

WWJMRD 2017; 3(7): 323-327
www.wwjmr.com
Impact Factor MJIF: 4.25
e-ISSN: 2454-6615

Dragos Ionut ONESCU
Strasbourg University/Babes-
Bolyai University, Cluj
Napoca, Romania

Death penalty

Dragos Ionut ONESCU

Abstract

Capital punishment is the most severe form of repression that has ever existed. The theme of this type of sanction has been debate since ancient times, as well as personalities Cicero, Caesar or St. Augustine, however, barely beginning in the 18th century with the writings of Cesare Beccaria, States have begun to pay attention to the humanistic theories of what campaigning in favour of waiving the death penalty.

The death penalty is prescribed by law of killing a man as a punishment for a crime, for which he was found guilty. It is usually preceded by a judicial process, which ends with a sentence of condemnation to death. This is implemented through the execution.

In the present paper I analyzed the reasons pro and contra to death penalty carried out by sociologists at the global level and I tried to realize a profound conclusion regarding this issue.

Keywords: death penalty, crime, global

Introduction

From the historical point of view, the execution of criminals and political opponents was a common practice for almost all companies. Now, capital punishment has an area of using more isolated, but it is still practiced.

Life is an essential attribute of man which was awarded for the development of all levels. Within the community in which he lives is appropriate to define complex rules by which that community to organize, operate and, in this way, is likely to develop. Lack of well-defined at a company level would lead to an instability of the relationship created between its members, to confusion regarding the consistency and coordination of the actions carried out. Therefore, a well-defined legal framework in any field is absolutely necessary. Thus, Hegel argues that "there should be no punishment for that offense produced a bad, but because through it he had raped right as right".¹

In his conception of Jean Jacques Rousseau, the necessity of application of punishment in case of violation of a rule previously belonged to the company, as a result of the Pact fundamentally tacit agreement between it and its members.

In Italian readers (Lambroso, Ferri), application of punishment "social defense against crime follows the offender", the concept was taken up and reconsidered after World War II. According to another point of view expressed in the legal literature, there are no legal differences between the notions of "human rights" and "public freedoms", which are regarded as having the same content. Having regard² to the terms used in the field of human rights, in the literature have examined in particular the concepts of "human rights" and "freedoms". According to one opinion, it makes the distinction between net; thus, it is considered that the concept of "human rights" has a broader meaning, representing a set of rights inherent in the very nature of the human being, and public freedoms correspond to those human rights that the State recognizes and ensures the exercise of its legal system. Sharing this view, Frederick Sudre³ appreciate that only public freedoms would belong to

Correspondence:
Dragos Ionut ONESCU
Strasbourg University/Babes-
Bolyai University, Cluj
Napoca, Romania

¹ HEGEL, G., W., F., *Principles of the philosophy of right*, IRI Ed, București, 1996, p. 104.

² RIVERO, Jean, *Les libertés publiques*, PUF, Thémis, tome I, 8^{ème} édition, 1997, p. 22-28.

³ SUDRE, Frédéric, *Dreptul european și internațional al drepturilor omului*, Ed. Polirom, Iași, 2006, p. 12.

positive law, as legal realities", human rights⁴, natural rights, it belongs to the field of ethics.

Humanistic principles formulated in the Treaty formed the basis for the drafting of important articles in the „Declaration of the rights of man and the citizen of 1789”. Everyone has the right to life, freedom and inviolability of the person.⁵ „The right to life is inherent in the human person. This right shall be protected by law. No one may be deprived of his life arbitrarily”.⁶

A State may make provision for the death penalty for acts committed in time of war or imminent danger of war, in accordance with its provisions. Do not allow derogations from this protocol.⁷

There is in the world a dominant trend in legal documents, political, sociological of elimination of the death penalty, her cruelty that rarely proved effective, but never, considering the fact that there have been serious miscarriages of Justice in history.

Not to violate human rights in a situation in which death "resulted from a necessary recourse to force"⁸ as in the following situations: to ensure the defense of any person from unlawful violence, to make a lawful arrest or to prevent the escape of an owned, to quell violent disturbances legally or an insurrection.

For constitutions which provide for the death penalty, the Pact recommended in the article (), and the Convention in article 2, where the death penalty has not been abolished, to pronounce a sentence of conviction only for the most serious crimes, in accordance with the law in force at the time of committing the crime. Death sentence must be made by a competent tribunal, and sentenced to have their right to seek pardon or commutation of punishment. It also may not be sentenced to death persons not having reached the age of 18, and pregnant women. When capital punishment is applied, it runs so as to cause minimum possible suffering.⁹

Defending the right to life of the State and the legislature. Thus was drafted Decree-Law No. 6/1990 on the abolition of the death penalty for altering and repealing certain provisions of the penal code and other regulatory acts this legal act is contrary to the laws of the Communist era. According to statistics, between 1980 and 1989, were condemned to death 58 people.¹⁰

If he'd kept the death penalty in Romanian legislation and after the revolution of 1989, could have been sentenced to

death about 100 offenders who have committed particularly serious offences under conditions rising crime in Romania.¹¹

Being a fundamental human right which occupies a high position in the hierarchy of values, the right to life is regulated, as is natural, and at the level of the fundamental act.

Thus, the Constitution of 1991 revised in 2003 to include the relevant provisions in this field. Art. 22 provides and guarantees the right to life and to physical and mental integrity, inter alia, also banning the death penalty. In the same vein, article. 11 States that ratification of international treaties concluded by Romania shall determine their inclusion in national legislation. That article should be read in conjunction with article 5. 20 of the Constitution contains special provisions concerning interpretation and application of the constitutional provisions on fundamental rights and freedoms of citizens in accordance with the Universal Declaration of human rights, the Covenants and other treaties to which Romania is a party. In case of discrepancies between the latter and national legislation shall apply to foremost international regulations, except where the Constitution or national laws contain provisions which are more favorable.¹²

Internationally, Romania has expressed consent to comply with the provisions of the International Covenant relative to civil and political rights (1974), of the Optional Protocol to the International Covenant relative to civil and political rights aiming at the abolition of the death penalty (1991), of the European Convention on human rights (1994) and of the additional Protocol No. 6 to the European Convention on human rights concerning the abolition of the death penalty (1994).

In accordance with the position expressed by the laws of the State of ratification of the various international documents mentioned above, and internally there are regulations concerning the right to life, in a series of normative acts.

In accordance with the position expressed by the laws of the State of ratification of the various international documents mentioned above, and internally there are regulations concerning the right to life, in a series of normative acts.

These different visions have been supported with very varied arguments by sociologists, philosophers, politicians, writers, undersigned criminal law scholars, criminologists, penology, creating thus a diversity of schools and streams. According to the opinions expressed in the literature, the phrase "right to life"¹³ has two meanings in the constitutions of States. Thus, in the restricted meaning of "the right to life for the person's life only in the physical sense, and in the wide meaning of the right to life is" person's life as a universe of phenomena, facts, requirements, and desires is added to enrich the physical presence".

⁴ BÎRSAN, Corneliu, Convenția europeană a drepturilor omului, Comentariu pe articole, Drepturi și libertăți, vol. I, Ed. C.H.Beck, București, 2005, p. 10-11; MURARU, Ioan, TĂNĂSESCU, Elena, Simina, Drept constituțional și instituții politice, vol. I, ediția a XI-a, Ed. All Beck, București, 2003, p. 140-145; VRABIE, Genoveva, Les „droit de l'homme” et les „droits du citoyen”. Contribution à la clarification des concepts, în Etudes de droit constitutionnel, Ed. Institutul European, Iași, 2003, p. 17.

⁵ The Universal Declaration of human rights, article 3.

⁶ The International Covenant on Civil and political rights, art. 6, paragraph (1).

⁷ The additional protocol to the Convention for the protection of human rights, the number (No.) 6, article 2.

⁸ Art. 2, item 2, of the Convention on human rights.

⁹ Publish in Monitorul Oficial of Romania, I Part, no. 4 from 8 January 1990.

¹⁰ STĂNESCU, Florin, Alexandru, Un anacronism: pedeapsa cu moartea, în „Criminalistica” no. 4, București, July 2000, p. 29.

¹¹ Romania Free of 29 April 1994.

¹² Art. 20 of the Romanian Constitution of 1991 as amended and supplemented by the law of the Constitution of Romania No. 429/2003, published in the Official Gazette of Romania, part I, no. 758 of 29 October 2003 and republished in the Official Gazette No. from 31 October 2003 to 767.

¹³ CONSTANTINESCU, Mihai, IORGOVAN, Antonie, MURARU, Ioan, TĂNĂSESCU, Elena, Simina, Constituția României revizuită, Ed. All Beck, București, 2004, p. 36.

Considering that the right to life is an essential human right, the positions adopted by States in connection with this fundamental right is involved maintaining the death penalty through the Suppression of this fundamental right, either the abolition of capital punishment by replacing them with jail for life.

To make an analysis of the relevant grounds which support maintaining or abolishing capital punishment, we believe that the presentation of the summary of the specific traits of the death penalty.¹⁴ Thus, the main characteristic of this punishment is aimed at suppressing the life, the death penalty is a prison sentence. Also, the death penalty is a punishment, so refer to the human person in relation to bodily integrity.

At the same time, the death penalty is an irreparable punishment in situation where it would have been fixed in the wrong way and may only have general preventive effect, being devoid of specific deterrence effect.

In the legal literature were made a number of arguments for maintaining the death penalty. One of these relates to the data provided by the judicial statistics is trying to emphasize that removing this sentence from the domestic law of some countries has led to an alarming increase in crime.¹⁵ As an example, it has provided information on this issue in the United States, where 38 States still practice the death penalty and where the crime rate has fallen in recent years, being less than that of the 1960s.

Another argument in favor of the maintenance and application of the death penalty is strong intimidating effect of that punishment because the death penalty it contributes to the defense of an entire community against crime, the worst and most dangerous against criminals. Intimidating effect of capital punishment appears much more poignantly if pronouncement and execution of punishments in public. The confidential nature of the execution of the death penalty has led to a decrease in the effect of the death penalty. Also, intimidating effect of capital punishment can be inferred from its application in the case of particularly dangerous and crime with very serious consequences, such as murder, treason and espionage in wartime. Although it cannot be denied intimidating effect of the death penalty, though some authors¹⁶ argued that "intimidating force of the sentence is no more than a presumption, if not a hopeless and even less a fiction."

Being in favor of maintaining the death penalty, some persons argue that only by implementing this punishment may cause the offender an evil equal to that produced by his deed. Such a position can no longer be accepted today if we consider that the death penalty involves a certain responsibility for each and every sentence, this sentence is "a matter of conscience and promote cultural society".¹⁷

The conclusion was that "the death penalty is not, so a law ... but a nation's war against a citizen, it is necessary and

useful considering the destruction of his, but if it will be demonstrated that death is neither useful nor necessary, because humanity will defeat".¹⁸

Often it turns out that leaving someone alive is a heavier punishment than death. According to surveys carried out in different countries, public opinion is in favor of maintaining the death penalty, since this leads to a sense of individual and collective security in the framework of a company.¹⁹

Is relevant in this context, and the attitude of the police to maintain the death penalty, because it is considered that only the threat of the capital they hold penalty detainees at the prison's life not to organize riots or mass disorders in American prisons. Another argument in favor of the death penalty is the difficulty of replacing it with another penalty when it would put the issue of suppression. This motivation was rebutted by the practice existing in the legislation of many countries in the world that have replaced capital punishment with life in prison sentence: hard work (forced) in Germany and Belgium, (involving the prohibition to ever see a person) in Italy, where the death penalty is replaced by imprisonment for a maximum of 40 years; rigorous imprisonment for life in Denmark, Finland, Netherlands, Norway, Sweden, Australia, New Zealand and other countries. Question just to reduce the jail's life and because maintaining it means "to demoralize a convict when not giving them no incentive to strive to become better".²⁰

Disadvantages of the imposition of the death penalty are, first, the fact that they can commit the irreparable mistakes. There have been plenty of instances in history where only after the death of the accused, when it was obviously too late, it was discovered that they were, in fact, innocent. Subsequently, it was discovered that the real culprit was his accomplice aged 16 years, Craig.²¹

Moreover, there are cases like that of Eddie Slovik during World War II, who was executed for having deserted the army, despite the fact that he expressed a desire to be transferred, capital punishment does not have meaning. Laurence Thibault said in a study in 1977 that the death penalty promotes violence, promoting a "flawed design" in the relationship between the individual and the State.

Another significant factor set against capital punishment is the religion. Iulian Poenaru said that "life is good most of man's price, the man himself".²² "No one can take what someone else might return."²³

Supporters of the religion advertises the fact that life has been given to man by God and only he can take someone's life. However, it gets rid of the mind that cannot be resurrected individuals whose rights had been severely violated the absolute, so all God to be the one to judge.

Also, Iulian Poenaru says that the State has no right to dispose of the life of a man, because the State gave him his life — she was home and parastatal-and, therefore, is not

¹⁴ POENARU, Ion, *Pedeapsa cu moartea, Pro sau contra?*, Ed. Lumina Lex, București, 1994, p. 16-20.

¹⁵ BELIȘ, Vladimir, PĂTRU, Adriana, *Despre pedeapsa capitală și criminalitate în România*, în „Criminalistica” nr.3, București, 2000, p. 7

¹⁶ ANCEL, M., *Le problème de la peine de mort*, în „Revue de droit penal et de criminologie” nr.5, Bruxelles, 1964, p. 388, apud la Poenaru, I., op. cit., p. 117.

¹⁷ POENARU, I., op. cit., p. 96.

¹⁸ UDREA, Mihai, *Drepturile omului și pedeapsa capitală*, Ed. Lumina Lex, București, 2004, p. 70.

¹⁹ POENARU, I., op. cit., p. 123.

²⁰ TANOVICEANU, I., *Tratat de drept și procedură penală*, vol III, București, 1925, p. 144.

²¹ Iulian Poenaru – *Pedeapsa cu moartea. Pro sau contra*, Ed. Lumina Lex, București, 1994, p. 13.

²² Iulian Poenaru, op.cit., p.4.

²³ Iulian Poenaru, op. cit., p. 136.

allowed to take in any circumstance. However, nobody can do it alone and justice, citizens are forced to turn to the State to exercise its rights of subjective. It follows, therefore, that the State must be able to appropriately punish any deed, even those worthy of scorn.

Shooting as a way of putting into practice the death penalty, it is provided in law for committing crimes of military nature and is found in: Argentina, Bulgaria, Cameroon, China, Greece, Mexico, Netherlands, Peru, Senegal, Somalia. Modalities of execution of the death penalty were multiple over time, clearly differentiating them from one State to another. Currently, the execution of capital punishment not to humiliate the detainee and the person using those means to make death more easily bearable. Today, among the most popular ways of enforcing the death penalty may cite: beheading, hanging, shooting, electrocution, gassing or lethal injection. The first of these is maintained in: Saudi Arabia, Dahomey, Ivory Coast, Laos.

The hanging was practised mainly in the United Kingdom and her colonies. In the u.s., on 6 august 1890, the hanging was replaced by electric chair. Today, they practice this way of execution of capital punishment: Afghanistan, Australia, Canada, Ethiopia, Ghana, India, Indonesia, Iraq, Iran, Japan, New Zealand, Pakistan, Sri Lanka, and Turkey.

The Council of Europe should consider a limited number of situations related to the crime, only to apply the death penalty to provide safety and protection to other members of society who have not violated the right to life of those around them. It should be noted, however, that the application of capital punishment, the courts should distinguish between murder and treason or murder and other offences from which folds, for example, on the principle established by the law of retaliation and the enforcement of which the death penalty is unfounded, the facts are not so severe as to justify this. For example, theft or murder through negligence should not be again with capital punishment, but premeditated murder.

The killer instinct is not to be there again, not a random accidental.

Usually capital punishment provided by the law of States may be replaced by a penalty involving deprivation of liberty or, when it is established that the mandatory punishment, it can be influenced by a number of elements concerning the person of the offender or for some reasons actually.

The decline in the number of executions in America reflects a trend seen globally. Last year, Latvia became the 97-country that has capital of penalty legal system. But there are also more recalcitrant spots where the death penalty still retain their position and even recorded increases.

Except China (and Syria and Egypt, from where the data have not been obtained), Amnesty International recorded executions in 682 21 countries over the past year. Three-quarters of the executions took place in Iran, Iraq and Saudi Arabia.

In Iraq, the number of executors almost doubled in a year, up to 129 people, of whom 34 were accomplished in a single day.

The Americans have killed 43 criminals, placing it fifth in the world. The number has declined considerably toward the tip reached in 1999, when they were sentenced to death and executed 98 prisoners.

In April 2012, Connecticut became the 17th American State which has abolished the death penalty, and the fifth in the past six years. A few others are in the process of giving up on this system.

Among offences against the internal and external security of the State to which it applies the death penalty, the most well-known are the betrayal and espionage committed in wartime or in peacetime. The death penalty will be implemented in the case of treason in Australia, Bulgaria, Canada, the Philippines, Ghana, India, Indonesia, Iran, Iraq, Pakistan, Egypt, the Republic of Poland, South Africa, Sri Lanka, USA (23 Federated States). Committing the crime of spying causes capital punishment in Iran, Morocco, El Salvador, Spain, Turkey, Egypt, the us and other countries. A series of offences related to the internal security of the State, such as armed rebellion, insurrection, conspiracy against the State, the bombing at the head of State's lives are penalized with death penalty in many countries, such as Australia, Bulgaria, Guatemala, Indonesia, Iran, Laos, Morocco, Pakistan, Sudan, Turkey. Committing war crimes, those against peace and mankind have as a consequence the death penalty or penalties involving deprivation of liberty in Bulgaria.

According to Amnesty International, the death penalty is abolished in law or in practice in about 130 countries. 29 of them are considered abolitionist de facto: death penalty is provided by law, but was not enforced for a decade or more. Others maintain States and 67 shall apply the death penalty, but the number of States that actually resort to executions in the course of a year is much smaller.

The Council of Europe has a highly critical position towards the continued use of the death penalty by the United States. The Parliamentary Assembly has appealed to the Government of the United States to introduce a moratorium on capital punishment. The Secretary General regularly intervenes in individual cases requesting suspension of execution. Discrimination against the poor, who often cannot afford hiring a lawyer, that would ensure a proper defense, is also an extremely common phenomenon.

Thus, beyond whether or not to uphold the death penalty, we believe that there must always be a balance between the seriousness of a crime and the punishment applicable for committing it.

The company has enough outside means the death penalty, to protect individuals against infringements of the most serious and most dangerous against criminals.

Currently in Europe, capital punishment has been abolished in most States, except in Belarus, one of the reasons that Belarus is not a member of the Europe being Council's application of the death penalty. Public authorities refuses, however, to abolishing capital punishment on the grounds that the company is not ready to give it up, citing as proof the referendum of 1996, where 80,44% of the population voted in favor of keeping the death penalty.

The solution that should be in the existing companies would be a compromise, in which the rights and fundamental freedoms to be protected, should not be constrained in any way, and where an individual ignores them, no longer enjoy the same status that it would have had if they had not committed a crime.

Executions continues to be practiced in Japan, where 96 people have been sentenced to death penalty in 2006. In 2001, the Council of Europe has asked Japan for the first

time to adopt a moratorium on the death penalty and eventually to abolish.

Between the years 2005 and 2006, the Government of Japan has maintained a moratorium, but it has begun implementation of executions in 2006, arguing through the results of a

Government survey found that 80 percent of Japanese citizens that are in favor of the death penalty.

Legal regulations at national and international level is, clearly, the orientation towards the abolition of the death penalty in most countries of the world, whereas this trend contributes to the growth of human dignity, to highlight the importance of fundamental rights, the death penalty and deprived of a legitimate place in the penal systems of democratic societies.

Bibliography

Books:

1. ANCEL, M., Le problème de la peine de mort, în „Revue de droit penal et de criminologie” nr.5, Bruxelles, 1964, p. 388, apud la Poenaru.
2. BELIȘ, Vladimir, PĂTRU, Adriana, Despre pedeapsa capitală și criminalitate în România, în „Criminalistica”nr.3, București, 2000.
3. BÎRSAN, Corneliu, Convenția europeană a drepturilor omului, Comentariu pe articole, Drepturi și libertăți, vol. I, Ed. C.H.Beck, București, 2005, p. 10-11; MURARU, Ioan, TĂNĂSESCU, Elena, Simina, Drept constituțional și instituții politice, vol. I, ediția a XI-a, Ed. All Beck, București, 2003, p. 140-145; VRABIE, Genoveva, Les „droit de l’homme” et les „droits du citoyen”. Contribution à la clarification des concepts, în Etudes de droit constitutionnel, Ed. Institutul European, Iași, 2003.
4. CONSTANTINESCU, Mihai, IORGOVAN, Antonie, MURARU, Ioan, TĂNĂSESCU, Elena, Simina, Constituția României revizuită, Ed. All Beck, București, 2004.
5. HEGEL, G., W., F., Principles of the philosophy of right, IRI Ed, București, 1996.
6. POENARU, Ion, Pedeapsa cu moartea, Pro sau contra?, Ed. Lumina Lex, București, 1994.
7. RIVERO, Jean, Les libertés publiques, PUF, Thémis, tome I, 8 ème édition, 1997,.
8. STĂNESCU, Florin, Alexandru, Un anacronism: pedeapsa cu moartea, în „Criminalistica” nr. 4, București, iulie 2000.
9. SUDRE, Frédéric, Dreptul european și internațional al drepturilor omului, Ed. Polirom, Iași, 2006
10. TANOVICIANU, I., Tratat de drept și procedură penală, vol III, București, 1925
11. UDREA, Mihai, Drepturile omului și pedeapsa capitală, Ed. Lumina Lex, București, 2004.

Legal Documents

1. The International Covenant on Civil and political rights
2. The additional protocol to the Convention for the protection of human rights, the number (No.) 6
3. Art. 20 of the Romanian Constitution of 1991 as amended and supplemented by the law of the Constitution of Romania No. 429/2003, published in the Official Gazette of Romania, part I, no. 758 of 29 October 2003 and republished in the Official Gazette No. from 31 October 2003 to 767

4. Romania Free of 29 April 1994
5. The Universal Declaration of human rights