, der bereits die Forschungsplanung maßgeblich mitbestimmt hatte. Tomasz Giaro hat das Institut 2006 verlassen, um eine Professur an den Universitäten Warschau und Kattowitz anzutreten. An seiner Stelle fungierte danach der Herausgeber dieses Bandes als leitender Projektmitarbeiter und konnte noch gemeinsam mit Frau Fögen den Abschlussbericht des Projektes abgeben. Dass Frau Fögen noch ihre letzten Kräfte dem erfolgreichen Abschluss und möglicherweise der Fortsetzung des Projektes selbstlos gewidmet hatte, möchten wir auch an dieser Stelle der menschlichen Vergesslichkeit entreißen. Herr Prof. em. Dr. Michael Stolleis hat als kommissarischer Institutsdirektor nach dem Tod von Frau Fögen die Abwicklung des Projektes getragen und uns tatkräftig bei der Veröffentlichung der Projektbände unterstützt. Mit seinem großen organisatorischen Geschick und seiner Erfahrung, besonders aus der Mitwirkung in den früheren Osteuropaprojekten des Instituts, hat auch Herr Dipl.-Soz. Gerd Bender in allen Projektphasen einen großen Beitrag geleistet.

Wegen der Komplexität des Forschungsthemas und der immensen organisatorischen Dimensionen wurde schon der Projektplanung eine besondere Bedeutung beigemessen und während der laufenden Forschungen die größtmögliche Mühe auf die Pflege und Betreuung des Netzwerks verwandt. Das Forschungsprojekt sollte nicht einfach wieder westliche Ostforschung sein, sondern sollte meist jüngere osteuropäische Wissenschaftler in tragenden Rollen integrieren. Diese Ausgangsentscheidung hat der Kooperation eine außerordentlich hohe Bedeutung verliehen, der nur mit den größten Anstrengungen Rechnung getragen werden konnte. Bei der Projektentwicklung war davon ausgegangen worden, dass die Rechtshistoriker Osteuropas – bis

wege gegangen. Endlich, aber erst 1889, war auch der Gesetzgeber gezwungen, massiv einzugreifen und sie im Einklang mit dem ABGB gesetzlich zu regulieren. Erst damit passte der Gesetzgeber ein Rechtsinstitut, welches das Leben einer überwiegend ländlichen Gesellschaft maßgebend bestimmte, dem transferierten Recht systematisch an. Bereits 1902 war eine kleine Gesetzesnovelle notwendig, die dann sogar bis zu den kommunistischen Eingriffen in die Rechtsordnung »hielt«.

Schließlich erfüllt der Beitrag von Damir Prišlin-Krbavski bezüglich des theoretischen Rahmens des Projekts eine wichtige Funktion. Er ermöglicht einen Vergleich zwischen Kernungarn und Kroatien, wo das in Ungarn abgelehnte österreichische ABGB Geltung erlangte. Somit kann verglichen werden, wie sich in zwei identisch westlich geprägten Ländern unterschiedliche Transfers – in Kernungarn der rechtswissenschaftlich-justizielle und in Kroatien der legislative – ausgewirkt haben.

\* \* \*

Für die diverse Unterstützung, besonders die deutsch- und englischsprachigen Korrekturen, bei der Vorbereitung dieses sowie der vorherigen von mir herausgegebenen Bänden, möchte ich mich, auch an dieser Stelle, bei David Sörgel – damaliger Doktorand am Institut – und meinen Hilfskräften, Thomas Becker und Alexander Krey, herzlichst bedanken. Die nicht einfachen Aufgaben erledigten sie sehr präzise und beeindruckten, gerade bei den oftmals sehr bearbeitungsintensiven Texten, durch ihre äußerste Sorgfalt und Genauigkeit. Bei der redaktionellen Betreuung der Projektschriftenreihe, besonders dieses Bandes, hat Dr. Karl-Heinz Lingens sehr oft durch seine Präzision und sein wachsames Auge noch Mängel und Fehler korrigiert, die sonst Andere – einschließlich der Herausgeber selbst – verantworten müssten. Und da man – wie uns Tucholsky lehrt – nicht über seine Fehler fällt, sondern über seine Feinde, die diese Fehler ausnützen, hoffen wir, dass nicht zu viel für die Feinde übrig bleibt.

Zoran Pokrovac (Frankfurt am Main / Split)  
Mai 2012

## Trial by Jury in Croatia 1849–1918: Transfer and the Context

I. Introduction – II. Current research and sources – III. Trial by jury in Europe and the Habsburg Monarchy – IV. Constitutional and legal development of Croatia – V. Trial by jury in Croatia and Slavonia, 1849–1850 – VI. Trial by jury in Croatia and Slavonia, 1875–1884 – 1. The trial by jury and press legislation 1875 – 2. Trial by jury in judicial practice 1876–1884 – VII. Trial by jury in Croatia and Slavonia 1884–1903 – 1. The trial by jury and press legislation 1884–1901 – 2. Trial by jury in judicial practice, 1890–1901 – VIII. Trial by jury in Croatia and Slavonia 1903–1921 – 1. The trial by jury and press legislation 1903–1918 – 2. Trial by jury in judicial practice 1903–1918 – IX. Trial by jury in the Croatian legal system: transfer, irritation and the context – X. Conclusion

### I Introduction

The spread of trial by jury in 19<sup>th</sup> century Europe was certainly one of the more intriguing episodes in the history of the transfer of legal institutions. One of the most typical institutions of the common law system was adopted almost as a means of following fashion in continental legal systems with completely differing legal heritages. After the introduction of juries in the legal systems of several European countries, that institute was interpreted as a part of national heritage of those countries regarding the elements of trial by jury in the national traditions of lay judiciary. However, true trial by jury was first introduced to the continental Europe in 1791, along the lines of the English model, in French penal legislation. Later, the French version of trial by jury became the model for the introduction of the institute in other European countries. In further development on the continent, the jury was replaced by trial by assessors which had been part of the tradition of some European countries. This arose as a compromise between the tendency towards professionalism of judiciary and the need for its political legitimacy, and a corrective by citizen participation in trials. However, although trial by assessors was on the whole in the ascendant, trial by jury had a significant influence on the development of modern penal procedural law in continental countries, since it introduced or encouraged the development of some important penal procedure institutions. Croatia also found its place in this process of acceptance and displacement of trial by jury, as a country with almost no tradition of a lay judiciary. The process of intro-



ducing trial by jury in Croatia clearly emphasised her particular political position as well as her political and legal system, legal culture and social structure.

In terms of its legal nature and position in relation to the social environment, trial by jury stands at the crossroads of different dimensions. The institution is linked to some fundamental questions concerning penal procedure (the participation of laymen in adjudication, the importance of main trial, the principle of openness to public and adversarial principle, the system of presenting evidence etc.). It is influenced by its environment (social structure, educational level, cultural level etc.) as well as by political orientation of the legislator (the criteria for and procedure of jury selection). The fact that it is an institution which, everywhere except England, was adopted from outside, is sufficient motivation to examine the effects it caused and the changes it underwent in new surroundings. For all these reasons, research into the transfer and development of trial by jury contributes to an understanding of the mechanisms and process of the transfer of law, as well as the legal, cultural and other characteristics of particular contexts. Of course, it also contributes to the understanding of the development of penal procedure and the organisation of the judiciary in a particular country.

These characteristics also form the basis for our interest in this study. In it, the development of trial by jury in the Croatian legal system will be presented, from the episodic appearance of the institution in 1849–50, through the systematic, legislative definition of 1875 and its later amendments, its suspension and corresponding judicial practice up to 1918, to its complete abolition in 1921. We will show how the Austrian jury legislation was transferred into the Croatian legal system, the development of independent Croatian jury legislation and the elements of press legislation with which it was functionally linked, how jury trial legislation was conditioned by the social and political environment, the practice of trial by jury and the theoretical and political standpoints of the time on trial by jury. We organised our study as a combination of legislative and practical aspects of the institute of trial by jury. Thus we made the legislative framework a basis of the presentation but complemented it with judicial practice and aligned the periodisation with the suspensions of the institute.

Before we begin a consideration of the development of trial by jury in the Croatian legal system, we will present the preconditions necessary for a better understanding of the topic. Thus, we will first review the results of research to date and report on sources relating to research into trial by jury in Croatia. We will then outline the development of trial by jury in Europe and briefly present the constitutional and legal terms of reference of Croatian autonomy up to 1918, which are necessary to an understanding of further consider-

ations. We will then approach the designated core of our research, that is, the development of trial by jury in Croatia and Slavonia.

## II Current research and sources

For readers not speaking Croatian, limited, but fairly informative literature on the Croatian history and legal history in other languages is available. This literature gives an overview of the general historical, constitutional and legal development in individual areas, including elements important to a study of the development of juries.<sup>1</sup>

However, Croatian literature in the field of legal history directly relating to jury trial is very modest, reflecting a low level of research. The reasons lie in the concentration of a relatively small number of Croatian legal historians on mainly constitutional and public law issues. An important reason is also the fact that the institution of the jury was never really part of Croatian legal tradition, but rather made occasional appearances.

An outline of research into juries in Croatia is provided in two essential works. The first is a monograph by an eminent professor at the Faculty of Law in Zagreb, late Vladimir Bayer, *Problem sudjelovanja nepravnik a u savremenom kaznenom sudovanju* [The Problem of the Participation of Laymen in Modern Penal Judiciary], (1940)<sup>2</sup> which also includes aspects of legal history. The second is a more detailed article by the author of this study,

1 A general overview of Croatian history in other languages can be found in: Ivo Goldstein, *Croatia: A History*, London 1999; Ivo Perić, *A History of the Croats*, Zagreb 2005; Ludwig Steindorff, *Kroatien Vom Mittelalter bis zur Gegenwart*, Regensburg and München 2001. For more on the constitutional and legal development of Croatia between 1848 and 1918 in other languages see Giannantonio Benacchio, *La circolazione dei modelli giuridici tra gli slavi del sud*, Padova 1995; Dalibor Čepulo, Building of the Modern Legal System in Croatia 1848–1918 in the Centre-Periphery Perspective, in: *Modernisierung durch Transfer im 19. und frühen 20. Jahrhundert*, hg. von Tomasz Giaro, Frankfurt a.M. 2006, pp. 47–91; Dalibor Čepulo, Modernity in Search of Tradition: Formation of the Modern Croatian Judiciary 1848–1918, in: Alan Uzelac and C.H. Van Rhee (eds), *Public and Private Justice. Dispute Resolution in Modern Societies*, Antwerpen and Oxford 2007, pp. 105–127; Dalibor Čepulo, Legal Education in Croatia From Medieval Times to 1918: Institutions, Courses of Study and Transfers, in: *Juristenausbildung in Osteuropa bis zum Ersten Weltkrieg*, hg. von Zoran Pokrovac, Frankfurt a.M. 2007, pp. 81–151.

2 Vladimir Bayer, *Problem sudjelovanja nepravnik a u savremenom kaznenom sudovanju* [The Problem of the Participation of Laymen in Modern Criminal Jurisprudence], Zagreb 1940.

Dalibor Čepulo, *Sloboda tiska i porotno suđenje u banskoj Hrvatskoj 1848–1918* [Freedom of the Press and Trial by Jury in the Bannate Croatia, 1848–1918] (2000)<sup>3</sup> who also published several other works in Croatian, English and German complementary to the topic.<sup>4</sup> The legal historian, Ferdo Čulinović, wrote a clear, but rather superficial, not entirely accurate study in 1954, on the development of juries in the territory of the former Yugoslavia from the Middle Ages to the 1950's.<sup>5</sup> Additional information on juries in the 19<sup>th</sup> century can also be found in several other articles by Vladimir Bayer, directly or indirectly related to juries in Croatia.<sup>6</sup> Apart of that the Law on Penal Procedure of 1875 was analysed in 1994 in an article by Vladimir Ljubanović.<sup>7</sup> All these studies deal with the development of legislation, while only modest references to judicial practice are given in the first study mentioned above by Dalibor Čepulo.

In historical works fragmentary notes on trial by jury may be found primarily in the monograph *Povijest novinstva Hrvatske* [History of Journal-

3 Dalibor Čepulo, *Sloboda tiska i porotno suđenje u banskoj Hrvatskoj 1848–1918* [Freedom of the Press and Trial by Jury in the Bannate of Croatia 1848–1918], in: *Hrvatski ljetopis za kazneno pravo i praksu* [Croatian Annual of Criminal Law and Practice], 7 (2000), pp. 923–975. That article presents the basis for this study in terms of the development of legislation, and some passages from the article have been used in this study.

4 Dalibor Čepulo, *Prava građana i moderne institucije u europskoj i hrvatskoj pravnoj tradiciji* [Rights of Citizens and Modern Institutions in the European and Croatian Legal Tradition], Zagreb 2003; Dalibor Čepulo, The Press and Jury Trial Legislation of the Croatian Diet 1875–1907: Liberalism, Fear of Democracy and Croatian Autonomy, in: *Parliaments, Estate and Representation* 22 (2002), pp. 169–192; Dalibor Čepulo, Izgradnja modernog hrvatskog sudstva 1848–1918 [The Building of the Modern Croatian Judiciary 1848–1918], in: *Zbornik Pravnog fakulteta u Zagrebu* [Collected Papers of the Faculty of Law in Zagreb] 56 (2006), pp. 325–383.

5 Ferdo Čulinović, Porota u Jugoslaviji [The Jury in Yugoslavia], in: *Zbornik Pravnog fakulteta u Zagrebu* [Collected Papers of the Faculty of Law in Zagreb] 4 (1954), pp. 41–58.

6 Vladimir Bayer, Suci-porotnici [Judges-jurors], in: *Zbornik Pravnog fakulteta u Zagrebu* [Collected Papers of the Faculty of Law in Zagreb] 5 (1955), pp. 3–4; Vladimir Bayer, *Kazneno procesno pravo – odabrana poglavlja. Knjiga II. Povijesni razvoj kaznenog procesnog prava* (ur. Davor Krapac) [Criminal Procedure Law – Selected Chapters. Book II. The Historical Development of Criminal Procedure Law], Zagreb 1994, p. 152. See also Milenko Jovanović, *Porota u pravosuđu Jugoslavije* [Jury in the Judiciary of Yugoslavia], Beograd 1958.

7 Vladimir Ljubanović, 120. obljetnica donošenja i sankcioniranja hrvatskog Zakona o kaznenom postupku od 17. svibnja 1874. [120th Anniversary of the Adoption and Sanctioning of the Croatian Law on Penal Procedure of 17 May 1874], in: *Hrvatski ljetopis za kazneno pravo i praksu* [Croatian Annual of Criminal Law and Practice] 1 (1994), pp. 239–244.

ism in Croatia] by Josip Horvat (1962, 2001<sup>2</sup>),<sup>8</sup> and the monograph, *Prema hrvatskome građanskom društvu* [Towards a Croatian Civil Society] by Mirjana Gross and Agneza Szabo (1992), which gives a comprehensive overview of what was an important period, the 1860's and 1870's.<sup>9</sup> More information can be also found in the articles written by Croatian authors of middle or younger generation, whose main concern was freedom of the press, a subject which was inevitably yoked to trial by jury in Croatia.<sup>10</sup>

The situation regarding jurisprudence from the period under research is not particularly favourable. There is a thorough, systematic discussion of jury proceedings in the light of contemporary law in a university textbook by Nikola Ogorelica, *Kazneno procesno pravo* [Penal Procedure Law] (1899).<sup>11</sup> There are only two informative articles on trial by jury in a scholarly journal from that period, *Mjesečnik Pravničkoga društva u Zagrebu* [Monthly of the Lawyers' Society in Zagreb], one of which deals with the equivalent practice in Austria.<sup>12</sup> Elements of a scholarly approach, influenced by politics, may be found in articles in the daily press (*Narodne novine*, *Obzor*, *Sloboda*, *Die Drau*, *Agramer Presse* etc). These articles were mainly written for the purpose of political polemics, but are based to some extent on scholarly, legal arguments. Articles relating to trial by jury of a political programme nature are also to be found in newspapers.

As far as published sources are concerned, the primary ones are laws and decrees published in collections of laws enacted by the *Sabor's* (the Croatian

8 Josip Horvat, *Povijest novinstva Hrvatske* [History of Journalism in Croatia], Zagreb 1962.

9 Mirjana Gross and Agneza Szabo, *Prema hrvatskome građanskom društvu* [Towards a Croatian Civil Society], Zagreb 1992.

10 Croatian historians are not paying particular attention to trial by jury, but mention the institute in the context of a wider interest for the freedom of the press and the activities of individual publicists. Those who have written on this topic include Vlasta Švoger, Stjepan Matković and Jasna Turkalj, and on the Dalmatian region, Ivan Pederin. For more on the organization of the judiciary in Dalmatia see Vjekoslav Maštrović, *Sudstvo i jezično pitanje sudovanja u XIX. stoljeću u Dalmaciji* [The Judiciary and the Linguistic Question in Judicature in 19<sup>th</sup> Century Dalmatia], Zagreb 1956.

11 Nikola Ogorelica, *Kazneno procesno pravo*, I. [Penal Procedure Law, Vol. I], Zagreb 1899.

12 Rasprava pred porotom [Trial before a jury], in: *Mjesečnik Pravničkoga društva u Zagrebu* [Monthly of the Lawyers' Society of Zagreb] 2 (1876), pp. 476–478; K tumačenju par. 25. zakona od 17. svibnja 1874 o porabi tiska za kraljevine Hrvatsku i Slavoniju [Towards an Interpretation of Paragraph 25 of the Law on the Printed Matters of 17 May 1874 in the Kingdom of Croatia and Slavonia], in: *Mjesečnik Pravničkoga društva u Zagrebu* [Collected Papers of the Faculty of Law in Zagreb] 20 (1894), pp. 118–121.

Diet), and there are extremely useful minutes of *Sabor* sessions, in which it is possible to trace legislative procedures related to the enactment of individual laws. The relevant *Sabor's* debates were characterised not only by political leanings but also scholarliness, since professors and legal practitioners participated in them. Discussions on trial by jury were conducted not only for the adoption of laws related to trial by jury, but for other reasons. Nonetheless, statistical data on trial by jury is almost non-existent, since official statistics do not record separately trials conducted before a jury. Still, some published data enable indirect conclusions on the subject to be drawn.<sup>13</sup>

As it regards sources related to judicial practice, the situation is relatively good. That refers to reports on judicial practice in newspapers, but not to the most immediate and most important sources – judicial records. Although it is true that, up to 1906, there was only one chamber with a jury at the County Court in Zagreb, my search for files relating to trials by jury did not produce any serious results. A search of the archives of the courts which one would expect to contain such files (the County Court in Zagreb, the Ban's Table i. e. the high court and the Table of Seven, i. e. the Supreme Court) and the archives of administrative institutions which might have been »subsidiary« locations for some files of that kind, (the Presidency and the Justice Department of the Croatian Autonomous Government) yielded unexpectedly poor results.<sup>14</sup> Fortunately, information on judicial practice is relatively well covered in newspapers. *Narodne novine* [The Peoples Press] – a combination of

13 See *Statistički godišnjak kraljevina Hrvatske i Slavonije 1904, sv. I*. [Statistical Almanac of the Kingdom of Croatia and Slavonia 1904, vol. I], Zagreb 1911; *Statistički godišnjak kraljevina Hrvatske i Slavonije 1906–1910, sv. II*. [Statistical Almanac of the Kingdom of Croatia and Slavonia 1906–10, Vol. II], Zagreb 1917, and Fran Vrbanić, *Kriminalitet žiteljstva u Hrvatskoj i Slavoniji* [Criminality among the Population in Croatia and Slavonia], Zagreb 1887 (taken from *Rad Jugoslavenske akademije znanosti i umjetnosti* [Work of the Yugoslav Academy of Sciences and Arts], bk. 82, Zagreb 1886, pp. 155–203 and bk. 83, Zagreb 1887, pp. 1–42).

14 In the well bodyised archival fund of the Zagreb County Court in the State Archives in Zagreb, part of which were also a jury court, not a single jury verdict, nor any information on jury proceedings, has been preserved. Other sections of the archives of the courts have been only partially bodyised, and my search led only to sporadic files and other documents relating to individual jury proceedings. The same was true of the extremely comprehensive archives of individual departments of the Croatian Autonomous Government in the Croatian State Archive in Zagreb, which I was only able to explore in part, due to their size. It is hard to believe that among the not insignificant number of jury cases held, none have been preserved, so it will be up to further researches to find these documents and fill in the details which in this study have been culled from newspaper sources.

official gazette and government political journal – published the most basic information on proceedings and judgements of the jury court. Newspapers whose editors were court-tried before the jury on the whole reported well, or even in great detail, on the jury debate. These reports frequently included minutes, as well as lists of all the participants in the proceedings, including the judges and the jurors, and relevant information on them.

Since my search was for information on trial by jury, I concentrated on an analysis of the press in the period when juries were in existence, that is, from 1849 to 1850 and 1875 to 1918. In doing so, I concentrated primarily on a review of *Narodne novine*, assuming this, as the official publication, would contain records of all jury proceedings, and *Obzor* [Horizon], as the most reputable, least biased publication. Further details relating to particular proceedings were sought in the other newspapers available.<sup>15</sup> In this way I identified 33 jury proceedings based upon 39 indictments or private prosecutions. This perhaps does not cover all jury proceedings, but the state of statistical, official information does not permit an accurate estimate of their actual number. However, the sample represents if not complete then certainly a very significant proportion, facilitating relevant analysis on the topic. Reports on these jury proceedings, most often in the form of polemical reactions, appeared occasionally in newspapers of opposing political leanings, whose varying tones of voice can be used as controlling sources. Among contradictory pieces of information I thus discovered (for example, differences in the names of judges or jurors, or their personal details) I settled on those which seemed to offer the best impression of the trustworthiness of particular reports, since such details were in any case minor in significance.

Although the newspapers reports I referred to were informal, incomplete sources, the detail and quality they provided made them relevant and fairly satisfactory sources of reporting. Detailed stenographic reports, which were occasionally to be found, left an impression of great reliability. The main drawback of such reports was the lack of a comprehensive approach to reporting the whole development of the proceedings, i. e. individual procedural stages and actions. Reports on investigative procedures were minimal, even though their importance was great, since in order to economise on time, the emphasis on evidence in proceedings during the main trial rested with the

15 Given the scope of research into newspaper sources and the time available, a great deal of this work was done according to my precise instructions by my assistants, Ivan Kosnica and Dunja Pastović, who is herself preparing a doctoral dissertation on trial by jury in Istria and Dalmatia, from 1848 to 1918. Here I shall thank them for their help. Because of their conscientiousness as well my constant supervision I am certain that I can rely on their researches.



investigating reports. Furthermore, there was a tangible lack of reporting on the outcome of appeal proceedings. I found several reports of appeals lodged (there were probably more of them), and a few reports on public sitting of the appellate court at which such appeals were granted. But I found no reports of repeated jury trials. Another drawback to the newspaper reports is the lack of detail concerning the ages or religious affiliation of the jurors involved in the trials. However, the newspaper usually, though not always, indicated the juror's professions.

In official journal *Narodne novine* the names of jurors, with details of their professional orientation, were on the whole reported on an annual or periodic basis. These directories were used as a basis for forming panel of jurors. These lists are a useful basis in analysing jury selection and social structure. However, in my comprehensive study I was unable to process this data regarding necessary rationalisation and economy during research. Given the conditions of the extremely narrow scope of trial by jury in Croatia, and the small number of cases, the results of such research would not be of immediate relevance to my basic interests, while the systematic processing of such data would require a different approach and additional time and energy.

### III Trial by jury in Europe and the Habsburg monarchy

As I have mentioned, trial by jury in continental Europe started in France at the time of the revolution. In 1791, trial by jury was adopted from England, as part of the general French admiration for English penal law institutions, particularly the jury system.<sup>16</sup> However, English trial by jury was recognised in France according to doctrine, while the controversies which occurred at that time within the judiciary were largely unknown.<sup>17</sup> Thus the adoption of trial by jury in France came about without full knowledge or understanding of the institution.<sup>18</sup>

The French law of 1791 introduced juries only in penal trials. The adaptation of the institution to French conditions would lead to significant amendments in relation to the English model. This was most obvious in the strict

16 Antonio Padoa Schioppa, Introduction, in: Antonio Padoa Schioppa, *The Trial Jury in England, France, Germany 1700–1900*, Berlin 1987, pp. 7–11, here p. 8

17 Schioppa, Introduction (n. 16), p. 8

18 Bron Mckillop, Experience with Criminal Juries in France and Germany, *Paper presented at the 2<sup>nd</sup> Jury Research Conference, University of Sydney / University of Canberra* (<http://www.canberra.edu.au/ncf/events/bronmckillop.pdf>).

separation of the roles of judge and jury, and in the exclusion of grand (accusatory) juries in the final formation of the institution in the *Code d'instruction criminelle* of 1808.<sup>19</sup> This act reflected Napoleon's authoritative style of government that was expressed in allowing influence of administration to prevail in forming jury panels before the influence of judiciary, and in the active roles of professional presidents of judicial chambers.<sup>20</sup>

The French regulations had a significant impact on the spread of trial by jury in Europe. In any case, juries were first introduced in countries immediately subservient to France; in Belgium, in the Italian states, Switzerland and Germany west of the River Rhine.<sup>21</sup>

The spread of the jury system in Europe was promoted by liberal movements who saw in it a counterbalance to the judge as the king's official, and a guarantee of the independence of the courts from the influence of the governments. Thus the jury system appeared in 1821 in Spain and in several German states, starting with Württemberg and Hanover; in 1830 it was introduced in Belgium and from 1844 in almost all the Swiss cantons. In 1848–1849 it was introduced in the Kingdom of Sardinia, Austria, Hungary, Croatia and Slavonia, and Greece, in 1852 in Portugal, in 1865 in Italy, in 1867 it was reintroduced in Hungary, in 1869 in Austria and in 1875 in Croatia and Slavonia, in 1877 it was introduced in the German Empire, in 1879 in Turkey, in 1886 in Romania, in 1887 in Norway, and in 1888 in Spain. Among the few countries which did not accept trial by jury were the Netherlands, Denmark and Sweden, while Serbia introduced what was in fact trial by assessor, while using the term trial by jury, in 1864.<sup>22</sup> Juries were introduced later in most South American countries. In 1874 the institution of the judge-mediator was introduced in Japan, based on the French model, followed by the English jury model in 1921 (entry into force in 1928), but this was later abolished in 1941.<sup>23</sup>

The competence of juries in individual European countries depended on their different legal traditions and their social, economic and political characteristics. Still, jury competence was mostly linked to graver criminal offences and to offences of a political nature. Trial by jury was compulsory or even exclusive in cases relating to offences committed through printed

19 Boguslav Lesnodorski, Juges professionnelles et élément populaire, in: *Revue internationale de droit comparé* 80 (1968), pp. 287–306, here p. 292.

20 Bayer, Problem (n. 2), pp. 24–32; Henri Coulon, *La liberté de la presse*, Paris 1894, pp. 10–13; Albert Gilles, *La presse devant le jury*, Paris 1938, passim.

21 Bayer, Problem (n. 2), p. 33; Lesnodorski, Juges (n. 19), p. 292.

22 Bayer, Problem (n. 2), pp. 33–34; Lesnodorski, Juges (n. 19), p. 291.

23 Lesnodorski, Juges (n. 19), pp. 295–296.

material. Publishing offences tended to be concerned with criticism of the government and state officials and were often to be found on the borderline between freedom of speech and overstepping it. For this reason it was considered that publishing offences should not be left to professional judges, who, as state officials, would be biased, and that society itself should be included in passing judgment on infringements in the public sphere.<sup>24</sup>

After the initial wave of introducing juries, the debate began about their ratio and limitations, and changes were introduced. German doctrine and legislation played a particularly important role in this. In the debate on trial by jury, its opponents emphasised the lack of interest or necessary knowledge of the jurors, their vulnerability to local or collective pressure and the pressure of public opinion, and their tendency to reach decisions based on fickle emotions. It was alleged that juries had been superseded by social and cultural advances, as well as the advances of legal science, so that they no longer responded to modern demands. It was alleged that the participation of laymen was not in accordance with the demands of the rule of law and that it was inappropriate in situations in which the position of professional judges was sufficient guarantee.<sup>25</sup> Those who championed the participation of laymen in trials emphasised that, in spite of the obvious drawbacks of trial by jury, it reduced the deficiencies of legal positivism, formalism and bondage to routine, guaranteeing the true independence of the courts. They emphasised that the imperfection of non-professional judicature did not lie in trial by jury, but in the lack of sufficient education and culture in the development of society in general, and that these areas should be improved. They also pointed to political and social relations as a reason for the non-functioning of trial by jury.<sup>26</sup>

The introduction of trial by jury in Germany was accompanied by pompous statements about the German genius and the institution, drawn from the German tradition of lay trials, only for it to be later criticised as a French import and foreign body within the German tradition. The deficiencies of and criticisms levelled against trial by jury were the reason why Germany gradually distanced itself and replaced trial by jury with trial by assessor, carried out by professional judges and, in practice, an equal or higher number of lay judges. The modern form of trial by assessor also appeared in the 19<sup>th</sup> century, but most European countries, including the most important ones, adopted trial by jury. However, the insufficiencies demonstrated in practice in trials by jury led

24 Lesnodorski, Juges (n. 19), p. 294.

25 Lesnodorski, Juges (n. 19), p. 294.

26 Lesnodorski, Juges (n. 19), p. 294.

to them being replaced by trials by assessor by the middle of the 19<sup>th</sup> century, and this was even more strongly expressed in the 20<sup>th</sup> century.<sup>27</sup>

In 1848 demands for freedom of the press and trial by jury were among the main demands of the liberal movement in Austria. The relative success of the liberal movement made the emperor declaring the abolition of censorship in the whole Monarchy and the introduction of freedom of the press on 15 March 1848. Together with that the restrictive Law on the Printed Matters [*Preßgesetz*] was introduced which also regulated trial by jury. The Law on Penal Procedure for Publishing Offences [*Preßprozessordnung*] was also adopted the same year. This regulation recognised the provisional confiscation of a newspaper about which the court would make a final decision and public trial procedure before a senate and jury. The competence of juries was extended in the Law on Penal Procedure [*Strafprozessordnung*] of 17 January 1850 to cover serious crimes and political offences, while the March Constitution of 1849 prohibited censorship and guaranteed freedom of expression with trial by jury in cases of serious offences.<sup>28</sup> However, the Sylvester Patent, which introduced open absolutism on 1 January 1851, expressly forbade the principle of public trials and trials by jury.<sup>29</sup> In the same spirit, the repressive Law on the Printed Matters [*Preßordnung*] of 1852 dealt a harsh blow to freedom of the press.<sup>30</sup> With the abolition of absolutism in 1861, the new, more liberal Law on the Printed Matters [*Preßgesetz*] and the Law on Penal Procedure in Publishing Offences [*Preßprozessordnung*] 1862 were adopted and further liberalised by new amendments in 1868.<sup>31</sup> New press laws were adopted later, too (1894 and 1902). In 1867 trial by jury got constitutional

27 Bayer, Problem (n. 2), 37–40; Lesnodorski, Juges (n. 19), p. 295–297.

28 Ogorelica, Kazneno (n. 11), pp. 67, 68; Thomas Olechowski, *Die Entwicklung des Preßrechts in Österreich bis 1918*, Wien 2004, 293 ff.

29 Croatian text of the Sylvester Patent (Carska povelja od 31. prosinca 1851 i Prilog k br. 9 o ustroju vlasti [The Imperial Charter of 31 December 1851 and Supplement to no. 8 on the Organisation of Power]) see in: *Zemaljsko-zakonski i vladni list za kraljevine Hèrvatsku i Slavoniu* (Landesgesetz- und Regierungsblatt für das Kronland Kroatien und Slavonien) [Land and Government Gazette for Croatia and Slavonia], Zagreb 1852, pp. 12–14, 19.

30 *Preßordnung vom 27. Mai 1852*, see: *Reichs – Gesetz – und Regierungsblatt für das Kaiserthum Oesterreich. Jahrgang 1852*, Wien 1852, pp. 603–615; Horvat, Povijest (n. 8), p. 185.

31 See the *Preßgesetz vom 17. Dezember 1862* in: *Reichs – Gesetz – Blatt für das Kaiserthum Oesterreich. Jahrgang 1863*, Wien 1863, p. 145–156 and the *Preßprozessordnung vom 17. Dezember 1862* in: *Reichs – Gesetz – Blatt für das Kaiserthum Oesterreich, Jahrgang 1863*, Wien 1863, pp. 157–161 as well as the amended versions of these laws of 15 October 1868, in: *Reichs – Gesetz – Blatt für das Kaiserthum Oesterreich. Jahrgang 1868*, Wien 1869, pp. 409–411.

grants in the Fundamental Law on Judicial Power [*Staatsgrundgesetz über die richterliche Gewalt*]. The law guaranteed trial by jury in cases of crimes requiring severe punishment, political crimes and misdemeanours and petty offences committed using printed means.<sup>32</sup> The Law on Composition of Jury Lists [*Gesetz über die Bildung der Geschwornenlisten*] of 1869 and Law on the Periodical Suspension of Trials by Jury [*Gesetz betreffend die zeitweise Einstellung der Geschwornengerichte*] of 1873 did not fully achieve these principles. However, trial by jury introduced in 1869 took root in the Austrian judiciary. Practice of the Austrian jury courts shows that juries were prone to acquit defendants, right from the start (61 acquittals in 89 cases).<sup>33</sup> The systematic regulation of juries, by which the principles of the Fundamental Law on Judicial Power were implemented, was laid down in the Law on Penal Procedure [*Strafprozessordnung*] passed in 1873. Trial by jury was applied to all crimes and misdemeanours committed through the printed materials, and to all crimes liable to punishment by a period of imprisonment longer than five years.<sup>34</sup> However, a separate law enabled the government to suspend jurisdiction of the jury courts in cases in which the jury could not be guaranteed to arrive at an independent, unbiased decision.<sup>35</sup> It is interesting that this law was first implemented in the district of Kotor (Cattaro), which was then part of the province of Dalmatia, now in the Republic of Montenegro. It seems that trial by jury ran into difficulties in rural areas, since the inhabitants were wary of acts of revenge on the part of the defendant's relatives or friends. This seems to be a partial explanation of a large number of acquittals before the jury courts. A more important reason was tactic of public prosecutors who avoided trial before the jury in publishing cases by opting for the so-called »objective« proceeding. The public prosecutor first demanded ban of the incriminated journal before the senate of professional judges. Then he indicted the editor of the journal before the »ordinary« court.<sup>36</sup>

The development of juries was somewhat different in Hungary. The Hungarian Diet, probably under the influence of German doctrine, proposed a

32 *Staatsgrundgesetz über die richterliche Gewalt* vom 21. Dezember 1867 (RGBl 144/1867) see also see in: Edmund Bernatzik (ed.), *Die österreichischen Verfassungsgesetze*, Wien 1911, pp. 430–431.

33 Olechowski (n. 28), p. 627 ff.; Rieko Ueda, Die Entstehung der Geschworenengerichtsbarkeit in der Habsburgermonarchie in der zweiten Hälfte des 19. Jahrhunderts, in: *Ad fontes, Europäisches Forum Junger Rechtshistorikerinnen und Rechtshistoriker*, Vienna 2001, pp. 387–400, here p. 392.

34 Ogorelica, Kazнено (n. 11), pp. 74, 76.

35 Ueda, Die Entstehung, (n. 33), p. 396.

36 Ueda, Die Entstehung (n. 33), p. 397.

Law on Penal Procedure as early as 1843/1944, which included trial by jury, with some form of accusatory jury.<sup>37</sup> The proposal was not adopted at the time, but its contents reached partial expression in the Law on the Printed Matters of 1848. This law prescribed that publishing offences shall be tried before a jury. It authorised the government to establish trial by jury statutorily, on condition that jurors should be persons of at least moderate means.<sup>38</sup> Thus, trial by jury in cases of publishing offences was introduced by a ministerial decree of 29 April 1848. The regulation allowed for the formation of juries in all towns with civic autonomy, and jurors decided on both the charge and the verdict. In practice, only one proceeding was completed before the jury court, and one case ended with acquittal before the accusatory jury.<sup>39</sup> When the Hungarian Revolution was crushed in 1849, Austrian regulations were brought in. But during negotiations on the Austrian-Hungarian Compromise, the Hungarian government statutorily restored the Law on the Printed Matters of 1848, while two ministerial decrees standardised penal proceedings in publishing cases. The conservative wing opposed this and put paid to the intention of the liberal wing of the governing Liberal Party to make juries a general institution in penal procedure.<sup>40</sup> It seems that Hungarian jury legislation offered a solid framework for defending freedom of the press, including the possibility of freely criticising the government, and reasonably correct procedure. Significant differences, in relation to the former legislation of 1848, included the abolition of competence of a jury to decide on the charge, the establishment of trials by jury in only five county courts and the appointment of judges, rather than their election in the counties. But the territorial allocation of trials by jury established in majority Hungarian areas soon provoked criticism from politicians representing the Romanian and Serbian minorities, and the situation was not improved when the number of courts was doubled.<sup>41</sup> The jury, as a general institute in penal procedure, was accepted only with the Law on Penal Procedure of 1896 (enforced in 1900) when 67 juries were formed. The law extended competence of the jury court on all serious crimes (over 5 years of imprisonment) and most of the political crimes. However, libel and

37 Tamás Antal, The Codification of the Jury Procedure in Hungary, in: *The Journal of Legal History* 30 (2009), pp. 279–297, here p. 283.

38 Hungarian Law on the Printed Matters of 1848 in Croatian edition and in Croatian language, see *Zakonski članci Ugarskog državnog Sabora godine 1847/1948* [Laws of the Hungarian State Diet 1847/1948], Zagreb 1860, p. 44–50.

39 Ueda, Die Entstehung (n. 33), p. 392; Antal, The Codification (n. 37), p. 284.

40 Ogorelica, Kazнено (n. 11), p. 82.

41 Ueda, Die Entstehung (n. 33), pp. 394–395.



slander committed through printed matters against »private« persons were excluded from the jury's competence. The number of cases tried before juries gradually increased, from 954 out of a total of 8,915 in 1900, to 1,687 out of a total of 9,133 cases in 1908. Significant amendments to the Hungarian system were introduced by the Law 23:1914, which in its vital points concurred with the Austrian Law on Penal Procedure of 1871. The law was suspended by the decree almost immediately after it had been enforced, due to the state of war. The law was re-enforced after the war and replaced by the new law only in 1952; but the decree has never been suspended.<sup>42</sup>

The Bannate of Croatia (Croatia and Slavonia) at that time was part of the Hungarian constitutional framework in which it was granted autonomy part of which was the justice system, including trial by jury. The development of the jury in the Croatian legal system therefore came about separately, and in a different manner than in Hungary. It was based directly on the Austrian model, whilst subject to indirect political influence from Budapest. For this reason, it will be necessary to show first in brief the constitutional position of Croatia and the scope of Croatian autonomy.

#### IV Constitutional and legal development of Croatia

The basic characteristic of Croatia's constitutional position up to 1918 – when the Yugoslav state was formed – was wide-ranging autonomy in relation to the Kingdom of Hungary, with which Croatia had been affiliated since the early 12<sup>th</sup> century. Croatian autonomy had its roots in the medieval Croatian kingdom which comprised the historical regions of Croatia, Slavonia and Dalmatia, and which came under the rule of the Hungarian Árpád dynasty at the beginning of the 12<sup>th</sup> century. However, Croatia retained her own aristocracy and separate institutions. Among these the most important was the Ban, the direct representative of the king, surviving from an earlier period, and the *Sabor* (Diet) of the Croatian nobility, which appeared for the first time in the 13<sup>th</sup> century. Along with these institutions, a system of written and customary rules developed, which, until 1848, defined Croatian autonomy within the feudal system. This institutional framework was retained after the Habsburgs became the Hungarian-Croatian rulers in 1527.

As time passed, the area of Croatian administrative autonomy diminished, while remaining continuously linked to the single administrative area of the Kingdom of Croatia and Slavonia. It consisted of the continental territories and part of the northern coastline. Dalmatia, the coastal region and interior to

42 Bayer, Problem (n. 2), pp. 50–51; Antal, The Codification (n. 37), p. 296.

the south, fell resoundingly to the Venetian Republic at the beginning of the 15<sup>th</sup> century. After the fall of Venice, Dalmatia became an Austrian province between 1797 and 1918, except for a brief period of French rule 1804–1813. At the end of the 16<sup>th</sup> century, parts of Croatia and Slavonia that bordered with the Ottoman Empire were separated from the Croatian jurisdiction. The government in Vienna proclaimed that region a Military Border [*Militär-grenze*], a special administrative unit under the direct administration of the Austrian Army. The annexation of the Military Border and Dalmatia with Croatia and Slavonia formed the central topic of Croatian politics from the beginning of the 19<sup>th</sup> century up to 1918. However, success was only achieved in terms of the Military Border, which last parts were added to Croatia and Slavonia in 1882. This provided a final territorial definition of Croatia and Slavonia at that time. It extended to the east as far as Zemun, a town on the left bank of Danube opposite Belgrade, and encompassed a significant ethnic Serb population.<sup>43</sup> The official titles for the area of Croatian administrative autonomy were the (historical) *Kingdom of Dalmatia, Croatia and Slavonia*, or the actual *Kingdoms of Croatia and Slavonia*, also known as the *Bannate of Croatia*, denoting the regions under the rule of the Bans. Similarly, *Sabor*,

43 The borders of the Kingdom of Croatia and Slavonia differed significantly from the territory of the Republic of Croatia today. The borders of Croatia and Slavonia, which had been finalised after the annexation of the former Military Border to the Croatian-Slavonian territory in 1882, did not include the areas of the then Austrian regions of Dalmatia and Istria to the south and west, port town of Rijeka, which was under administration of the Central Government, and the northern regions of Međimurje and Baranja, which were part of Hungary. However, the eastern border of Croatia and Slavonia extended well into the territory of what is today the Republic of Serbia including Petrovaradin and Zemun, today suburbs of the cities of Novi Sad and Belgrade. In 1890 there were 2,186,410 inhabitants on that territory of whom 1,359,588 were Croats (62.19%), 56,1131 Serbs (25.71%), 11,7493 Germans (5.37%), 68,794 Hungarians (3.15%) and 78,494 others (3.58%). It should also be mentioned that in 1840, of 1,604,400 inhabitants 67.01% were Croats and 31.41% Serbs, with all the others amounting to only 1.58%. Given the intensity of immigration, the proportion of Germans grew from 0.82% to 5.37%, of Hungarians from 0.32% to 3.15% and of others from 0.44% to 3.58%. Enhanced social dynamics were reflected in the structure of religious affiliation, comparing 1840 with 1890. The proportion of Roman Catholics slightly grew from 70.43% to 71.03%, of Greek Catholics from 0.45% to 0.57%, of Protestants from 0.58% to 1.65%, and of Jews from 0.13% to 0.79%, while the proportion of Orthodox diminished from 31.41% to 25.93%. Fran Vrbanić, *Jedno stoljeće u razvoju broja žiteljstva Hrvatske i Slavonije* [A Century in the Growth of the Population of Croatia and Slavonia], Zagreb 1899 [taken from *Rad Jugoslavenske akademije znanosti i umjetnosti*, bk. 140, Zagreb 1899], pp. 45, 51

i. e. the Diet of the Kingdom of Dalmatia, Croatia and Slavonia (in reality, the Croatian-Slavonian Diet), came to be known as the Croatian Diet. Here I will use the names »Croatia and Slavonia« and »Sabor«, as the most accurate ones.

The beginnings of the building of the modern Croatian state began with the abolition of feudalism in 1848 and concurrent Croatian opposition to the decisions of the Hungarian Diet in 1848 that seriously affected the Croatian autonomy. In the circumstances of the time the Hungarian-Croatian political dispute evolved into the armed conflict due to which the short-lived *Sabor* of 1848 did not undertake any significant institutional reforms except abolition of feudalism. The intensive introduction of modern institutions was to take place during the time of the Central Government, with its seat in Vienna, during the period of false constitution (1849–1851) and the absolutist phase (1852–1860), when many modern regulations were imported from Austria. Among them was the General Civil Code [*Opći građanski zakonik, Allgemeines Bürgerliches Gesetzbuch*], penal laws and the repressive Law on the Printed Matters [*Tiskovni red, Preßordnung*] of 1852, introduced in 1853. The introduction of provisional constitutionalism in 1861 was reflected in the unsuccessful attempts of the *Sabor* in 1861 and 1865–67 to replace institutions imported from Austria with their own, more modern institutions based on the Austrian model. Still, along with the traditional Ban's Table in Zagreb, being a high appellate court, the Table of Seven was established as the Supreme Court for Croatia and Slavonia in 1862. However, the basic presupposition on which the thorough, internal modernisation of institutions had to rely on was the stabilisation of the constitutional framework. This occurred with the adoption of the Austrian-Hungarian Compromise in 1867, and the sub-dual Croatian-Hungarian Compromise of 1868. The latter established a stable, constitutional basis for fairly extensive Croatian autonomy within Hungary. However, the Croatian-Hungarian Compromise provided some important control mechanisms for the »common« institutions, which were in fact under complete Hungarian control. According to the Croatian-Hungarian Compromise, Croatia and Slavonia enjoyed legislative and executive autonomy in internal administration, education, religion and the judicial system and participated in common institutions. Thus the Central Government in Budapest had a separate Home minister for Croatia and Slavonia, and the *Sabor* elected a delegation for the Common Diet in Budapest. The important control mechanisms of the Central Government (in fact the Hungarian government), which made the Croatian autonomous sphere truly dependent upon the influence of central institutions, were these: the king appointed the Croatian Ban, at the proposal of the president of the Hungarian government and with his counter-signature; the acts of the *Sabor* were sent for approval to the king, via the Central Government, which could voice objections because of

violation of the common competence or the interests of the union, and such conflicts were always resolved by the king in favour of Hungarian interests. Similar procedure was used in the case of the so-called king's pre-approval of the drafts prepared by the Croatian Autonomous Government but in that case the Central Government was not bound by time limits in keeping them for consideration. Finally, public finances were defined as a part of common competences. Thus, apart of a set quota designated for Croatian needs, the fiscal sphere was completely in Hungarian hands.<sup>44</sup> Still, this framework, within the circumstances of the corresponding political constellation in Hungary and Croatia and Slavonia, formed the basis of the beginnings of systematic modernisation. Thus during the period of government of the National Liberal Party from 1873 to 1880, the introduction of modern administrative and judicial institutions, among which was trial by jury, within the Croatian legal system was speeded up, almost completely by adopting the Austrian models. There were setbacks after the appointment of the authoritative Karoly Khuen-Héderváry as the Croatian Ban (1883–1903) with the aim of placing Croatian autonomy under the more distinct control of the Central Government. During Khuen-Héderváry's rule, the separation of the judiciary and administration was permanently abolished, trial by jury was suspended several times and the competence of juries restricted. A certain degree of liberalisation was again achieved only after the victory of the liberal-democratic Croatian-Serbian Coalition at elections held in 1906.

This was the situation up to the collapse of the Habsburg Empire, and it only changed with the establishment of the Yugoslav state in 1918. In regions which joined the new state from different constitutional and legal regimes, regulations regarding civil, penal and procedural areas largely remained in force, as did the institution of trial by jury. In this way six different »legal regions« each with its own judicial structure came into being. The »legal regions« were by their nature out of harmony with the unitary, centralist ideal of the new state. This heterogenic legal system was partly removed with the unification of the largest part of the regulations during the period of monarchical dictatorship (1929–31). However, the participation of laymen in trials, which particularly emphasised regional variety, was abolished already not long after the formation of the new state. The jury system in

44 Dalibor Čepulo, *Hrvatsko-ugarska nagodba i reforme institucija vlasti u Hrvatskom saboru 1868–1871* [The Croatian-Hungarian Compromise and the Reforms of the Organisation of Power in the Sabor 1868–1871], in: *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* [Collected Papers of the Law Faculty of the University of Rijeka], *Supplement* (2001), pp. 117–148, here pp. 130–145; Gross and Szabo, *Prema* (n. 9), pp. 232–239.

the former Hungarian region was abolished soon after the new state was declared. Trial by jury for publishing offences in the Croatian-Slavonian and former Austrian »legal regions« was disabled by one provision of the 1921 Constitution. Apart of that, lay judiciary as well as trial by jury were discussed at the First Congress of Lawyers of the Kingdom of the Serbs, Croats and Slovenes in 1925. During the debate, Croatian and Slovene lawyers on the whole favoured juries and lay trials, but in a compromise formula, it was stated that most participants, »particularly those from regions which do not have real juries«, were against the participation of laymen in the judiciary.<sup>45</sup> All forms of non-lawyer participation were finally abolished with the Law on the Judicial Criminal Procedure [*Zakonik o sudskom krivičnom postupku*] of 1929, which introduced exclusively professional judges by which it was a rarity in Europe.<sup>46</sup> It should be mentioned that the Croatian lawyer, Nikola Ogorelica, spoke in favour of trial by jury, and in 1921 drew up a draft law on trial by jury, relying on the Austrian model of 1873. Vladimir Bayer, one of the most respected penal lawyers of 20th century Yugoslavia, in the already mentioned monograph on trial by jury written in 1940, urged the introduction of trial by jury in the Bannate of Croatia [*Banovina Hrvatska*], an autonomous Croatian unit in the Kingdom of Yugoslavia, formed in 1939.<sup>47</sup>

The first Yugoslav state collapsed during the Second World War during which the Yugoslav communist federation was gradually constructed. Within that federation, six republics (of which Croatia was one) held the status of individual states with limited sovereignty. Lay trials were introduced during the war in so-called »people's courts«, as part of the Partisan movement, whose core members were communists who affirmed the participation of assessors in trials. The lay or assessing element, which was retained in the organization of the justice system in communist Yugoslavia and Croatia, was known as »jurors«.<sup>48</sup> With the breakdown of the Yugoslav state in 1991, the former republics, led by Croatia and Slovenia later followed by others formed themselves into independent states. In the modern Croatian justice system there are elements of assessor's trials, but no trials by jury.

45 Bayer, Problem (n. 2), p. 161 ff; Čulinović, Porota (n. 4), pp. 47-48.

46 Bayer, Problem (n. 2), p. 160.

47 Bayer, Problem (n. 2), pp. 168-184.

48 Čulinović, Porota (n. 4), p. 48 ff.

## V Trial by jury in Croatia and Slavonia, 1849-1850

In the Croatian legal tradition, there was virtually no lay participation in the courts until the mid 19<sup>th</sup> century.<sup>49</sup> Nevertheless, demands for the abolition of censorship and the introduction of trials by jury, particularly for publishing offences, were present in liberal newspapers before the introduction of juries in 1849.<sup>50</sup> These demands probably arose during the 1840's under the influence of political publications and literature from abroad. Given the general cultural terms of reference, we can be fairly certain that Austrian publications and literature played a key role in this, and it is safe to assume that there was also influence from Germany and Hungary.

A demand for the introduction of trial by jury was also expressed in *The Demands of the People*, a wide-ranging petition of rights published on 25 March 1848, which represented the symbolic foundation for the further political activities of the Croatian national and liberal forces. In this document, the demand for the introduction of trial by jury was positioned among demands relating to the objectivity of trials. It was not linked to the demand for the freedom of the press, which was in the section relating to the freedoms and rights of citizens.<sup>51</sup> However, the short-lived *Sabor* of 1848 did not undertake any significant reforms at the level of institutions, including the regulation of the press and trial procedures.

In fact, the Emperor's proclamation on the freedom of the press of 15 March 1848 officially abolished censorship in the whole of Habsburg Monarchy. In Croatia and Slavonia the abolition of censorship, after a brief period of confusion, soon resulted in the appearance of new newspapers and freer writing.<sup>52</sup> Papers began to publish more and more liberal articles and

49 In the Croatian tradition, a court of jurors (jurymen) appears only in the Statute of Vinodol of 1288 and in the statutes of some Dalmatian towns. Compare Lujo Margetić, *The Statute of Vinodol (1288)*, Čakovec 1981. For more see Lujo Margetić, *Vinododolski zakon 1288* [The Statute of Vinodol of 1288], Zagreb 1998.

50 Dalibor Čepulo, *Razvoj ideja o ustroju vlasti i i građanskim pravima u Hrvatskoj 1832-1849* [The Development of the Ideas on the Organisation of Power and Civil Rights in Croatia, 1832-1849], in: *Pravni vjesnik* [Quarterly Journal of Law and Social Sciences] 16 (2000), p. 33-53; Petar Korunić, *Jugoslavizam i federalizam u hrvatskom nacionalnom preporodu 1835-1874*. [Yugoslavism and Federalism in the Croatian National Revival 1835-1874], Zagreb 1989, p. 71.

51 Original text of the »Zahtijevanja naroda« [The People's Demands], in: Jaroslav Šidak, *Studije iz hrvatske povijesti za revolucije 1848-1849* [Studies in Croatian History During the Revolution of 1848-49], Zagreb 1979, pp. 33-76.

52 Horvat, *Povijest* (n. 8), pp. 150-152.



attacks on individual officials and influential people, who then began to seek the intervention of the authorities.<sup>53</sup> It was in these circumstances that Ban Josip Jelačić, pursuant to the regulatory powers granted him by the *Sabor*, as »Ban and Dictator«, pushed through the curt Provisional Law on the Printed Matters [*Privremeni zakon o štampi*] on 9 May 1849.<sup>54</sup> This law, drafted by the Ban's Council, which was practically the Croatian government of the time, was written by a former censor. He used the Austrian laws on the press and on the trial by jury from March 1849 as a model.<sup>55</sup> However, even with the ranks of the Ban's Council, some were reluctant to pass the regulation, and the Zagreb press harshly criticised the very announcement of its passing.<sup>56</sup> Trial by jury was thus introduced in Croatia and Slavonia in a repressive context.

The Provisional Law on the Printed Matters tersely regulated the precepts of publishing and the position of the newspapers, sanctions, the procedure in cases of publishing offences, and the organisation of trials by jury, in a total of about thirty articles. The law prescribed the posting of security with the local authorities, that is, a cash deposit used to pay fines levied on newspapers. Criminal liability in principle was apportioned to publishers and editor, but in cases of libel against the emperor and high treason, the printer, publisher, editor and author could all be included. The publisher could be fined or the newspaper banned, and the editor could be given a prison sentence and banned from editing newspapers in the whole country. In comparison to the Austrian model, fines within Croatian law were set lower, (though newspapers complained that the Croatian stipulations were still too severe), while prison sentences were harsher (ranging from one month to ten years). In the Austrian system, prison sentences were envisaged as the exception, rather than the rule. A repeat offence might lead to banning publication of a newspaper. Juries were used in proceedings related to publishing offences. Juries consisted of the citizens of the town in question and were formed by the town's mayor, at the request of the public prosecutor, by convening a panel of 36 persons. A jury of twelve was then chosen. The public prosecutor and the

53 Horvat, *Povijest* (n. 8), p. 171.

54 Šidak, *Studije* (n. 51), p. 312.

55 Horvat (n. 8), pp. 174–175.

56 See *Niekoliko riječi namijenjeno nam štamparskom zakonu* [A Few Words on Our Law on the Printed Matters], in: *Slavenski jug* [Slavonic South], 19. XII. 1848, p. 1; *Niekoliko riječi namijenjeno nam štamparskom zakonu*, in: *Slavenski jug*, 21. XII. 1848, p. 1; *Niekoliko riječi namijenjeno nam štamparskom zakonu*, in: *Slavenski jug*, 23. XII. 1848, p. 1; *Nedrmaj me već za perčin svatko!* [Stop Everybody Touching my Horsetail!], in: *Slavenski jug*, 12. V. 1849, p. 2; Horvat, *Povijest* (n. 8), p. 174–175; Šidak, *Studije* (n. 51), p. 312.

defendant had the right to exclude up to twelve candidates. The requirements fitting individuals for jury service were not defined. During proceedings, the principles of openness to the public and clear speech were expected, but the actual proceedings were not well regulated. The competent court was chosen on the basis of the defendant's place of residence, but in cases involving insulting the emperor or high treason, the Ban's Table in Zagreb was the competent court, whereas in other cases it was the appeal court.<sup>57</sup>

The Zagreb press continued to criticise the law fiercely even after it had been promulgated. There were many objections to the law, saying just how harsh and repressive it was in relation to the Austrian model, and how incomplete and superficial its drafting had been in inadequate conditions. One of the objections pointed out that the penal or civil law laws referred to in the act, which were essential for its implementation, did not exist in Croatia. Most objections concerned the reduction of freedom of the press (the extension of criminal liability to printers, measures for the permanent banning of newspapers for repeat offences, instead for three months like in Austria). The way in which juries were to be formed was also criticised, particularly the fact that a town's mayor could form a jury panel without applying any criteria whatsoever. The Zagreb press warned that the participation of educated classes in towns would be marginalized because most of them did not enjoy the right of domicile that depended upon property qualifications. So the press cautioned that such an ordinance would, in practice, lead to publishing offences being heard before juries composed of illiterate citizens or with little knowledge of Croatian.<sup>58</sup>

The first and only proceedings held before a jury according to this act took place on 6 February 1850, following a political article in *Slavenski jug* [Slavonic South], attacking the government. The hearing turned into excessive protests against the imposed nature of the law and ended with one juror demonstratively withdrawing from the trial, confusion in the courtroom and the interruption of the trial. The course of the debate, which seemed more like a badly organised public meeting, was a clear indicator of the politicised atmosphere and the lack of a tradition of lay trials.

The defendants, Lavoslav and Ljudevit Župan, the publishers of *Slavenski jug*, received the summons to the trial two days before it began. The summons

57 See *Privremeni zakon o štampi* [Provisional Law on the Printed Matters], in: *Novine dalmatinsko-hrvatsko-slavonske* [Dalmatian-Croatian-Slavonian Journal], 24. V. 1849, p. 1; Horvat, *Povijest* (n. 8), p. 174–175.

58 See the attacks on the Provisional law on the Press in: *Novine dalmatinsko-hrvatsko-slavonske*, 10. V. 1849, pp. 1–2 and 22. V. 1849, p. 1; Horvat, *Povijest* (n. 8), p. 175; Šidak, *Studije* (n. 51), p. 312.

mentioned that they had been indicted due to the »tendentiousness« of the published text, but they were not informed of the actual or legal basis for the charge. The jury trial began at 10 a.m. and aroused a great deal of interest among the populace. However, immediately following the court president's opening statement, the defence lawyer objected to the political arbitrariness of the charge and attacked the Provisional Law on the Printed Matters for failing to order proceedings. The defence proposed that legal loopholes be resolved using the regulations of the Tripartite or Austrian Law on Penal Procedure in Publishing Offences. However, the representative of the prosecution and the judge warned the defence lawyer he was not entitled to question the validity of the law. He replied that he had merely been pointing out the law's insufficiencies and defending himself from possible further arbitrariness on the part of the court, due to legal loopholes. Each party then proceeded to exclude 12 candidates from the 36 on the jury panel, thus forming a jury. Then the representative of the prosecution presented the charge, and only then was the jury foreman elected. He immediately addressed the public, saying that there had been chaos during the last year, in which everybody had been involved, thus alluding to the case he was about to try. The president of the bench cautioned him and said that his duty as a juror was to be quiet until called upon to give his opinion of the guilt of the defendants, pursuant to the law. Then another juror, Đuro Bornemissa, had an outburst, claiming that the Provisional Law on the Printed Matters did not legally exist, but was the order of one man. Bornemissa insisted that he, as a noble who from birth had been accustomed to freedom, would submit only to a law passed in *Sabor*. He then left the courtroom in protest. Following this a general debate developed on the authority of the remaining eleven jurors, in which the general public took part. Since the public prosecutor refused to reconsider any members of the panel who had already been excluded to replace the missing juror, the trial was stayed.<sup>59</sup>

Following this incident, Ban Jelačić issued a regulation abolishing juries.<sup>60</sup> Nonetheless, the application of the Provisional Law on the Printed Matters,

59 U Zagrebu [In Zagreb], in: *Narodne novine* [The Peoples Press], 5. II. 1850, p. 1; U Zagrebu, in: *Narodne novine* 6. II. 1850, p. 1; *Slavenski jug*, 5. II. 1850, p. 1; Nepravda [Injustice], in: *Slavenski jug*, 6. II. 1850, p. 1; *Slavenski jug* pred porotom [Slavenski jug Before a Jury], in: *Slavenski jug* 7. II. 1850, p. 1–3; see also Vlasta Švoger, *Zagrebačko liberalno novinstvo 1848.–1852. i stvaranje moderne Hrvatske* [Zagreb Liberal Journalism 1848–1852 and the Formation of Modern Croatia], Zagreb 2007, p. 194–195.

60 Bayer, *Suci-porotnici* (n. 6), p. 148; Mirjana Gross, *Počeci moderne Hrvatske* [The Beginnings of Modern Croatia], Zagreb 1985, p. 402; Horvat, *Povijest* (n. 8), p. 178–179.

to whose repressive provisions only juries presented any threat, was halted by Ivan Mažuranić, Deputy General Procurator for Croatia and Slavonia. He had gained fame as a writer and became prominent as a reforming Ban during the 1870's. Mažuranić claimed that this regulation contradicted the emperor's patent on the organization of the courts and that it would be necessary to await further imperial regulations.<sup>61</sup> However, other regulations made repressive measures aimed at newspapers possible,<sup>62</sup> and the anticipated imperial amendments did not overturn the Jelačić's regulation regarding the abolition of juries. Thus, the competent Croatian courts continued to pass judgments in cases concerning publishing offences.<sup>63</sup>

The introduction of absolutism made the situation worse, since the Sylvester Patent of 1851 expressly prohibited trial by jury. The position of the press was regulated by the Law on the Printed Matters [*Presseordnung*] of 1852, which established large amounts of security and harsh penalties, opening up wider opportunities for repression by legal means.<sup>64</sup> This law was tempered in Croatia and Slavonia to some extent in 1871, but remained in force until a systemic reform of publishing and penal legislation took place in 1875. The period of absolutism (1852–1860) was a period of modernisation from an external and superordinate origin, since the entire Croatian legal system was remodelled by the introduction of Austrian laws. One of the most important was the Penal Law on Crimes, Misdemeanours and Petty Offences [*Kazneni zakon o zločinstvih, prijestupih i prekršajih, Strafgesetz über Verbrechen, Vergehen und Übertretungen*] introducing the typical tripartite division of criminal offences according to the French model and precluding extremely harsh punishments. The law remained in force right up to 1929.

After the return to constitutionality in 1860, the *Sabor* attempted to regulate the position of the press and penal procedure on two occasions, in 1861 and 1865.

The first attempt was carried out in the *Sabor* in 1861. This *Sabor* was dissolved by a royal decree only six months after it was conveyed, and, as a result, most of the regulations prepared remained unfinished or were never adopted. Among them were drafts of a Law on the Printed Matters [*Tiskovni zakon*]<sup>65</sup>

61 Gross, *Počeci* (n. 60), p. 401, 404; Švoger (n. 59), *Zagrebačko*, pp. 187–188.

62 Gross, *Počeci* (n. 60), p. 402; Horvat, *Povijest* (n. 8), pp. 179–180.

63 Gross, *Počeci* (n. 60), p. 404.

64 Gross, *Počeci* (n. 60), p. 402; Horvat, *Povijest* (n. 8), p. 183; Ogorelica, *Kazneno* (n. 11), p. 70.

65 Draft of the *Tiskovni zakon* [Law on the Printed Matters] see in: *Spisi saborski sabora kraljevinah Dalmacije, Hrvatske i Slavonije od god. 1861, IV. Uredili i izdali Bar. Dragojlo Kušlan i Dr. Mirko Šubaj* [Acts of the Sabor of the Kingdom

and a Penal Code [*Kazneni zakonik*],<sup>66</sup> which stipulated trial by jury for publishing offences and dealt with corresponding matters. These drafts were drawn up by various *Sabor's* committees. Although they contained significant differences or overlaps, they were never harmonised.<sup>67</sup>

From this body of complicated regulations, we shall single out provisions relating to trial by jury. The draft of the Law on the Printed Matters envisaged that offences committed by the press should be tried by special juries, composed of a chamber of five judges and twelve jurors. The Penal Code, on the other hand, envisaged trial by jury as a general institution and part of the general organisation of the courts. Trial by jury in the county court were held in cases of publishing offences and for all crimes and misdemeanours listed in the Penal Code, except those expressly awarded to the competence of district juries. Jury trial would be heard before five members of the senate and twelve jurors, while a district court had three judges and six jurors. According to the Law on the Printed Matters, jury service could be performed by (male) persons aged between 30 and 70, who could read and write, were citizens of the Triune Kingdom, and had satisfied the tax census or census of occupations or education. Ineligible were military or clergy personnel or those who had any moral, psychological or physical reason to be disqualified. A list of candidates was kept in municipal offices for the public, and the annual jury panel was formed by drawing lots. From this, 36 jurors were chosen by drawing lots and twelve of them selected by both parties to form a jury. The senate could contest a jury decision because of a lack of clarity or jury error, in the case of condemnatory verdicts and if the senate voted unanimously on the issue. According to the Penal Code, jury service applied to men aged 25 and over, who could read and write in Croatian and who lived in the municipality of the court district in which jury service was to be performed. For district juries, the criteria of reading and writing in Croatian did not need to be applied for another decade if the number of potential jurors fell below 200. This provision was an indication for the poor educational structure of Croatian society. Jury lists were formed at district level from the list of jurors held by local courts, compiled on the basis of election rolls. District lists were collated into a county list which the public prosecutor could object. From this list, an annual list of between 300 and 400 jurors was selected at random. Then 18 or

of Dalmatia, Croatia and Slavonia, 1861, Vol. IV, ed. by Count Dragojlo Kušlan and Dr. Mirko Šuhaj], Zagreb 1861, pp. 183–210 (hereinafter: *Spisi* 1861).

66 See Article III and §§ 20–40 of the *Kazneno pravo* [Penal law], *Spisi* 1861 (n. 65), pp. 174, 177–178.

67 *Spisi* 1861 (n. 65), pp. 265–266.

36 jurors from among them who lived near the court were randomly selected, and of these 6 or 12 were chosen by drawing lots and allocated to three cases in advance.

These drafts were not debated in the *Sabor* in 1861 and no progress was made during the *Sabor's* session held just before the enactment of the Austrian-Hungarian Compromise. That *Sabor* elected in 1865 concentrated on resolving Croatian relations with Austria and Hungary and neglected institutional reform. However, when it seemed likely that the *Sabor* would be prematurely dissolved in 1866, most of the draft laws prepared in 1861 were rushed through. The adoption of a more liberal law on the press to replace the repressive Law on the Printed Matters of 1852 was particularly important. However, the Law on the Printed Matters of 1861 was not adopted, because it provided for trial by jury. The *Sabor* representatives were afraid that the introduction of trial by jury would provoke the king into withholding approval of the law. Instead, as a temporary measure, the Austrian Law on the Printed Matters of 1861 was adopted, from which trial by jury had been removed.<sup>68</sup> Thus the institution of trial by jury, which was valid in Austria, was not adopted in Croatia and Slavonia. However, when the *Sabor* was dissolved in 1867, the king did not approve any of the laws proposed, including this one.

A more serious, but unsuccessful attempt was made to regulate the position of the press and trial by jury following the Croatian-Hungarian Compromise of 1868. In the *Sabor* which reached the Compromise, the pro-Hungarian Unionist Party [*Unionistička stranka*], linked with a Hungarian Liberal Party at power in Hungary, held the majority. The Unionist politician, Levin Rauch, was made Ban, and also president of the newly formed Croatian Autonomous Government. He implemented authoritarian policies, particularly in relation to the press. Even so, having achieved the political marginalisation of the opposition and established firmer control, Rauch wanted to demonstrate the liberal leanings of his party.<sup>69</sup> So the Croatian government prepared draft laws to regulate the position of the press and trial by jury, and submitted them via the Central Government to the king for his pre-sanction. The Central Government declared its opposition to these proposals in June 1870, claiming

68 *Saborski spisi sabora kraljevinah Dalmacije, Hrvatske i Slavonije od godine 1865–1867* [Acts of the Sabor of the Kingdom of Dalmatia, Croatia and Slovenia 1865–1867], Zagreb 1900 (hereinafter: *Spisi* 1865), pp. 326–327.

69 *Dnevnik Sabora trojedne kraljevine Dalmacije, Hrvatske i Slavonije držana u glavnom gradu Zagrebu god. 1868* [Minutes of the Sabor of the Kingdom of Dalmatia, Croatia and Slavonia 1868], Zagreb (hereinafter: *Dnevnik* 1868), pp. 729, 1288–1289.



that they had had bad experiences with the Hungarian press and trial by jury in Hungary. Since, however, Central Government could not intervene directly in the acts of the Croatian autonomous bodies it informed Ban Rauch confidentially that it would submit the proposal to the king for pre-sanction, but also warned Rauch about the possible consequences and his responsibility regarding the introduction of trial by jury. At that point, Rauch dropped the proposal, although his government continued to promise *Sabor's* delegates that press regulations would soon be proposed for debate.<sup>70</sup>

The authoritative Ban Rauch was soon forced to withdraw promoted by a campaign of the hounded Croatian opposition press, which enjoyed the discreet support of anti-Hungarian Austrian military authorities. The newspaper *Zatočnik* [Prisoner] accused Rauch of corruption and was promptly sanctioned under the Law on the Printed Matter of 1852. As a result the editorial board moved from Zagreb to Vienna, and later to Sisak, a town close to Zagreb, but in the territory of the Military Border under Austrian military administration.<sup>71</sup> Rauch was forced to lodge a private suit against *Zatočnik*, on account of the accusation of corruption, with the military court in Sisak, where he had no influence, and the case was thrown out.<sup>72</sup> Thus Rauch was forced to resign, and a more liberal, moderate Unionist, Koloman Bedeković, was appointed Ban in his place. In May 1871 he enacted a provisional, fragmentary decree based on the Austrian Law on the Printed Matters of 1861, which to some extent tempered the Law on the Printed Matters of 1852.<sup>73</sup>

70 Dnevnik 1868 (n. 69), p. 1288; Gross and Szabo, *Prema hrvatskom* (n. 9), p. 385; James Paul Krokari, *Liberal Reform in Croatia, 1872–75. The Beginnings of Modern Croatia Under Ban Ivan Mažuranić*. Ph. D. Thesis, Indiana University 1980 (unpublished material), p. 221; compare James Krokari, *Liberal Reform in Croatia 1872–1875*, New York, 1996.

71 Vera Ciliga, *Slom politike Narodne stranke 1865–1880*. [The Breakdown of the Policy of the National Party 1865–1880], Zagreb 1970, pp. 99–100; Horvat, *Povijest* (n. 8), pp. 231–232; Jaroslav Šidak, Mirjana Gross, Igor Karaman and Dragovan Šepić, *Povijest hrvatskoga naroda g. 1860–1914* [History of the Croatian People from 1860 to 1914], Zagreb 1968, pp. 43, 47.

72 Ciliga, *Slom* (n. 71), pp. 99–100; Šidak, Gross, Karaman and Šepić, *Povijest* (n. 71), p. 47.

73 See Banska naredba br. 43 [Ban's decree no. 43], in: *Sbornik zakonah i naredbah valjanah za kraljevinu Hrvatsku i Slavoniju. Godina 1871* [Acts and Provisions in Force in the Kingdom of Croatia and Slavonia], Zagreb 1871 (hereinafter: *Zakoni i naredbe 1871*), pp. 233–234. Compare Banska naredba o tiskovnom redu (I) [The Ban's Decree on the Printed Matters (I)], in: *Branik* [Defender], 10. VI. 1871, p. 1; Banska naredba o tiskovnom redu (II), in: *Branik* 12. VI. 1871, p. 1; Još o banskoj naredbi [More on the Ban's decree], in: *Branik* 19. VI. 1871, p. 1; Posljednja o banskoj naredbi [Final Words on the Ban's Decree], in: *Branik* 26. VI. 1871, p. 1–2.

But Bedeković resigned as Ban in February 1871, on account of the generally unyielding orientation of the Central Government. The next provisional Unionist government first proposed to *Sabor* the laws on the printed matters, on penal procedure in publishing offences, and on compiling a list of jurors for jury courts, but then withdrew them. These laws had probably been prepared by Rauch's former government.<sup>74</sup>

The regulation of the press and trials by jury was an issue which was not resolved in Croatia until political turbulence died down and a new political constellation appeared on the scene. In spite of government pressure during elections of the *Sabor* in 1871, the opposition National Party [*Narodna stranka*] was victorious. This resulted in a stalemate between the National Party in the *Sabor* and the Central Government, which was only resolved by political compromise. A prominent member of the National Party, Ivan Mažuranić, was made Ban and President of the Croatian Autonomous Government, while individual members of the Unionist Party were co-opted into the government and into the National Party. The Unionist Party was disbanded soon afterwards.

## VI Trial by jury in Croatia and Slavonia, 1875–1884

### 1 The trial by jury and press legislation, 1875

The period of administration under Ban Ivan Mažuranić (1871–1880) was marked by a pronounced spirit of reform. About 60 liberalising laws were passed during that time at the proposal of the Croatian government. The most important were laws separating the courts from administration, on the reform of administration and the courts, on the responsibilities of the Ban before the *Sabor*, on penal procedure, on the establishment of university, on the secularisation of elementary education, on the right to hold public gatherings and on the position of the press and the regulation of trials by jury for publishing offences. Shortly before Mažuranić took over the office of the Ban, the *Sabor* adopted the Law on the Equality of the Jews, which was promulgated in October 1873.<sup>75</sup>

74 *Saborski dnevnik kraljevinah Hrvatske, Slavonije i Dalmacije godina 1872–1874, I* [Minutes of the Sabor of the Kingdom of Dalmatia, Croatia and Slavonia 1872–75, Vol. I], Zagreb 1874 (hereinafter: *Saborski dnevnik 1874, I*), p. 117, 401, 411, 415; Gross and Szabo, *Prema* (n. 9), p. 385; Krokari, *Liberal* (n. 70), pp. 221.

75 For more on Mažuranić's reforms see: Dalibor Čepulo, *Središte i periferija: europske i hrvatske odrednice Mažuranićevih reformi ustroja vlasti i građanskih prava (1873–1880)* [Centre and Periphery: the European and Croatian

The priorities of the Croatian government included reforms in the areas of judiciary and administration, which were the preconditions for annexing the Military Border to civilian Croatian territory. These laws were enacted in the first wave of legislation, during 1873 and 1874.<sup>76</sup> The most important among the judicial reforms was the Law on Judicial Power. This law was a shortened form of the Austrian Fundamental Law on Judicial Power of 1867. It had a general nature, and established significant guarantees of judicial independence on the basis of the separation of judiciary and administration, lifelong tenure for judges, and the incompatibility of the calling of a judge with other callings. It differed from the Austrian model in omitting guarantees of trials by jury in cases of publishing offences. The Law on Disciplinary Responsibility of Judges, their Reassignment and Retirement against Their Will was enacted parallel to this law, again according to the Austrian model. This act guaranteed the stability of the position of judges in the face of possible pressure from the government.<sup>77</sup>

The public expected that in tandem with these laws on the judiciary, the government would undertake reform of publishing legislation. The majority National Party had already had bad experiences with the then valid Law on the Printed Matter of 1852.<sup>78</sup> But regulation of the press and reform of the penal justice system, at least in the area of introducing trial by jury, did not happen until 1874, after the vital organisational laws concerning judiciary and administration had been adopted. Only then did the government propose the Law on the Printed Matters, the Law on Penal Procedure and two special laws regulating penal procedure in publishing offences and the formation of juries.

The governmental proposals had been made according to Austrian models. However, in Austria trial by jury was part of general penal procedure regulations, and covered rather wide scope, whereas in the Croatian legal system it was limited exclusively to procedures involving publishing offences.

Influences on the Mažuranić's Reforms of the Organisation of Power and Civil Rights (1873–1880), in: *Zbornik Pravnog fakulteta u Zagrebu* [Collected Papers of the Faculty of Law in Zagreb] 50 (2000), pp. 921–936; Dalibor Čepulo, *Ustrojstvo vlasti i građanska prava u reformama Hrvatskog sabora 1873–1880* [The Organisation of Power and Civil Rights in the Reforms of the Croatian Sabor, 1873–1880], in: *Hereditas rerum Croaticarum ad honorem Mirko Valentić* (prir. Alexander Buczynsky, Milan Kruhek, Stjepan Matković), Zagreb 2001, pp. 199–206.

76 *Saborski dnevnik* 1872, I (n. 74), pp. 1026–1028.

77 See Čepulo, *Izgradnja* (n. 4), pp. 325–383, here pp. 349–350.

78 *Poslovi božićnih sjednica* [The Agenda of the Christmas Sessions], in: *Obzor* [Horizon], 12. XI. 1871, p. 1.

In September 1874 the *Sabor* debated the Law on the Printed Matters [*Zakon o porabi tiska*], then the Law on Compiling a List of Jurors for Jury Courts [*Zakon o sastavljanju porotničkih imenika za tiskovne sudove*], and in October the Law on Penal Procedure [*Zakon o kaznenom postupku*] and the Law on Penal Procedure in Publishing Offences [*Zakon o kaznenom postupku u tiskovnim poslovima*].

The government's draft of the Law on the Printed Matters was virtually identical to the previous government's proposal of 1872. So it can be assumed that the proposals for the other two laws were also taken from the previous Rauch's government.<sup>79</sup> Among the provisions of the Law on Printed Matters, the most important concerning the issue of trials by jury was the introduction of the obligation for publishers or printers to deliver copies of their publications to governmental departments, the competent administrative body and the public prosecutor, or else are subject to harsh penalties. Publishing offences were tried according to penal laws (§ 24). The editor in charge, the publisher and the printer were now liable for lack of due care. A newspaper editor could be responsible for content characterised as criminal or offensive, regardless of the fact that according to the Penal Code, he was not responsible for such content (§ 25).<sup>80</sup> An editor who refused to name the author of an incriminating article at a first hearing could be held subsidiary responsible because of lack of due care (§ 26). In verdicts declaring printed contents to be criminal it was obligatory prohibited to the further distribute such material, whereas this was to be discretionary in the case of misdemeanour or offence (§ 32). In cases in which printed material was banned, the court could rule that the offending issue and the printing equipment shall be destroyed. This could not be applied to copies already in the possession of a third party for personal use (§ 33). Expiration of statute of limitations was applied according to the Penal Code, but with a time limit of six months, including halting proceedings already started. However the enforcement of the statute of limitations did not take into account periods during which

79 Horvat, *Povijest* (n. 8), p. 257.

80 See the chapter on the concept of crime in the wider meaning in: *Kazneni postupnik. Po predavanju prof. Dr. Janka Čakanića na zagrebačkom sveučilištu 1889* [Penal Procedure. Lectures by Prof. Dr. Janko Čakanić at Zagreb University, 1889], Zagreb s. a. (script, lithographed) and §§ 1–2 and other provisions on crimes, misdemeanours and offences from the Penal Code of 1852, in: *Kazneni zakon o zločinstvih, prestupnih i prekršajih od 27. svibnja 1852 sa zakoni od 17. svibnja 1875* [Penal Code on Crimes, Misdemeanours and Offences, 27 May 1852, with the Acts of 17 May 1875], Zagreb 1908, pp. 11–12.

proceedings hindered by legal reasons (§ 35). The law was passed on 10 September 1874.<sup>81</sup>

In the very short *Sabor's* debate on the law, objections mostly related to the very broadly defined opportunities for imposing bans or the level of security. The Ban emphasised that rulings regarding freedom of the press had been transferred from administration to the court, thus achieving the principle of freedom of expression, but also giving the state the right to prosecute and prevent criminal acts. From this arose the option of adopting preventive rulings temporarily banning the distribution of printed material, to be confirmed or overturned by the court. This was justified by so-called »objective verdict« on banning printed material of punishable content, in cases in which the culprit could not be identified (§ 25). In contrast, since it was now impossible for the administration to prohibit distribution, so printed material with punishable content could now be distributed freely.<sup>82</sup>

Following the Law on the Printed Matters, the government proposed a Law on Compiling a List of Jurors for Jury Courts to the *Sabor*, based on the Austrian Law on Compiling a List of Jurors for Jury Courts [*Gesetz über die Bildung der Geschwornenlisten*] of 1873.<sup>83</sup> The act prescribed that jurors should be selected from the town in which the court had its seat, i. e. Zagreb (§ 1). Qualifications for jury service were that the jurors are male, aged between 30 and 60, can read and write, and resident for at least a year in the municipality in question, and with a relatively high taxable status (20 Hungarian florins). The taxable status could be substituted by jointly meeting the requirements of a lower age (24, i. e. the age of majority) and additionally a higher level of education (doctoral level or higher technical education, or a regular membership in an academy of science) or having a certain profession (lawyer, public notary, teacher) (§ 2). Certain state and Church professions were excluded (clergy, elementary school teachers, judges, civil servants, soldiers and public service employees). People could be considered unsuitable for jury service because of physical, mental or legal limitations (those with legal rights withdrawn, under investigation, sentenced in penal proceedings

81 Zakon o porabi tiska [Law on the Printed Matters of 17 May 1875], in: *Sbornik zakonah i naredbah valjanih za kraljevinu Hrvatsku i Slavoniju. Godina 1875* [Acts and Provisions in Force in the Kingdom of Croatia and Slavonia, 1875], Zagreb 1876 (hereinafter: *Zakoni i naredbe 1875*), pp. 355–367.

82 *Saborski dnevnik kraljevinah Hrvatske, Slavonije i Dalmacije godina 1872–1875, II*. [Minutes of the Sabor of the Kingdom of Croatia, Slavonia and Dalmatia, 1872–1875, Vol. II], Zagreb 1875 (hereinafter: *Saborski dnevnik 1872, II*), pp. 1152, 1157, 1295–1303, 1317–1323, 132–1327, 1328.

83 Bayer, Problem (n. 2), p. 49; Josef Kasserer (ed), *Das Gesetz vom 23. Mai betreffend die Bildung der Geschworenenlisten mit Materialien*, Wien 1873.

or those without passive voting rights at municipal level). Members of the Croatian *Sabor* and Hungarian-Croatian Diet were exempted from jury service during sessions, as were persons with specific public functions and anyone who had already completed jury service was exempted for the next twelve months (§§ 3–5). The procedure of compiling a jury panel began by compiling a »preliminary list« of the names of those able for jury service. This list was drawn up by the mayor and posted in public for a period of eight days. In that time members of the Zagreb city council could lodge objections. Then a commission of between 6 and 12 members – half appointed by the president of the first instance court, and half by the mayor – selected names from the »preliminary list« to form the annual list of candidates for jury service. The criteria required in order to be included on that list were common sense, honesty, moral rectitude and good character, and one in fifty residents was selected as a candidate (§§ 6–10). The annual list was published in the press and delivered to the president of the publishing court and the competent public prosecutor. Fourteen days before a jury began to meet, 36 main jurors and 9 deputy jurors were selected by drawing lots at a public session of the jury court, in the presence of the public prosecutor and one other lawyer; the latter was chosen by drawing lots by the lawyers' board from the annual list of names (§§ 12–13). Jury service was without remuneration (§ 15). The government's proposal was accepted in *Sabor* with no significant amendments or debate and after the king had sanctioned it, the law entered into force.<sup>84</sup>

The basic act of penal reform and a subsidiary source of laws regulating trial by jury was the Law on Penal Procedure. This was the government's reworked version of the valid Austrian Law on Penal Procedure of 1873. Instead of the inquisitional nature of proceedings which had been prevalent up to then, the government's proposal introduced a mixed, but simpler procedure. Under this new procedure the central position was taken by the oral, public trial while the formerly prevailing system of the rules of evidence defined by law was replaced by the principle of free estimation of evidence. However, in contrast to the Austrian Law on Penal Procedure of 1873, which prescribed trials by jury for political and serious crimes, the government's proposal limited trials by jury only to proceedings in cases of publishing offences. In a terse elaboration of this act, the Croatian government explained that modern legislations accepted broader competence of juries but that this

84 *Saborski dnevnik 1872, I*. (n. 74), pp. 1328–1330. Zakon od 17. svibnja 1875. o propisu kako se imadu sastavljati porotnički imenici za sudove tiskovne [Law of 17 May 1875 on Regulations for the Compiling List of Jurors for the Press Courts], in: *Zakoni i naredbe 1875* (n. 81), pp. 368–372.



solution was not suitable in Croatia and Slavonia for objective reasons.<sup>85</sup> A certain level of compensation for this would be achieved by introducing trials by assessor in cases for petty offences tried before district courts, where rulings on guilt and sentencing were delivered by a professional judge and two assessors, acting on equal terms.

However, the *Sabor's* committee produced on the basis of the government's proposal a comprehensive draft of the Law on Penal Procedure, modelled on the Austrian law of 1873. The most significant difference between the *Sabor's* and the government's proposals was that in the former trial by jury was part of regular first instance court proceedings, thereby widening the competence of juries to try crimes of treason, insult to the king and his family and disturbing the peace. Another heading was added regulating proceedings held before a jury.

The greater part of the rather modest debate held on the adoption of the Law on Penal Procedure revolved around the proposal of *Sabor's* representative Marijan Derenčin, a lawyer from Zagreb, who was close to the Croatian government. He proposed that the provisions relating to the jury as a general institution should be removed, and that penal procedure in cases of publishing offences should be regulated by a special law. Derenčin said that he supported the institution of the jury in principle and did not agree with the government's claim that conditions in Croatia and Slavonia were unsuitable for its introduction. But, he also presented the legal and political dilemmas regarding the institution of the jury and declared himself against trials by jury in cases of political offences, which could compromise the institution right from the start. He warned that widening the competence of juries might result in the king's refusal to sanction to the entire act, which would hold up the entire process of legislative reform. Two opposition representatives however showed that professional judges, particularly during periods of political tension, were prone to limit the freedom of individuals in political cases, particularly by ordering investigative detention. These two spoke up for trial by jury as a means of separating court powers. They emphasised that trial by jury was the only real guarantee of an objective trial, given the abolition of the system of the rule of evidence defined by law. The government representative said that the government had no reservations about juries in principle, but that the institution only functioned where conditions were adequate, especially regarding legal tradition and legal culture. The government representative explained that it was logical to introduce juries for publishing offences, since the press was the voice of public opinion. Therefore a jury, as a public body, should judge publishing offences, since these on the whole concerned criti-

85 Saborski dnevnik 1872, I (n. 74), p. 1352.

cisms of the state and government. However, he opposed using juries as a corrective to the principle of free estimation of evidence, and said that, in reality, judges based the judgments on their personal convictions, for which they then sought a basis in law. He warned that incompetent laymen in the jury would be put in the position of judging serious crimes, without having proper knowledge of the law, but that the objectivity of the jury's decision would be guaranteed, since a two-thirds majority was required in order for a judgment to be reached collegially. The government representative also warned that in times of political tension, independent professional judges were more objective in judging political offences than jurors. He claimed that the jury question could not be separated from the question of the development and education of the nation. He insisted that the government would only be able to assess the possibility of widening the competence of juries or assessors' courts after gaining some experiences of juries, abolishing the system of the weight of evidence defined by law and the introduction of trial by assessor for petty offences. He also warned that introducing juries purely for political cases would definitely compromise them. Another representative seconded his opinion and stated that the extension of jury competence to include political acts would be meaningless. The government representative explained this by referring to the fact that during the past decade, only one such verdict had been delivered, and only a few in cases involved insulting the emperor while in a state of intoxication. He emphasised that the guarantee of judges' independence in the Law on Judicial Powers formed a sufficient basis for legal security. He mentioned that Croatia had no tradition of trial by jury and claimed that it was not appropriate to introduce trial by jury into a country with no large cities or middle class, apart from Zagreb. The government representative concluded by emphasising that the introduction of trial by assessor would create an opportunity for education in this area. In the end, the act was passed with the provisions on trials by jury, in harmony with the government's proposal.<sup>86</sup>

The brevity of the debate indicates that the elimination of the *Sabor's* committee proposal had probably been tacitly agreed in advance between the government and representatives. The basic reason was the fear that the king would refuse to sanction the law if it extended the competence of juries to include political acts. It would have met with resistance in the Central Government in Budapest, which did not want more liberal political life in the autonomous part of its state, whose autonomy it tolerated only because it had to. However, the debate also demonstrated that the representatives were themselves sceptical about extending jury competence and including a lay

86 Saborski dnevnik 1872, I (n. 74), pp. 1435-1542.

element which would be difficult to control, even with the selection procedure. This anti-democratic tinge and scepticism regarding the education and political maturity of the Croatian population were characteristic of Croatian liberals. They were expressed in other reforms during Mažuranić's time as well, particularly in electoral reform.<sup>87</sup>

While the Law on Penal Procedure was still in the process of being passed, a debate began on the proposed Law on Penal Procedure in Publishing Offences. This law stated that publishing offences should be judged in district courts in places which were the seats of county courts. The County Court in Zagreb, with its jury, tried cases of crimes and misdemeanours and cases of editorial lack of due care, which was punishable as an violation of official duty (§ 25, Law on the Printed Matters).

The sanctions against the press recognised in the Law on Penal Procedure in Publishing Offences were confiscation of printed materials by the administration or by the court. Confiscation was regulated by the police body at the request of the public prosecutor, or directly, on condition that the public prosecutor was informed within 24 hours, or by the court, based on a ruling at the request of a private prosecutor. The confiscated goods could be held until a court confirmation was issued, within three days, or until a charge was lodged with the court, within 8 days (§§ 7–9). The injured party could lodge an appeal with the court for damages within 14 days of the cessation of the measure (§ 10). The law recognised the prohibition of the distribution and destruction of printed material by a court order in a case of a halted investigation or when the defendant was declared »not guilty« and by assumption that the court had established an incriminating element in the contents of the printed material (§ 11). Furthermore, the public prosecutor could, without filing a charge, ask the court to act in the public interest against a certain person, and establish the existence of a publishing offence at a private hearing, and impose a distribution ban; this did not preclude later prosecution of the offender (§ 12). Such cases were known as »objective verdicts«, i. e. rulings in which the existence of a crime had been established and a distribution or destruction ban imposed, without establishing subjective criteria of guilt, i. e. without a sentenced offender. These »objective verdicts«, which were directed against the press, could be declared in the »subjective« (§ 11) or »objective« proceedings (§ 12). The court acting in a proceedings

87 Dalibor Čepulo, *Izborna reforma u Hrvatskoj 1875 – liberalizam, antidemokratizam i hrvatska autonomija* [Electoral Reform in Croatia in 1875 – Liberalism, Anti-democratism and Croatian Autonomy], in: *Zbornik Pravnog fakulteta u Zagrebu* [Collected Papers of the Faculty of Law in Zagreb] 52 (2002), pp. 665–692.

initiated later against a certain person was not bound by the verdict given in the »objective« proceedings, even if the existence of a crime remained unproven. Legal redress was available against decisions rejecting the public prosecutor's proposal and against verdicts.<sup>88</sup>

Preparations for proceedings (inquiry, investigation and indictment) were subject to the provisions of general penal procedure, but investigation was obligatory, regardless of the severity of the offence. The general provisions of penal procedure applied to the preparation of the main trial, but in cases in which a crime was alleged, the presence of the defence counsellor was required from the investigative phase onwards. The court was required to publish the names of the members of the senate and 36 members of the jury panel, three days before the beginning of the main trial.

Regular sittings of the jury were supposed to take place every three months, if there was a need for them, and extraordinary sittings were called by the president of the Ban's Table. The senate consisted of three judges and a clerk. These were appointed for a period of one year by the president of the Ban's Table, and were usually presided over by the president of the county court, that is, the publishing court. The jury decided upon guilt as well as upon aggravating and mitigating circumstances which influenced the type and level of punishment. For each jury sitting, 36 main jurors and 9 deputy jurors were called, from whom twelve jurors were selected at a closed session of the chamber of judges before the beginning of the main trial. The law defined the reasons that disqualified somebody for performing jury service (persons in particular relationship with the defendant or the injured party, harm or benefits as a consequence of the verdict, position of witness, defence counsellor, representative or expert witness in the same case, or having been a juror in a previous trial of the same case). Both parties had the right to exclude jurors without any explanation, and jurors were drawn by a lot, until a twelve-man jury was formed.

For the main trial, general provisions of penal procedure applied subsidiary. The jurors were sworn in. After the finishing of the taking evidence, both parties made statements, which had to be limited to counts on which the jury would decide on guilt and on aggravating or mitigating circumstances. Matters upon which the senate would decide were only to be elaborated after

88 For more on »objective verdicts« in »objective« and »subjective« proceedings, see Ogorelica, Kazneno (n. 11), pp. 777–782. In the same book, Ogorelica points out that in Bosnian-Herzegovinian criminal procedure »objective proceedings« were unknown. They were not part of Hungarian procedure either, but in Hungary there was the possibility of passing down a sentence on the destruction of printed material found in the possession of the author, printer or distributor. Ogorelica, Kazneno (n. 11), pp. 776.

the jury verdict. After the evidences were presented, the president of the senate delivered questions to the jury, in oral and written form. Both sides could object the questions' formulation and propose amendments, upon which the senate would decide. The main question was whether or not the defendant was guilty, but additional questions could also be asked, to be answered with a »yes« or a »no« (on the non-existence of a offence, on mitigation or a harsher qualification of the offence, with the defendant's consent, on aggravating or mitigating circumstances, etc). Then the president would declare the main trial to be concluded and expound and explain to the jury the legal characteristics of the offence and direct them to go to deliberations. The jury would deliberate in a separate room, without interruption, until a decision had been reached. The jurors chose a foreman from among themselves, who chaired the debate, and voted last. It was considered that a guilty verdict and decisions relating to aggravating or mitigating circumstances were adopted if there was a two-thirds majority vote. On questions concerning exemption from punishment and mitigating circumstances, a simple majority was sufficient, according to the rule *in dubio pro reo*. If the senate considered the jury verdict unintelligible, incomplete or contradictory, it rendered an immediate ruling and ordered the jury to return to their room and change the verdict. If the defendant was found guilty, and the senate unanimously agreed that the jury was mistaken in the main charge, it could decide to award the case to another jury. If the charge was against several persons, or contained several charges, and the senate considered that the jury was mistaken in regard to only one person or in only one charge, then their decision was restricted to that person or charge. In a repeat trial, none of the former judges or jurors could be involved. A repeated jury decision was binding on the court. If the defendant was found not guilty, he was immediately acquitted of the charge. If he was found guilty, the plaintiff would propose a sentence, after which the injured party, the defendant and the defence counsel were given an opportunity to speak. The senate could deliver a verdict on pardon from the charges if it considered that the act of which the jury found the defendant guilty was not prohibited by any penal regulation. The law was enacted unchanged.<sup>89</sup>

In a short debate on the draft law the spokesman for the *Sabor's* committee particularly emphasised the role of the jury as the public voice in adjudicating in offences within a social context. He also emphasised that only the town of Zagreb had the necessary preconditions for introducing juries. The government representative, on the other hand, elaborated the right of the state to

89 Zakon o kaznenom postupku u tiskovnim stvarima [Law on Penal Procedure in Publishing Offences] of 17 May 1875, in: Zakoni i naredbe 1875 (n. 81), pp. 373–390.

provisional confiscation and the prohibition of distributing printed material. He emphasised that the proposed law reduced to the minimum possibilities of the prohibition of distributing printed material, and put it into the competence of the court. He justified court orders prohibiting the distribution of printed material, or »objective verdicts« as a necessary substitute for the abolition of administrative reprimand in press regulations. It was also a court instrument for the prevention of the distribution of printed material with incriminating content.<sup>90</sup>

The law passed represented a huge step forward in terms of the regulation of this area compared to the previous regulation. It was a fairly modern regulation which adopted the standards of trial by jury, prevented what had been the customary confiscation of newspapers, and according to the evaluation of experts, was technically concise, like the Austrian Law on Penal Procedure, whose solutions it adopted.<sup>91</sup> The establishment of new press and jury regulations in Croatia and Slavonia provided a fairly favourable basis for the advancement of the press and, with it, the development of the political parties and the Croatian political scene. Nonetheless, limiting trial by jury to Zagreb was an expression of pessimism concerning the qualification of the Croatian populace to participate in trial by jury. Limitation for the trials in cases for petty offences only to district courts in the seats of county courts was, on the other hand, an expression of scepticism regarding the abilities of Croatian judges outside Zagreb. Yet the purpose of the provisions was not just to delegate authority to stronger court centres, but to encourage financial savings and make it easier for the government to supervise and influence the courts in court centres.

The adopted laws were only sent to the king to be sanctioned seven months after its adoption, with the excuse that it concerned comprehensive regulations which had to be translated into German. The opposition interpreted this delay as deliberate stalling, with the intention of making sure some penal proceedings, which had already been started under the strict regime of the Press Law of 1852, would be concluded. The laws received the king's approval on 17 May 1875 and were then published with the quarterly *vacatio legis*, which was supposed to enable judges to acquaint themselves with the new laws.<sup>92</sup>

90 Saborski dnevnik 1872, II (n. 82), pp. 1152, 1348, 1558–1565, 1567, 1583; Bayer, Problem (n. 2), pp. 40–48; Gross and Szabo, Prema (n. 9), p. 326; Ljubanović, 120. obljetnica (n. 11), pp. 329–330.

91 Bayer, Kazneno (n. 6), p. 152.

92 The course of the adoption of the introductory law for the penal laws see: Dnevnik 1871, II. (n. 82), pp. 1450, 1583–1586, 1588, 1885. Law of 17 May



The acts mentioned above entered into force on 26 September 1875 and their promulgation was received by the Croatian press with a degree of reserve.<sup>93</sup> Still, the new press and penal laws in practice revealed a number of favourable, though controversial features. This was not just the result of new regulations, but of the moderately favourable political environment at the time of Ban Mažuranić's administration.

In the years following the adoption of these laws, a number of newspapers were launched in Zagreb, Osijek and Sušak.<sup>94</sup> Mažuranić's government avoided widespread intervention in the dealings of the moderate press, some former limitations on individual newspapers were lifted, and if administrative officials requested political intervention of the government, they were directed to the courts.<sup>95</sup> In a climate which was generally characterised by greater tolerance of political opinions, newspaper articles were freer in their expression.

The limitations imposed on administrative reprimand and the introduction of juries formed a solid defence against more drastic state intervention. For this reason, the government, that is, the public prosecutor, tended to avoid trial by jury when reacting to the press and to prefer other legal means.

Bringing a charge before a jury was something which the public prosecutor used sparingly. Right from the beginning, proceedings before juries proved to be an unsuccessful means of prosecutors's reaction to publishing offences. In my research from the first jury trial in 1876 to the temporary suspension of the jury system in 1884, I were only able to discover six jury trials, involving nine defendants charged under indictments issued by the public prosecutor. I found no private prosecutions. In five cases the jury acquitted all five defendants, while in one case, in which there were four defendants, the statute of limitations was enforced. The content of all the incriminating material was political, and all the cases involved four opposition newspapers; the liberal *Die Drau*, *Kroatische Post* and *Agramer Presse* (all published in German) and the nationalist *Sloboda* [Freedom]. The accused were Croats,

1875 on the Implementation of the Law of the Penal Procedure, Law on the Printed Matters, Law on Compiling List of Jurors for Jury Courts and Law on Penal Procedure in Publishing Offences, see in: *Zakoni i naredbe 1874* (n. 81), pp. 233–234.

93 Tiskovni zakon [Law on the Printed Matters], in: *Obzor* [Horizon], 11. IX. 1875, p. 1.

94 Horvat, *Povijest* (n. 8), pp. 258–268.

95 Saborski dnevnik 1872, II (n. 82), pp. 61–62, 866. See also Krokari, *Liberal* (n. 70), p. 226; Horvat, *Povijest* (n. 8), p. 258.

Jews and one Lutheran, probably a German from Silesia. I have presented the details of these proceedings and a statistical elaboration in summarised tables in the next chapter. Here, I will briefly present each jury trial and some press reactions. The discussion of these presentations should be complemented by consulting the details contained in Table 3 below.

The first trial held before a jury took place on 26 and 27 September 1876, against Maks Kohn, the editor-in-chief of the German language newspaper from Osijek, *Die Drau*, because of two published articles. The first article claimed that the Croatian government was deliberately delaying the adoption of the press and jury laws. The public prosecutor found in these elements the incitement to hatred and contempt for the government. The second article accused *Sabor's* representatives of irregularities as well as of a breach of law in their work. Because of that the article was said to be directed against the *Sabor*, thereby offending the interests of public safety. Kohn's defence lawyer was Milan Makanac, a former *Sabor's* representative and former deputy professor of the Faculty of Law, a position he was removed from in 1868 due to his political activities. The first trial by jury attracted a large public audience. During the process of selecting the jurors by drawing lots, the public prosecutor publicly renounced his right to exclude jurors, while the defence counsel exercised his, thus excluding a professor of the Faculty of Law. The president of the council addressed the jurors at the beginning of the trial and told them of the historical significance of this first jury trial. He spoke of the problems which had faced the introduction of juries in other countries and warned the jurors that the jury was not a political institution. During proceedings the defence raised an objection on the expiration of statute of limitations. Defense councillor also demanded that a secret document sent by the Croatian Government to the Osijek court be produced, in which the neutralisation of the opposition press was demanded, but the court rejected this proposal. The defendant asked to be allowed to speak in German when giving evidence, with the explanation that it was easier for him to express himself in this language, which the jurors in any case understood. The president of the senate refused this request, but in the end allowed him to use »the odd German phrase«. The trial lasted all day and the following day until noon, and ended with an acquittal by the jury.<sup>96</sup>

This first jury ruling provoked political and professional commentaries in the press, some of which questioned the institution of the jury itself and predicted its suspension. In *Obzor*, the newspaper of the pro-government National Party, there were several critical articles. In one, disappointment

96 Rasprava pred porotom [Trial Before Jury], in: *Mjesečnik Pravničkoga društva u Zagrebu* [Monthly of the Lawyers' Society of Zagreb] 2 (1876), pp. 476–478.

was expressed with the jury's decision, implying the toleration of an insult of the *Sabor* which had introduced trial by jury. However, the author found mitigating circumstances in the inexperience and teething problems of understanding the new institution.<sup>97</sup> In another article, the author criticised the public prosecutor for not exerting his powers to exclude individual jury candidates and allowing the jury to include persons who did not have good knowledge of Croatian. He also objected that the defence excluded a Faculty of Law professor during selection of jurors. The main reason for the decision to acquit, in the author's opinion, was the influence of the public on the jury, whether through general propaganda or through the support of the public in the courtroom, which was encouraged by the senate and administrative officials. So the author drew the significant conclusion – from which the editors of *Obzor* distanced themselves – that the *Sabor* had erred in passing laws on trial by jury and the independence of judges.<sup>98</sup> Another reader rejected this thinking, claiming that juries were by nature part of social and political life, and that this had been expressed in their decision, and treated the first trial by jury as a test case. He said that the Czechs did not judge their »own« newspapers; neither did the Germans or the Hungarians who condemned Serbian publications.<sup>99</sup> A fourth writer also cautioned against expecting a Croatian jury to react in the same manner as juries in Austrian lands and in Hungary, who did not judge their »own« papers, but those of other nationalities.<sup>100</sup> On the other hand, the opposition press expressed satisfaction with the institution of trial by jury and criticised the authorities which had used it as a scapegoat and furthered the prosecution of the press by other means. The criticisms were directed against the ruling party, lawyers and the University, on account of their passivity or support for this attitude.<sup>101</sup>

Maks Kohn was charged in another trial by jury on 23 April 1877, because of an article against the transitional government in the Military Border and its Head, General Mollinary. It seems that these proceedings ended in an acquittal, against which the public prosecutor appealed demanding the decision to be declared void.<sup>102</sup> The lack of further reporting in the press indicates that this appeal was probably unsuccessful.

97 Prva hrvatska porota [The First Croatian Jury], in: *Obzor* [Horizon], 28. IX. 1876, p. 1.

98 Porotni sud [Jury Court], in: *Obzor*, 30. IX. 1876, p. 1.

99 I opet porota [Jury Again], in: *Obzor*, 1 X. 1876, p. 1.

100 Porota i činovnici [Juries and Clerks], in: *Obzor*, 5. X. 1876, p. 1.

101 Einig im Schutze der Pressfreiheit!, in: *Agramer Presse*, 27. IV. 1877, p. 2.

102 Porotna razprava [Jury Trial], in: *Narodne novine* [The Peoples Press], 21 IV. 1877, p. 3; Iz sudnice [From the Courtroom], in: *Narodne novine*, 1 V. 1877, p. 1.

In the third recorded trial before a jury, held on 15 September 1879, four journalists and editors were charged. Friedrich Lobrecht Rosche was charged with inciting hatred against the Croatian government in a newspaper article in German in the *Agramer Presse*, and of committing the crime of disturbing the peace. In one other article published in another German language newspaper, *Kroatische Post*, the army was accused of being undisciplined and unprepared in interventions in Bosnia and Herzegovina. Hinko Waschler and Jakob Frank, as editors, were charged, and Josip Frank, later a leader of the Croatian nationalist Party of the Right [*Stranka prava*], was also charged. Frank's defence counsellor suggested that proceedings against his client should be halted due to the statute of limitations, since the six months term had already expired. During the trial, the impression emerged that there were questionable elements concerning the interpretation of enforcement of the statute of limitations, but the senate eventually ruled to halt proceedings for that reason regarding expiration of a six month term.<sup>103</sup>

The fourth trial noted was held on 4 September 1880, during the short-lived rule of the moderate Unionist Ban, Koloman Bedeković (1880–1883), after the Ban Mažuranić had stepped down. The defendant was Gavro Grünhut, editor of the newspaper *Sloboda*, the journal of the nationalist Party of the Right. He was charged because of two articles. He was accused of insulting the emperor for stating in an article entitled »Gladstone and Austria« that the Hungarians had the king in their clutches, and that, under their influence, he was attempting to subjugate the recently freed Balkan states. In an article entitled »The Balkan Nations« Grünhut wrote of the Austrian-Hungarian yoke imposed on the people of Bosnia and Herzegovina and part of Croatia and Slavonia, and on the perspectives for the Balkan states forming an alliance under the guidance of Russia or England. This was interpreted as incitement to hatred and contempt for the constitutional bond between Croatia and Slavonia and Hungary, thereby constituting an act of disturbing public order and peace. The defendant claimed that the article on Gladstone had been included only after appearing in several other newspapers, and rejected the second charge on the grounds of impunity. During the main trial, the public prosecutor Cuculić led the prosecution. The defence argued that in Hungary and Austria, newspapers were far more critical on the same topic, but were not called upon to answer for it. The defence warned the jurors that a guilty verdict would mean prison for a young, married man, a family man of no property, and that this would force his family to become beggars. After closing arguments, the president put five questions to the jury.

103 Iz sudnice [From the Courtroom], in: *Obzor*, 15. IX. 1879, p. 2; Iz sudnice, in: *Obzor*, 16. IX. 1879, p. 1

After jury deliberations lasting half an hour, the jury answered all five questions in the negative and the defendant was acquitted.<sup>104</sup>

According to *Sloboda* this verdict was the main topic of all public debates in Zagreb, and it was claimed that this was why the Ban was called to Budapest for discussions. The rumour spread that the prosecutor was given to understand that his career was over and in circles close to the Croatian government, it was claimed that trial by jury would be abolished.<sup>105</sup> But these rumours proved unfounded, at least in relation to the public prosecutor, Vladislav Cuculić. He was appointed to the County Court of Zagreb in 1884 and from 1890–91 presided over almost every senate in jury proceedings.

In October, the case against Milan Kerdić, also editor of *Sloboda*, came before the court. In *Sloboda*'s report of the trial, it was claimed that the courtroom was full, but the president of the senate closed the gallery to the public, where only the defendant's family and a few other people were sitting, so that even some of the jurors had to stand. Kerdić was charged because the paper had carried a satirical »epic« in several issues, in which the decisions of the local government of the Rijeka County were ridiculed. He was charged with inciting hatred and contempt for the head of the Rijeka County as the representative of the government, to whom he referred as a »monster«, »toad«, »crocodile«, etc. The defendant argued that the allegations were true, saying that in order for the texts to be incriminating, it was not enough to prove ridicule, but lies. The defence established that there might have been insult to individuals, which was not the topic of the proceedings, and also

104 The questions put to the jury were as follows (in brief): (1) Is the defendant guilty of publishing an incriminating article alleging that the Emperor has fallen entirely under the Hungarian influence in *Sloboda*, thus insulting the honour of the king? If the jury answered in the negative, the second question was: (2) Is the defendant guilty of using the same article to incite hatred for the person of the king? If the answer to this question was negative, the third question would be: (3) Is the defendant guilty of lack of due care by publishing the incriminating article in *Sloboda*? There followed question (4): Is the defendant guilty of publishing another incriminating article with allegations which amount to incitement to hatred for the constitutional bonds between Croatia and Slavonia and Hungary, and the general constitutional order of Austro-Hungary? If the answer was negative, the next question would be: (5) Has the defendant, by including this article, neglected to pay due care? The jury answered the first four questions unanimously in the negative and the final questions with 11 no and one yes. Iz sudnice [From the Courtroom], in: *Sloboda* [Freedom], 10. IX. 1880, pp. 2–4; Iz sudnice, in: *Sloboda*, 12. IX. 1880, pp. 3–4; Iz sudnice, in: *Sloboda*, 15. IX. 1880, p. 4; Iz sudnice, in: *Sloboda*, 17. IX. 1880, p. 4; Iz sudnice, in: *Sloboda*, 19. IX. 1880, pp. 3–4.

105 Iz sudnice, in: *Sloboda*, 10. IX. 1880, p. 1; Dopisi [Letters], in: *Sloboda*, 12. IX. 1880, p. 2.

threw in an objection because of enforcement of the statute of limitations. The question put to the jury was, »Is the defendant guilty of including a poem containing incriminating material in the newspaper, constituting an offence according to § 300 of the Penal Code on Crimes, Misdemeanours and Petty Offences?« The jury verdict was 11 no and one yes, therefore the defendant was acquitted.<sup>106</sup>

The last trial was held on 5 December 1884, during the rule of the authoritarian government of Khuen-Héderváry, shortly after the announcement that juries were to be suspended. The defendant was Ivan Krajač, who was in investigative custody. He was charged with inciting hatred and contempt for the state administration in Croatia and Slavonia, and with humiliating the Ban, in his official capacity, by inciting hatred and contempt for him, and inciting part of the population to mutual enmity. The last charge related to the claim that »newcomers (...) like Maks Stern« the city representative, were courting the people, then attacking them and turning their backs on them as soon as it suited their personal interests. The author of the article wondered why, if a German living in France could not attack the French people with impunity, or an Austrian attack the Italian people in Italy, why newcomers to Croatia and Slavonia could attack the Croatian people with impunity. Although the surname of the city representative suggested that he was Jewish, during proceedings there were no indications that this was a specifically anti-Semitic attack. In a temperamental outburst, the defendant claimed that he considered anyone who was not a Croat to be a foreigner, including the Ban, Khuen-Héderváry. He claimed that foreigners were prepared to sell out the homeland and should be thrown off the city council, excluded from honest society and »ostracised«, i. e. not allowed to be candidates for office. He admitted that the word »banish« that he used in the article was »a bit strong«. In closing, one member of the defence referred to an explanation for an acquittal given by a jury in Vienna, which relied on the precept that in the constitutional order, the opposition press was called upon to criticise the government. Another member of the defence pointed out that in the proceedings against Gavro Grünhut, the president of the senate had not limited his right to speak, as had the present president, Cuculić, who had led the prosecution in the previous case, as public prosecutor. The defence wondered how it was possible for the opposition not to be free in Croatia and Slavonia, which had the same ruler and same laws as in Austria. The senate formulated

106 Pravorok porote [Jury Verdict], in: *Sloboda*, 18. XI. 1880, P. 2; Porotna razprava [Jury Trial], in: *Sloboda*, 18. XI. 1881, pp. 3–4; Porotna razprava, in: *Sloboda*, 20. XI. 1881, pp. 3–4.



four questions for the jurors, and after a 35 minute debate, they answered them all in the negative thus acquitting the defendant.<sup>107</sup>

Thus juries proved to be an impassable obstacle to the indictments brought by the public prosecutor, who was controlled by the government. However, as we have said, there was a reason for the government's different tactics in prosecuting publishing offences, and in their attitude towards the press in general. Mažuranić's government, or rather the public prosecutor's office, was to make good use of the repressive opportunities at its disposal. The public prosecutor's office initiated proceedings against individual papers and there were many cases of confiscation and prohibitions on distribution, particularly for *Agramer Presse* and *Die Drau*, who also attacked Mažuranić in person. This led to many interpellations in the *Sabor*.<sup>108</sup> However, rulings on prohibiting distribution were made by the courts, and the government had to act in accordance with the law.

In the proceedings of the government against the press, while trying to avoid trial by jury, the notion of »objective proceedings« was of crucial significance, as we have already mentioned. This allowed for a court prohibition of the distribution of newspapers, without the need to charge an individual. This institute was also adopted from Austrian law. There, it had been introduced primarily to prohibit the distribution of newspapers printed abroad, for which nobody could be charged in court proceedings, and also to avoid introducing the administrative measure of banning a newspaper.<sup>109</sup> However, in reality this institute was applied in other ways.

107 The questions put to the jury were: (1) Is the defendant guilty of inciting contempt and hatred for the state administration? If the question were answered in the negative, there followed (2) Is the defendant guilty of attempting to incite citizens of the state to mutual enmity? (3) Is the defendant guilty of humiliating and distorting the facts in order to incite hatred and contempt for the Ban as an official? (4) Is the defendant guilty of attempting to incite some citizens of Zagreb to mutual enmity? Iz suda [From the Court], in: *Sloboda*, 6. XII. 1884, p. 3; Zagreb, 9 prosinca [Zagreb, 9 December], in: *Sloboda*, 9. XII. 1884, p. 1; Iz suda, in: *Sloboda*, 9. XII. 1884, pp. 2-4; Porotna razprava, in: *Sloboda*, 10. XII. 1884, pp. 2-4.

108 The newspapers *Agramer Presse* and *Die Drau*, attacked Mažuranić and the circle around him and called them a criminal clique in the service of the Hungarians. Of 60 issues of *Die Drau* in 1876, during a seven month period 50 were confiscated. Interpellations caused by this and other events were numerous. Compare Saborski dnevnik 1872, II (n. 82), pp. 15-16, 46, 60-63, 527-530, 769-770, 829-830, 864-867, 902. See also Gross and Szabo, *Prema* (n. 9), p. 86; Horvat, *Povijest* (n. 8), p. 257.

109 Zakoni o porabi tiska [Law on the Printed Matters], in: *Obzor* 26. IX. 1877, p. 1.

In the government's reaction to the press (while avoiding juries) the provisions of the Law on the Printed Matters (hereinafter: LPM) were important, since they related to the responsibility of editors in cases of a lack of due care, in relation to articles which were objectively characterised as crimes or misdemeanours (§§ 25, 29 LPM). In the Law on Penal Procedure in Publishing Offences (hereinafter: LPPPO) provisions on the competence of juries in cases of crimes and misdemeanours were relevant (§ 3 LPPPO). Important were also provisions on the separation of proceedings in cases of the concurrence of publishing offences and »ordinary« offences or crimes (§ 4 LPPPO), and on the regulation of so-called »objective proceedings«. In the latter the court declared only the type of offence, without charging individuals, but it could decide to ban distribution of printed material (§ 12 LPPPO).

The way in which the institution was applied in practice is evident from one verdict of the Ban's Table, in appeal proceedings requested by the public prosecutor against a verdict of the Zagreb District Court in 1877. In this ruling, the Ban's Table overturned the acquittal of the first instance District Court and gave the defendant a one month prison sentence.<sup>110</sup>

It is clear from this verdict that, in practice, the public prosecutor first initiated »objective proceedings«, in which the senate of a county court, in closed session, would decide both how to qualify the objective characteristics of the deed, and on prohibiting the distribution of the newspaper which had published the article by an ostensibly unknown author (§ 12 LPPPO). If the objective characteristics of the deed were qualified as a crime or misdemeanour, the public prosecutor would then qualify the subjective responsibility of the author as culpable (lack of due care on the part of the editor). Pursuant to §§ 25 and 29 of the LPM, he would then bring a charge for petty offence in »subjective proceedings«, which came under the competence of the district court. Thus the district court would decide on the culpability of the content of the printed material, that is, the responsibility of the editor in terms of failing to pay due care in printing the article, whose distribution had already been prohibited by the county court, who had judged it to contain criminal or misdemeanour content. Although this meant taking the longer way round, it was a way of avoiding juries and compulsory investigations, newspapers were banned, and editors were fined heavy by district courts or even penalised with prison sentences of between one and six months, with very limited opportunities to claim legal redress. The district court would not react even if an editor admitted to being the author of an incriminating article, as this ploy was intended to force the case to be sent for jury trial. It was argued that the editor had been charged because of the responsibility attached to his position,

110 Aus dem Gerichtsaale, in: *Agramer Presse*, 21. IV. 1877, pp. 5-6.

and this was not excluded if he admitted authorial responsibility. The opposition press complained unsuccessfully about this interpretation of § 25.<sup>111</sup>

This seems to have been the standard procedure by which the government avoided trial by jury and achieved prohibitions on the distribution of certain newspapers. It provoked revolt and interpellations in the *Sabor*, and the Ban Mažuranić himself was forced to deliver a response.<sup>112</sup> As a result of this, in September 1887 *Obzor* published a fierce attack by a prominent member of the National Party on the laws which allowed such proceedings. The article also contained the author's recantation of more favourable statements concerning the Law on the Printed Matters which he had made previously.<sup>113</sup> However, the editorial board of *Obzor* emphasised that the new regulations were incomparably better than the previous ones.<sup>114</sup> In spite of public dissatisfaction, the avoidance of trials by jury was conducted within the law.<sup>115</sup> It seems as though a similar practice was common in Austria.<sup>116</sup>

## VII Trial by jury in Croatia and Slavonia 1890–1897

### I The trial by jury and press legislation in Croatia and Slavonia 1890–1897

The reforming activities of Mažuranić's government dissatisfied the Central Government in Budapest, which saw in them the strengthening of Croatian autonomy. At the same time the representatives of the National Party

111 Aus dem Gerichtsaale, in: *Agramer Presse*, 27. IV. 1877, pp. 3–4.

112 Saborski dnevnik 1872, II (n. 82), pp. 769–770, 829–830, 864–867.

113 Zakoni o poslovih tiskovnih [Law on the Printed Matters], in: *Obzor*, 25. IX. 1877, p. 1; Zakoni o poslovih tiskovnih, in: *Obzor*, 26. IX. 1877, p. 1.

114 Štamparski zakon [Law on the Printed Matters], in: *Obzor*, 27. XI. 1877, p. 1.

115 Ogorelica, Kazneno (n. 11), pp. 764–767, 776, 779–780.

116 In *Mjesečnik Pravnčkog društva u Zagrebu* a similar case in Austria was presented which occurred in 1891 due to the interpellation in the Imperial Council. The Minister of Justice agreed with the practice of the Austrian general procurator in qualifying press offences as culpable misdemeanours. *Mjesečnik* carried a letter from the general procurator, L. Cramer, to the Croatian public prosecutor, advising him to demand the same. In his opinion, the Austrian general procurator interpreted the view, which arose from the case in point, that pressing a milder charge was the competence of the procurator alone. He stated that this would not lead to illegal changes in the competence of the courts, given that the sole criminal court was authorised by the Law on Penal Procedure, meaning that it could enact changes to the description of the facts of an offence and thus change the qualification of the offence. However, the interpellation in the Imperial Council occurred only in 1892. K tumačenju (n. 12), pp. 18–121. See also Olechowski (n. 28), p. 642–643.

complained that Mažuranić was indecisive in his policies. Thus, Mažuranić delivered an ultimatum to the king on the need to resolve certain controversial issues with Hungary and in doing so brought about his own dismissal. But his successor, the moderate Unionist Ladislav Pejačević, did not prove to be fully loyal to the Central Government either. By 1883 he had stepped down, faced with the impossible task of advancing moderate reforms. The newly appointed Ban was the young, agile lawyer Karoly Khuen-Héderváry, a Hungarian aristocrat from Slavonia. Khuen-Héderváry was appointed Ban and given the task of securing Hungarian interests and keeping Croatia and Slavonia subservient. He remained in the position for 20 years, from 1883 to 1903. He set about his task by breaking up the National Party and turning it into a pro-government party, relying on the Serbian ethnic minority and inciting conflict between the Croats and the Serbs, by appeasing the Croatian political scene and by exploiting the *Sabor*, in which he ensured the National Party held the power.<sup>117</sup>

Among the first important measures proposed in August 1884 by Khuen-Héderváry was the three-year suspension of the principle of tenure of judges, as in the Law on Judicial Powers of 1874, and suspension of the Law on the Disciplinary Responsibility of Judges of 1874. Subsequently, the absolutist 1851 Imperial Patent on the Internal Organisation of the Judiciary was also replaced by a new act,<sup>118</sup> which allowed the Croatian government to reassign

117 On Karoly Khuen-Héderváry as the Croatian Ban see Stjepan Matković, Ban Khuen-Héderváry – značenje i utjecaji [Ban Khuen-Héderváry – Importance and Influences], in: *Povijest u nastavi* [History in Teaching] 1 (2003), pp. 37–47; Šidak, Gross, Karaman and Šepić, *Povijest* (n. 71), pp. 119–159.

118 Zakon od 1. kolovoza 1884. kojim se privremeno dokidaju neke ustanove zakona o vlasti sudačkoj i zakona o stegovnoj odgovornosti sudaca, o premještanju njihovu i o umirovljenju protiv njihove volje, te uspostavljaju ustanove carskog patenta od 1. svibnja 1851. o nutarnjoj uredbi i o poslovnom redu svih sudbenih vlastih i naredbe Ministarstva pravosuđa od 1. kolovoza 1854. o nutarnjem redu i poslovnom redu državnih odvjetništava [Act of 1 August 1884 on Temporary Abolishment of Certain Provisions of the Law on Judicial Power and the Law on the Disciplinary Responsibility of Judges, Their Reassignments and Retirement Against Their Will, and on Imposition of the Provisions of the Imperial Patent of 1 May 1851 on the Internal Regulation and Internal Procedures in the Whole Judicial Organisation, and the Order of the Ministry of Justice of 1 August 1854 on the Internal Regulation and Procedures in the Organisation of the Public Prosecutor], in: *Sbornik zakonah i naredabah valjanih za kraljevinu Hrvatsku i Slavoniju. Godina 1884* [Acts and Provisions in Force in the Kingdom of Croatia and Slavonia, 1884], Zagreb 1884, pp. 215–216 (hereinafter: Zakoni i naredbe 1884). Zakon od 1. kolovoza 1884 kojim se izjednačuju i nadopunjuju zakonske ustanove o ustrojstvu i nadležnosti sudova u kraljevinama Hrvatskoj i Slavoniji [Act of 1 August 1884 on Uniformation

judges against their will.<sup>119</sup> Both suspensions were renewed for two years in 1887 and the provisional Imperial Patent of 1853 replaced in 1890 by the Law on the Personal Relations of Judicial Civil Servants, based on the same principles as the patent.<sup>120</sup> The judiciary was kept dependent upon the government until 1917.

An important part of this first blow to the judiciary was also aimed at trial by jury. By the law of 2 December 1884, trial by jury was suspended for three years. Cases which had reached the stage of the main trial were to be completed, but other cases processed according to the general provisions of the Law on Penal Procedure. The government justified the suspension of trial by jury by referring to the repeated failures of the public prosecutor's office, in spite of the fact that it had only initiated proceedings before a jury in cases which were incontestable. The government claimed that the failure of the prosecution to win cases tried before a jury was the reason for abandoning

and Amendment of Legal Provisions on the Organisation and Competences of Courts in the Kingdom of Croatia and Slavonia], in: *Zakoni i naredbe 1884*, pp. 207–211.

119 According to the Imperial Patent of 1 May 1851, disciplinary provisions and provisions on reassignments for official reasons and on retirement applied to both judges and court officials, with particulars which applied to judges, but which did not guarantee their independence. The competence for implementing disciplinary measures against judges belonged to the hierarchical higher court while the Ministry of Justice was competent in the case of the highest court and the president of that court, although disciplinary rulings on judges had to be confirmed by the king. With regard to these and other provisions it was clear that regulations were meant which actually treated judges as state officials and to a great degree exposed them to the influence of the government, and the emphasis was on discipline, not independence. See *Gradjanski sudovnik od 16. veljače 1851. i Zakon o poslovnom redu sudbenih vlasti od 1. svibnja 1851, Ur. Adolfo Rušnov* [Internal Regulations of the Civil Judiciary of 16 February 1851, and the Law on the Internal Regulation of Judiciary of 1 May 1853], Zagreb 1885.

120 Zakon od 10. prosinca 1890 o osobnim odnosima, uredovnim dužnostima i stegovnoj odgovornosti pravosudnih činovnika kraljevina Hrvatske i Slavonije [Law of 10 December 1890 on the Personal Relations, Official Duties and Disciplinary Responsibility of Judicial Officials in the Kingdom of Croatia and Slavonia], in: *Sbornik zakona i naredbah valjanih za kraljevinu Hrvatsku i Slavoniju. Godina 1891* [Acts and Provisions in Force in the Kingdom of Croatia and Slavonia], Zagreb 1891, pp. 1–17; this law was published and entered into force on 16 January 1891. For the debate on the draft law see *Stenografski zapisnici sabora kr. Hrvatske, Slavonije i Dalmacije. Petogodište 1887–1892. od C. do uključivo CXXXI. saborske sjednice od 20. veljače do 15. prosinca 1890. Svezak IV. Godina 1890*. [Minutes of the Sabor of the Kingdom of Croatia, Slavonia and Dalmatia 1887–1892, Vol. IV], Zagreb 1890, pp. 25–29.

them, and instead of carrying out »subjective proceedings«, proceeded to confiscate printed materials and seek prohibitions later, in »objective proceedings«. However, court orders concerning the prohibition of distribution of printed material did not prevent their actual distribution. This state of affairs led to the conviction that the press was irresponsible and incited frequent attacks on the institutions of government and individuals within them. For this reason, the government considered it imperative to suspend trial by jury until the situation become less tense, allowing jurors to carry out their duties objectively and independently. The government envisaged freedom of the press being guaranteed by a professional judiciary – forgetting that only recently it had itself abolished the guarantee of relatively independent judges.<sup>121</sup>

The *Sabor's* debate on the suspension of trials by jury was marked by interesting features. The president of the *Sabor's* judicial committee, Jovan Gjurić, an ethnic Serb, said that there had been grave abuse of freedom of the press. He referred in particular to press attacks on ethnic Serbs because of their supposed pro-Serbian political leanings, and attacks on the entire structure of the government, individual bodies and individuals. Another ethnic Serb, Jovan Živković, who had been a deputy of the Ban in Mažuranić's time, when trial by jury was introduced, emphasised the importance of that institution for freedom of the press but claimed that the ferocity of attacks in the press and the decisions arrived at by juries had lost any rational purpose. For that reason, he supported the suspension of trial by jury, but was in favour of new press and jury laws. He accused the government of frequently abusing »objective proceedings« for the purpose of banning politically unacceptable newspapers and demanded that this institute should be abolished. Ban Khuen-Héderváry, however, claimed that the suspension of juries was in the interests of freedom of the press, since it was directed against abuse of trial by jury, which had permitted the dissemination of lies. He explained the breadth of the application of »objective proceedings« as a means of compensating for the failure to prosecute before juries, which should be halted with the suspension of juries. The argument of another majority representative was also interesting. He claimed that the suspension of trial

121 Debate on the suspension of trial by jury in: *Saborski dnevnik kraljevinah Hrvatske, Slavonije i Dalmacije godina 1884–1887. I*. [Minutes of the Sabor of the Kingdom of Croatia, Slavonia and Dalmatia 1884–1887, Vol. I], Zagreb 1887, pp. 232–248 (hereinafter: *Saborski dnevnik 1884*). Zakon od 2. prosinca 1884 kojim se djelatnost porotnog suda privremeno obustavlja [Law of 2 December 1884 Temporarily Halting the Activities of Jury Courts], see in: *Zakoni i naredbe 1884* (n. 118), pp. 522–521.



by jury was a liberal measure, directed against the radicalism and exclusivism of the nationalist Party of the Right, which had been the main aim of banning newspapers. The leader of this party, Josip Frank, pointed out that similar debates were being held in Hungary, where the political criticism is even harsher. But apart of that the Hungarian government had not initiated any amendments to the law on that account, nor had the Hungarian Diet debated the abolition of juries. He interpreted suspension of trial by jury as part of a wider reaction against the opposition.<sup>122</sup>

As we have mentioned, the three-year suspension of juries which entered into force in 1884 was extended in December 1887 for further two years.<sup>123</sup> In the *Sabor* debate, the spokesman for the *Sabor's* committee justified the extension by claiming that, in the intervening three years, the situation had not changed in any significant way, that juries were not a precondition for freedom of the press, and that juries judging crimes of a political nature were themselves more a political, than legal institution. He announced that the Croatian government was preparing an act on penal proceedings for publishing cases, which would be better suited to Croatian circumstances. Opposition representatives opposed the new suspension and expressed their concern that this was just a means of preparing the ground for the full abolition of trial by jury. They emphasised that since the first jury suspension, there had been persecution of the opposition press. One representative of the majority said, however, that in the ten years in which juries had been in existence, they had not handed down a single guilty verdict, that even the most liberal institutions could not succeed where no conditions applied, and that in the circumstances of the time, juries had contributed to the systematic poisoning of the people's political opinions. He also criticised the system of trial by assessor, because assessors were usually peasants, dragged to the town against their wills to take part in trials for which they were not fitted, either by education, motivation or knowledge of law. He declared his conviction that juries could only succeed if they were made competent for all offences. However, this would lead to more trial by jury, for which the requisite social conditions were lacking. He justified the suspension of juries by the fact that, following the

122 The debate on the draft law temporarily suspending the activities of jury courts for three years can be found in *Saborski dnevnik* 1884, pp. 232–243, 244–248.

123 *Zakon od 15. prosinca 1887 kojim se valjanost zakona od 2. prosinca 1884. proteže na daljnje dvije godine* [Law of 15 December 1887 Extending the Validity of the Law of 2 December for a Further Two Years], in: *Sbornik zakonah i naredabah valjanih za kraljevinu Hrvatsku i Slavoniju. Godina 1887* [Acts and Provisions in Force in the Kingdom of Croatia and Slavonia, 1887], Zagreb 1887, pp. 449–450.

first suspension in 1884, the number of private prosecutions for press offences had multiplied, whereas such prosecutions had not been brought before juries in principle, from a conviction that they were doomed to failure.<sup>124</sup>

The next important changes in regulations relating to the lay judiciary came in 1888, with a new Law on Penal Procedure. Among such changes, there were some stricter procedural provisions and trials by assessor in county courts were abolished. This was justified by the inappropriateness of the institution in practice, and similar developments in more developed countries.<sup>125</sup> In the debate, representatives of the majority emphasised that modern courts required educated lawyers, rather than laymen with a degree of legal awareness more suited to medieval Scabin courts, i.e. incompatible with modern principles of legality. But opposition representatives criticised this move as making proceedings even stricter. They accused the government of omitting any liberal solutions in general when adopting laws from Austria or Hungary, and making them even stricter. They said that the government, instead of reinstating juries, had gone further by abolishing the assessor element, previously presented as a good substitute for the jury element. They rejected arguments against the lay judiciary as rather meaningful in countries whose judiciaries were not independent and pointed out that in a country in which the judiciary was open to the influence of the government, lay participation in trials was an essential element in defending constitutionality.<sup>126</sup>

The entire body of press and jury regulations described above was also extended to the territory of the former Military Border by the new Law on Penal Procedure in Publishing Offences of 1890. Following the integration of

124 Debate on the new suspension of juries, 1887, in: *Stenografički zapisnici sabora kralj. Hrvatske, Slavonije i Dalmacije. Petogodište 1887–1892. od I. do uključivo XXIV. saborske sjednice od 1. rujna do 5. prosinca 1887. Svezak I. Godina 1887* [Minutes of the Sabor of the Kingdom of Croatia, Slavonia and Dalmatia 1887–1892, Vol. I], Zagreb 1889, pp. 204–231 (passim).

125 *Zakon od 6. srpnja 1888. kojim se preinačuju i nadopunjuju neke ustanove zakona od 17. svibnja 1875. o kaznenom postupku* (sbornik zakonah i naredabah br. 30, god. 1875) [Law of 6 July 1888 Modifying and Supplementing Some Parts of the Law of 17 May 1875 on Penal Procedure], in: *Sbornik zakonah i naredabah valjanih za kraljevinu Hrvatsku i Slavoniju. Godina 1888*. [Acts and Provisions in Force in the Kingdom of Croatia and Slavonia], Zagreb 1888, pp. 305–331. See also Ljubanović, 120 obljetnica (n. 7), pp. 245, 246, 262, 264, 266; Ogorelica, *Kazneno* (n. 11), p. 88.

126 *Stenografički zapisnici sabora kr. Hrvatske, Slavonije i Dalmacije. Petogodište 1887–1892. od XXV. do uključivo LXIV. saborske sjednice od 14. svibnja do 5. prosinca 1888. Svezak II. Godina 1888* [Minutes of the Sabor of the Kingdom of Croatia, Slavonia and Dalmatia 1887–1892, Vol. II], Zagreb 1889, pp. 98–140 (passim).

the western part of the Military Border into the Croatian legal system in 1882, the former regulations which had remained in force there were gradually amended.<sup>127</sup>

The new law on Penal Procedure in Publishing Offences of 1897, passed at the initiative of representatives, probably in collusion with the government, was important because of its content. This amendment was again a reflection of the political circumstances and was influenced by the sharp polemics which developed at the time between the Croatian and ethnic Serbian press regarding support of ethnic Serbs for the authoritarian policy of Khuen-Héderváry. At the same time, the Croatian press attacked the Croatian-Hungarian Compromise as a constitutional framework which in reality hindered Croatian autonomy. The new elements of the law provided for private prosecutions to be exempted from the competence of juries and sent to county courts, according to the place in which a crime had been committed. On the one hand, this made procedure easier as far as private prosecutions were concerned, but on the other, it meant they fell within the competence of professional judges. The government had direct influence upon these judges, given the existence of the Law on the Personal Relations of Judicial Civil Servants of 1890.<sup>128</sup>

127 Zakon od 28. prosinca 1889. kojim se preinačuje zakon od 17. svibnja 1875. o kaznenom postupku u poslovih tiskovnih za kraljevine Hrvatsku i Slavoniju te taj zakon skupa sa zakonom od 17. svibnja 1875. o propisu, kako se imadu sastavljati porotnički imenici za sudove tiskovne u kraljevini Hrvatskoj i Slavoniji uvadja i u područje bivše hrvatsko-slavonske vojne krajine [Law of 28 December 1889 modifying the Law of 17 May 1875 on Penal Procedure in Printed Matters for the Kingdom of Croatia and Slavonia, and on Introduction of This Law Together With the Law of 17 May 1875 on the Regulation on Compiling a Lists of Jurors for Jury Courts in the Kingdom of Croatia and Slavonia Into the Area of the Former Croatian-Slavonian Military Border], in: *Sbornik zakonah i naredabah valjanih za kraljevinu Hrvatsku i Slavoniju. Godina 1890* [Acts and Provisions in Force in the Kingdom of Croatia and Slavonia 1890], Zagreb 1890, 101–101. An elucidation of the proposal for this law is in *Stenografički zapisnici sabora kr. Hrvatske, Slavonije i Dalmacije. Petogodište 1887–1892. od C. do uključivo CXXXI. saborske sjednice od 20. veljače do 15. prosinca 1890. Svezak III. Godina 1889* [Minutes of the Sabor of the Kingdom of Croatia, Slavonia and Dalmatia 1887–1892, Vol. III], Zagreb 1889, pp. 629–630, 337–340 and Appendix 18.

128 Zakon od 11. ožujka 1897. kojim se dopunjuje, odnosno preinačuje zakon od 17. svibnja 1875. o kaznenom postupku u tiskovnim poslovima za kraljevine Hrvatsku i Slavoniju [Law of 11 March 1897 Supplementing and Modifying the Law of 17 May 1875 on Penal Procedure in Publishing Matters for the Kingdom of Croatia and Slavonia], in: *Sbornik zakonah i naredabah br. 34 od godine 1875. odnosno br. 30 od god. 1897* [Acts and Provisions in Force in the Kingdom of Croatia and Slavonia no. 34, 1875 and no. 30, 1897].

A five-day debate was held on this amendment in January 1897, which at times was characterised by theoretical pretensions. The spokesman for the *Sabor's* committee which had considered the draft law pointed out that in jurisprudence, trial by jury were being questioned more and more and that in developed countries, an increasingly reserved attitude towards them prevailed. He emphasised that the problems of trial by jury were even more prominent in Croatia and Slavonia. In a small area, with a small population, and in the circumstances of complicated constitutional relations with Hungary and the presence of another nation, by which he meant the ethnic Serbs, political activism was rife. The spokesman openly declared that those who had proposed the law were actually in favour of abolishing juries completely, but had nonetheless proposed only the removal from jury competence those elements which would not affect freedom of the press. The initiative was supported by the Ban, who pointed out the paradox of juries from Zagreb delivering verdicts on crimes committed in other places, in the case of newspapers published outside Zagreb. The proposal was fiercely challenged by opposition representatives, as had been expected. They pointed out that there were no indications meriting such a move and that it was merely in the interests of those who proposed it, and not in the public interest. They rejected the attacks on trial by jury by showing that the position of the Croatian judiciary was more difficult than in developed countries. They claimed that the consequences of the amendment would be to make every criticism of a public servant a matter for private prosecution, requiring the protection of the regular courts, and that this would result in the complete silencing of public criticism of officials in the end. They proposed that, along the French model, jury competence should be abolished only in the case of private persons (not public officials), that more jury courts should be formed, and the jury process speeded up. The majority representatives replied by throwing doubt on the notion of taking over the institution of the jury and expressed confidence in the objectivity of judges in the Croatian judiciary. Ban Khuen-Héderváry himself expressed the dilemma about improvement of the jury trial regulations in the situation of practical impossibility to successfully try publishing offences before a jury. He said that the least bad solution was to limit the competence of juries to the narrowest possible political sphere. He said that forming more juries would mean juries would cease to be *ad hoc* institutions and this would prevent radicalism, but that the establishment of new courts in the circumstances in Croatia and Slavonia was also impossible. He rejected full abolition of juries, since this would attract negative opinions from Europe. A third opposition representative claimed that by removing private misdemeanours from jury competence, juries would in fact be turned into political institutions. On the other hand, he claimed that the government

controlled the political dimension of jury competence through the public prosecutor and »objective proceedings«, and that since Khuen-Héderváry had been appointed Ban, juries had not sat at all in cases with political characteristics. He challenged the claim that juries had been abandoned in some German states, by showing that this had been compensated for by extending the competence of assessors' courts. The leader of the opposition Party of the Right, Josip Frank, also spoke in favour of full jury competence. He particularly criticised »objective proceedings« and reminded representatives that these had been introduced in 1874 by the National Party, thus permitting the present government to manipulate systematically freedom of the press and trial by jury. Two ethnic Serbs, members of the government party, also participated in the debate. One of them claimed that the Serbian people in Croatia and Slavonia comprised one third of the population, but that they were systematically attacked in the opposition press and that legislation must be passed to disable such journalistic activity. He also emphasised that the five year suspension of juries had led to an improvement in what had previously been an intolerable situation. Pavle Jovanović, an ethnic Serb and owner of *Srbobran* [Serbian Defender], the journal of the Serbian Independent Party, also spoke in the debate. The editor of that journal had been convicted in 1891 before a jury and sentenced to four months in prison, for making allegations against the late Ban Ivan Mažuranić. In the *Sabor*, Jovanović was kind of independent opposition who occasionally supported government, and he claimed that journalists picked out individuals because they were not allowed to criticise the government. He complained about »objective proceedings« and the institute of prohibiting the distribution of printed material. However, he came down against juries primarily because of the quality of their composition, and claimed that jurors were often butchers and carpenters who understood nothing, and sometimes did not even speak Serbian or Croatian. A prominent majority representative and professor at the Faculty of Law in Zagreb, Franjo Spevec, claimed that, in reality, juries made decisions based on their political leanings, regardless of the evidence. He said that it could easily be predicted that a member of a certain party, or a Serb, would never succeed in their efforts, and this would lead them to refraining from seeking protection before a jury. He declared himself against juries in principle, claiming that legal knowledge was necessary in the practice of modern law, while justification for juries was a political argument. He said that jurors, compared to judges, had no sense of responsibility pursuant to the law, but that they were emotionally subjective, uncertain and capricious, which could lead to violations of law. He admitted that Croatian judges were dependent on the government for their appointments, but claimed that they were independent in their decisions. At the same time the juries were inde-

pendent of the government but dependent on public opinion and the consequences of their verdicts in their decision-making. He claimed that in the legal and technical sense, the existence of juries meant chopping courts in two, and chopping up single verdicts into two. Another opposition representative objected to the fact that the composition of juries was underestimated and rejected the claim of discrimination against Serbs. He cited the case of Simo Paić, the Serb editor of a Serbian newspaper, who had been defended by a lawyer named Šumanović (almost certainly a Serbian surname), who was acquitted by the jury.<sup>129</sup> In fact, claims of discrimination against ethnic Serbs in trial by jury were quite unfounded. Simo Paić was acquitted three times by a jury, and all other Serbs brought before a jury were also acquitted (see here below).

However, even this truncated form of trial by jury was not to survive long. Public unrest and critical commentaries in the press provoked a new suspension of jury trials in 1903. Events began in the autumn of 1901, when the Zagreb paper *Srbobran* carried an offensive anti-Croat article taken from the Belgrade *Srpski književni glasnik* [Serbian Literary Herald]. Following that, anti-Serb demonstrations broke out in Zagreb and in the spring of 1902 there was also anti-Hungarian and anti-government unrest, with confrontations on the streets involving the police and the army. This was all accompanied by extremely critical writing and polemics in the press. In these circumstances, trials by jury were suspended yet again, this time indefinitely. In justifying the suspension, the government referred to the Law on Penal Procedure in Publishing Offences of 1875, saying that in it, the Austrian law on trial by jury had been transferred in a superficial way. The institute of delegation a second jury was not then transferred from Austrian legislation. Furthermore, in Croatian legislation the government was not authorised, under certain circumstances, and upon informing *Sabor*, to halt trial by jury for a period of one year, with the aim of safeguarding the independence of the courts. Under the circumstances, the public prosecutor was forced in advance to abandon »subjective proceedings« in prosecuting offenders, and keep to »objective proceedings«, i. e. banning printed material, which was not in fact effective.

129 *Sbornik zakonah i naredabah valjanih za kraljevinu Hrvatsku i Slavoniju. Godina 1897* [Acts and Provisions in Force in the Kingdom of Croatia and Slavonia, 1897], Zagreb 1897, pp. 253–254. For the debate on this law see *Stenografički zapisnici sabora kralj. Hrvatske, Slavonije i Dalmacije. Petogodište 1892–1897. od CXLII. do uključivo CLXXVIII. saborske sjednice od 19. studenoga 1896. do 29. travnja 1897. Svezak V. Godina 1896/1897.* [Minutes of the Sabor of the Kingdom of Croatia, Slavonia and Dalmatia 1892–1897, Vol. V], Zagreb 1897, pp. 3332–3451 (passim).



Since public opinion had fomented, aided by the press, it was now impossible for juries to be unbiased and objective trials could only be guaranteed by suspending trials by jury.<sup>130</sup> Thus the government's line of argument against trial by jury remained basically the same as before. The fact that the suspension of trial by jury was this time unlimited perhaps points to the government's ultimate intention of abolishing them completely. The fact that the *Sabor* passed this radical law, including the lack of a time limit, without contest, says a great deal about the composition of the *Sabor* and the political climate of the time.

However, this was the last law passed during the twenty-year administration of Khuen-Héderváry. On 17 June 1903 he was relieved of the duties of Ban and made President of the Central Government, with the task of resolving the political crisis in Hungary.

## 2 Trial by jury in practice, 1890–1897

A review of the newspapers in the period between the reinstatement of trial by jury in 1890 and the new suspension in 1903 uncovered reports on 25 jury proceedings involving 16 defendants (some of whom were charged more than once), with the characteristic scheme, nature and results which reflected the changes in the political arena and in legal regulations.

Our results differ from the not entirely clearly defined official statistics of the time, from which it can be directly inferred that the number of proceedings before a jury between 1891 and 1897, or rather 1903, was different.<sup>131</sup> At the beginning we mentioned that Croatian official statistics do not show trial by jury separately. However, from 1891 onwards, in the chapter on the activities of the public prosecutor's office, a separate presentation of completed trials in publishing cases of crime and misdemeanour is provided. These cases were tried before juries until 1897, when private prosecutions for misdemeanours

<sup>130</sup> Zakon od 26. lipnja 1903, kojim se privremeno obustavljaju neke ustanove zakona o kaznenom postupku u poslovih tiskovnih od 17. svibnja 1875. (Sbornik br. 33) [Law of 26 June 1903, Temporarily Suspending Some Provisions of the Law on Penal Procedure in Publishing Offences of 17 May 1875], in: *Acts and Provisions in force in the Kingdom of Croatia and Slavonia, 1903*, Zagreb 1904, pp. 241–242; Debate on the law see in: *Stenografski zapisnici i prilozi sabora kralj. Hrvatske, Slavonije i Dalmacije. Petogodište 1901–1906. od LIII. do uključivo LX. saborske sjednice od 17. lipnja do 25. lipnja 1903. Svezak III/I. Godina 1903* [Minutes of the Sabor of the Kingdom of Croatia, Slavonia and Dalmatia, 1901–1906, from 17 June to 25 June 1901, Vol. III/I], Zagreb 1903, pp. 129–131 and Appendix 8.

<sup>131</sup> Statistički almanah, I. (n. 13), p. 797.

were removed from jury competence and transferred to the competence of county courts. To this extent, the number of trial by jury held can be directly inferred from these statistics. However, there is a certain dilemma caused by the lack of clarity as to whether these numbers refer only to charges made by the public prosecutor's office (which would seem reasonable to expect, at first sight), or whether they included private prosecutions. In the same chapter, for example, which deals with the activities of the public prosecutor's office, all the details of charges and main trials held are also given, comprising both public prosecutor indictments and private prosecutions, but the two categories are shown quite distinctly. Details of publishing cases do not reveal such a distinction. If the official details of publishing cases included private prosecutions, then there is a certain degree of overlap, leading to discrepancy with our statistics, arrived at by analysing newspapers. However, if official statistics only covered cases brought by the public prosecutor's office, then the difference is significant. In that case, between 1891 and 1897, official statistics show 22 charges for crimes and misdemeanours in press matters, and 51 up to 1902. In reviewing the papers for the entire period, we were only able to confirm one charge brought by the public prosecutor's office (1891). So we should add to our cases another 22, or rather 51, initiated by the public prosecutor's office. However, we find it hard to believe that the press, who reported on less important trial by jury, would fail to mention a large number of charges brought by the public prosecutor's office, which must have made much better news. It is equally improbable that we managed to overlook these charges while carefully reviewing the papers. In addition, some *Sabor's* debates which allude to the lack of political cases before juries after 1890 – and the public prosecutor's charges were always political – seem to support our figures. Nonetheless, for each case we will cite the official details and the details which we discovered. We omitted the period 1903–1906 from the table, since trial by jury were then suspended (see below). We will just mention that during that time, according to official statistics in publishing cases for crime and misdemeanour, there were 8 convictions in 1903, 4 in 1904 and 1 in 1905.

Table 1: Official statistics of completed main trials in publishing cases for misdemeanours and petty offences 1891–1902

	1891	1892	1893	1894	1895	1896
Acquittals	2	1	1	3	3	–
Convictions	2	–	1	–	2	1

	1897	1898	1899	1900	1901	1902
Acquittals	1	–	4	1	–	–
Convictions	5	–	7	14	3	–

Table 2: Statistics from our research on completed main trials before a jury 1891–1914 (number of defendants)

	1891	1892	1893	1894	1895	1896	1897
Acquittals	–	1	1	4	–	1	–
Convictions	2	–	1	1	2	–	–
Charges withdrawn	2	–	–	1	–	–	–

	1898	1899	1900	1901	1902	1909	1914
Acquittals	–	–	–	–	–	1	1
Convictions	–	–	–	–	–	–	–
Charges withdrawn	–	–	–	–	–	2	–

In our further elucidation we will only rely on the details of trial by jury on whose content we have full information, since we can deal with them analytically in different dimensions in greater detail. The essential information on these proceedings is presented in Table 3, for the sake of space. We have included in this table other details on trial by jury held, apart from those held in 1850, in order to facilitate easier, more thorough comparison. Thus, Table 3 includes statistics on proceedings from 1876 to 1884 and from 1890 to 1903 (in practice, up to 1896) and from 1907 to 1918. These statistics will serve as a basis for compiling other tables with derived results. The course of the trial by jury and their general characteristics will be presented at the end of this chapter.

Table 3: Completed cases before jury courts 1876–1914<sup>132</sup>

Date	Defendant	Legal grounds	Prosecutor/Defence	Senate	Jury	Jury verdict
26–27 Sept 1876	Maks Kohn, owner and editor of <i>Die Drau</i> , 25, Jewish, already convicted of publishing offences	breach of the peace (§ 65 PC) and the misdemeanour of revolting against the government (§ 300 PC)	– PUBPR: Milan Bledšneider – DC: lawyer Milan Makanač	president of the County Court Franjo Šmidt, Slavoljub Sova, Dragutin Gvozdanović	Josip Baričević, L. Domitrović, Franjo Kares, Milan Stanković, Jakob Štern, Dragutin Rosenkranc, Vuk Kolak, Ladislav Hajsek, Josip Ernt, Josip Bidicki, Franjo Neidhart, Vjekoslav Papst	jury acquittal
23 Apr 1877	Maks Kohn, editor of <i>Die Drau</i> (see above)	misdemeanour of revolting against the government (§ 300 PC)			lawyer Zoričić (F)	jury acquittal; PUBPR lodged an appeal to quash

LPM – Law on the Printed Matters; PC – Penal Code; PUBPR – public prosecutor; PRIVPR – private prosecutor; DC – defence counsellor; F – jury foreman.  
The information on legal grounds and all other data were taken from the original sources without any changes except only the most necessary systematization.

132 When prosecuting and rendering judgment the public prosecutor and the courts referred to the following legal provisions or reasons: the Penal Code: § 34. – Bankruptcy, § 35. – Complicity in crime, § 63. – Insult to honour, § 65. – Breach of the peace, § 65a) – Provoking contempt of the Emperor (see also § 2. Act of 29 August 1870), § 266. – Extraordinary mitigation of penalty, § 300. – Dishonouring orders issued by the government and revolt against the government (see also § 4. Law XIV:1870), § 302. – Incitement against nationalities, religious associations, groups etc., § 487. – Misdemeanour against safety of honour: unfounded allegation of a criminal offence, § 488. – Misdemeanour against safety of honour: unfounded allegation of another act § 489. – Misdemeanour against the safety of honour: publication of embarrassing, even if truthful matters from private and family life § 491. – Misdemeanour against the safety of honour: other public insults, § 492. – Misdemeanour against the safety of honour: other public insults of the family, public authorities, government bodies, § 493. – Range of penalties; Law on Printed Matters, § 31. – Loss of security, § 32. – Prohibition of further distribution of printed matters in the case of conviction, § 34. – Public announcement of verdict.

Table 3 (continued)

Date	Defendant	Legal grounds	Prosecutor/Defence	Senate	Jury	Jury verdict
15 Sept 1879	– Josip Frank, Roman Catholic – Friedrich Lobrecht Rosche (Franjo Rausch), journalist, born in Gross Gloga, Silesia, 38, Lutheran, already convicted of publishing offences – Hinko Wachslar, editor of <i>Agramer Presse</i> , born in Osijek, 26, Jewish, already convicted of publishing offences – Jakob Frank, editor of <i>Agramer Presse</i> , born in Osijek, 40, Jewish, already convicted of publishing offences	– Friedrich Lobrecht Rosche: breach of the peace (incitement to hatred of the Croatian Autonomous Government, § 65 PC); crime of revolting against the government from § 4 the Law XIV: 1870 i. e. § 300 PC, all punishable by § 300 PC – Hinko Wachslar and Jakob Frank: liability for including certain articles in newspapers	– PUBPR: Pekić – DC: lawyers Zabar, Nikola Crnković and Vrbančić	Jakčin, Ključec, Alexander pl. Šuljok	Kelečić, Tkalčić, Karalz, Hodl, Dr. conte Buratti, Koporčić, Budicki, Veber, Faber, Stiahl, Frankl, Barišec, Unger, Arš	jury indictment dismissed due to the enforced statute of limitations
4 Sept 1880	Gavro Grünhut, editor of <i>Sloboda</i> , 30, Roman Catholic, no criminal record	– crime of insulting His Majesty, §§ 5 and 63 PC, punishable by § 63 PC; complicity in the crime of breaching	– PUBPR: Vladislav Cuculić – DC: lawyers David Starčević and Mijo Tkalčić	H. Kavić, Alexander pl. Šuljok, Josip Umfogl	householder Delapka, city councillor Gjuro Deželić (F), barber Dianić, tin-smith Dušek, bell foundry worker Vjekoslav Koch, confectioner O. Kružma, innkeeper Stjepan	jury acquittal

Date	Defendant	Legal grounds	Prosecutor/Defence	Senate	Jury	Jury verdict
14 Oct 1880	Milan Kerdić, owner of a printing works and editor of <i>Sloboda</i> ; born in Svinjari (municipality Svinjar, district Nova Gradiška), 24, Roman Catholic, no criminal record	the peace, § 65a provoking contempt or hatred for the Emperor), § 2 Act of 29 Aug 1870, punishable by § 65 with regard to § 34 PC (gain) and § 63 PC – misdemeanour of revolting against the government (§ 300 PC)	– PUBPR: Milan Bledšneider – DC: lawyer Mijo Tkalčić	H. Kavić, Alexander pl. Šuljok, Savić	Malecki, baker Morić, householder Patriarch, householder Stanko, tradesman Segar, householder Vladislav and innkeeper Kocijan as reserve juror	jury acquittal
5 Dec 1884	Ivan Krajač, editor of <i>Sloboda</i> , born in Senj, 39, Roman Catholic, no criminal record	breach of the peace (§ 65a) – inciting contempt or hatred for the Emperor; misdemeanour of revolting against the government (§ 300); incitement against nationalities, religious associations, groups, etc. (§ 302), all	– PUBPR: Milan Bledšneider – DC: lawyers (Hinko) Hinković and David Starčević	Vladislav Cuculić Bitorajski, Josip Čermak, Mavro Pintarić	Dr. Fr. pl. Marković, Solar (F), Eisenhut, Frankl, Badovinac, Lovrenčić, Delapka, Auš, Brodjočin, Arko, Cimaš, Murgić	jury acquittal



Table 3 (continued)

Date	Defendant	Legal grounds	Prosecutor/Defence	Senate	Jury	Jury verdict
20 May 1890	Martin Lovrenčević, editor of <i>Hrvatska</i> [Croatia]; born in Virje, 33, Roman Catholic, fined three times for publishing misdemeanours	misdemeanour of insult to honour, § 491 PC (other public insults), punishable by § 493 PC	– PRIPR: Josip Korić, maritime captain from Bakar, represented by Lj. Schwarz – DC: lawyer Josip Frank	Vladislav Cuculić, Weinert, Ferdo Štajner	Mijo Zaić, tradesman Eugen Janušić, tradesman Antun Gnezda, tradesman Ferdo pl. Luks, umbrella-maker Julio Arbanas, hatter and publican Ivan Gašparinčić, Franjo Volčanšek, Dr. Ignjat Horvat, Petar Šimečki, Josip Zupaničić, householder Ivan Štimac, Vjekoslav Klokočar	charge withdrawn by plaintiff
20 May 1890	Sima Paić, editor of <i>Novo vreme</i> [New Time], 32, Greek-Eastern (Serbian Orthodox), no criminal record	misdemeanour against safety of honour, § 487 PC (other public insults), § 488 PC (unfounded allegation of another act), § 491 PC, punishable by § 493 PC	– PRIPR: Dragutin Zverina, manager of the People's Savings Bank in Zemun, represented by lawyer (Hinko) Hinković – DC: lawyer Svetislav Šumanović	Vladislav Cuculić	university professor Dr. Milivoj Šrepel, tradesman Antun Gnezda, belt-maker Ivan Matica, Šimun Cenž, lawyer Dr. Adolf Betheim (F), Josip Štimac, goldsmith Franjo Pećak, hatter and publican Ivan Gašparinčić, Petar Šimečki, turner Josip Gmaz, university professor Dr. Dragutin Zahradnik, Franjo Volčanšek	jury acquittal

Date	Defendant	Legal grounds	Prosecutor/Defence	Senate	Jury	Jury verdict
22 May 1890	Ernest Kranjčević, Roman Catholic, parish priest in Vališ selo	insult to honour in <i>Gospodarski List</i> [Commercial Journal]	– PRIPR: Janko Šimćak, bailiff of the municipality of Slunj, represented by lawyer (Hinko) Hinković – PUBPR: Tomo pl. Kraljević; Franjo Maiksner, judge and court official – DC: lawyer Marijan Derenić	Vladislav Cuculić, Jaroslav pl. Vakanović, Weinert, court clerk Salavari	builder L. Hoenigsberg, cobbler Mijo Zaić, umbrella-maker Arbanas, lawyer Dr. Homigsberg, Fran Folnegović, Dr. Štepl, Šimečki, university professor Smičiklas, goldsmith Pećak, tradesman Janušić, lawyer dr. Medaković	charge withdrawn by plaintiff
23 May 1890	Franjo Pećnjak, editor of <i>Obzor</i> , 36, Roman Catholic	§ 488 and 493 PC and §§ 31 and 34 LPM	– PUBPR: Tomo pl. Kraljević; Franjo Maiksner, judge and court official – DC: lawyer Marijan Derenić	Vladislav Cuculić	tradesman Karas, carpenter Oblak, butcher Ivan Novak Mašek, tradesman Bošnjaković, smith Hendrich, Ceraj, Hinthuber, Starčić, Čimaš, apothecary Natko Katkić (F) and publican Majstorović	jury acquittal
7 Oct 1890	Franjo Pećnjak, editor of <i>Obzor</i> (see above)	insult to honour	– PUBPR: Tomo pl. Kraljević – DC: lawyer (Šime) Mazzura	Vladislav Cuculić	tradesman Karas, carpenter Oblak, butcher Ivan Novak Mašek, tradesman Bošnjaković, smith Hendrich, Ceraj, Hinthuber, Starčić, Čimaš, apothecary Natko Katkić (F) and publican Majstorović	jury acquittal
7 Oct 1890	Franjo Kiefer, owner and editor of <i>Symier Wochenblatt</i> , born in Pančevo, 44, Roman Catholic	misdemeanour against safety of honour, § 487, § 489 (publication of embarrassing things from private	– PRIPR: Štemina, innkeeper from Vukovar, represented by lawyer Nikola Čzernkovich	Vladislav Cuculić, Ferdo Štajner, Jaroslav pl. Vakanović	teacher August Musić, publican Nikola Cerjak, apothecary Ninko Katkić, smith Franjo Hendrich, prof. Stjepan Kućak, lawyer Svetoslav Šumanović, Stjepan Starčić, carpenter Josip Oblak, Franjo	convicted and sentenced to one month in prison

Table 3 (continued)

Date	Defendant	Legal grounds	Prosecutor/Defence	Senate	Jury	Jury verdict
8 Oct 1890	Martin Lovrenčević, editor of <i>Hrvatska</i> (see above)	misdemeanour against safety of honour, § 488 PC and § 491 PC	– PUBPR: Kelecseny – DC: lawyer Benešić	Vladislav Cuculić, Ferdo Šlajmer, Jaroslav pl. Vakanović	Cimaš, prof. Staré, prof. Kućak, tradesman Karas, apothecary Katkić, Mašek, Starčić, carpenter Oblak, smith Hendrich, butcher Lukas, publican Majstorović, Vajdić	jury acquittal
9 Oct 1890	Sima Paić, editor of <i>Novo vreme</i> (see above)	misdemeanour against safety of honour §§ 488 and 491 PC	– PRIPR: Panajot Morfy, mayor of Zemun and deputy in the Sabor, represented by lawyer A. Benešić – DC: lawyer Svetislav Šumanović	Vladislav Cuculić, Ferdo Šlajmer, Weinert	coffee-house keeper Apolinar Križ, high school teacher Dr. August Musić, teacher Josip Stare, Fran Folnegović (F), Josip Bošnjaković, Dr. Mile Starčević, Ferdo Ferenščak, innkeeper Andrija Venko, Ignjat Weiss, publican Nikola Cerjak, Prof. Stjepan Kućak, Ninko Katkić	jury acquittal
10 Oct 1890	Stanislav Feigel, surveyor, from Osijek, born in Fiumača (Galicia), 37, Roman Catholic	misdemeanour against safety of honour §§ 487, 488 and 492 PC, in a brochure published	– PUBPR: Tomo pl. Kraljević – DC: lawyer Svetislav Šumanović	Pavao Birać, Jaroslav pl. Vakanović, Weinert	Gjuro Ferenčak, Franjo Veselac, retired teacher Matija Valjavec, prof. Stjepan Kućak, coffee-house keeper Apolinar Križ, tradesman Mirko Karas,	jury acquittal

Date	Defendant	Legal grounds	Prosecutor/Defence	Senate	Jury	Jury verdict
9 Jun 1891	Stjepan Lovreković, landowner in Prelošćica	in Leipzig in 1889 and distributed throughout the Empire	– PRIPR: Mijo Majnarić, municipal clerk in Topolovec, near Sisak, represented by lawyer Marijan Derenčin – DC: lawyer Josip Frank	Vladislav Cuculić, Jaroslav pl. Vakanović, Čegetek	publican Blaž Majstorović, teacher Pravomil Krbek, teacher Josip Stare, carpenter Josip Oblak, Ignjat Weiss, publican Nikola Cerjak; reserve jurors: Vjekoslav Hintherhuber and Ninko Katkić	charge withdrawn by plaintiff
10 Jun 1891	Mavro I. Boschan, sales agent in Zemun, 36, Roman Catholic, sentenced to six weeks in prison by the Austro-Hungarian Consulate in Sofia for offences against security and honour	misdemeanour against safety of honour, for allegations in a brochure printed in Sofia in 1889	– PRIPR: Eugen Eirnagl, former employer of the defendant in Sofia, represented by lawyer Samuel Singer – DC: lawyer Robert Siebenschein	Vladislav Cuculić, Ferdo Šlajmer, Jaroslav pl. Vakanović	Prof. Dr. Ivan Hoić, Eugen F. Bothe, householder Vjekoslav Funtek, Franjo Bosner, Prof. Bosner, Prof. Dr. Dragutin Zahradnik, innkeeper Ivan Medarić, householder Girolamo Prister jr., Prof. Josip pl. Prugovečki, publican Ivan Gšanger, Makso Frankl, baker Stjepan Hrastić, sievemaker and publican Antun Arko	charge with-drawn by plaintiff

Table 3 (continued)

Date	Defendant	Legal grounds	Prosecutor/Defence	Senate	Jury	Jury verdict
18 Nov 1891	Mile Naval	insulting claims in two letters printed in <i>Semliner Wochenblatt</i>	– PRIPR: police constable Mile Pešun, no representation – DC: lawyer Marijan Derenčin	Vladislav Cuculić	Aleksandar Bernhard, grocer Juratovec, Mavro Steinhardt, lawyer Dr. Oskar Kornitzer, Ljudevit Sarkoci, butcher Ivan Holešek, retired teacher Franjo Magdić, tailor Josip Huzek, Aleksander Jonas, Nikola Hrenović, grocer Mavro Eisenstädter, Marko Bačić	convicted and sentenced to six months in prison
19 Nov 1891	Ilija Vujaković, peasant from Oblaj, no criminal record; Franjo Pećnjak, editor of <i>Obzor</i> (see above)	misdemeanour against safety of honour, letters sent and published in <i>Obzor</i>	– PUBPR: Tomo pl. Kraljević – DC: lawyer Marijan Derenčin	Vladislav Cuculić, Jaroslav pl. Vakanović, Ferdo Šlajmer	Aleksander Jonas, lawyer Dr. Hinko Hinković (F), Mirko Blau, butcher Gj. Šnidarić, retired teacher Franjo Magdić, Simo Frangeš, Mirko Baršić, Vilim Šlesinger, butcher Ivan Holešek, bacon-producer Ljudevit Sorgač, Franjo Jazbec, tradesman Adolf Kronfeld	convicted and sentenced – Vujaković to six weeks in prison, Pećnjak to one month in prison
14 Dec 1892	Milan pl. Miković, entrepreneur from Ilok	misdemeanour of insult to honour, § 487 punishable by § 493 PC, article in <i>Sriemske novine</i> [The Srijem Papers]	– PRIPR: Kosta Arsenić, tradesman and manager of the Bank and Savings Bank in Ilok, represented by lawyer (Hinko) Hinković – DC: lawyer Benešić	Franjo Schönholz, Ferdo Šlajmer, Jaroslav pl. Vakanović	bank official Dragutin Gogolja, tradesman Egidije Spitzer, tradesman Artur Spitzer, carpenter Ivan Budicki, tradesman Dragutin Spitzer, tailor Antun Paštrika, publican and grocer Mijo Culi, construction engineer Aleksandar Seć, trades-	

Date	Defendant	Legal grounds	Prosecutor/Defence	Senate	Jury	Jury verdict
30 Aug 1893	Martin Lovrenčević, editor of <i>Hrvatska</i> (see above)	crime of abetting a misdemeanour against safety of honour in printed material, §§ 488 and 487 PC	– PRIPR: Ivan Surbek, commander of the town watch in Varaždin, in person – DC: lawyer Ružić	Dr. Aleksander pl. Rakodczay, Ferdo Šlajmer, Čegetek	man Ladislav Beluš, accountability adviser Simo Matasović, joiner Vjekoslav Heintel, tradesman Samuel Ornstein	jury acquittal
30 Aug 1893	Martin Lovrenčević, editor of <i>Hrvatska</i> (see above)	crime of abetting a misdemeanour against safety of honour in printed material, §§ 488 and 487 PC	– PRIPR: Ivan Surbek, commander of the town watch in Varaždin, in person – DC: lawyer Ružić	Dr. Aleksander pl. Rakodczay, Ferdo Šlajmer, Čegetek	cobbler Terihaj, publican Mihokulić, physician Dr. Eugen Sladović, householder Stanko Franjo, cleaner Hinko Schwarz, baker Andrija Majcen, butcher Mihelin, householder Stjepan Vlahović, publican Blaž Majstorović, editor of <i>Vijenac</i> [Garland] Josip Pasarić, innkeeper Ivan Medarić, tradesman Ignjat Pick	jury acquittal
20 Sept 1893	Josip Veselko, editor of <i>Srbobran</i> and manager of the Serbian Printing Works in Zagreb, born in Zagreb, Roman Catholic	§§ 488 and 493 PC	– PRIPR: Vladimir Mažuranić, in person and represented by lawyer Marijan Derenčin – DC: lawyer Bogdan Medaković	Dr. Aleksander pl. Rakodczay, Ferdo Šlajmer, Jaroslav pl. Vakanović	butcher Antun Mihelin, locksmith Marko Medarić, householder Stjepan Vlahović, cobbler Ferdinand Terihaj, householder Andrija Krznar, householder Martin Lončar, construction accountant adviser Simo Matasović (F), butcher Vinko Liebold, innkeeper Stjepan Malecki, music teacher Josip Leuštek, publican Blaž Majstorović, theatre director Adam Mandrović	convicted and sentenced to four months in prison, every seventh day without food; forfeit security of 200 florins



Table 3 (continued)

Date	Defendant	Legal grounds	Prosecutor/Defence	Senate	Jury	Jury verdict
31 May 1894	Sima Pačić, editor of <i>Novo Vreme</i> (see above)	§§ 487, 488, 491 PC	– PRIPR: Jakob Waldo, represented by lawyer Marijan Derenčin – DC: lawyer Svetislav Šumanović	Aleksander pl. Rakodczay, Ferdo Štajmer, Jovan Radivojević	Prelac Dane, cobbler Martin Bogović, Koloman Rac, Bergles Josip, bookbinder Ivan Schneider, Franjo Žiger, manufacturer Egidius Kornitzer, manufacturer Stjepan Stingl, butcher Ladislav Regwart, Mijo Bašić, publican Josip pl. Gvozdanović	jury acquittal
7 Jun 1894	Julije Pfeifer of Osijek, editor of <i>Die Drau</i>	misdemeanour of insult to honour, §§ 491 and 493 PC	– PRIPR: the late Dr. Mate Štefinović or his legal heirs, represented by lawyer Marijan Derenčin – DC: lawyer Hugo Spitzer of Osijek	Aleksander pl. Rakodczay, Ferdo Štajmer, Jaroslav pl. Vakanović	Dr. Ladislav Rakovac, teacher Ivan Benigar, publican Mato Husjak, tailor Mirko Žigrović, Franjo Žiger, Mavro Herker, Dr. Albert Predoević, Filip Spitzer, bookbinder Ivan Schneider, manufacturer Egidije Kornitzer, Ljudevit Bašić, householder Leopold Singer	convicted on 8 counts and sentenced to 14 days in prison, acquitted of 10 counts; verdict annulled in second instance court for violation of proceedings, since the jury had been asked a legal question; no renewed proceeding

Date	Defendant	Legal grounds	Prosecutor/Defence	Senate	Jury	Jury verdict
25 Oct 1894	Petar Molnar, miller, from Mitrovica	misdemeanour of insult to honour, letter in <i>Hrvatski branik</i> [Croatian Defender]	– PRIPR: Regina Molnar and Mikola, Eva and Tereza Reiš, represented by lawyer Milan Roja – DC: lawyer Dr. Ivan Ružić	Aleksander pl. Rakodczay, Ferdo Štajmer, Jovan Radivojević	householder Petar Krizmanić, teacher Hugo Badalić (F), tradesman Jakob Kaufman, householder Franjo Stanko, Franjo Kolek, bank official Ivan Cvetešić, public agent Stanko Kvaternik, tradesman Ljudevit Kirschner, chimney sweep Antun Junkar, Dragutin Wendler, Fabijan Kovacić, householder Josip Rebrešnjak	jury acquittal
22 Nov 1894	Josip Vranić	libel in <i>Narodne Novine</i>	– PRIPR: Ivan Štromar, mayor of Petrinja			charge withdrawn by plaintiff
13–14 Dec 1894	Josip Pasarić, editor of <i>Obzor</i> , from Pušća, 33, Roman Catholic, convicted for publishing misdemeanour	§ 488 PC	– PRIPR: Vladimir Duić, religious education teacher in Senj, represented by lawyer Svetislav Šumanović – DC: lawyer Marijan Derenčin	Aleksander pl. Rakodczay, Ferdo Štajmer, Šafarić	carpenter Škrtić, teacher Budmani, innkeeper Josip Krizmanić, householder Petar, householder Herman Eisner, householder Koles, householder Ivan Osek, bank official Petar Trözter, belt-maker Gebauer, Antun Brusina, Ivan Kovacić, tradesman Adolf Müller	jury acquittal
14 Jan 1895	Josip Pasarić, editor of <i>Obzor</i> (see above)	§§ 488 PC, 493 PC, punishable by § 493 PC and §§ 31, 32, 33, 34 the LPM	– PRIPR: Dr. Josip Frank, in person – DC: lawyer Marijan Derenčin	Aleksander pl. Rakodczay, Ferdo Štajmer, Šafarić	Dragutin Turković, rope-maker and publican Josip Klišanić, Valent Krčelić, Josip Dimić, tradesman Vilim Brodjočin,	jury acquittal

Table 3 (continued)

Date	Defendant	Legal grounds	Prosecutor/Defence	Senate	Jury	Jury verdict
7 Mar 1895	Miroslav S. Kraus (Fridrik S. Kraus), writer, resident in Vienna, born in Pože-ga, Jewish	misdemeanour of insult to honour, §§ 488 and 491 PC, articles in <i>Die Drau</i> and <i>Narodne Novine</i>	– PRIPR: Franjo Mezner, teacher in Požega, represented by lawyer Pero Gavrančić – DC: lawyer Jacoby, defence counselor of Varaždin	Aleksander pl. Ra-kodczay, Ivanuš, Šafarić, court clerk: M. Makanec	publican Stjepan Kajba, householder Ivan Dvoržak, boot-maker Ivan Baričević, Jakov Brezak, grocer Jakov Friedländer	convicted and sentenced to six months in prison
16 May 1895	Šandor Medur, merchant and innkeeper from Karlovac	misdemeanour against safety of honour, §§ 488 and 491 PC, in the paper <i>Svijetlo</i> [Light] (Karlovac)	– PRIPR: Gjuró Gašparović, represented by lawyer I. Zahar – DC: lawyer Ivan Ružić	Aleksander pl. Ra-kodczay, Šafarić, Ivanuš	Josip Pintar, Dr. E. Figatner, Locksmith V. Lenard, decorator A. Posilović, university professor M. Šrepl, M. Špan, householder I. Štimac, carpenter I. Sotlišek, university professor V. Dvoržak, S. Ročić, retired prof. Š. Frangeš, L. Mašek, householder Gj. Križ, D. Tretinjak	convicted and sentenced to two months in prison

Date	Defendant	Legal grounds	Prosecutor/Defence	Senate	Jury	Jury verdict
7–8 May 1896	Leopold Selinger, writer for <i>Die Drau</i>	misdemeanour of insult to honour, §§ 491 and 493 PC	– PRIPR: Antun Pšik, commander of the Fire Fighting Association, represented by lawyer Vladimir Kovačević – DC: lawyer Hugo Spitzer	Jovan Radiojević, Ivanuš, Slavko Aranićki, court clerk Laluš	Franjo Miles, Prof. Dr. David Segen (F), butcher Franjo Kralj, bank official Ivan Cve-tešić, butcher Ladislav Regvart, carpenter Ivan Budicki, Šandor Janković, Josip Malec, publisher Šimon Kolar, householder Mirko Tepeš, Valent Sašel, Franjo Petak	convicted and sentenced to three days in prison
28 Jun 1909 Osijek	Glša Gadić, presently from Weiskirch (Bela Crkva), Svetozar Popović, lawyer from Zemun Milan Ilkić	disturbing public peace and order, breach of the peace, § 65, article in <i>Srpska misao</i> [Serbian Thought]	– PUBPR: Alexander terović and Sauer	president of the County Court Bro-schan, Becić, Bauer	Karl Eisner, Ferd. Kempf, Rudolf Schmidt, Franjo Planer, Prof. Bogdan Penjić jr., Filipp Sautzer, Anton Zorn, Michael Axmann, Julius Schubert, Mijo Matijević	PUBPR with-drew charges against second and third de-fendants – Gadić acquit-ted by the jury
25 May 1914	Vjekoslav Kokolj, editor of <i>Slobodna riječ</i> [Free Word], from Varaždin, 26	disturbing public peace and order, three articles in <i>Slobodna riječ</i>	– PUBPR: Vukelić – DC: lawyer Srđan Budisavljević	deputy president of the County Court Košutić, Rakoš, Stancer	Josip Hohnjec, Rudolf Šega, Ivan Žigel, Gustav Bazala, Valent Plečko, Stjepan Škreb, Bela Polлак, Girolamo Spitzer, Šandor Hohnjec, Josip Singer, Đore Velisavljević, Đuro Škarčić	jury acquittal

If we take into account details from Table 3 referring to the number and frequency of jury proceedings, it is evident that they were significantly greater in the second period, i. e. after the end of jury suspension in 1890. During the first nine years of trial by jury (1876–1884) we noted 6 jury proceedings, and in the eight-year period from 1890 up to the limiting of jury competence in 1897, as many as 25 proceedings. In the final period between 1907 and 1918, we found only two instances of jury proceedings. At first glance, this structure is surprising, given the small number of proceedings in a moderately liberal period, when juries were introduced in the 1870's, and the leap in numbers of proceedings when open repression of the press was common, between 1884 and 1890, and its continuation during the period of Khuen-Héderváry's strict authoritarian policies. On the other hand, the increased number of proceedings noted in that period was accompanied by a clear rise in the ratio of private cases to charges brought by the public prosecutor's office (20:13). This is a significant change in comparison to the previous period, in which the public prosecutor's office initiated all six cases which appeared before juries (Table 4). These comparisons require more detailed explanation.

Table 4: Initiatives for charges (number of defendants)

	Private prosecutions	Indictments	Total
1876–1884	–	9 (6 proceedings)	9
1890–1897	20	6	26
1907–1918	–	4 (2 proceedings)	4
Total	20	19	39

From the statistics provided it is most noticeable, although not necessarily most significant, that the fairly common occurrence of private prosecutions did not happen at all before 1890. Only a few charges based on private prosecutions were of a political nature, while the others were on the edge of the political sphere or completely beyond it. This could all be interpreted in terms of the »inertia« of private charges (which became more frequent with jury suspension in 1884), after the reinstatement of juries in 1890. The appearance of numerous private charges in cases of publishing offences after jury suspension in 1884, which were otherwise within the competence of juries, was emphasised as one of the arguments in favour of the suspension of juries in the *Sabor's* debate on its extension in 1887.

Nonetheless, a more significant outcome was the considerable reduction in the number and proportion of charges brought by the public prosecutor. This can probably be explained for two entirely different reasons. One is that

during the previous period, it had been evident that a charge brought by the public prosecutor before a jury had little chance of succeeding. It had therefore been worth resorting to the tactics of prohibiting the distribution of newspapers in »objective proceedings«, and prosecuting editors in county courts on the basis of the culpability of editors. And indeed, during the entire period from the introduction of trial by jury to the breakdown of the state in 1918, according to our evidence, a jury found a defendant guilty in a case initiated by the public prosecutor only once, and that was in a case which had been taken over from a private plaintiff. On the other hand, in the period from 1891 to 1897, 1,122 rulings were given in »objective proceedings« which satisfied the demands of the public prosecutor for the prohibition of the distribution of newspapers, and this demand was rejected only once. From 1891 to 1904 the public prosecutor gained satisfaction in 1,676 cases and only four were overthrown.<sup>133</sup>

The second, more obvious reason for the reduction in the number of jury proceedings, particularly after 1896, was the reform of penal legislation in 1897. This reform transferred private prosecutions for misdemeanours from jury competence to the competence of regular county courts. After 1890, private prosecutions were not only prevalent, having found an effective outlet for their realisation, but this change could also account for the passivity of the public prosecutor's office. The lodging of private prosecutions in county courts virtually eliminated the need for indictments to be handed down by the public prosecutor, in cases in which individual officials came under attack. These cases could be dealt more efficiently in private prosecutions before county courts. This was not only in order to avoid risky juries, but also the fact must be taken into account that after the abolition of the principle of the separation of judiciary and administration in 1884, the Croatian government had an open path to influencing judges. The opportunity to exert influence was enhanced by the reforms of 1888, when assessor's courts were abolished in district courts, which had until then been competent to judge misdemeanours, and their competence transferred to the individual professional judges. With such efficient options in place, the need for the public prosecutor to bring charges for attacks on individuals virtually evaporated. Those indictments which did not directly relate to individual officials could probably be redefined as insults or breaches of individual interests, which could be prosecuted privately through the regular courts. Still, it should be said that this presupposition is educated guesswork, which should be supported by detailed, focussed research. Whatever the case, in comparison to the previous

133 Statistički almanah, I. (n. 13), p. 797.



period, trial by jury appeared only in three cases after 1887, in 1909, 1911 and 1914.

From this perspective, it is easy to explain why a relatively large number of jury verdicts resulted in convictions, rather than exclusively acquittals, as had been the case in the previous period. Declaring a defendant guilty appeared in contests involving »ordinary« citizens, rather than editors and journalists, who were prosecuted by the public prosecutor. Similarly, it is clear why a relatively significant number of private prosecutions were withdrawn (Table 5), which had not happened at all in the previous period. Citizens' room to manoeuvre was much greater, and they could more readily decide to resort to this form of prosecution, rather than going through the public prosecutor.

To some of these indicators – the tendency towards public initiative in prosecuting in the first period, compared to private initiative in the second period, and the transfer of competence in 1898 – we should add a third, that is, the change in the prevailing legal grounds for prosecution. Until 1884, breaching the peace and rebelling against government decisions were the basic causes for prosecution (§§ 65 and 300 Law on Penal Procedure), while after 1890, insults against individuals prevailed (§§ 488–491). The correlation was expected; the rise in the proportion of private prosecutions was accompanied by the incriminating characteristics of insult in the private sphere, while the transfer of competence for such misdemeanours to the district courts in 1897 is a reflection of the lack of such grounds for prosecution.

The changes in the numbers and proportion of private prosecutions was probably the basic reason why there was a noticeably significant number of guilty verdicts and a significant number of charges withdrawn in the period following 1890 compared to the previous period, in which there had been no such cases.

Table 5: Outcome of proceedings (number of defendants)

	Acquittals	Convictions	Charges withdrawn	Statute of limitations	Total
1876–1884	5	–	–	4	9
1884–1897	12	9	5	–	26
1907–1918	2	–	2	–	4
Total	19	9	7	4	39

Furthermore, it is evident that in the first period, all six cases were linked to four newspapers, of which three were liberal and one nationalist in leaning (Table 5). These jury proceedings were only the tip of the iceberg, since the

newspapers in questions were subject to systematic reactions from the government, particularly frequent acts of confiscations, and the application of »objective proceedings«. In the second period, the political framework was less defined – prosecuted newspapers belonged mostly to different sections of the opposition, but also included semi-official *Narodne novine* and other papers which were important locally and professionally. This wider spectrum was linked to the fact that most prosecutions were now private and not politically determined.

Table 6: Incriminated newspapers

	Hrvatska (Zagreb)	Sloboda (Sušak, Zagreb)	Obzor (Zagreb)	Narodne novine (Zagreb)	Agramer Presse (Zagreb)	Kroatische Post (Zagreb)
1876–1884	–	3	–	–	4	1
1884–1901	4	–	5	2	–	–
1906–1918	–	–	–	–	–	–
Total	4	3	5	2	4	1
	Gospodarski list (Zagreb)	Srbobran (Zagreb)	Slobodna riječ (Zagreb)	Svjetlo (Karlovac)	Die Drau (Osijek)	Novo vreme (Zemun)
1876–1884	–	–	–	–	2	–
1884–1901	1	1	–	1	3	3
1907–1918	–	–	1	–	–	–
Total	1	1	1	1	5	3
	Semliner Wochenblatt (Zemun)	Sriemske novine (Vukovar)	Syrmier Wochenblatt (Vinkovci)	Hrvatski branik (Srijemska Mitrovica)	Srbska misao (Srijemski Karlovci)	brochures
1876–1884	–	–	–	–	–	–
1884–1901	1	1	1	1	–	2
1907–1918	–	–	–	–	3	–
Total	1	1	1	1	3	2

If we look at the places where individual newspapers were published and the number of charges linked to them, it is clear that Zagreb was ahead of Osijek and the whole eastern region of Slavonia, including Srijem. However, the number of incriminated newspapers with their roots in Slavonia was only marginally less than the number of Zagreb papers, while the number of

charges brought was somewhat higher (Table 7). This distribution indicates strong potential of Zagreb but it can also be interpreted as an indication for establishing another jury court in Osijek. The more so since Osijek was in the centre of the Slavonian region, on a fair distance from Zagreb. On the other hand, the fairly small number of all jury proceedings, even fewer if we were to consider only the Slavonian newspapers, made such an idea economically unreasonable.

Table 7: Territorial distribution of newspapers and number of proceedings

	Zagreb and Karlovac (1)	Slavonia (Osijek)	brochures
Number of newspapers	9	7	2
Number of incriminations	21	15	2

The final, and possibly most interesting question, is that of the bias of jury proceedings in relation to the religious or ethnic affiliation of the defendants (Table 8), private prosecutors, jurors and judges. Since there is a lack of information and certain methodological problems occur, it is only possible to provide vague indications in this area.

The religious affiliation of defendants formed part of official records, but it was not always included in newspaper reports, and in relation to private prosecutors and jurors, was never mentioned. Nonetheless, religious or ethnic affiliation can be roughly guessed at by looking at the characteristic names and surnames of those involved. In doing so, we should be aware of the limitations and risks of such a method, which does not provide a sound basis for a quantitative analysis.

We were able to confirm the religious and therefore ethnic affiliation of 22 defendants directly or indirectly, while we could not be sure about the remaining 10 defendants, although guesses could be made as to their affiliation on the basis of their names and surnames. We included our guesswork in the text, according to the presumed affiliations of the private prosecutors and jurors, which we did not, however, treat statistically.

A lesser problem was posed by the possible divergence between religion and ethnic affiliation. Given the characteristics of Croatian society in the research period, religious affiliation was almost always identified with ethnic affiliation. It is therefore correct to identify two Orthodox defendants as Serbs, and Jewish believers as Jews, while the details we have of one Lutheran showed him to be of German origin. With some defendants, whose religious affiliation was unknown, we applied other methods, using subsidiary information or published sources. Thus, Josip Frank, the leader of the Croatian

nationalist Party of the Right, was of Jewish background, but declared himself to be a Roman Catholic and a Croat, and so we treated him as such. Josip Veselka, the director of a Serbian print works and the editor of the nationalist *Srbobran*, the journal of the Serbian Independent Party, was recorded as being Roman Catholic, and in the main trial declared himself to be »an honest Croat«. The affiliation of the other 10 defendants, for whom it was difficult to discover clear indicators, we left as »unknown«. Judging from their surnames, they were probably four Croats, two Hungarians, two Serbs and two Jews but that cannot be taken for granted.

The information processed and other details should be compared to information on religious affiliation, mother tongues and literacy in Croatia and Slavonia and Zagreb.<sup>134</sup>

Thus the following table has been compiled bearing in mind the remarks and limitations just mentioned.

134 In 1880 in Zagreb there were 29,218 inhabitants, of whom 26,653 were Roman Catholics (91.22%), 76 Greek Catholics (0.26%), 959 Orthodox (3.29%), 233 Protestants (0.79%), 1,286 Jews (4.4%) and 11 others (0.04%). In 1890 there were 38,742 inhabitants, of whom 34,112 were Roman Catholics (90.64%), 97 Greek Catholics (0.25%), 1,216 Orthodox (3.14%), 354 Protestants (0.91%), 1,942 Jews (5.01%) and 17 others (0.05%). In 1900 there were 57,690 inhabitants, of whom 51,258 were Roman Catholics (88.85%), 144 Greek Catholics (0.25%), 1,437 Orthodox (4.22%), 627 Protestants (0.75%), 1,195 Jews (5.54%) and 29 others (0.34%). Of the total population of Zagreb, Croatian or Serbian were the mother tongue of: in 1880-71.51%, 1890-69.9%, in 1900-75.65%; Slovenian, in 1880-13.45%, in 1890-15.19%, in 1900-10.38%; German, in 1880-9.29%, in 1890-8.88%, in 1900-6.62%; Hungarian, in 1880-1.99%, in 1890-3.07%, in 1900-4.6%; Czech, in 1880-1.87%, in 1890-1.49%, in 1900-1.47%; Italian, in 1880-1.31%. After 1889 the Italians numbered less than 1%, with the Slovaks and Russians. It seems that Slovenian was mostly spoken by women, presumably married to Croats, who were not jury candidates. Their numbers fell sharply and Slovenian was spoken as a mother tongue in 1910 by 5.30% of the population. In the male population, which could only appear as jurors, the literacy rate in Zagreb in 1889 was 74.79%, in 1890-78.10% and in 1890-83.70%. Measured at the level of Croatia and Slavonia in 1890, the Jews were by far the most literate (79.54%), then the Lutherans (around 53%), then the Roman Catholics (35.55%) while the Orthodox were at the end (22.56%). Statistički almanah (n. 13), pp. 24, 28, 32, 36-37, 62, 64; Agneza Szabo, Regionalno porijeklo i socijalna struktura stanovništva grada Zagreba između 1880-1910. godine [Regional Background and Social Structure of the Population of the Town of Zagreb, 1880-1910], in: *Radovi instituta za hrvatsku povijest* [Works of the Institute for the Croatian History], Zagreb 1984, 17, pp. 101-120, here p. 103. Compare the statistics in note 43.

Table 8: Religious structure of defendants, 1876–1896

Indictments / proceedings	Roman Catholics	Jews	Orthodox	Lutherans	unknown	Total
Number of indictments/proceedings	17/14	5/4	6/6	1/1	10/10	39/31
Frequency: Number of persons × number of indictments	2 × 3; 1 × 2; 9 × 1	1 × 2; 3 × 1	1 × 3; 3 × 1	1 × 1	10 × 1	3 × 3; 2 × 2; 26 × 1
Outcome (defendants)	NG 10; G 3; CW 3; SL 1	NG 2; G 1; SL 2	NG 4; CW 2	SL 1	NG 3; G 5; CW 2	NG 19; G 9; CW 7; SL 4

NG: not guilty, i.e. acquitted by the jury; G: guilty; CW: charges withdrawn; SL: statute of limitations

It is noticeable that among the defendants, there is a marked prevalence of Roman Catholics, of whom the majority, judging by their surnames and the general social climate, could have been of Croatian descent. This proportion of Roman Catholics is in line with their predominance in the total population, which was even more marked in Zagreb. There is also a noticeably high numbers of Jews, higher than the proportion of Jews in the general population and in Zagreb. A partial explanation for this lies in the fact that the Jews were far more educated than most of the population and by nature were more »involved« in newspaper publishing. However, a more realistic explanation is linked to the fact that most of the Jews appeared as editors or authors in three opposition newspapers published in German, which were targeted by the government. To a certain extent, the low number of charges against Orthodox believers (Serbs) is unexpected, even if we have in mind the actual number was probably greater, since the affiliation of several defendants was unclear, although their surnames indicate they were of ethnic Serbian origin. For, given the logic of ethnic discrimination in trial by jury, which was present in other countries in the Monarchy, a greater number of indicted ethnic Serbs could have been expected. This is even more likely, given the proportion of ethnic Serbs in the total population, which was significant, at a time when Croatian-Serbian political friction and occasional explosive demonstrations were an almost constant feature of political life. In addition, foreign politics occasionally kindled anti-Serb feelings (the crisis on account of the annexation of Bosnia and Herzegovina; strained relations with Serbia before World War I). However, ethnic Serbs co-operated successfully with the ruling National Party in the time of Ban Ivan Mažuranić, and in spite of broken relationships after

the secularisation of education in 1875, were still significantly close to the government. Ethnic Serbs were particularly close to the Croatian government during the authoritarian period of Khuen-Héderváry. Thus, the thrust of public prosecutor was not aimed at the Serbs even though that distribution of *Srbobran* was also occasionally prohibited – but not in a jury trial. Among several cases of a political nature in which Serbs were involved, three cases were particularly important. These were the private prosecution brought by the Croat Vladimir Mažuranić against the editor of *Srbobran* (who claimed to be a Croat), the charge lodged by the (Serbian) Orthodox Church religious education teacher Duić against the Croatian editor of *Obzor*, and the indictment by the public prosecutor of three Serbs in 1909. In the first two cases, the jury rendered a verdict against the Serbian party. In the third case, in 1909, which was the only case to be fully political in content and which took place at a highly sensitive political juncture, the public prosecutor withdrew the charge against two indicted persons (this was the only time the public prosecutor withdrew from proceedings), and the third defendant was acquitted by the jury. All the defendants, whom we have assumed were ethnic Serbs (the three above-mentioned and Simo Paić, who appeared three times), were acquitted by juries. Thus the statistics counter the objections of the ethnic Serbian and some pro-government Croatian representatives in *Sabor's* debates on discrimination against Serbs in trial by jury. It seems unlikely that there were more jury proceedings (e.g. private prosecutions) in which Serbs and Croats were involved, and which we have not identified. It is even harder to imagine that if such cases existed, the press failed to report them. Thus it seems that, in contrast to other countries, and in spite of the extremely serious political friction of the time, trial by jury in Croatia and Slavonia did not display ethnic discrimination against Serbs in practice. It seems to us that the same conclusion holds as for other ethnic groups. It should be mentioned that, in principle, defendants who were or can be assumed to have been Jews or Serbs were defended by lawyers of the same affiliation. But we also found cases in which lawyers with Jewish surnames, and, in two cases, Serbian surnames, defended Croats.

The religious affiliation of the other participants in proceedings was not given. However, although this information is lacking, it is still possible to construct certain hypotheses, given the characteristic names and surnames of the participants. Of course, in doing so, one must bear in mind the ambiguity and limitations of this approach and understand its merely rough, orientation value.

In relation to the ethnic affiliation of private prosecutors, according to their surnames and other details, we can presume that some of them were of Serbian, Jewish or Hungarian origin, although most were of Croatian origin.



The composition of the senate and the public prosecutor's staff were dominated by names and surnames indicating Croatian origin, or the Croatian forms of German names, with fewer Hungarian names. There was evidently at least one Serb among the judges (Jovan Radivojević), and there was one Hungarian (Kelecseny) among the deputy public prosecutors. On the whole, lawyers were probably of Croatian origin, although a few lawyers with a characteristically Jewish names also appear, and fewer still with Serbian names and surnames.

A rough idea of the ethnic composition of juries can also be gained by looking at characteristic names and surnames. From these it can be seen that Croatian surnames were predominant, then Croatian forms of German or Hungarian names. There were a significant number of jurors with German surnames, and among them, it can be safely assumed that there was a good proportion of Jews, but there were only a few (not more than a handful) of jurors with characteristically Serbian names and surnames. The number of Jewish jurors is probably explained by their level of education, as we have already mentioned, which was much higher than that of other religions, and by their wealth and representation in the intellectual professions. In at least one case, against ethnic Serb Simo Paić, held on 21 May 1890, the jury elected a foreman with a characteristically Jewish name (Adolf Betelheim). The fact that so many Jews served on juries proves that the opposing parties did not exclude them, although it seems that the exclusion of jury panel members was convenient. Among the population there was a more pronounced anti-Jewish feeling.<sup>135</sup> The importance of the few Serbs in Zagreb, among whom there were many tradesmen, also belied their small number and proportion, given their wealth and the important political functions they held.<sup>136</sup> Among jurors and other participants in proceedings, there are occasionally individual names which point to Czech or Slovene origin.

135 Anti-Jewish feelings were from time to time manifested in public, linked to the separation (of part) of Jewish community from the Croatian national emancipation process and their quasi Hungarian identity, for example in the anti-Hungarian demonstrations of 1848, which were also directed against the Jews. On the other hand, prominent politicians of Jewish extraction were not a rarity in the ranks of the Croatian nationalists, the best example being Josip Frank, leader of the most radical Croatian nationalist Party of the Right. Yet it is paradoxical that the Croatian liberal press occasionally mocked the »Yid« mentality and semi-ignorant use of the Croatian language shown by such politicians. For more on the Jews in Zagreb in the respective period, see Gross and Szabo, *Prema* (n. 9), pp. 418–423.

136 Mato Artuković, *Ideologija srpsko-hrvatskih sporova (Srbobran 1884–1902)* [The Ideology of Serbo-Croatian Conflicts (Srbobran 1884–1902)], Zagreb 1991, p. 28.

In contrast to their reporting on ethnic affiliation, the newspapers carried much more detailed information on the social composition of individual juries. Nonetheless, collated information is not available, since there are no such details for five trials and for some of the others, information is incomplete. From the data available, it is evident that most jurors were craftsmen or tradesmen, while the intellectual and legal professions were also fairly well represented, and at least two industrials served in several proceedings. It is interesting that several distinguished names appeared from the scientific, artistic and political spheres of the time (from the social sciences and humanities, natural history, literature, journalism, and one distinguished composer). These individuals were usually elected as jury foremen.<sup>137</sup> There were also some jurors with aristocratic names (prefixed by »pl.«, comparable to German »von«, meaning *plemeniti*, i. e. noble), and there were probably more of them than were noted in the papers. Some jurors were lawyers representing parties in other trial by jury. However, it is difficult to discern how juries functioned in practice. We should recall that they were mocked for being incompetently structured mainly by pro-government and Serbian representatives, who were in any case against juries, yet the structural composition we discovered did not support this impression.

From newspaper cuttings it is possible to reconstruct the typical course of trials by jury. Before the start of the trial, jurors were selected by drawing lots in an adjacent room, *in camera*. Both parties were allowed to use their discretion in excluding certain candidates without needing to provide an explanation, and at least in several cases did so. It is very likely that it was a routine part of procedure. Trials usually lasted half a day and were scheduled to start at 8, 9 or 10 o'clock in the morning, continuing until 3 or 4 o'clock in the afternoon. The trial or handing down of the verdict would rarely be prolonged further, and even more rarely carried over to the next day. The presence of the parties was not required, and in several proceedings one or both parties were absent. The results of investigation were very important, since, during the trial, most witness evidence was read from the investigating report. The defendant and perhaps a few witnesses, whose names were provided before the trial began, were usually heard directly. Without any exception, editors who had been charged refused to reveal the names of the

137 Among members of the jury the following prominent university professors were mentioned, the philosopher Franjo Marković, the historian Tadija Smiči-klas, the natural scientist Špiro Brusina, the classical philologist Milivoj Šrepel, the Greek scholar August Musić, the author of secondary school history textbooks, Ivan Hoić, the writer Hugo Badalić, the composer Ivan Zajc and others. See here, table 3.

authors of incriminating articles, thus taking upon themselves the responsibility for lack of due care. The court almost always refused requests by the defendant or the defence to call witnesses, on the grounds that this should have been proposed before the main trial began. Since lawyers must have been well aware of this rule, it is possible that defendants engaged them too late, or perhaps they simply did not care about that in time. Whatever the case, this part of judicial practice leaves the impression that insufficient attention was paid to the principle of material truth and the principle of the equality of the parties was practically negated. The prosecution was at an advantage in proposing witnesses at the time of charge, and this was almost always the case when the public prosecutor was prosecuting. Avoiding calling witnesses during the trial had another consequence, since it was practically a standard tactic by the defence to attempt to demonstrate »the proof of the truth«, i.e. to prove the truthfulness of the incriminating claims, thus providing a reason for exculpation. In individual cases, the court expressly rejected »demonstrating the truth«, with the explanation that it was irrelevant or inadmissible, for example in the case of justifying the use of the word »coward« for refusing to accept a challenge to a duel. Objections on the grounds of enforcement of the statute of limitations were common if the case was stayed for more than six months. These objections were usually overturned, and the court justified its decision by claiming that the reasons for the delay were legally founded. The presidents of senates, depending on their personalities, were fairly active during trials, while other members of the chambers did not pose any questions. One president of the chamber, whom we have already mentioned, Cuculić, who was involved in a large number of cases, was particularly active and exercised a restrictive approach toward defendants. After closing arguments the senate would formulate questions and their president would briefly explain to the jurors how they should proceed, he would draw their attention to the essential points and instruct them on their deliberations. The parties in several cases had additions or objections to make concerning the questions, and the court usually did not admit them. On several occasions jurors made comments or asked questions which the court rejected, on the grounds that jurors did not have the right to submit proposals. The jurors would then withdraw for deliberation in a separate room, where they would elect a foreman to pronounce the verdict at the end of their deliberations. From the records we have, it seems that juries were prone to brief discussions, in one case only lasting fifteen minutes, several times running to half an hour, and only in a few cases, lasting longer than an hour or recorded as »longer deliberations«. If the jury convicted the defendant, first the prosecution would be allowed to speak and propose a sentence, followed by the defence.

Statistics reveal that juries were much more prone to acquittals. From newspaper cuttings, as far as we can gather, it can be gleaned that these verdicts were not always correct, given the evidence. This behaviour on the part of juries was influenced not only by general reasons to do with the lay judiciary, but the grounds for the charge and the strictly regulated sentences which applied. The court could pass extremely harsh sentences ranging from six weeks' to six months' imprisonment. In only two cases did the court pass shorter sentences – three and fourteen days. These outcomes of proceedings probably explain the fairly common occurrence of charges being withdrawn if the defendant admitted guilt, asked for forgiveness and promised to publish corrections, even when the plaintiff had refused to accept such a deal at the beginning of the trial. Leaving decisions to juries was a risky business for plaintiffs, given jury reluctance to convict, but it was even more risky for the defendant, given the harshness of sentences. If the charge was withdrawn, the court ruled that the plaintiff should bear the court costs.

According to the law, juries were to sit in principle every three months. But it seems that there were too few cases to merit assembling them. In the period between 1876 and 1884, we discovered only one year in which two proceedings took place (1880), while in all the other years there was only one case, or none. In the period after 1890 we discovered a significantly higher number of cases, but still not enough to merit holding quarterly sittings of the jury. The greatest numbers of proceedings were held in 1890 (9), 1891 (4) and 1894 (5), while in the other years, there were between one and three cases. In the first two years, jury proceedings were grouped and trials organised in two cycles (20–23 May and 7–10 October 1890, and 9–10 June and 18–19 September 1891). Other proceedings were organised on an individual basis.

During the entire duration of jury legislation, *Narodne novine* published a list of candidates for jurors on a fairly regular basis, by which shortlists were formed. They recorded the candidates' professions, but rarely their addresses. Thus we can learn from *Narodne novine* that in March 1914, 1,939 names were entered on the annual jury list for the city of Zagreb. There should only have been 1,400, so 539 names had to be removed.<sup>138</sup>

In what follows we shall present in brief all the proceedings before juries in the period from 1884 to 1903 (i.e. between 1890 and 1896), which, in the interests of full understanding, should be read in conjunction with the details given in Table 3.

The first jury proceedings following the lifting of suspension was held on 20 May 1890 and was a private charge brought by Josip Korić against Martin

<sup>138</sup> Porotničke listine [Jury Lists], in: *Narodne novine* [The Peoples Press], 5. III. 1914, p. 2.

Lovrenčević. The offending article was directed against a former candidate of the National Party during elections in Bakar, and in it, the plaintiff was mentioned as having gone bankrupt. The trial did not excite much interest and the court was rather empty. When the jurors were selected, both parties used the right to exclude jurors without explanation. During proceedings, the defendant expressed regret for the publication of incorrect information, upon which the plaintiff withdrew the charge on condition that a correction be printed in the newspaper in a guaranteed form. Some of the jurors exercised their right not to take part in jury proceedings during the next year.<sup>139</sup>

The second trial was held on 21 May 1890 and was a private prosecution brought by Dragutin Zverina against Simo Paić, who had accused the plaintiff of being fond of playing cards and of not leading »a respectable life«. The defendant argued the proof of the truth. One juror asked if the issue was not in fact about the political conflicts of the opposing parties, which the defendant denied. The defence pointed out that the plaintiff had attempted to merge three paragraphs of the Penal Code to a single article, which indicated confusion. The senate then formulated three questions for the jury, and after a quarter of an hour's deliberations, the jury returned a negative answer to the two main questions (10 yes and 2 no and 11 yes and 1 no), so the defendant was acquitted.<sup>140</sup>

The third jury trial was held on 22 May 1890 and was a private prosecution brought by Janko Šimić against a parish priest, Ernest Kranjčević, for libel in two articles on extorting forestry fines. The trial was very short, since as soon as the indictment was read out, the plaintiff's representative declared that he was withdrawing the charge, given the verdict in the previous proceedings. One of jurors, Gnezda, who had also served as a juror in that trial, objected to the defence's arguments. Gnezda claimed that the jurors in the previous proceedings had arrived at their verdict according to conscience.

139 Iz suda [From the Court], in: *Narodne novine*, 20. V. 1890, P. 5; Iz sudnice [From the Courtroom], in: *Hrvatska* [Croatia], 20. V. 1890, p. 1

140 The jury questions were: (1) Is the defendant guilty of using incriminating words in the article, thus falsely accusing the plaintiff of misdemeanour, and thus committing an offence under § 487 PC, or of falsely accusing him of immoral acts, thus bringing upon him humiliation and hatred in public opinion, thereby committing an offence under § 488 Penal Code? (2) Is he guilty of committing an offence by this incriminating opinion under § 491? If the jury answered the first question in the affirmative, than a further question followed: (3) Has the defendant shown the substance of the matter of his allegations, or at least its probability, to be true? The phrase »or at least its probability« was stricken at the proposal of the plaintiff's representative, as was another technical detail. Iz suda, in: *Narodne novine*, 22. V. 1890, p. 6.

The president of the court instructed the jurors to consider a possible initiative regarding penal or disciplinary proceeding against the lawyer.<sup>141</sup>

The final jury trial in the first cycle took place on 23 May 1890 and was an indictment brought by the public prosecutor, who had taken over a private prosecution initiated by Franjo Maiksner against Franjo Pećnjak. The subject of the contest was related to reporting in the press on a scandal linked to the University Ball, after which several students had broken the windows of the lawyer Nikola Czernkovich and the Rector Luka Marjanović, known for their pro-Hungarian leanings. The students were soon convicted in a trial presided over by Maiksner, and the incriminating article accused him of bias in judging and being motivated by the expectation of promotion at work. The defendant argued that the incriminating article did not contain culpable elements, since it was the duty of the press to criticise the government and its servants. He also claimed that this affair in Vienna and Budapest, as well as in England, France, Italy and elsewhere in similar cases belongs to the competences of the police and not judiciary and that judges should follow public opinion. The president of the chamber, Cuculić, answered that this was an erroneous view, for in other countries, as in Croatia, judges must uphold the law. To the question, »Did the defendant commit the offence with which he has been charged by means of the incriminating offence?« the jury answered with 3 no and 9 yes and the defendant was acquitted.<sup>142</sup>

The first trial in the second cycle was held on 7 October 1890 and was an indictment brought by the public prosecutor against Franjo Pećnjak for an article in which a municipal official, Drago Bartsch, was accused of providing preferential, or rather discriminating treatment in the performance of his duties as administrator of the municipal property in the town of Daruvar. The article included the phrases, »vaunted«, »weak and flabby in spirit«, »spiritual eunuch«, etc. During the trial, which began at 9 a. m. the defendant argued that the article was a criticism of work, not slander of an individual, and that the citations were truthful. He proposed calling witnesses to prove it. This proposal was rejected, and instead the investigating report was read out and the defendant heard. Judging from the press reports, the president of the court explained to the defendant that his every insult was unjustified, untruthful and insulting. The senate formulated two main questions and two subsidiary ones regarding the offence of lack of due care. The jury answered all four questions unanimously in the negative so the case ended with acquittal.<sup>143</sup>

141 Iz suda (n. 140), p. 6

142 Iz suda, in: *Narodne novine*, 21 V. 1890, p. 5.

143 Iz suda, in: *Narodne novine*, 7. X. 1890, p. 5; Sudnica [Courtroom], in: *Obzor*, 7. X. 1890, pp. 3-4.



During the afternoon of the same day, a trial was held on the private charge of an innkeeper, Šlemina of Vukovar, against Franjo Kiefer, for an article in which it was claimed that there were bedbugs in the plaintiff's establishment, as well as that the plaintiff had caused a townsman to fall into a ditch by extinguishing the light in front of the inn. The senate formulated the following basic questions: (1) Has the defendant, although under no specific pressure to do so, made public embarrassing, albeit true, facts from the plaintiff's personal or family life, by publishing a claim about bedbugs? If the jury answered this question negatively, another question would follow: (2) Has the defendant, in publishing this information, shown lack of due care? The next basic question was: (3) Has the defendant falsely accused the plaintiff with allegations of brutality towards guests and of extinguishing the light near the ditch, and is he thus guilty of the offence with which he is charged? The follow-up question (4) was identical to the former follow-up question, concerning lack of due care. After a longer deliberation, the jury answered the first basic question with a unanimous yes and the second positively, with eleven votes to one. The plaintiff was then invited to propose sentencing. The representative of the plaintiff Czernkovich proposed that the defendant be punished according to § 493, that the verdict be printed in the next issue of his newspaper, that he forfeit security and be charged 250 florins in extra costs. The senate then convicted the defendant of misdemeanours in §§ 487 and 489 of the Penal Code according to §§ 493 and 266 of the Penal Code (exceptional circumstances for mitigating sentences) to one month in jail and ordered him to publish the verdict in his newspaper. Security was not forfeit because the case did not concern a political newspaper and therefore security had not been posted.<sup>144</sup>

The next morning a trial was held on an indictment brought by the public prosecutor against Martin Lovrenčević for printing an article in his newspaper by an unknown author criticising the work of Kosta Rojčević, a district official in Slunj. Allegations were made of the inhumane conditions in which a townswoman was imprisoned, leading to consequences for her health and to the local girls being summoned for obligatory medical examinations, due to fear of the spread of venereal disease, with the defendant being personally present at these examinations. From the investigating report and the statement of the accused and two called witnesses, it emerged that the allegations were untrue. The defendant refused to testify and proposed calling new witnesses, which the court rejected. The court posed two questions: »Was

144 Iz suda, in: *Narodne novine*, 8. X. 1890, p. 5; Sudnica, in: *Obzor*, 8.10.1890, p. 1

the offence in § 488 of the Penal Code committed in essence?« If the jury answered no to this question, they were to be asked: »Has the offence of a lack of due care been proven?« The jury deliberated for a longer period and then answered both questions in the negative.<sup>145</sup>

The next morning a trial was held which was a private prosecution brought by Panajot Morfy against Simo Paić. He was accused of slandering the plaintiff by claiming that he had influenced the government in the appointment of a local judge and his deputy, contrary to the will of the town council, and for the plaintiff of cowardice for refusing a challenge to a duel. During the investigation and main trial, the court rejected the defendant's proposal to prove the truthfulness of his allegations. The court justified this decision by saying that the procedure for appointing a local judge was not within the remit of the town council and was therefore an official secret, and that duels were against the law. One of the jurors, Folnegović, said that he would not have allowed the official report to be read out either, but that nonetheless he was unable to reach a decision without seeing the report, and suggested that it be brought and made available to the jury. The president of the senate informed him that the jurors were allowed to ask questions, but not make proposals. The chamber then formulated these questions: »Has the defendant, in the first article, committed an offence according to § 491 and in his second article, against § 488 of the Penal Code?« After half an hour of deliberations, the jury was divided on the first question (6:6) but arrived at a unanimous negative answer to the second question, upon which the defendant was acquitted.<sup>146</sup>

The last trial in the autumn cycle was held on 10 October 1890 and was an indictment brought by the public prosecutor against Stanislav Feigel, for offences detrimental to several military officers. The contents of the proceedings were complex and revolved around the marital problems of the defendant's brother, who was a lieutenant in the army, and who had abused his wife for reasons of jealousy. She had subsequently left him. He had been remanded to a mental hospital in the custody of his brother, a professor of forensic medicine in Lavovo (Lvov, today in Ukraine), and had been soon discharged as healthy. On his release, a brochure was published in Osijek directed against his former wife, several military officers and military doctors, signed by the defendant, although it was assumed that the real author was his brother. Statute of limitations was enforced in that case. After that, another incriminating brochure appeared, also under the defendant's name. In it, an officer

145 Iz suda, in: *Narodne novine*, 8. X. 1890, pp. 5–6.

146 Iz suda, in: *Narodne novine*, 9. X. 1890, pp. 5–6; Sudnica [Courtroom], in: *Obzor*, 9. X. 1890, p. 1.

and a cadet were accused of having adulterous relations with the brother's former wife, and several officers were accused of participating in proceedings against the defendant's brother, for the purpose of declaring him insane. The court rejected the defence's proposal to provide evidence by examining witnesses who were scattered throughout the Monarchy, and the investigating reports were read out. The defendant replied in a combination of Croatian and German. In his statement he confirmed that he was the author of the brochure and demanded that his brother be heard as a witness, which the court refused. At the end of the proceedings the defendant changed the statement and insisted that the author was his brother, in an obvious attempt to thwart the proceedings. However, the public prosecutor then amended the charge against the defendant to complicity thus neutralising the defendant's attempt to obstruct the case. At nine o'clock in the evening the court formulated twelve questions and subsidiary questions relating to the offences committed against individual officers. The jury withdrew to deliberate at nine o'clock in the evening and at 10 o'clock produced not guilty responses to the questions. On eight questions they were divided (6:6) and answered with 7, 8, and 10 no to the other questions, therefore the defendant was acquitted.<sup>147</sup>

The next two trials by jury were held in June 1891. The first took place on 9 June, on the basis of a private prosecution brought by the municipal clerk, Mijo Majnarić, against Stjepan Lovreković, for alleging that Majnarić had imprisoned suspects and kept them overnight in the municipal prison, terminated the employment of employees and expelled certain persons from the municipality, etc. When the proceedings began, the defendant expressed regret and said that he had been deceived by false claims, after which the plaintiff withdrew the charge.<sup>148</sup>

The next day the second jury trial was held, on the basis of a private prosecution brought by Eugen Einagl against Mavro I. Boschan, in the absence of both parties. The plaintiff had employed the defendant as a sales agent in Bulgaria, but had dismissed him when he tried to deceive him. After that, the defendant attempted to compromise him by making claims of irregular business conduct. The defence, on his behalf, expressed regret for alleging falsities concerning the plaintiff based on false information, and the

147 Iz suda, *Narodne novine*, 10. X. 1890, p. 5; Iz suda, in: *Narodne novine*, 11. X. 1890, pp. 4–5; Sudnica, in: *Obzor*, 10. X. 1890, p. 3; Sudnica, in: *Obzor*, 10. X. 1890, p. 3; Sudnica, in: *Obzor*, 11. X. 1890, pp. 3–4; Sudnica, in: *Obzor*, 11. X. 1890, pp. 3–4.

148 Iz suda, in: *Narodne novine*, 9. VI. 1891, p. 5; Iz suda, in: *Hrvatska*, 9. VI. 1891, p. 1.

plaintiff withdrew the charge. One jury candidate who had not appeared at the trial was fined 10 florins.<sup>149</sup>

The next cycle of trial by jury was held in November, with the first trial beginning on 18 November 1891. It was a private prosecution brought by a police inspector, Mile Pešun, against Mile Naval, for publishing the plaintiff's allegation that he was violent, a coward and a drunk, and for favouring certain suspects, etc. In his defence, the defendant requested that the truthfulness of the allegations be demonstrated, but the witness' statements during the investigation, as well as documents of the public authorities refuted the defendant's allegations and brought his credibility under scrutiny. When the defence objected to evidence not being provided by hearing witnesses, but by reading their statements in the investigation report, the judge replied that the defendant had failed to name his witnesses on time. The trial was postponed until four o'clock in the afternoon, when the jury convicted the defendant with a majority of eleven votes, and the defendant was sentenced to six months in prison.<sup>150</sup>

In the next case, the public prosecutor indicted an illiterate peasant, Ilija Vujaković, and the editor of *Obzor*, Franjo Pečnjak. According to the indictment, Vujaković had enlisted the aid of two »infamous scribblers« to write an letter in *Obzor* in which he accused local police of illegal actions and of abusing suspects and witnesses. Pečnjak was indicted for allowing the letter to be printed in his paper. The authors were not indicted, since the statute of limitations was enforced. Vujaković admitted that he had sent the letter after spending five unwarranted days in prison, thinking that it was addressed to the court and that the newspapers knew nothing of it. The court put eight questions to the jury, which they mostly answered unanimously or almost unanimously, confirming the guilt of both defendants, who were sentenced to prison.<sup>151</sup>

149 Iz suda, in: *Narodne novine*, 10. VI. 1891, p. 5; Sudnica, in: *Obzor*, 10. VI. 1891, p. 1.

150 Iz suda, in: *Narodne novine*, 20. XI. 1891, p. 5; Sudnica, in: *Obzor*, 19. XI. 1891, p. 1.

151 The jury questions and answers were: (1) Has the defendant Vujaković falsely accused the gendarme? (Unanimous yes) (2) Has the defendant Vujaković proved the foundation of his accusation in the previous question? (Unanimous no) (3) Has the defendant Vujaković accused the gendarme of unproven insulting attitudes and opinions? (Unanimous yes) (4) Has the defendant Vujaković proved the foundation of his accusation in the previous question? (Unanimous no) (5) Has the defendant Pečnjak, as editor, aided Vujaković in falsely accusing the gendarme? (11 yes and one no) (6) Has the defendant Pečnjak proved the foundation of his accusation in the previous question? (Unanimous no) (7) Has the defendant Franjo Pečnjak, as the editor respon-

The next trial was held on 14 December 1891 and was a private prosecution brought by Kosta Arsenić against Milan Miković. The defendant accused the plaintiff in an article in *Sriemske Novine* of keeping horses without proper documents, leading to the suspicion that the horses were stolen and that the plaintiff was engaged in irregular business conduct in general. Two witnesses were called to testify on the second charge (irregular business conduct) but did not appear, so the defence called for the main trial to be postponed. The plaintiff withdrew part of the charge. During the trial, the defendant said that he had since reached the conclusion that he had reacted over hastily, in alleging complicity in theft. However, in spite of this, and although the jury was divided concerning his guilt (6:6), he was acquitted.<sup>152</sup>

The trial in the case of a prosecution brought by Ivan Surbek against Martin Lovrenčević was held on 30 August 1891. Lovrenčević was accused of publishing an article in which it was claimed that the plaintiff had received a beating while on his way to an extra-marital assignation. The plaintiff had reported the beating as electoral violence, and on account of which the offenders, a group of boys, were imprisoned and charged. Another incriminating allegation was that the defendant had not handed over money to his superiors confiscated from illegal card games. The defendant claimed that the editorial staff had been deceived, but that the plaintiff had refused to accept a correction in the newspaper. However, the jurors voted unanimously in the negative on the question of allegations of »flirting« and »dalliance« and in the negative (11:1) on the question of allegations concerning the handing over of the money, so the defendant was acquitted.<sup>153</sup>

The trial held on 20 September 1891 was a private prosecution brought by Vladimir Mažuranić, a highly-placed administrative official in the Department of Justice of the Croatian government and son of late Ban Ivan Mažuranić, against Josip Veselko, editor of *Srbobran*. The case had political connotations and excited a great deal of public interest. Veselko was charged with calling the late Ban and renowned writer Mažuranić a »Serbian schools

sible, aided in accusing the gendarme of insulting statements and opinions? (11 yes and one no) (8) Has Franjo Pećnjak proved the foundation of the accusations in the previous question? (Unanimous no) (9) Has Pećnjak, by including the letter, neglected the due care which would have resulted in the letter not being printed? (10) Has Pećnjak, in including the incriminating parts of the letter, neglected the due care which he should have exercised and which would have avoided the incriminatory nature of the writing? see Sudnica, in: *Obzor*, 19. XI. 1891, p. 3-4.

152 Iz suda, in: *Narodne novine*, 15. XII. 1892, p. 6.

153 Iz suda, in: *Narodne novine*, 31. VIII. 1893, p. 5.

hyena« and the »usurper of Njegoš's verses about Čengić Aga«.<sup>154</sup> The first comment concerned the liberal reform of elementary schools of 1874, when education in Croatia and Slavonia was secularised and separate religious schools were abolished. As we mentioned before, this reform provoked sharp reactions from the Catholic and Orthodox Churches. The latter considered their schools to be Serbian schools preserving national identity. The Orthodox Church also thought that it should enjoy autonomy regarding education and be excluded from the competence of the *Sabor*. The second comment referred to one of Mažuranić's epics on the battle between the Montenegrins and the Turks, for which the author had been accused of plagiarism, as the work was similar to one by the Montenegrin prince, Petar Petrović Njegoš. Because of these allegations, the plaintiff had first lodged a complaint with the public prosecutor, but he had rescinded his competence and he had therefore initiated a private prosecution. The plaintiff claimed that the reform of elementary schools of 1874, which recognised a separate Serbian curriculum in the appropriate areas, had advanced the status of education significantly, and that calling the initiator of such reforms a »hyena« was both distortion of the facts and would incite ethnic Serbs to hatred and contempt for Mažuranić. The plaintiff claimed that he would not have initiated penal proceedings solely on these reasons. However, he said he had been forced to sue the editor, given the other charge of plagiarism, which was an insult to his father's moral and eternal glory as a writer. It seems that, in the investigation, the defendant relativised his accusations against Mažuranić as a politician and denied his intention to label Mažuranić a plagiarist. He said that the word »usurper« meant that Mažuranić had »reproduced« some verses from Njegoš's poem, but that he could not remember which verses. The trial, which began at 8 o'clock in the morning, was attended by a large number of members of the elite intelligentsia. The jury elected a foreman whose name and surname probably indicates Serbian identity (Simo Matasović). The defendant stated during his defence that as an »honest Croat« he had wanted to help the ethnic Serbs by criticising the closing of the Orthodox Church seminary in Pakrac, which was the result of the Mažuranić's school reform, but he regretted using the word »hyena«. He distanced himself from the allegation of plagiarism, claiming that he had merely meant to say that Mažuranić's poetry followed the spirit of Njegoš. From the witness statements and the statements made by

154 The private prosecution for insulting the honour of a deceased person was probably lodged on the basis of § 495 Penal Code, according to which the injured parties were considered to be the relatives. Ogorelica, Kazneno (n. 11), p. 226.



the prosecution, it could be deduced that the real author of the text and the »true spirit« behind *Srbobran* was Pavle Jovanović, who later as a representative spoke against juries in *Sabor*. The private plaintiff showed that Mažuranić's poem was original and that Mažuranić's school reform had raised the level of education for Serbs. The defence demonstrated that the school reform denied Serbs (their disputed) educational autonomy, and that Mažuranić, in the successful addition to another epic, had »usurped« the spirit and language of its author, etc, and that he had done so in the poem in question. The senate posed two questions: (1) Has the defendant, by including the incriminating article and using the term »hyena«, published imagined, twisted allegations, accusing the late Ban in a manner which could lead to his being hated in public opinion, thus committing an offence against public respect? (2) Has the defendant, by including an article containing the word »usurper«, published imaginary, malicious lies, accusing the (late) Ban of dishonest work, which could lead to his being hated in public opinion? To both questions the jury answered yes unanimously, so the court sentenced the defendant to a harsh prison sentence.<sup>155</sup>

The next trial took place on 31 May 1894 and was a private prosecution brought by Jakob Waldo against Simo Paić. The incriminating article claimed that the plaintiff had persuaded a goldsmith to transfer gold merchandise without paying customs duties in Belgrade (the capital of the Kingdom of Serbia), and then reported him to the Serbian Customs, who confiscated the merchandise. The defendant admitted to writing the article but said that he had been convinced the facts of the case were true. His defence attorney submitted a file belonging to the Serbian Ministry of Finance showing that the plaintiff's brother had claimed a reward from the Serbian government for reporting the alleged offence. The court put six questions to the jury, to which they answered with 6 or 10 votes in the negative, and the defendant was acquitted.<sup>156</sup>

A week later, on 7–8 June 1894, a trial was held which was a private prosecution by the late Mate Štefinović, an Osijek lawyer, against Julije Pfeifer, for accusing the plaintiff of conducting irregular business and complicity in denouncing creditors. The penal proceedings which the plaintiff

155 Iz suda, in: *Narodne novine*, 31. VIII. 1891, p. 5; Iz suda, in: *Narodne novine*, 19. IX. 1891, p. 5; Iz suda, in: *Narodne novine*, 20. IX. 1891, p. 4; Preska parnica protivu »Srbobrana« [Jury Trial against Srbobran], in: *Srbobran* [Serbian Defender], 20. IX. 1891, p. 2–3; Preska parnica protivu »Srbobrana«, in: *Srbobran*, 21. IX. 1891, p. 1.

156 Iz suda, in: *Narodne novine*, 31. V. 1894, p. 5; Iz suda, in: *Narodne novine*, 1. VI. 1894, p. 5.

launched during his lifetime were taken over by his legal heirs.<sup>157</sup> The defendant began making his statement in German and refused to change to Croatian, saying that although he could understand Croatian, he could not defend himself in that language. However, the president forbade him to defend himself in German. The defendant claimed that he and the plaintiff had been in conflict regarding political issues, after which they had attacked each other in the press. The defendant also claimed expiration of the statute of limitations. The president of the court rejected the argument on the case having been rested for longer than 6 months, on objective grounds: there had been a delay in forming the main jury panel, then the plaintiff had died, which meant time had passed before his legal heirs were found, and they had then had to decide whether or not to continue proceedings. The defence attorney proved the truthfulness of the allegations. The closing of the main trial was postponed until the next day, in order for the senate to define the formulation of jury questions. The next day, 18 questions were put to the jury, and after two hours of deliberations, at noon, the jury found the defendant guilty on 8 counts and not guilty on 10 counts.<sup>158</sup> The defence lodged an appeal to quash the verdict, which was discussed at the next sitting of the Table of Seven, the Supreme Court. Franjo von Burgstaller, the vice-president of that court, presided over the senate, and the other members were Florschütz, Mikuličić, Urani and Egersdorfer, while the reporting official was Hruby. The defence appealed on the grounds of expiration of the statute of limitations, which was opposed by the plaintiff's representative. The court overturned the verdict on the grounds of §§ 31, 31, 34 and 49 of the Law on Penal Procedure in Publishing Offences, on account of the fact that a legal question had been put to the jurors, and for this reason the court had not reached a verdict on the objection on account of expiration of statute of limitations, and there had been other procedural violations.<sup>159</sup> Unfortunately, we were unable to discover any information on renewed proceedings.

157 It still remains unclear to me how it was possible for the heirs to take over the prosecution brought for an insult delivered to the deceased person during his lifetime, in proceedings which he had initiated. According to Ogorelica, the relatives could not have initiated nor continued penal proceedings for insult to honour during the deceased's lifetime. In connection with this, Ogorelica cites another verdict from 1897; Ogorelica, *Kazneno* (n. 11), p. 226. Perhaps the answer lies in the fact that such practice had not yet crystallised in 1894, when proceedings were conducted against Štefinović. The defendant objected on the ground of enforcement of statute of limitations and did not contest the taking over of the case of a deceased person.

158 Iz suda, in: *Narodne novine*, 12. IX. 1894, p. 6.

159 Iz suda, in: *Narodne novine*, 7. VI. 1894, p. 5; Iz suda, in: *Narodne novine*, 8. VI. 1894, p. 5; Pressprozess, in: *Die Drau*, 7. VI. 1894, P. 2; Pressprozess.

The next jury trial was held on 25 October 1894 and was a private prosecution brought by Regina Molnar and Mikola, Eva and Tereza Reis against Petar Molnar. The defendant had published in *Hrvatski branik* an appeal to his wife, who had left him, accusing her of various »dishonest and immoral acts«. Eva Reis, Regina's sister, said that her sister had left her husband because he could not keep her adequately, and had gone out to work. The president put five questions to the jury and Hugo Badalić, the jury foreman, in delivering their answer, declared the defendant not guilty of the charges in relation to all five questions.<sup>160</sup>

Two weeks later, on 22 October 1894, the trial of Josip Vranić was held, who was accused by Ivan Štromar of libel in an article in *Narodne novine*. The defendant asked for pardon and the plaintiff withdrew the charge, thus ending the trial.<sup>161</sup>

A jury trial of delicate content was held on 12 and 14 December 1894 on the basis of a private prosecution by Vladimir Duić against Josip Pasarić. The case had been thrown out during investigations, but the Ban's Table ordered a new investigation. Pasarić was accused of publishing an article in *Obzor* accusing the plaintiff, who was a Serbian Orthodox religious education teacher, of inciting his pupils to hatred against Croats and the Catholic faith. In the Gymnasium of the town of Senj, seven Orthodox pupils, two of whom declared themselves to be Orthodox Croats, were permitted to receive their own religious education and were taught by the defendant. The article accused him of teaching the young people about »Serbianism« during religious education lessons, which were held in his private apartment, and teaching them Serbian secular songs (some with provocative political contents), mocking some elements of the faith and organisation of the Catholic Church and tolerating the trampling of the Croatian crest and burning of the Croatian flag, acts which had been carried out by his younger brother. The defendant argued proof of the truthfulness of his allegations. In the evidence stage of proceedings, some of the witnesses from the investigation stage were heard, i. e. the Orthodox Church Gymnasium pupils who were over 16 years of age, one gymnasium teacher who had led the internal investigation in the Gymnasium, and another witness, who was said to have exerted influence over the pupils in order not to charge the plaintiff. The witnesses' statements were contradictory, and some contradicted their own previous statements in court. The plaintiff's representative objected to the examination of minors

Dr. Štefinović contra »Drau«, in: *Die Drau*, 10. VI. 1894, pp. 2-4; Cassations – Verhandlung Štefinović contra »Drau«, in: *Die Drau*, 11. IX. 1894, pp. 2-4;  
160 Iz suda, in: *Narodne novine*, 26. X. 1894, p. 4.  
161 Iz suda, in: *Narodne novine*, 24. XI. 1894, p. 4.

in the witness stand and played down some of the established allegations against the plaintiff, throwing doubt on some of the witnesses' statements. He showed that the defence had failed to demonstrate a connection between the actions of the plaintiff and wider provocation with Serbian features in the Senj Gymnasium. The defendant claimed that he had been aware of the bad state of affairs in the Senj Gymnasium, and that everyone had convinced him that the previously exemplary state of affairs had been ruined by the arrival of the plaintiff as a religious education teacher. In addition he claimed that the Department of Education of the Croatian government, by withholding financial aid from the Senj Gymnasium, had forced the Senj Orthodox Church parish to reassign the plaintiff, after which the situation had improved. The senate formulated the following questions: (1) Is the defendant guilty of publishing an article which, in containing imaginary and malicious allegations, accuses the defendant of dishonest acts, for which he may experience humiliation or hatred in public opinion? (2) Has the defendant proved the truth of his allegations? The jurors delivered a verdict in favour of the defendant, answering the first question yes by 11:1 and the second no by 10:2.<sup>162</sup>

The next trial also had a political content and was also against Josip Pasarić, who was this time sued by Josip Frank, leader of the Party of the Right. The article which the defendant printed in his newspaper accused the plaintiff of having been bribed by the »Haas and Deutsch« company, of Budapest, and that the paper, *Hrvatska*, the journal of the Party of the Right, had served such policies. The defendant argued proof of truthfulness. He claimed that the conflict had been provoked by the plaintiff by a merciless attack on him in *Hrvatska*, to which he had replied in *Obzor*, with the aim of provoking the plaintiff to sue and publicly prove his allegations. In the incriminating article it was claimed that – similarly to some bribed Hungarian journals – after Frank's trip to Budapest, *Hrvatska* had changed from being a critic of civil marriages to a defender of the same, and that it had begun to display understanding for Hungarian internal policies, particularly those relating to nationalities. Nonetheless, the defendant said that he had not claimed that Frank had been bribed, merely that after his meetings in Budapest Frank's paper had been written in the spirit of the Hungarian press. The plaintiff then withdrew the charge with the explanation that he no longer required anyone to be sentenced, but that he wished the facts to be confirmed and the taint to be removed from his name. The plaintiff was

162 Iz suda, in: *Narodne novine*, 15. XII. 1894, p. 5; Sudnica, in: *Obzor*, 11. XII. 1894, p. 4; Sudnica, in: *Obzor*, 14. XII. 1894, p. 2; Sudnica, in: *Obzor*, 15. XII. 1894, p. 4; Sudnica, in: *Obzor*, 17. XII. 1894, p. 1.

satisfied with the defendant's statement that he had not wished to offend him, and that he had not alleged bribery.<sup>163</sup>

A certain degree of political colouring was evident in the trial of 7 March 1894, or rather 18 April 1894, brought on the basis of a private prosecution by Franjo Mezner against Fridrik (Miroslav) S. Kraus of Vienna, the supposed secretary of the Viennese »Alliance Israelite«, who was originally from the small town of Požega. *Die Drau* had published the book comment of an Austrian compiler on the state of elementary education, in which Kraus presented education in Croatia and Slavonia as in a very poor state. A teacher from Požega reacted critically to this article, and Kraus responded by admitting to writing the article in questions under the influence of memories of the plaintiff as a drunkard and ruffian teacher who abused him continuously, and also accepted bribes. In the investigation, the defendant claimed that he had been an excellent pupil, but then fell into the hands of the ruffian Mezner. Because of Mezner Kraus had come to hate anything Croatian or Slavonian and equated it with brutality and violence. Among the witnesses was the defendant's sister, who supported the defendant's claims, but distanced herself from the accusation of bribery. The court put four questions to the jury.<sup>164</sup> After half an hour of deliberations the jury answered the first and third questions in the affirmative and the other two in the negative, and the court sentenced the defendant to six months in prison.<sup>165</sup>

The next trial was held on the basis of a suit by Gjuro Gašparević against Šandor Medur, who was accused of making allegations that concealed methylated alcohol had been found in the plaintiff's possession, that he had suppressed his own religion for reasons of greed, and that he was a good-

163 Iz suda, in: *Narodne novine*, 14. I. 1894, p. 4; Iz suda, in: *Narodne novine*, 15. I. 1894, p. 5; Sudnica, in: *Obzor*, 14. I. 1894, p. 4; Sudnica, in: *Obzor*, 15. I. 1894, p. 3; Sudnica, *Obzor*, 16. I. 1894, p. 3; Sudnica, in: *Obzor*, 17. I. 1894, p. 3; Sudnica, in: *Obzor*, 18. I. 1894, p. 1.

164 The jury questions were: (1) Has the defendant, in the first incriminating article, falsely accused the plaintiff of immoral and dishonest behaviour, which may lead to him being humiliated and hated in public opinion, and exposed him to public ridicule, thus committing an offence under §§ 488 and 491 Penal Code? (2) Has the defendant proved the truthfulness of the allegations in the article in question? (3) Has the defendant, in the second incriminating article, falsely accused the plaintiff of immoral and dishonest behaviour, which may lead to his being humiliated and hated in public opinion, and exposed him to public ridicule, thus committing an offence under §§ 488 and 491 Penal Code? (4) Has the defendant proved the truthfulness of the allegations in the article in question? Iz suda, in: *Narodne novine*, 19. IV. 1894, p. 5.

165 Iz suda, in: *Narodne novine*, 7. III. 1894, p. 5; Iz suda, in: *Narodne novine*, 18. IV. 1894, p. 5.

for-nothing, malicious, etc. The defendant argued proof of truthfulness, but according to the report in *Narodne novine*, the witnesses made statements which were different from those he expected. The jury answered two questions by declaring the defendant guilty and unable to prove the truth of his allegations. He was sentenced to prison for two months.<sup>166</sup>

The next recorded case was on 7–8 May 1896 and was a private prosecution by Antun Pšik against Leopold Selinger. In two articles, the plaintiff had been accused of handling the finances of the fire fighting association, without account or control, which had been earned by selling filtered water and collecting garbage. The defendant argued that he had written the article at the request of individual members of the fire fighting society, and referred to the society's accounts. During the trial nine witnesses were heard. The jury was given the following questions: (1) Is the defendant guilty of the incriminating offence in the first article? This was answered unanimously in the affirmative. (2) Has the defendant succeeded in providing evidence to support his claims in the first article? This was answered with 1 yes and 11 no. (3) Is the defendant guilty of an offence in the second article? This was answered unanimously in the affirmative. (4) Has the defendant succeeded in providing evidence to support his claims in the second article? This was answered unanimously in the negative. The jury withdrew for deliberations at noon and then declared the defendant guilty. After that, the plaintiff's representative analysed the aggravating and mitigating circumstances and proposed a strict sentence for the defendant, the payment of a fine and the forfeit of security from *Die Drau*, the destruction and prohibition of further distribution of the incriminating issue and the publication of the verdict in the next three issues of *Die Drau* and *Slawische Presse*. The defence claimed that the defendant had been misled by false reports. The court sentenced the defendant to three days in prison and rejected the other sanctions proposed.<sup>167</sup>

166 Iz suda, in: *Narodne novine*, 17. V. 1894, p. 5.

167 Iz suda, in: *Narodne novine*, 8. V. 1896, p. 5; Gerichtshalle. Nach dem Schwurgerichte, in: *Die Drau*, 10. V. 1896, p. 6.



## VIII Trial by jury in Croatia and Slavonia, 1903–1912

### I The trial by jury and press legislation 1903–1918

The departure of Khuen-Héderváry coincided with other important political events in Europe and the Habsburg Monarchy, and in Croatia and Slavonia itself, which would lead to a significant political turnaround in 1906. At the elections for *Sabor* in that year, the Croatian-Serbian Coalition won with a programme of liberal and democratic reforms. This was a coalition of five minor parties, the essential elements of whose manifesto were the unification of Dalmatia with Croatia and Slavonia, the moderate liberalisation and democratisation of Croatian politics, and co-operation with Hungarian parties in opposing the Austrian policy of »Drang nach Osten«. The coalition reached a compromise with the Central Government and entered the Croatian government. However, by 1907 the Croatian-Hungarian partnership had ruptured and the Hungarian side again attempted to seize control and hinder Croatian autonomy.

One of the first, most important measures taken by the new government was the lifting of the suspension of trial by jury in January 1907. The lifting was explained by stability within the political environment, i. e. the cessation of the conditions under which the suspension had been introduced. The new government, in a *Sabor's* debate, in contrast to the former government, expressed a particularly positive attitude towards juries. Accordingly, the government announced steps towards broadening freedom of the press and extending the competence of juries. The Ban emphasised the importance of juries in safeguarding civil and constitutional liberties and announced the drafting of law on citizens' rights, which would include the right to trial by jury. The extension of the competence of juries to include political and serious offences was also announced. However, these goals were not to be fulfilled by this government.<sup>168</sup>

<sup>168</sup> Zakon od 30. prosinca 1906. kojim se stavlja izvan snage zakon od 26. lipnja 1901, kojim se privremeno obustavljaju neke ustanove zakona o kaznenom postupku u tiskovnim poslovima od 17. svibnja 1875 [Law of 30 December 1906 Removing from Force the Law of 26 June 1901, Temporarily Suspending Certain Provisions of the Law on Penal Procedure in Publishing Offences of 17 May 1875], in: *Sbornik zakona i naredaba valjanih za kraljevine Hrvatsku i Slavoniju, godina 1907* [Acts and Provisions in Force in the Kingdom of Croatia and Slavonia, 1907], Zagreb 1907, pp. 1–2 (hereinafter: *Zakoni i naredbe 1907*). The debate on this law and the government's reasons for passing it, in: *Stenografski zapisnici i prilozi Sabora kralj. Hrvatske, Slavonije i Dalmacije petogodišta 1906–1911. od 1. do uključivo XXIX. saborske sjednice od 9. svibnja do 18. prosinca 1906. Broj priloga od 1. do 28 – Svezak 1 – godina 1906*

The Law on Amendments to the Laws on Printed Matters [*Zakon o promjeni tiskovnih zakona*] of May 1907 liberalised the regime towards the press. The opposition criticised these reforms as too moderate, saying they were a mockery of the pre-election promises made by the Croatian-Serbian Coalition. Among more significant amendments was the explicit prohibition of security. From the Austrian Law on the Printed Matters of 1868, the German system of lack of due care on the part of persons subsidiary responsible, as opposed to the authors of offending articles (i. e. editors, publishers, printers and distributors) was adopted. At the level of trial by jury, there was a marked broadening of the competence of jury courts, which expressed the diametrically opposite leanings of this government, compared to the previous one. Petty offences concerning lack of due care, which were prosecuted on the grounds of official duty, were transferred from the competence of county courts to the jury court. Apart of that another jury court was formed, in Osijek, the second largest city in Croatia, and the government was authorised to delegate jury competence to another jury court in cases prescribed by law. Furthermore, the authorisation of the police to confiscate printed material was restricted to strictly defined cases. Paragraph 11 of the Law on the Printed Matters, which had allowed the destruction of printed material with criminal content, even if a case was rested or the defendant declared not guilty, was rescinded. However, the public prosecutor could propose that the court, without prosecuting or trying an individual, could order the destruction or prohibit the distribution of printed material. The assumptions for this were: that the printed material had been seized in cases in which it was possible to impose such measures; if the offender was unknown, but penal liability in the sense of § 25 of the Law on the Printed Matters (lack of due care of editor) was not proposed; if the offender was abroad or his place of residence was unknown; if there were circumstances as a result of which the offender's culpability would be removed; or if the offender enjoyed immunity from prosecution. In these cases, the publisher or publishing house was summoned to the main trial, and given the rights appertaining to the defendant. If these persons were unknown or abroad, they got a defence attorney by the state. The court could order the destruction and prohibition of the distribution of printed material, or reject the demand. Another significant new element was in relation to the privileged regime of serving sentences. The court could order a person guilty of press offences of a political nature to serve his sentence in a more favourable regime. The Ban's

[Minutes of the Sabor of the Kingdom of Croatia, Slavonia and Dalmatia, 1906–1911, Vol. II, Zagreb 1907, pp. 245–254 and Appendix 3/1.

decree determined that a place of »honourable custody« for people so convicted be set aside in a separate building in the prison in Mitrovica, which was governed by the president of the county court in Mitrovica.<sup>169</sup>

However, in spite of the government's conviction that they had thus made a huge step forward, opposition representatives criticised them fiercely for the limitations of the reform. One opposition representative complained that the government had made even stricter institutes adopted from Austrian legislation, and his main objection was to the preservation of »objective proceedings« and the possibility of prohibiting the distribution of newspapers, even though it had been reduced. He was also dissatisfied with the preservation of the former system of selecting jurors, with its unnecessary conditions (30 years of age and taxable status of 20 florins). The government representative promised that in future a wider range of persons would be included in juries. However, he justified keeping private prosecutions within the remit of the regular courts by referring to the experiences of other countries, while claiming that banning newspapers had proved to be a »necessary evil« in the transition from a lack of liberty to a state of liberty. The government representative also said that Croatia could not blaze a trail in front of Austria and Hungary, since it was normal for new areas to be taken primarily by the strong. He entered into polemics with the opposition representative by saying that the old order of »objective proceedings« had been altered, and that every prohibition of the distribution of printed material would now be adjudicated by juries. He admitted that the possibility still existed for the public prosecutor to manipulate trial by jury by imposing prohibitions on the distribution of printed material in the regular courts in »objective proceedings«. However, the government representative pointed out the need to ban the distribution of newspapers in cases in which there was no defendant. He said that the possibility of abuse would be avoided by introducing passive interested parties in »objective proceedings«, who could propose the trial for the proceedings to be turned into »subjective«.<sup>170</sup>

169 Zakon od 14. svibnja 1907. o promjeni tiskovnih zakona, [Law of 14 May 1907 on Amendments to the Laws in Publishing Matters], in: Sbornik 1907 (n. 168), pp. 356–396; Naredba kr. hrv-slav-dalm. zem. vlade, odjela za pravosuđe, od 27. lipnja 1907 [Decree of the Croatian Autonomous Government, Department of Justice, 27 June 1907], in: Sbornik 1907 (n. 168), pp. 395–396.

170 *Stenografski zapisnici i prilozi Sabora Kralj. Hrvatske, Slavonije i Dalmacije petogodišta 1906–1911. od L. do uključivo LXXII. saborske sjednice od 1. ožujka do 12. prosinca 1907. Broj priloga od 1. do 19 – svezak II – dio II – godina 1907.* [Minutes of the Sabor of the Kingdom of Croatia, Slavonia and Dalmatia, 1906–1911, Vol. II], Zagreb 1907, pp. 678–718.

Amendments to the press and jury legislation of 1874 show the clear connections between the composition and political leanings of the Croatian government and the content of legislative change (Table 9).

Table 9: Composition of the *Sabor* and the Croatian Autonomous Government, and legislative changes

Sabor and the Croatian Autonomous Government: the ruling party	Legislative changes
Ivan Mažuranić and the National (Liberal) Party 1873–1880	1875 – Law on the Printed Matters – Law on Penal Procedure – Law on Penal Procedure in Publishing Offences – Law on Compiling List of Jurors for Jury Courts
Karoly Kuen-Héderváry and the National (Unionist) Party 1883–1903	1884 – abolition of the principles of the separation of judiciary and administration and the tenure of judges' – suspension of trial by jury for three years 1887 – suspension of trial by jury for two years 1890 – reinstatement of trial by jury 1897 – restriction of the competence of juries 1903 – indefinite suspension of trial by jury
Croatian-Serbian Coalition 1906–1907, 1917–1918	1906 – reinstatement of trial by jury 1907 – liberalisation of the Law on the Printed Matters (abolition of security) – establishment of a jury court in Osijek

Overall, the entire re-liberalisation of press and jury legislation in 1906 and 1907 represented a significant improvement in the situation, which opened up the perspective of further development. However, actual conditions were not in favour of that. Previous suspensions and limitations to jury competence had moved in the direction of »desuetude« and political crises and the outbreak of the First World War would lead to new restrictions. First, a political crisis in Croatia and Slavonia in 1912 resulted with a decree issued by the King's Commissioner on 2 April 1912 which introduced preventive censorship; it was lifted on 27 November 1913.<sup>171</sup> The next year, when the

171 Naredba kraljevskog povjerenika u kraljevinama Hrvatskoj i Slavoniji, kojom se određuju privremene preventivne mjere glede tiskopisa [Decree of the King's Commissioner in the Kingdom of Croatia and Slavonia, Defining Temporary Preventive Measures in Relation to the Press], in: *Narodne novine*, 5. IV. 1911, p. 1; Naredba kraljevskog povjerenika u kraljevinama Hrvatskoj i Slavoniji,

First World War broke out, two decrees, issued by the Ban on 27 July 1914, introduced police control over the printed material and the abolition of trial by jury. Both were lifted by another decree issued by the Ban on 30 October 1918<sup>172</sup> in another political framework, within the short-lived, transitional State of the Slovenes, Croats and Serbs, founded on 19 October 1918. In the Kingdom of the Serbs, Croats and Slovenes, proclaimed on 1 December 1918, most of the regulations from civil, penal and procedural law which were caught up in individual »legal regions« would remain in force. But, as we have already noted in the overview of constitutional development at the beginning of this study, the participation of laymen in trials was swiftly abolished and trial by jury for publishing offences disabled by a provision of the Constitution of the new state in 1921.

## 2 Trial by jury in judicial practice, 1903–1918

According to the press reports, it seems that in spite of the more liberal atmosphere and the establishment of a second jury court, only two cases of jury proceedings were recorded between 1903 and 1918. One case was tried in Osijek in 1909 and one in Zagreb in 1914, while one jury trial scheduled to take place in Zagreb in 1911 was probably not held. Both the completed trials were initiated by the public prosecutor and their content was entirely political in nature. The juries delivered not guilty verdicts in both. Of course it is important to note that both proceedings were held in the circumstances of sensitive, strained relations, both internally and in international politics, particularly in regard to Austria-Hungary and Serbia, given the crisis caused by the Austrian annexation of Bosnia and Herzegovina and the outbreak of the First World War.

kojom se stavljaju izvan snage naredbe o privremeno izdanim preventivnim mjerama glede tiskopisa [Decree of the King's Commissioner in the Kingdom of Croatia and Slavonia, Invalidating the Decree Defining Temporary Preventive Measures in Relation to the Publishing Matters], in: *Narodne novine*, 29. XI. 1911, p. 1.

<sup>172</sup> See the Naredba bana od 30. listopada 1918 kojom se stavlja izvan snage banska naredba od 27. srpnja 1914 o obustavi djelatnosti porotnih sudova [Ban's Decree of 30 October 1918, invalidating the Ban's Decree of 27 July 1914 on the Cessation of Jury Activities] and Naredba bana kojom se stavlja izvan snage naredba bana od 27. srpnja 1914. o tisko-redarstvenom nadzoru povremenih tiskopisa i drugih tiskotvora [Ban's Decree invalidating the Ban's Decree of 27 July 1914 on Police Control of the Periodically Printed Materials and Other Printed Matters], in: *Zbornik zakona i naredaba valjanih za Kraljevine Hrvatsku i Slavoniju. Godina 1918* [Acts and Provisions in Force in the Kingdom of Croatia and Slavonia, 1918], Zagreb 1919, pp. 453, 454.

At the beginning of June 1909 the first trial before the jury in Osijek was scheduled, in which three defendants, who were almost certainly ethnic Serbs (Gliša Gadić, the lawyer Svetozar Popović and Milan Ilkić), were accused of breaching the peace and public order, that is, a violation of § 65 of the Penal Code, by writing an article entitled »Manipulating the Constitution«, in the newspaper *Srbska misao*, based in Srijemski Karlovac. The newspaper ceased publication before the trial started. For unknown reasons, a week before the trial, the defence attorney, Rein, resigned from the defence. The trial was held in the largest courtroom, due to great interest on the part of the townspeople. After the jury was selected, the indictments were read out and then four witnesses (Brandeis, Kopčić, Dr. Bidosav Popović and Florijan Marks) were heard. They testified unanimously that the first and second accused had not known of the contents of the article prior to publication. Upon that, the prosecution representative withdrew the charge against those two. After half an hour of deliberations, the jury delivered a verdict of not guilty on the only remaining defendant, at which the public broke into applause.<sup>173</sup>

The first jury trial after the lifting of the suspension was not held before the Zagreb jury until 1911, and was against Nikola Vukojeć, editor of *Slobodna riječ*. This trial was scheduled for the May of that year, but was obviously not held, because it was rescheduled for November. It was postponed again because the president of the court went down with acute malaria. It is not clear whether the trial was ever held, and it is quite possible that statute of limitations was enforced.

The jury trial in the second case was held before a jury in Zagreb on 25 May 1914, shortly before the suspension of trial by jury in July, against Vjekoslav Kokolj, editor-in-chief of *Slobodna riječ*, the newspaper of the Social Democratic Party. The subject of the trial was writing of a political nature published on 1 and 9 December 1911 and on 5 January 1914. The main trial began at 8 a.m. and at the outset, the president of the chamber warned the jurors to judge fairly and swore them in individually. The defendant denied guilt, saying that the matter was one of public criticism, and not a criminal offence, and complained that the prosecution had taken quotations out of context. The evidence proceedings consisted of reading out the incriminating articles, after which the public prosecutor explained the charge, while the defendant and his counsel refuted his claims. The jury withdrew for deliberations at noon and at 2 p.m. delivered a verdict of not

<sup>173</sup> Prva razprava pred porotnicima u Osijeku [First Jury Trial in Osijek], in: *Narodne novine*, 1 VI. 1909, p. 5; Die erste Verhandlung vor den Geschworenen in Essek, in: *Die Drau*, 2. VI, 1909, p. 3; Zurückgelegte Verteidigung, in: *Die Drau*, 22. VI. 1909, p. 4; Gerichtshalle, in: *Die Drau*, 30. VI. 1909, p. 5.



guilty, answering all the questions put to them by the senate in the negative so the defendant was acquitted.<sup>174</sup>

It is hardly likely that the small number of trials held in tense political circumstances bear witness to a liberal atmosphere; rather it is more realistic to explain the lack of prosecutions at that time as a consequence of low importance of trial by jury. The reason for that lay less in the problems characteristic of the institute of trial by jury and more in the politically conditioned relationship to trial by jury which existed throughout the lifetime of the institution. The consequence of this conditions can be seen in the fact that the first, and possibly the only jury trial in Osijek, was established two and a half years after the jury court was established. To that extent, the establishment of a jury court in Osijek can be interpreted as a politically conditioned move of doubtful rationality, given the previously rather small number of cases in the area of the jurisdiction of that court. The intention for the second established jury court to stimulate a larger number of trials by jury in liberal political and legal conditions was a move motivated by action. However, it had little chance of success following the persistent marginalisation of the institution. The basic reason for the limited success of trial by jury in the Croatian legal system lay in the political determinants of its practical appearance. The conceptual features and failings of the institution were of complementary, but second rate significance, as were the lack of tradition and the lack of readiness of society for trials by jury.

IX *Trial by jury in the Croatian legal system: transfer, irritations and the context*<sup>175</sup>

Trials by jury, apart from a fleeting appearance in 1849, were introduced into the Croatian legal system in 1875, following the Austrian legislative model.

174 Sudnica, in: *Narodne novine*, 2. V. 1914, p. 5; Sudnica, in: *Narodne novine*, 25. V. 1914, p. 5; Prva porotna rasprava [First Jury Trial], in: *Obzor*, 25. V. 1914, p. 1.

175 This interpretation of the development of the trial by jury in Croatia and Slavonia is based in part on the tenets of Gunther Teubner on the legal irritants and development of legal institutes in co-evolutionary process of adaptation of their legal and social modes. See Gunther Teubner, Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences, in: *The Modern Law Review* 61 (1998), p. 11–32. See also our interpretation of transfer and development in the Croatian legal system of the General Civil Code, a more significant »legal irritant« from the Austrian legislative system. Dalibor Čepulo, Tradicija i modernizacija: »iritantnost« Općeg građanskog zakonika u hrvatskom pravnom sustavu [Tradition and modernisation: the »irritability« of the General Civil Code in the Croatian legal system], in: Igor

The introduction of trial by jury in Croatia and Slavonia was part of the spreading of that institute in Europe and part of extensive liberal reforms within the Croatian judiciary in the 1870's. Among these reforms, of complementary importance were grants of the judicial independence from the government's influence, the introduction of trial by assessor for petty offences in first instance courts, and the abolition of the principle of estimation of evidence defined by law.

Juries were introduced into the Croatian legal system, which had no previous tradition of a lay judiciary, or the necessary experience, in inadequate social circumstances. The wider competence of juries under Austrian legislation was narrowed down in Croatia and Slavonia to competence only in cases of publishing offences. Apart of that, only one jury was actually formed, with a second being formed thirty years after. Trial by jury in Croatia and Slavonia was defined as a special institution and regulated through *leges speciales*, in contrast to the Austrian legal system, in which trial by jury was regulated as the institute of general penal procedure. Modifications to the Austrian model were made with the aim of adapting it to social conditions and the political direction of legislation in Croatia and Slavonia. An important reason was scepticism of the king and the Central Government toward trial by jury. They both wanted to keep political offences outside the competence of Croatian juries and maintain indirect line of control of the political sphere in Croatia and Slavonia. This was much easier to achieve by means of professional judges, who were to a certain extent subject to the influence of the Croatian government, as opposed to juries, who were difficult to control and who were open to the influence of public opinion. Such position of trial by jury clearly demonstrates limits of the Croatian autonomy as well as limits of the social and political environment.

The fundamental motivation for introducing of trial by jury into the Croatian legal system was political in nature and was intended to provide a counter-balance to the influence of the government, rather than advanced method of arriving at the truth. To that extent, the fate of juries was invisibly sealed by being bound to the question of judicial independence from the government. At this level, a marked political difference of opinion on juries would continue throughout the existence of the institution. The government and the leading political elite would try to avoid juries and limit their powers, even abolishing the institution of trial by jury, while the opposition, regardless of their differences, would put great effort into upholding trial by jury.

Gliha et al. (ed.), *Liber amicorum Nikola Gavella. Građansko pravo u razvoju* [Liber amicorum Nikola Gavella. Civil law in Development], Zagreb 2007, pp. 1–50.

Internal politics and, indirectly, foreign policy, played a major role in the fate of trial by jury. From the beginning, juries showed clear tendency to acquit thus denouncing charges of the public prosecutor. This was the main reason why the public prosecutor attempted to bypass juries and use other institutions of publishing and penal legislation, through which newspapers and editors could be sanctioned before professional judges. In practice, the public prosecutor's office concentrated on avoiding and marginalising trial by jury. For this reason, right from the beginning there was a reserve expressed towards juries and the threat of abolition was always present, along with criticism of the weakness of the system and its inappropriateness in Croatian circumstances. This restricted jury competence »irritated« the Croatian political system from the start. The manoeuvres of the public prosecutor's office to avoid trial by jury, as a prosecuting tactic, were intended to neutralise that irritation.

However, not even the effects of this manoeuvring satisfied the expectations of the public prosecutor or the government following political changes in 1883. The period between 1883 and 1903 was marked by authoritarian control of political processes in Croatia and Slavonia, with the aim of restricting political movements campaigning for the realisation of the Croatian autonomous rights and the extension of autonomy. In such circumstances, a radical response would be made to the irritation caused by trial by jury. The tactic of avoiding juries within the existing regulatory framework did not entirely neutralise the irritation caused by trial by jury. The irritability of the political system was to be reflected on the legal side by the five-year suspension of juries and the permanent abolition of the important guarantees of judicial independence in 1884. On the political front, these changes helped stabilise the authoritarian government and neutralised the opposition press, and then created the circumstances in which trials by jury could be reinstated in 1890. However, in practice the public prosecutor would continue to avoid trial by jury, although the number and proportion of private prosecutions, most of which had no political content, grew. From the government point of view, even this state of affairs was unsatisfactory. Thus in 1888 the government carried out reforms restricting the influence of juries by transferring competence for private prosecutions to professional courts and abolishing trials by assessor in district courts. Although the reasons given for this were primarily practical, backed up by doctrinaire and comparative arguments, the most significant factor was politics. Political unrest was again the reason given for the new suspension of juries in 1903, as a potential forerunner to their complete abolition.

The parallel evolution of the social and legal aspects of the institute of trial by jury thus continued up to the first decade of the 20th century. It consisted

in neutralisation of the mentioned irritation, by the tactic of avoiding juries in court practice, then by the formal suspension of the institute, and then by imposing formal restrictions upon it. The political environment in which this was played out was marked by the desire to abolish juries entirely, but there were constitutional and political considerations which made this impossible. Yet in fact, trial by jury were the subject of foul play right from the start and existed only as a kind of conditional institution. The lengthy, politically motivated suspensions of trial by jury were accompanied by criticism and challenges of that institute, and trials by jury were shown to be a marginal institute. The very fact that the jury trials took part very rarely was bound to lead to their bypassing. To that extent, it can be said that the failure of trial by jury in Croatia and Slavonia was primarily the consequence of political influence, starting with the reduced number of courts, to the treatment of the institute (avoidance and suspension). Of course the conceptual shortcomings of the institute and other limiting factors were also involved such as the social and educational structures and the lack of tradition.

The fact that attitudes towards trials by jury were marked primarily by political motivation, in spite of the serious conceptual failings of the institute, can be clearly seen in changes in the liberalised political scene following 1906. At that time, trial by jury was reinstated in a somewhat extended form, and a second jury court established. Thus, the pendulum returned from the tendency towards total abolition of juries towards their moderate affirmation. That positive tendency in social and legal reality fell onto hard ground, which already contained the stones of previous experiences of rejecting or bypassing trial by jury. The First World War put an end to that irritant and prevented it from carving a groove in the Croatian legal system in the potentially regular political circumstances. Of course, it was evident that among Croatian legal experts there was a leaning towards the inclusion of trials by jury in the Croatian legal system. However, the fate of the institution in the newly-formed Yugoslav state was shaped, like the fate of the lay judiciary, by political factors. Juries and lay participation in the judiciary were abolished primarily on account of their regional nature within a unitary, centralist state, and because they represented a potential source of »opposition« in relation to professional judiciary that was not protected from the government's influences.

During this course of events, it is possible to detect certain features of trial by jury in Croatian legislation and practice. Some procedural aspects are more difficult to analyse, primarily because the sources upon which such an analysis is based are extremely limited, yet it is possible to highlight certain elements.

The tendency to avoid juries in practice is very noticeable. The primary reason for this is the specifically »pro-opposition« inclination of most juries.

The fact that they were highly receptive to public opinion also played a part, as did the fact that they based their decisions on a substantive type of rationality. We have shown in great detail the tactics of the public prosecutor, in resorting to so-called »objective proceedings«, and it is possible that for these reasons, potential private prosecutors refrained from pressing charges.

A further clear feature of judicial practice was basing evidence proceedings primarily on investigating reports and the reluctance of judges to hear witnesses in court. This conduct was allowed by the provisions of the Law on Penal Procedure, but was also a reflection of the unwillingness of professional judges to call additional witnesses or postpone proceedings. Given the nature of trial by jury, which were based on the judgment of jurors, who were expected to reach conclusions based on personal conviction, this practice must have represented a negation of the principle of material truth. The more so since in proceedings, the defence often resorted to the tactic of proving the truthfulness of incriminating allegations. Sometimes the court refused to allow this line of defence, for legal reasons, or the nature of the proceedings in questions, and sometimes the results of taking such a line of defence were unsuccessful. For all these reasons, basing evidence proceedings on investigating reports was shown to be a serious flaw – the defence would object to such methods and demand that witnesses are heard, or propose new ones, and the court would refuse. Furthermore, the hearing of the parties and a few witnesses was usually only due to the efforts of the defence and the prosecution, with the minimal intervention of the judge. His role was to »maintain discipline« during the politically coloured speeches made by the defendant and the plaintiff. In such politically coloured proceedings, the emphasis in general was on the political content of the problem, and to a certain extent the legal aspect was ignored. Thus, some proceedings took on the features of a political platform. The fact that defendants and plaintiffs were all too ready to engage in political debate must have been for the purpose of winning over jurors with arguments of a non-legal nature, such as mentioning the existential status of the defendant. So it is probable that closing statements were the most important part of proceedings. The representative for the defendant and the president of the senate would participate reactively, but moderately. We should mention that we have gained this impression from the fact that our basic sources were newspaper reports, which by nature tended to concentrate on the political, rather than the legal content of proceedings.

In cases in which prosecution had been initiated by the public prosecutor, juries were clearly prone to acquit. As far as we have been able to discover, judging from newspaper reports, it seems that in some cases, which were not political in nature, juries arrived at verdicts of not guilty on the basis of

general »legal intuition« concerning the entire case, rather than on the basis of assessing the evidence. For this reason, in closing arguments the defence would emphasise the possibility of acquittal based on the possibility of a shadow of doubt remaining, and would often mention the serious social consequences which convictions would have on the defendant and his family. Another reason for the tendency to acquit was the schedule of harsh sentences prescribed in regulations, but also evident in judicial practice. It was also characteristic for jury deliberations to last only a short time, which does not indicate a serious consideration of the results of such short, or fairly short, deliberations.

The formal preconditions for the procedure of forming a jury were guaranteed by representation from the middle class. The actual make-up of juries shows the largest proportion of craftsmen, and somewhat fewer intellectuals. The primary stage of jury selection depended on the administrative authorities, but jury verdicts do not point to the political alliance of jurors with the ruling regime. The basis for this gap between juries and the line held by the regime is to be found in the great number of candidates in the basic register, in selection by drawing lots and in exercising the right to exclude candidates in the final phase of jury formation. This all meant that jury formation was independent of the influence of the government.

It seems that juries usually had a mixed ethnic composition, with the highest proportion of Croats and a noticeable proportion of Jews, who were particularly over-represented in terms of their numbers in the general population of Zagreb. This was probably on account of their above-average level of education and their social and professional profile, which matched the criteria for jurors well. Frequent criticisms of the low quality of juries because of their level of education or the professional background of jurors seem mere bluster. Nonetheless, we should bear in mind that such criticism came from those in the ruling political echelons who were in any case opposed to trial by jury. The professional profile of twelve-man juries which brought verdicts on the basis of a two-thirds majority does not seem to indicate that the situation was so bad.

Information and rough guesses concerning ethnic representation among trial participants reveals a prevalence of Croats, but also noticeable representation of other ethnic groups, with a good proportion of Jews and somewhat fewer Serbs, among all those involved in proceedings.

The cases we have analysed do not provide a basis for concluding that there was any discrimination practised in trial by jury against other ethnic groups, i.e. Serbs, as was the complaint of several government representatives and Serbian representatives supporting the government. In fact one would have expected that kind of discrimination, given jury practice in other countries



and the public opinion in Croatia and Slavonia at particular times. This can be explained to a great extent by the proximity of the ethnic Serbs to the Croatian government, which meant they were not systematically hounded by the regime. However, there were very few private prosecutions brought by Croats against Serbs as well. The answer to questions rising from such practice is in focussed research into individual cases within the wider context in which they took place, which, given the small sample, would even then probably not provide definite, convincing answers. Of course, our widely conceived research at that level is incomplete, so we must leave the quest for more defined conclusions to more precisely directed efforts. Nonetheless, one common level of explanations does lead to one conclusion, which we have already mentioned, and that is that for various reasons, mostly political, juries did not succeed in taking root in the Croatian legal system.

#### X Conclusion

Trial by jury was introduced into the autonomous Croatian legal system in 1875 by adapting the Austrian model. The shaping of the institute was affected by internal and, indirectly, external factors. In contrast to the Austrian model, trial by jury in Croatia were restricted by their position in the judicial system, the scope of their competence, the number of courts and the fact that procedural provisions were made stricter to some extent. These restrictions were implemented in order to adapt to the actual conditions in Croatia and Slavonia, in accordance with the liberal political leanings of Croatian legislators. They were sceptical of the socially limited environment and the political limitations coming from governments in Vienna and Budapest. The public prosecutor attempted to neutralise the irritation which trial by jury caused in politics by using the tactics of avoiding trial by jury and transferring the centre of gravity of repression to the professional courts. Since this method was inadequate in controlling the opposition press in the authoritarian political sphere which succeeded after 1884, trials by jury were neutralised by suspensions and the formal limitation of the institute. However, liberalisation of the prevalent political orientation led to reaffirmation of trial by jury. Thus the development of trial by jury in Croatia and Slavonia took place within the parallel evolution of the legal and social, or rather political aspects of the institution and in the face of authoritarian attitudes towards trials by jury. The key influence on the fate of trial by jury was the political factor, while legal considerations, i.e. the conceptual limitations of the institute, were of secondary importance. The social determinants (social structure, level of education and the lack of a tradition of lay trials) were of indirect importance. The potential for trial by jury to continue developing was

cut short by the First World War and all forms of lay trials were extinguished in the new Yugoslav state. In judicial practice proceedings conducted before juries were characterised by the tendency to use investigating reports, with little importance attached to witness statements during the main trial, the tendency of the defence to argue the truthfulness of incriminating allegations, short jury deliberations, the prevalence of acquittals and the imposition of very harsh sentences. Juries were composed mostly of craftsmen and intellectuals, and were multi-ethnic, with a prevalence of Croats, a good proportion of Jews and somewhat fewer Serbs. Although government and ethnic Serbs representatives in the *Sabor* supported the suspension and restriction of juries, complaining of the systematically anti-Serb orientation of jurors, the cases we have analysed from judicial practice provide no basis for such a conclusion. By all means, study of transfer and functioning of the jury trial in Croatian legal system gives a complex picture of the institute as well as its environment.

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