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**Capital Punishment.
Between History and Controversy**

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Abstract: Over the years, previous research has attempted to identify a deterrent effect of the death penalty. We argue that the quality of life in prison can have a greater impact on criminal behavior than on the death penalty. Using data from the statewide investigation method covering the period 1950–1990, we demonstrate that the death rate among prisoners is negatively correlated with crime rates, consistent with deterrence. This finding is proving to be quite robust. In contrast, there is little systematic evidence that the execution rate influences crime rates during this period (Michael, 2003, pp. 318–343). In this paper we will analyze the topicality of the issue which is determined by the large number of serious crimes, and the right to punish has always been recognized, because it is the main tool to protect individual and collective interests. The importance of determining the sentence consists in correctly determining the duration of the sentence and its nature so that this duration corresponds adequately to the acts committed by the offender and preventing the guilty party from causing new damage to society. From the point of view of the nature, the finality and the types of punishment, they have known a permanent evolution. Thus, the death penalty by its nature has different features, which fundamentally distinguish it from all other types of punishment (Kaufman, 2020, pp. 59-62). The fight against this punishment was regulated in Protocol no. 6 on the abolition of the death penalty, concluded in Strasbourg on 28 April 1983 and in Protocol no. 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty in All Circumstances.

Keywords: capital; punishment; human rights; European Union; Universal Declaration of Human Rights; Council of Europe

Introduction

In the practice of EU member states, this punishment was regulated in the Council of Europe by signing this **Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (hereinafter referred to as the Convention)**. Several member states of the Council of Europe express a general trend towards the abolition of the death penalty, have agreed on the following:

Art. 1. The death penalty is abolished. No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed.

Art. 2. A state may provide in its legislation the death penalty for acts committed in time of war or imminent danger of war; such punishment shall be applied only in the cases provided for by this legislation and in accordance with its provisions.

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That State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that legislation.

Art. 3. No derogation from the provisions of this Protocol under Art. 15 of the convention is not allowed.

Art. 4. No reservation to the provisions of this Protocol pursuant to art. 64 of the Convention is not admitted.

Article 5. 1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, designate the territory or territories in respect of which this Protocol shall apply.

2. Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe extend the application of this Protocol to any other territory specified in the declaration. The Protocol shall enter into force on this territory on the first day of the month following the date of receipt of the declaration by the Secretary-General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary-General. The withdrawal shall take effect on the first day of the month following the date of receipt of such notification by the Secretary General.

Art 6. States Parties shall consider 1 to 5 of this Protocol that additional articles to the Convention and all provisions of the Convention shall apply accordingly.

Art 7. This Protocol shall be open for signature by the member States of the Council of Europe, signatories to the Convention. It will be subject to ratification, acceptance or approval. A member State of the Council of Europe shall not be able to ratify, accept or approve this Protocol without having simultaneously or previously ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Art. 8. 1. This Protocol shall enter into force on the first day of the month following the date on which five-member States of the Council of Europe express their consent to be bound by the Protocol, in accordance with the provisions of Art. 7.

2. For any Member State which subsequently expresses its consent to be bound by the Protocol, it shall enter into force on the first day of the month following the date of deposit of the instrument of ratification, acceptance or approval.

Art. 9. The Secretary General of the Council of Europe shall notify the member States of the Council:

- a) any signature;
- b) the deposit of any instrument of ratification, acceptance or approval;
- c) any date of entry into force of this Protocol, in accordance with Articles 5 and 8;
- d) any other act, notification or communication relating to this Protocol.

In view of the above, the undersigned, having their full powers for this purpose, have signed this Protocol.

Done at Strasbourg, this 28th day of April 1983, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The

Secretary General of the Council of Europe shall transmit a certified copy to each of the member States of the Council of Europe.¹

Protocol no. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty in All Circumstances (Vilnius, 2002).

The Member States of the Council of Europe, signatories to this Protocol, are convinced that the right to life is a fundamental value in a democratic society and that the abolition of the death penalty is essential for the defense of this right and for the full recognition of the innate dignity of all human beings. Desiring to strengthen the protection of the right to life guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (hereinafter referred to as “the Convention”), 6 of the Convention on the Abolition of the Death Penalty, signed in Strasbourg on 28 April 1983, does not exclude the death penalty for acts committed in time of war or imminent danger of war, being determined to finally act to abolish the death penalty In all circumstances, they agreed on the following:

Art. 1. Abolition of the death penalty.

The death penalty is abolished. No one may be sentenced to such punishment or executed.

Art. 2. Prohibition of derogations

No derogation from the provisions of this Protocol under Art. 15 of the Convention is not permitted.

Art. 3. Prohibition of reservations

No reservation to the provisions of this Protocol pursuant to art. 57 of the Convention is not admitted.

Art. 4. Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, designate the territory or territories to which this Protocol shall apply.

2. Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. The Protocol shall enter into force in respect of that territory on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or amended by a notification addressed to the Secretary General of the Council of Europe. The withdrawal or amendment shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Art. 5. Reporting to the convention

States Parties shall consider Art. 1-4 of this Protocol as additional articles to the Convention and all provisions of the Convention shall apply accordingly.

Art. 6. Signature and ratification

¹ Protocol No. 6 on the abolition of the death penalty, concluded in Strasbourg on April 28, 1983, M.Of. no. 135/31 May 1994.

This Protocol shall be open for signature by the member States of the Council of Europe, signatories to the Convention. It will be subject to ratification, acceptance or approval. A member State of the Council of Europe shall not be able to ratify, accept or approve this Protocol without having simultaneously or previously ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe (Ferenczy, 2019, p. 48).

Art. 7. Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten-member States of the Council of Europe have given their consent to be bound by the Protocol, in accordance with the provisions of Art. 6.

2. For any Member State which subsequently expresses its consent to be bound by the Protocol, it shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of its instrument of ratification, acceptance or approval.

Art. 8. The functions of the depositary

The Secretary General of the Council of Europe shall notify the member States of the Council:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Protocol, in accordance with Art. 4 and 7;
- d. any other act, notification or communication relating to this Protocol. In view of the above, the undersigned, having their full powers for this purpose, have signed this Protocol.

Done at Vilnius on 3 May 2002 in the French and English languages, both texts being equally authentic, in a single copy, which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit a certified copy to each of the member States of the Council of Europe. (Vilnius, 2002)

Practical Content

The famous philosopher C. Beccaria wrote: “It seems absurd to me that the laws, which are the expression of the public will, which disapprove and punish murder, commit one themselves and, in order to remove the citizens from murder, order a public murder.”

Cesare Beccaria stated that it is immoral for the state to resort to murder, that executions are not necessary to protect society, that long years of servitude set a better example and that hanging attracts sympathy for the murderer: “The death penalty is not useful for example. Of cruelty he gives to people. “He is also the one who states: “The frightening but fleeting spectacle of the death of a bastard is a weaker brake against crime than the long and continuous example of a man deprived of his liberty.” (Mastacan, 2010, p. 102)

In the Romanian space, the death penalty has a long and varied history. Regarding the laws of Dacia, before the Roman conquest, historical data are extremely few, the author refers to the opinion that “the will of the leaders and the rights of nature seem to have had the power of written law”, and after the establishment of the Dacian state, the assembly of the armed people exclusively of men, he had the right to decide on the proposal of the chiefs, the death sentence. (Amza, 1998, pp. 42-43)

In the time of Roman Dacia, the administration of criminal justice became the attribute of the governor who had the *imperium merum*, ie the right to life and death, but only in relation to the local population.

After the establishment of the Romanian feudal states, including power, the right to punish was concentrated in the hands of the lords (Massino, 2019, pp. 140-141).

The offenses for which the death penalty was provided for are: cunning when the boyars betrayed, rose up against the lord to dethrone him, take your place or install another lord; *osluhul*- consists in disobeying the royal commandments; *omouciderea*; violent, gang or gun theft; incest, adultery. (Cernea & Molcuț, 2006, p. 157)

In Vasile Lupu's Romanian Textbook from 1646 and Matei Basarab's Law Correction from 1652, the criminal acts considered the most serious were punishable by death, distinguishing between convicts according to their social rank. Thus, in time of war, if a man from the lower people was caught alive, his head would be cut off, and if it was the case of a boyar, he would be hanged.

In the eighteenth century the death penalty was redeemed with money and the one who paid for the condemned, if he could not pay himself, compensated himself with the land.

In 1780, Alexandru Ipsilante promulgated *Prăvălniceasca Condică*, the first of the Romanian codes in which the criminal provisions were influenced by Beccaria's ideas.

Thus, under the influence of these ideas, the death penalty had been abolished. The idea of abolishing the death penalty was also taken over by the revolutionaries of 1848.

Therefore, the Islaz Proclamation stated that "the people decreed the complete abolition of the death penalty both in the work and in the sentences", a request that the Government of Wallachia approved by enacting on June 14, 1848, decree no. decided to abolish the death penalty.

During the reign of Basarab Știrbei, a new Criminal Code (December 1850) and the first Criminal Code of Military Justice (April 1852) were promulgated in Muntenia, which included the death penalty to be executed by beheading or shooting.

The death penalty was abolished by the Criminal Code of 1864, being reintroduced only by the Constitution of 1866 only for the cases provided in the Code of Military Justice for wartime.

The 1923 Constitution abolished the death penalty, being reintroduced by the Constitution of February 23, 1938 for attacks on the king, foreign heads of state and state dignitaries, as well as in cases of robbery with murder or political assassination (Colective, Cracking the AP European History Exam, 2019, p. 240).

According to Law no. 23/1969, the death penalty considered the following:

Art. 31. The commander of the penitentiary, receiving the warrant for the execution of the death penalty, immediately informs the convict, in the presence of the prosecutor, that he has the right to make a request for pardon within 5 days off, recording this in a report. The request for pardon together with the copies of the decisions pronounced in the first instance and in the appeal is submitted by the president of the court provided in art. 424 of the Code of Criminal Procedure, Council of State of the Socialist Republic of Romania, through the Ministry of Justice.

Art. 32. The death penalty is executed on the basis of the written order given by the president of the court provided in art. 31 last paragraph.

At the place of execution will be present the president of the tribunal in whose territorial area the penitentiary, the chief prosecutor of the county prosecutor's office or, as the case may be, of the military prosecutor's office, or their delegates, the penitentiary commander and a forensic doctor.

The president of the tribunal may approve the presence of other persons.

The execution of the death penalty is done by shooting.

Thus, in accordance with the above, the death penalty or the death penalty was a sanction by which the state reserves the right to suppress the life of the guilty person (Lansford, 2019, p. 1556).

During the communist period, the death penalty was an exceptional crime for the most serious crimes, being accompanied, in a special part of the Criminal Code, by the alternative punishment of limited time imprisonment (15-20 years).

Thousands of people were killed by state officials after the Communists took power in Romania in the mid-1940s to the late 1950s, while fewer than 400 were legally executed until the fall of the regime.

According to Amnesty International, in 2015, 102 states were abolitionists, and 140, more than two-thirds of the world's countries, abolished the death penalty in law or in practice, which can be considered a major change if we look at only 39 years old. back in 1976, when only 16 states were abolitionists for all crimes.

In fact, in a survey conducted by CCSB for the Pro Democracy Association in 2010, 50% of those interviewed agreed with the organization of a referendum on the reintroduction of the death penalty, 91% of them saying they would vote in favor of such a measure.

We strongly believe that there are lessons that can be learned from the experience of capital punishment in communist states. In addition, some of the states that still serve the death penalty are communist states, such as China, where the number of executions exceeds the total in the rest of the world. We hope that we will be able to more easily understand the mechanisms of capital punishment in a regime in which the figures on executions are secret, with the help of knowledge about the death penalty in former communist regimes. (Stancu, 2018, pp. 5-6).

Another example is that of Iran, which provides for the death penalty in the event of an offense that constitutes, over time, apostasy; in case of simple offense, the penalty of imprisonment from 1 to 5 years shall be applied. As a rule, if a simple implicit simplicity is offered and exceptional situations can be greater, it is sanctioned with a maximum of 74 whip laces.¹

In this sense, the example of Norway is cited in our legal literature. Thus, the Norwegian courts applied the death penalty to war criminals, according to the concluded international treaties, although this punishment was not provided in the domestic criminal law (see Barbu, Application of the criminal law in space and time, pp. 92-93). (Dobrinou, 2016, p. 236)

Universal Declaration of Human Rights

The right to life of every person is recognized by the Universal Declaration of Human Rights (1948) which also states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment".

¹ I France: the incrimination of blasphemy (LC 262, January 2016), published in "Revista Pandectele Române/Romanian Pandicts" number 5 of May 31, 2016.

At the international level, several legal instruments have been adopted that explicitly refer to the abolition of the death penalty.¹

No executions have taken place in Europe since 1997, specifically in the Europe of the 47 states that make up the Council of Europe. October 10 was declared. Article 2 para. (1) and (2) of the EU Charter of Fundamental Rights provide that no person may be sentenced to death or executed. All Member States of the European Union are bound by those provisions and enforce them².

The only country in Europe that still applies this punishment is Belarus.³ However, the public authorities refuse to abolish the death penalty on the grounds that society is not prepared to give it up, as evidenced by the 1996 referendum, in which 80.44% of the population voted in favor of maintaining the death penalty.

The death penalty has been abolished for all offenses in Italy (1994), Germany (1987), New Zealand (1989), Andorra (1990), Angola (1992), Australia (1985), Austria (1968), Belgium (1996), Canada (1998), Croatia, Czech Republic, Ireland and Hungary (1990), Denmark (1978), Spain (1995), Finland (1972), France (1981), Monaco (1962), Moldova (1995), Namibia and Nepal (1990), Norway (1979), Poland (1997), Portugal (1976), United Kingdom (1998), Dominican Republic (1966), Sweden (1972), Switzerland (1992), Venezuela (1863), Romania (1989) (Kamuf, 2019, p. 140).

Council of Europe

“The Council of Europe is based on the European Convention on Human Rights and its protocols which guarantee the right to life and prohibit torture and inhuman and degrading treatment. The death penalty is a violation of the Convention.

In fact, for 30 years, the Council of Europe has been working to outlaw the death penalty in Europe. Since 1989, the abolition of this penalty has been a condition for the accession of all new Member States. As a result, no execution has taken place in a member state of the Council of Europe for 10 years. Across the European continent, only Belarus has not abolished the death penalty, and it is the only European country that is not a member of the Council of Europe.” (Terry Davis, Secretary General, Council of Europe, January 2007)⁴.

At the heart of the Council of Europe’s mechanism is therefore the European Convention on Human Rights, which protects anyone on European territory and enshrined in other Council of Europe political treaties. These legal instruments create a framework, but it is the duty of every person, in all countries, to ensure that their spirituality is transposed into daily life⁵.

The main arguments for which the Council of Europe vehemently rejects the application of the death penalty in European states are the following: the death penalty violates fundamental human rights: the right to life, the right not to be subjected to inhuman treatment; this punishment does not prevent crime or help victims; has an irreversible character; frequent occurrence of judicial errors. If such a sentence is handed down to a person suspected of a crime, but who has not committed any such act, the execution

¹ <https://www.juridice.ro/539958/ziua-mondiala-a-luptei-impotriva-pedepsei-capitale.html>.

² Human Rights Watch, World Report 2020: Events of 2019, 28 Jan 2020, p. 388.

³ In 2010, two people were executed for multiple crimes, and in 2011 two more for the Minsk subway bombing. One of the two men found responsible for the blast was shot dead.

⁴ (2019). Cracking the AP European History Exam, The Princeton Review, p. 240

⁵ (2017). Human Rights and Public Opinion, International Law, Taylor & Francis, pp. 140-148.

in this case is an irreparable judicial error; another argument is about religion, which shows that life was given by God and only he can take it.

The Council of Europe has become a death penalty-free region and, following the internal removal of the punishment, it now calls for all countries of the world to abolish the death penalty. As Rene van der Linden, the former President of the Parliamentary Assembly, affirmed “capital punishment must be totally removed once and for all from the legislation of all countries which strive to uphold democracy, the rule of law and human rights.”¹ The Council of Europe’s completion of internal abolition and then the development of an external abolitionist focus is a process which the European Union similarly adopted.

The European Union continues to initiate a ‘tireless’ and ‘all out’ campaign against the death penalty.² The anti-death penalty position ‘lies at the heart of the EU’³ and the European Union’s ‘Action Plan on Human Rights and Democracy’ affirmed the EU structures for this goal.⁴

The death penalty is currently authorized in 28 states by the federal government and the US military. In recent years, New Mexico (2009), Illinois (2011), Connecticut (2012), Maryland (2013), New Hampshire (2019) and Colorado (2020) have legislated to abolish the death penalty, replacing it with a prison sentence for life.⁵ New Mexico abolished the death penalty in 2009.

The law replaced the death penalty for the most serious crimes with life imprisonment and life imprisonment, without the possibility of parole.

The US Supreme Court in 1976 reinstated the death penalty and only one person was executed in New Mexico. It was Terry Clark who killed a child and was sentenced to death in 2001 by lethal injection. The sentence was repealed by Bill House, which was signed by Governor Bill Richardson on March 18, 2009 and entered into force on July 1 of that year. Section 6 of the Act provides “The provisions of this Act shall apply to offenses committed on or after 1 July 2009” (Simon & Schuster, 2019, p. 400).

In 1973, a bill was passed in Illinois to reinstate the death penalty. This law came into force on July 1, 1974, but was overturned in 1975 by the Illinois Supreme Court. On June 21, 1977, a new bill was signed by James Thompson, confirmed in 1979 by the state Supreme Court, and remained in force until 2011.

A bill to abolish the death penalty was approved in 2009 in Connecticut, but M. Jodi Rell opposed the bill. In 2012, Connecticut abolished the death penalty for future crimes.

The Maryland State Senate passed a bill to repeal the death penalty for future offenders on March 6, 2013. On March 15, 2013, the House passed legislation 82-56 and sent the bill to Governor Martin O’Malley, who signed the law on May 2, 2013, declaring the 18th state of Maryland in the United States to ban the death penalty (Janssen, 2019, p. 1989).

The death penalty was a legal punishment in the US state of Colorado from 1974 to 2020.

In March 2020, the legislature passed a bill to repeal the death penalty for people - only for crimes committed after July 1, 2020. The bill was signed by the Colorado government on March 23, 2020.

¹ Press Release, Strasbourg, 10 October 2006.

² European Commission ‘All Out Against the Death Penalty’ (20 June 2017).

³ European Commission ‘Action Plan on Human Rights and Democracy (2015-2019).

⁴ European External Action Service (10 October 2016) accessed 16 June 2019.

⁵ <https://www.ncsl.org/research/civil-and-criminal-justice/death-penalty.aspx>.

Courts in Washington and Delaware have recently ruled that state capital punishment laws are unconstitutional. States across the country will continue to debate the fairness, reliability and cost of its implementation.¹ Scientists have tried to answer questions to see if maintaining the death penalty would reduce homicide (Simon & Schuster, 2019, p. 360).

Thus we may ask whether the death penalty is not a deterrent to murder. If we abolish it, won't it increase crime? Statistics and data collected from abolitionist countries permanently show that there is no link between the death penalty and crime rates - including in countries in transition to democracy. We have all heard some claims that the death penalty would be a deterrent to murder, and yet it is a well-known fact that there is no statistical evidence to support this claim. This view is in fact a myth. Study by study, it has not been possible in different countries to establish a causal link between maintaining or abolishing the death penalty and the rate or volume of violent crimes. “(Wohlwend, 1999, p. 58).

Crime figures collected in countries that have abolished the death penalty permanently confirm that this abolition has not led to an increase in crime. In Canada, for example, the death rate per 100,000 inhabitants fell from 3.09 in 1975, the year before the abolition of the death penalty for murderers, to 2.41 in 1980, and has remained low ever since. In 1999, twenty-three years after its abolition, the homicide rate was 1.76 per 100,000 inhabitants, or 44.7% lower than in 1975. The total number of homicides reported in the country fell in 1999 to third consecutive year. (Hood, 2000, p. 187).

The argument that capital punishment discourages criminals is part of the hypothesis that those who commit murder, or other crimes punishable by capital punishment, weigh the disadvantages and advantages of their actions in advance, and consider the possibility of execution².

This is a completely wrong idea of criminals and the conditions under which they commit fatal crimes. Most of these crimes are committed in the middle of the action, under the influence of great emotional tension or drugs or alcohol. Some crimes are also committed by very unstable or mentally handicapped individuals. In some of these situations, the perpetrators do not take into account the punishment they will face if they are arrested.³

It is obvious that a dead man will no longer be able to commit crimes. But this is a draconian and totalitarian approach to crime prevention that does not suit a civilized society. The experience of many abolitionist countries shows that it is possible to isolate dangerous criminals and ensure public safety without resorting to execution. Those who are executed represent only a very small percentage of the total number of criminals, and there is no reason to believe that an assassin has a higher probability of becoming a repeat offender than any other type of criminal. Execution essentially involves taking someone's life to prevent them from committing hypothetical crimes in the future - which is not the case for the vast majority of them (Louis, 2020, p. 1).

The risk of making a mistake and executing an innocent person is a real risk. Errors occur much more often than is generally believed. And once a life has been suppressed, there is no possibility of restoring it. In the United States, since 1976, when the Supreme Court reinstated the death penalty, more than 113

¹ These rights are guaranteed in particular in the Universal Declaration of Human Rights. Article 3 states that “every individual has the right to life, liberty and security of person”. Article 5 states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 3 of the European Convention on Human Rights also guarantees that: “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

² Routledge, *Understanding the Construction of Identities By Young New Europeans*, 13 feb. 2019, p. 187.

³ In 1999, a moratorium on executions had already been introduced in Ukraine, but the death penalty was still provided for in the codes.

people have been released from the corridors of death after being acquitted.¹ During the same period, more than 1004 people were executed. This means that for ten people executed, the eleventh - absolutely innocent - spent some time in the corridor of death. There have also been 23 documented cases in which innocent people have been mistakenly executed since the early 1900s, and this number is probably low due to the difficulty of establishing a person's innocence after he or she is killed. (Bedau & Radelet, 1987, p. 78).

Conclusions

In conclusion, we believe that capital punishment is, however, a wrong thing, a barbaric method for a democratic society, and that there must be a compromise in which human rights and fundamental freedoms (Dumitrache-Ionescu, 2015, p. 208; Dumitrache-Ionescu, 2016, pp. 48 – 64) are respected and defended, and the person who ignores laws and commits crimes, to be punished according to the law in force.

Basically, the death penalty completely contradicts the norms of democracy in a modern society, and states that have not abolished the death penalty do nothing but make society more brutal by legitimizing cold-blooded murder.

Abolishing the death penalty does not mean showing indifference to crime. Those who commit crimes against innocent victims should of course be severely punished and understand that their behavior is unacceptable. But is “revenge” an appropriate response to crime? And is the state - pressured by interest groups and rival political currents - a suitable “avenger”?

Is there anyone who can judge and say who deserves to live, and who should be killed for bad behavior?

A human and moral criminal policy distinguishes between murder and crime, and here the only policy worthy of a democratic society is one that respects human rights. No system is and never will be able to decide fairly, consistently and safely who should live and who should die. Hate, discretionary decisions and prevailing public opinion can influence all stages of the procedure from initial investigations to the last-minute decision on pardons. This means that those who end up being sentenced to death may not actually be the biggest criminals, but those who have not been able to defend themselves, those who suffer discrimination, those who have accidentally dealt with the most severe prosecutors or judges or even those who were innocent. Experience shows that this occurs everywhere and every time the death penalty is applied (Smit, 2019, pp. 29-33).

We believe that the state that approves the death penalty conveys the message that death is an acceptable way to solve society's problems. In no way can the state protect the rights of victims in this way, because a crime committed by the state cannot repair the injustice committed or alleviate the suffering that the victim went through.

In line with the above, we believe that the perpetrator must be punished in a fair and just manner worthy of today's society, and capital punishment does not guarantee the arrest of the real perpetrator and it is essential that there are appropriate procedures to ensure that the guilty person is arrested and punished - and not someone who is innocent while the perpetrator is at large.

¹ In many cases, as a result of the campaigns of employed militants, who operate outside the “brakes and counterweights” of the system. A study of judicial errors conducted by students in a journalism class at Northwestern University, for example, helped drive the Illinois governor to impose a moratorium on executions in 2000.

References

*** (31 May, 2016). Revista Pandectele Române, No. 5.

Amza, Tudor (1998). *Criminology*. Bucharest: Ed Lumina Lex.

Balaci, A. (1965). *Preface to About Crimes and Punishments*. Bucharest: Ed. Scientific. Cioclei, Valerian (2007). *Handbook of Criminology*, Edition 4. Bucharest: Ed C.H. Beck, p. 74)

Bedau, Hugo, Adam & Radelet, L., Michael (1987). Miscarriages of Justice in Potentially Capital Cases. *Stanford Review*, 40, pp. 21-179.

Benjamin, S. Yost (13 February 2019). *Against Capital Punishment*. Oxford: Oxford University Press.

Cernea, Emil & Molcuț, Emil (2006). History of the Romanian state and law. *Universul Juridic*. Bucharest, p. 157.

Cioclei, Valerian (2007). *Handbook of criminology*. Edition 4, Bucharest: Ed. C.H. Beck.

Dobrinou Vasile (23 May, 2016). *The new Criminal Code commented*. 3rd edition revised and added from May 23, 2016, *Legal Universe*.

Dumitrache-Ionescu, Ana-Alina (2015). Prolegomena of Human Rights. Historical Roots and Globalization. *EIRP Proceedings*, Vol. 10, Issue 1, ISSN 2067 - 9211 p. 208.

Dumitrache-Ionescu, Ana-Alina (2016). Practical and Theoretical Controversies of the Dichotomy of Rights and Liberties. *Acta Universitatis Danubius Juridica*, Vol 12, nr. 1/ 2016, **Online ISSN: 2065-3891, pp. 48 – 64.**

Helie, F. *Des Délits et des Peines*. Cioclei, Valerian (2007). *Handbook of Criminology*, Edition 4, Bucharest: Ed C.H. Beck, p. 78)

Hood, Roger (2000). *The death Penalty: A World-wide Perspective*. Oxford. Clarendon Press. Revised edition, p. 187.

Mastacan, Olivia (2010). The death penalty in Romanian law. *Universul Juridic*. Bucharest, p. 9.

Merle, R. & Vitu, A. (1967). *Traité de droit criminel*. Paris: Ed. Cujas. Cioclei, Valerian (2007). *Handbook of Criminology*, Edition 4. Bucharest: Ed C.H. Beck, p. 76.

Mitra, Mariana (2008). *Judicial cooperation in criminal matters*. Course Notes.

Simon and Schuste (2020). *APUS. Government & Politics Prep Plus 2019-2020*.

Stancu, Radu (2018). The Death Penalty in Communist Romania. *Political History*.

Steiker, Carol, S. & Steiker, Jordan, M. (2019). *Comparative Capital Punishment*. Edward Elgar Publishing.

Taylor, Ian; Walton, Paul & Young, Jock (1973). *The New York Criminology*. New York. Amza, Tudor (1998). *Criminology*. Bucharest: Ed Lumina Lex, p. 79.

Wohlwend, Renate (May, 1999). The efforts of the Parliamentary Assembly of the Council of Europe” in The abolition of the death penalty in Europe. *Council of Europe Publications*, p. 58.

Online Sources

<https://www.juridice.ro/539958/ziua-mondiala-a-luptei-impotriva-pedepsei-capitale.html>.

<https://www.ncsl.org/research/civil-and-criminal-justice/death-penalty.aspx>.

<https://autenticare.wolterskluwer.ro/auth/FormAuthPage.ashx?applicationId=AndromedaProduction&referer=https%3A%2F%2Fsintact.ro%2F>, accesat pe data de 10.05.2020.

https://en.wikipedia.org/wiki/Capital_punishment_in_New_Mexico.

<https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/illinois>.

<https://autenticare.wolterskluwer.ro/auth/FormAuthPage.ashx?applicationId=AndromedaProduction&referer=https%3A%2F%2Fsintact.ro%2F>, accesat pe data de 10.05.2020.

<https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/connecticut>.

https://en.wikipedia.org/wiki/Capital_punishment_in_Maryland.

<https://autenticare.wolterskluwer.ro/auth/FormAuthPage.ashx?applicationId=AndromedaProduction&referer=https%3A%2F%2Fsintact.ro%2F>, accesat pe data de 10.05.2020.

https://en.wikipedia.org/wiki/Capital_punishment_in_Colorado.