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THE SENSE OF PUBLIC SECURITY. DEATH PENALTY: CRUELTY AND JUSTICE?

Introduction

Currently, it is believed that the death penalty is used for conduct unworthy from the perspective of humanitarian values. It is argued that even the worst criminals remain human beings, and their elimination does not serve any particular purpose. Every human being is entitled to the right to live. Therefore, the only sensible way to solve the problem is properly carried out rehabilitation. It can be stated that the opponents of the death penalty today enjoy enormous triumphs thanks to its condemnation by international organizations such as the Council of Europe or the United Nations. The concern is also the issue of withdrawal or suspension of the death penalty in most countries around the world. Importantly, in virtually all academic and intellectual circles, for a long time there has been a perception that any such punishment is nothing unreasonable evil.¹

The death penalty in the history of mankind

In the history of mankind, there was no period in which the laws made by man did not provide the death penalty. The origin of the death penalty, treated as a retribution for the suffered damage, is therefore seen most often in institutions of bloody revenge used in times of primitive law. The death penalty in civilized societies is largely associated with a factor of the social policy of organized nature. In contrast, bloody revenge was quite a spontaneous reaction caused by the sense of differently understood harm arising from a breach of welfare recognised by the community. For the primitive law, the principle of proportionality of the penalty was alien, and, therefore, the harm suffered created a need for an offender to cause a greater evil than that which was caused by this act.² In ancient times, the perpetrators of the heaviest calibre, which are balanced in the interests of ancestral communities, were deprived of protection, and

¹ J.A. Świdziński, *Kara śmierci w obronie życia ludzkiego*, Kraków, 2009, pp. 5-6.

² L. Lernell, *Podstawowe zagadnienia penologii*, Warszawa, 1969, p. 61.

then excluded from the community. It was a kind of prototype of the later of institutions, so-called outlaw, which, with the rise of the state, has developed among other things the death penalty.³

A significant progress in the application of the death penalty resulted in the emergence of the rule of talion. According to this principle, a penalty imposed on the perpetrator was supposed to be identical to the set of his ailments. In connection with this, death began to be used to punish acts which result was also mortal. The rule of talion justified the behaviour of biological equality of people because the life of every human being should have the same value.⁴ This form of punishment appeared in the Code of Rights of Hammurabi, except that in accordance with the principle that the accusation of murder was also punished, not to be supported by the evidence, and also perjury at a court hearing, where sentencing to death was possible, stealing objects from temples and palaces, the acquisition or the safekeeping of things from a person not entitled to its possession, kidnapping a minor, hiding runaway slaves, burglary, adultery and rape.⁵

The death penalty has also appeared in the Hebrew law. The law of the Old Testament, just like other ancient legal systems, was based on the principle of retaliation. The death penalty was applied for some various crimes, mostly for the murder of a man. It was stated that only shedding the killer's blood is a sufficiently high penalty for the murder of a human being created in the image of God. It was not anticipated here to apply an alternative punishment. Moreover, the death penalty was inflicted for trafficking in human beings, idolatry (worship of idols), magic, blasphemy or violation of Sabbath rest.⁶ The sentence to death also threatened people committing sins against parents, and so for the active insult, imprecation, stubbornness and disobedience. Paradoxically the institution of marriage was protected in this way, by punishing people for adultery. In primitive societies, punishments were meted out in the family circles. However, after the formation of a state institution, there was an established category of offenses that were considered to breach the general interest. Sentencing to death became the domain of the ruler, considered as representative of the interests of the community.⁷

The period of ancient Roman law was characterized by the death penalty for crimes against the interest of the general public. Acts constituting the offense deities were subject to penalty. The people feared that they might bring anger and unhappiness to the whole community. Therefore, the death of the perpetrator was treated as a sign of of-

³ K. Sójka-Zielińska, *Historia prawa*, Warszawa 1993, pp. 10-11.

⁴ A. Zaranek, *Na pohybel karze śmierci*, <http://albumpolski.pl/artukul/na-pohybel-karze-smierci> [May 30, 2014].

⁵ H. Grajewski, *Kara śmierci w polskim prawie karnym do połowy XIV w*, Warszawa 1956, p. 46.

⁶ T. Kłosiński, *Kara śmierci*, <http://klosinski.na.liberte.pl/kara-smierci/> [May 20, 2014].

⁷ K. Sójka-Zielińska, *Historia*, pp. 151-152.

fering. Similarly, treason and arson, as well as intentional homicide were treated as a sign of offending Gods.

The catalogue of offenses involving the offending of deities diminished in the era of classicism. At the same time, there was an increase in the types of crime threatening the interests of the whole community. Penalties were increasingly cruel. The sentence to death was associated with the use of sophisticated forms of torture. Common forms of punishment were: burning alive, crucifixion, throwing to the lions, wild animals or drowning in the bag with pets. They were intended mainly for people from the commoners and slaves. In the Roman Empire, they were also used against the patricians who committed the most serious crimes, for which at that time was considered treason or *lèse majesté*.

Not much changed in regard to the death penalty in the early Middle Ages. At that time, it was the basic public punishment. The most popular methods of its application included: hanging, stoning, breaking with the rack, drowning in a swamp, and burning at the stake. The main objective of all those cruelties committed back then during the execution was the general prevention. The death penalty was accompanied by crippling fines: cutting the tongue, limbs, nose, ears, castration and blinding. Sometimes there were also alternative penalties used in the case of forgiveness offered to the convict.

In that period, the opportunity to purchase the convict out of death penalty was characteristic of the legal systems. What is more, there was even a detailed price list of the redemption for specific offences. Redemption was not possible to be done only in the case of the toughest and most extreme crimes. The feudal right prevailing at that time was class related, and, therefore, legal standards were governed in a highly diversified way by the regulations stipulated by the representatives of the groups. Criminal liability and type of punishment depended not only on the social position of the offender but also the victim. Prices for the redemption of the convict were varied. Financial compensation for the murder was called *Weregild*, which was paid to the family of a killed person. The price was based on the social position of the victim, their sex and age. Also, there was an obligation to pay an extra fee to the state. The obligation to pay weighed heavily on relatives of the perpetrator as well, and passed down from generation to generation.⁸

In the late Middle Ages, a new classification of the sanctions appeared. There disappeared a distinction between public and private crimes, and in their place, there was introduced a penalty on the throat and the hand, i.e. those who were meted out for crimes and penalties on the skin and hair, for minor offences. The death penalty was included along with mutilating penalties to the penalties on the throat and hand. Due to the prevailing social unrest and the need for suppression of the anarchist incidents at the time, the harshest punishment was meted out very often.⁹ The set of punishments

⁸ *Ibidem*, pp. 161-164.

⁹ T. Grabarczyk, *Na gardle karanie. Kara śmierci w średniowiecznej Polsce*, Warszawa 2008, pp. 47-49.

included especially cruel ones: burying alive, cooking in olive oil, dragging the convict with horses at the place of execution and a tug-hot tongs. The main purpose of executions was to maximize the length and intensity of the suffering of the perpetrator. The possibility of buying from the death penalty became almost impossible to implement. The diversity of forms was caused by a newly recognized principle of justice punishment. According to it, a variety of crimes punishable by death required varied degrees of brutality. Criminals who committed offences against religion and the ruler, imaginary crimes (spells) and various crimes of moral nature were punished most cruelly. Extremely severe penalties were used for repeated offenders. In the event of a third theft, regardless of its type, the death penalty was ruthlessly used. Only minors before the age of 14 could avoid it.¹⁰

In the last decade of the nineteenth century, the death penalty again began to gain in popularity. The main reason for this approach is considered to be industrial development and the intensification of social antagonisms, demanding harsh repression against the people. The practice of sentencing to death heavily intensified during the rule of fascists, and even more in the days of Nazi Germany. The fundamental function of the death penalty again became a need for retribution and deterrence.¹¹

In Poland moratorium on the death penalty has been binding since 1988. The death penalty was executed for the last time on 21 April 1988 in the prison at ul. Montelupich in Cracow. The sentenced person was 29-year-old Stanisław Czabański, whom the court sentenced to death for the brutal rape and murder of a woman. Under the existing procedure since 1956 Czabański's sentence was executed by hanging. Although the Polish courts repeatedly ruled the death penalty in the coming years, it was never implemented. Since 1989, no Polish President has had to decide whether to exercise the prerogative of mercy to a person sentenced to death. In 1995, the moratorium was already considered to be legal under the Act of 12 July 1995 amending the Criminal Code, the Executive Criminal Code and about raising the lower and upper limits of penalties and vindictive criminal law. All the judgments imposing death penalty were then changed into these imposing the penalty of the 25-year imprisonment. In 1997 the death penalty was definitively removed from the Criminal Code, establishing the most severe life imprisonment.

Enforcement of the death penalty by modern society

According to data for 2013, more than 23,000 people around the world still expect a death sentence. Although the governments of a growing number of countries point out that executions do not prevent the commission of offenses, it is one tenth of the countries in the world in which such executions are still carried out. According to the

¹⁰ Ibidem, p. 168.

¹¹ R. Lemkin, W. Makowski, *Kodeks karny faszystowski*, Warszawa 1978, pp. 8-11.

Amnesty International report of 10 April 2013, the death penalty continues to be executed in as many as 21 countries around the world.¹²

Iraq and Iran are two of the three countries, where most death penalties have been executed annually for many years. It is worrying that in 2013, there was a rapid increase in the number of the executions carried out. Both the government and the media controlled by it confirmed the execution of about 370 death penalties, reflecting a 20% increase in comparison to 2012, although other sources of information indicate that it was also conducted during hundreds of additional, officially unconfirmed executions. The execution in Iran is carried out mostly by stoning. This form of execution of the judgment is stated in the Islamic Penal Code, which you can read in the following way: “in the case of execution of sentence of death by stoning, the stones shall not be so big, so as to kill the person by one or two strikes, neither shall it be so small that it cannot be called a stone”. To make matters worse, in this country death penalty is used for many crimes and behaviours, in particular for adultery, espionage, murder, the third consecutive catch on the drinking of alcohol (first two are punishable by 80 lashes), homosexuality or drug smuggling.¹³

For many years, the US have been at the top spot in the statistics of countries concerning the death penalty. It is estimated that since 1622 in the United States about 20 thousand executions have been legally conducted. The situation significantly deteriorated in 1994, when a federal law on crime was adopted. Its effect was to increase the number of crimes punishable by death from 2 to 60. At the beginning of the 21st century, in US death cells there were about 3400 people. The death penalty is currently in force in 32 states. Frightening is the fact that by 2005, the minimum age of 10 was required to carry out execution in the state of Indiana and Vermont, the minimum age of 12 in Montana, the minimum age of 13 in Mississippi, and from 14 to 16 in another 14 states. The most common method of execution in the US is to inject poison into the body of the convicted person. The other practices also involve hanging, the electric chair, the gas chamber and firing squad, as provided for soldiers, for committing war crimes. The average cost of the convicted person living in the prison until the execution is estimated at 3 million. The state in which death penalties are most commonly executed is Texas (over 500 over the last 40 years).¹⁴

The situation in China is completely different from that in the US. The independence of local courts is a fiction. They act by the views of the leaders with the recognized leading role of the party. In the Chinese criminal code death penalty concerns 68 different types of crimes, including 12 political reasons. Most often it is used for: mur-

¹² M. Wachnicki, *Kto jeszcze karze śmiercią, w jaki sposób i za co?*, <http://swiat.newsweek.pl/kto-jeszcze-karze-smiercia--w-jaki-sposob-i-za-co,103335,1,1.html> [May 8, 2014].

¹³ A. Łojek, *Pani cudzołożyla? Czterech świadków poproszę*, <http://dziejadolog.wordpress.com/2011/08/28/pani-cudzołożyla-czterech-swiadkow-poprosze/> [May 10, 2014].

¹⁴ *Kara śmierci w Stanach Zjednoczonych Am. Północnej*, <http://www.karasmierci.info.pl/ksusa.html> [May 9, 2014].

der, terrorism, gambling, pornography, speculation, theft of state property, smuggling, counterfeiting, and non-payment of VAT, or even just curious acts as the theft of a cow, or killing a tiger. Even in the early 21st century, executions in China are carried out publicly at court rallies.¹⁵ With the heavily restricted and incomplete data that became available in 2008, it shows that annually there were more than 4,000 people sentenced to death and about 2,500 cases in which this penalty was executed.¹⁶

In Europe, the only country where the death penalty is imposed by courts is Belarus. It is imposed for 12 categories of crimes in peacetime and 2 in the event of war. Just as in China, there are no official statistics concerning jurisdiction and the death penalty. The Belarusian authorities treat this issue as a state secret. According to Amnesty International, the number of judgments issued in the country has been gradually falling since the early nineties.¹⁷

The death penalties are also imposed in many other countries, though not all of them provide the factual data on the scale of this practice. Nearly 80% of the reported executions worldwide were carried out in three countries: Iran, Iraq, and Saudi Arabia.¹⁸

Public opinion against the death penalty

The easiest way to know the attitude of the community towards the death penalty is an overview of public opinion polls on this issue. In the case of Poland (although this trend is noticeable in most European Union countries) the public approach to restoring the heaviest possible punishment to the legal system is positive, and it is worth considering the causes of this approval. Support for the death penalty is based mostly on quite mistaken or, at least, uncertain belief that it is an effective measure in the context of the fight against crime. For the public, it is important to find the most effective methods to combat the most serious offenses. If we add to this the views of the extreme political groups that preach thesis, according to which supposedly the death penalty is the most effective way to fight crime; often the public opinion agrees with a way to solve the problem.

¹⁵ *Kara śmierci w Chinach komunistycznych*, <http://www.karasmierci.info.pl/kschrl.html> [May 9, 2014].

¹⁶ *Wypisz karę śmierci z Białorusi!*, <http://amnesty.org.pl/uwaga-akcja/petycje/wypisz-kare-smierci-z-bialorusi.html> [May 10, 2014].

¹⁷ *Kara Śmierci 2013*, <http://amnesty.org.pl/index.php?id=397> [May 9, 2014]. *Death sentences and Executions 2013*, http://amnesty.org.pl/fileadmin/templates/www/Raport_Kara_%C5%9Bmierci_2013_ENG.pdf, pp. 10, 17-18, 28-31, 33-34 [May 9, 2014].

¹⁸ *Korwin-Mikke za karę śmierci za pedofilię i gwałt? To jakaś nowość! Jeszcze do niedawna prezes KNP w sprawach obyczajowych był liberalny do bólu...*, <http://wpolityce.pl/polityka/185355-korwin-mikke-za-kara-smierci-za-pedofilie-i-gwalt-to-jakas-nowosc-jeszcze-do-niedawna-prezes-knp-w-sprawach-obyczajowych-byl-liberalny-do-bolu> [November 11, 2014].

According to a study conducted in the years 1987-2007 by CBOS, the number of supporters of the death penalty in Poland remained at a relatively high level, and the drop in support for this punishment is merely transient (1989, 1994).

Table 1. The approach of Poles to Death Penalty between 1987 and 2007 (in %)

Poles' attitude towards the death penalty	'87	'89	'91	'94	'95	'96	'97	'98	'99	'00	'01	'02	'04	'07
Supporters	60	52	62	56	66	74	74	76	77	77	72	74	77	63
Opponents	28	27	29	28	26	19	20	15	18	19	23	19	19	31
No opinion	12	21	9	16	8	7	6	9	5	4	5	7	4	6

Source: *Own study based on Sense of security, the threat of crime and attitudes towards the death penalty*, http://www.cbos.pl/SPISKOM.POL/2011/K_060_11.PDF [November 14, 2014].

The views of Poles on this topic became even more radical in the second decade of the twenty-first century. In October 2014, the probe was carried out on the restoration of the death penalty in Poland. As many as 83% of respondents supported this solution. Only 14% were opposed, and 3% had no opinion on the subject.¹⁹

It can be concluded that a large majority of the public still believes that the death penalty should be reinstated. Interestingly, the studies carried out by CBOS show that the approval of the death penalty application is not the result of a sense of safety from crime, because the opinion about the death penalty is a percentage almost identical to the group of experiencing the threat due to the commission of these crimes, as well as a group of not showing such concerns.²⁰

Undoubtedly the most well-known opinion on this matter expressed by the majority shapes the attitude of the society to the death penalty. For if by the general, unspecified arguments, the death penalty is the right solution, and the majority for a long time has been supporting this sentence, it probably is right. What is more, if the majority considers the death penalty to be just, then the pressure should be exerted to restore it, because the law is to serve the society and solve its problems. A sense of social justice

¹⁹ *Czy uważasz, że w Polsce powinna zostać wprowadzona kara śmierci?*, <http://www.zin.fo.pl/artykuly/16525> [November 14, 2014].

²⁰ *Poczucie bezpieczeństwa, Zagrożenie przestępczością i stosunek do kary śmierci*, http://www.cbos.pl/SPISKOM.POL/2011/K_060_11.PDF [November 14, 2014].

even points to use of the death penalty in some cases. Therefore, we must remember that death penalty must correspond to a broader look at its function than merely through the prism of public perceptions regarding the proper response to a criminal act.²¹

However, it would be dangerous to take into account the “will of the majority” in the context of the death penalty, because this is mainly out of sense of revenge, e.g. in the case of punishment for murder. Even if the majority of respondents say they accept the death penalty, the declarations do not probably comply with the readiness of its application in practice. By studying all kinds of human attitudes, one must take into account that the declared attitudes differ from these carried out. It is especially important for such a sensitive issue that is the decision to deprive a human being of their life.²²

It is also easy to notice that in the present day, in case of which wide access to the media, almost instantaneous flow of information (especially the bad ones) and the visibility of violence, increases the sense of threat in humans (sometimes subconsciously), but in fact, most people never come into contact with aggression directly in everyday life, and even more so with the one that caused the death in the immediate vicinity. Media mean that the public is intimidated and fearful, making it easier to agree to the use of severe penalties which, only, in theory, increase the private security. According to the statistics (rarely disseminated), in Poland there are 2.6 murders at 100,000 inhabitants, whereas in the United States, where the death penalty is widely used, the ratio is 9.3 murderers per 100,000 inhabitants.²³

At this point, it is worth quoting the eminent moralist, professor Jerzy Woroniecki: “At the sight of the crime, every man with crystal conscience wants it to be punished. The man seeing evil desires that this evil should be rectified, that justice should be done, that evil should not tower over the good, but it was compensated for by a just punishment. Certainly, the virtue of the criminal justice is threatened by such distortions as revenge, abuse, cruelty offender. People can follow it if they are vengeful, fearful and not in control of anger, even when it comes to their harm. However, the second dangerous extreme that should be called by its name is an indulgence, indifference to the evil done to another person. This attitude leads to impunity and the moral decay of society. Moderation is what can give the proper desire for justice and acceptance of responsibility for the moral image of society”.²⁴

²¹ B. Wolniewicz, *Jeszcze parę tez o karze głównej*, “Edukacja Filozoficzna”, no. 21, 1996, pp. 69-71.

²² Z. Cwiąkalski, *Dyskusja panelowa nad problemem kary śmierci*, [in:] *Evangelium vitae. Dobra nowina o życiu ludzkim. Materiały na temat encykliki Jana Pawła II Evangelium vitae oraz dyskusja panelowa o karze śmierci*, ed. J. Brusilo, Kraków 1995, p. 120.

²³ W. Jaskuła, *Przeciwno karze głównej*, <http://www.racjonalista.pl/kk.php/s,4746> [November 15, 2014].

²⁴ J. Woroniecki, *Katolicka etyka wychowawcza*, vol. 2: *Etyka Szczegółowa*, part 2, Lublin 1995, p. 375.

When in a society there is a perception that criminal law is sufficiently effective, criminals are punished, and the victims receive redress and justice, the citizens accept this state of affairs supporting the system of legal norms in a sense. However, if the community comes to the public acquittal of the actual perpetrators of crimes or imposition of too mild penalties, where the victims become helpless and abandoned by the state, criminal law begins to be regarded as unfair and denied to the citizens. When people come to the conclusion that the legal system fails to offer justice, in extreme situations occurs lynching, which is the act of administering of the so-called public justice.²⁵

The death penalty in the teaching of the Church

The death penalty is an issue important also from the perspective of the Roman Catholic Church teachings. It is worth noting that for many years for the Church the death penalty has been an act tolerated regarding public protection. As far as killing an innocent person, or even a criminals (exception here is the issue of self-defence), in the doctrine of the Church is treated naturally as a mortal sin and a quite wicked act, then killing a man (convicted by the state authorities) is considered to be acceptable and appropriate action due to the common good. It is true that the Church has not proclaimed the thesis that the law of God requires the use of the death penalty, although in the specific external circumstances it has not treated it as a violation of natural law.²⁶

Changes in this matter were introduced before the period of the second half of the twentieth century and from the perspective of the Catholic Church, after the days after the last Ecumenical Council (1962–1965). In the seventies there appeared first national Episcopal statements (including the United States, Canada and France) which related directly to the issue of the death penalty. The most emphatic statements turned out to be those of the American bishops. In their view, intentional deprivation of life should be treated as an attack on life itself. They also believe that the death penalty applies to the poor and the abandoned by the society. Moreover, such punishment is not a means to fight crime properly. According to the bishops, the attention should focus on the reform of the penitentiary system and the appropriate preparation of rehabilitation programmes. It was necessary to reconstruct the penitentiary system thoroughly to develop treatment programmes and improve the implementation of punitive measures. The effective elimination of evil was, in their opinion, possible only by reaching the source to eradicate the problem, not by the physical removal of successive people contaminated with evil. The bishops wanted criminals to be treated as sick people who need healing. Also, they stressed that the death penalty does not help to repair the

²⁵ F. Cieplý, *O dowartościowanie retrybutywnej racjonalizacji kary*, [in:] *Hominum causa omne ius constitutum est*, eds. A. Dębiński, M. Gałązka, R.G. Hałas, K. Wiak, Lublin 2006, pp. 231-246.

²⁶ R. Otowicz, *Kara śmierci – problem wciąż aktualny*, “Przegląd Powszechny”, no. 1, 1988, p. 41.

damage already done, but only hurts more people, mostly relatives of the convicted persons. In the end, they found that the death penalty cannot atone for sins, and also introduces the idea that such people lack the capacity to change for the better. An important seal of these claims was the publication the joint statement by the Catholic and Protestant Church in 1979, which concluded that death penalty, as well as any attempts to restore it, are unacceptable.²⁷

In the early 1990s, the Catechism of the Catholic Church, which is the official interpretation of the doctrine of the faith and morals of the Catholic Church, concluded that: "The efforts of the state to curb the spread of behaviour harmful to people's rights and the basic rules of civil society correspond to the requirement of safeguarding the common good"²⁸ in 2266 thesis. The Church interpreted these words as a legitimate right, and also the duty of state authorities to apply the penalties appropriate to the gravity of the offense, while not denying the death penalty in cases of particular importance. It can, therefore, be noted that the Church's position on the death penalty continues to be inconsistent and ambiguous (at least about the issue of the previous paragraph). Although after a few years the sentence was removed from the Catechism, it remains at the still point, saying that "Assuming that the guilty party's identity and responsibility have been determined fully, the traditional teaching of the Church does not exclude recourse to the death penalty, if this is the only possible way of effectively defending human lives against the unjust aggressor". In turn, it will interfere with another piece of the Catechism, which recorded that "Punishment then, in addition to defending public order and protecting people's safety, has a medicinal purpose: as far as possible, it must contribute to the correction of the guilty party".²⁹ At this point, it is possible to ask the question if the person sentenced to death has a chance to improve. In summary, the Church continues to admit secular authorities the right to apply the death penalty, although justifying its position by allowing such action only in special cases. However, without specifying these cases completely, the Church has left in this way the place for a fairly broad interpretation of the issue.

The actual breakthrough regarding the death penalty and the Church's attitude to this matter was brought before the encyclical *Evangelium Vitae* (Latin The Gospel of Life), written by John Paul II and published in 1995. Its theme was the value and inviolability of human life. The same problem of death penalty occurs there three times. Paragraph 27 refers to "grow a new sensitivity", which is reflected in the search for new methods of violence prevention, without using it in retaliation. According to the Pope, more widespread opposition to the death penalty then became a firm public, even that used to defend society. John Paul II emphasizes that the opposition is fully correct because modern society has no possibility of fighting crime using methods to

²⁷ M. Mitera, M. Zubik, *Kara śmierci w świetle doświadczeń współczesnych systemów prawnych*, Warszawa 1998, p. 42.

²⁸ *Katechizm Kościoła Katolickiego*, Poznań 1994, p. 632.

²⁹ *Ibidem*, pp. 632-633.

render criminals harmless, and at the same time allowing the return to the right path in life and penance.³⁰

Another important paragraph about the death penalty, paragraph 40, includes discussion on the sanctity of human life and the consequent principle of the inviolability of life. According to the Pope, “The commandment regarding the inviolability of human life reverberates at the heart of the »ten words« in the covenant of Sinai (cf. Ex 34:28). In the first place that commandment prohibits murder: »You shall not kill« (Ex 20:13); »do not slay the innocent and righteous« (Ex 23:7). But, as is brought out in Israel's later legislation, it also prohibits all personal injuries inflicted on another (cf. Ex 21:12-27). Of course, we must recognize that in the Old Testament this sense of the value of life, though already quite marked, does not yet reach the refinement found in the Sermon on the Mount. It is apparent in some aspects of the current penal legislation, which provided for severe forms of corporal punishment and even the death penalty. But the overall message, which the New Testament will bring to perfection, is a forceful appeal for respect for the inviolability of physical life and the integrity of the person [...]»³¹ It is worth noting that as clear, strong message, negating any possibility of the death penalty; it was an unprecedented event in the history of the Church in general.

The death penalty also applies to paragraph 56 of the encyclical, which is located in the section “Thou shalt not kill”. Here, the death penalty is recognized in the attitude of respect for life and impassable boundaries to protect it. The Pope stressed at this point that the killing of a human being is a sin especially hard for the Church, although he has the awareness that “the right to protect one's life and the duty not to harm someone else's life are difficult to reconcile in practice”. John Paul II also regrets the fact that “Unfortunately it happens that the need to render the aggressor incapable of causing harm sometimes involves taking his life.”³²

The same issue of the death penalty has been subjected to consideration by the pope in the context of just punishment. According to him, every punishment should correspond to human dignity. It is true that the public authorities have the right to defend their people and the penalties that are appropriate for the crime committed, however, they should not go to the extreme because now there are already ways of protecting society from events that encourage to deliver the highest possible sentences.

The arguments of supporters of the death penalty

In the dispute about the legitimacy of the death penalty, their arguments regarding its maintenance or abolition of exchange still opposing trends related to retention and

³⁰ *Encyklika “Evangelium vitae”, [in:] Encykliki Ojca Świętego Jana Pawła II, Kraków 1997, p. 878.*

³¹ *Ibidem, p. 894.*

³² *Ibidem, pp. 914-915.*

abolition. The first one, also related to repression, is in favour of maintaining the death penalty, but, as a rule, permitting certain restrictions on its use.

The main argument of modern retention approach is proportionate punishment, according to which for the most serious crime of the homicide, perpetrator of the act must be punished in the most severe manner, proportional to the crime, because this is the only fair way. Even Immanuel Kant and Georg Wilhelm Friedrich Hegel claimed that the death penalty for murder is fair, adding that it is a presentation of respect for the criminals, which can be thus the only option to pay for their offense. What is more, they reject the contention that the death penalty has a preventive effect and changes decisions of potential murderers’.

Not only those following the retention approach, but also those related to abolition and seeking support for their positions, refer to the conclusion that springs from the individual concept of punishment, shared on retributive and preventive. According to retribution theories, every penalty (including the death penalty) must be an act of retribution evil for evil, and not to be found in other purposes related to it. The legitimacy of punishment only produces the criminal sin. However, according to the theories of prevention, the use of the death penalty is justified by its social impact. It is noticeable here that the retributive concepts refer to the act committed in the past, and prevention is focused on the future and expectations of changes in human behaviour.³³

According to supporters of the death penalty, the constitutive feature of humanity is the ability to distinguish between positive and negative values, and the intention to do well, not a biological dimension. Therefore, moderate retention related followers argue that the death penalty should be applied to offenders who clearly crossed the boundary of humanity in their actions.³⁴

The relation related followers often invoke Saint Thomas Aquinas, who claims that the killing of a man is intrinsically an evil act, but only in situation in which the person retaining the dignity is deprived of life. Accordingly, the relation related followers conclude that murder deprives the perpetrator of his human dignity, and so it allows and justifies taking away of his life. Further floundering in their deliberations, the relation related followers argue that fear of loss of life will stop most people from committing crimes. However, if this does not happen, regardless of threatening sanctions, a person commits offenses of the heaviest calibre destroying the social order is completely righteous deed is to deprive him/her of his/her life, if he/she does not appreciate it in others. As life is the highest temporal good, to maximize the effectiveness of its protection, the heaviest possible punishment should be used, namely, the deprivation of life.³⁵

³³ M. Szyszkowska, *Zarys filozofii prawa*, Białystok 1994, p. 121.

³⁴ T. Ślipko, *Kara śmierci z teologicznego i filozoficznego punktu widzenia*, Kraków 2000, p. 100.

³⁵ A. Maksymowicz, *Kontrowersje wokół kary śmierci*, http://journals.bg.agh.edu.pl/STUDIA/2010-09/SH_2010_09_11.pdf [February 13, 2015].

Supporters of the death penalty argue that granting individual rights of the defence of life against an aggressor cannot receive public a right to self-defence if its member becomes a victim of an assault. Therefore, if the victim can no longer exercise the right of self-defence, then the law not exercised before his/her death should be transferred to the state. The state's duty is to defend the life right of a deceased victim of the crime. However, this obligation rests with the state against the entire society, because it must protect the interests and property of citizens, hence the duty of defence against criminals and concern for disadvantaged people. On the other hand, to fulfil this obligation, the state must have the means to guarantee the effectiveness of the defence, and one of them is the death penalty, which they consider strictly retention related effective, explaining that the only offender becomes harmless to the public.³⁶

Most retention related followers claim that capital punishment helps criminals in the process of conversion, compensating discredit, they brought God and redeeming for disregard of his rights. The penalty is compared with lifetime imprisonment. They point out here that any such penalty charges primarily in society by long-term costs of maintaining a prisoner. They also feel that it is much more humane to deprive the criminal of his life than sentencing him (especially at a young age) to deprivation of the rest of his life, shut in a cell without any hope to ever go out.³⁷

By considering the most serious types of crime, particularly murder perpetrated with particular cruelty, the supporters of the death penalty believe that the deprivation of life is the only punishable means that correspond to the sense of social justice. Their reason is supported by the thesis that the life of victim's murder continues in the moral order and spite of his/her death it continues to have the social effects. To sum up, even if the life of the individual is physically destroyed, it has not been the destruction of the moral valence, and, therefore, moral claim. Therefore, for the sake of justice, it requires punishment, which indemnifies the victims of injustice. The retention related followers emphasize here that the abolitionists make serious abuses there, allowing murderers to keep alive because they grant each the right to pardon criminals, which can mean only their victim's.³⁸

In summary, according to supporters of the death penalty, the guilt of the offender and individuality-prevention functions should be considered as fundamental factors of importance and the need to apply the death penalty. The overall prevention is extremely important to them in this regard. Indeed, they believe that only death penalty is an effective deterrent for future criminals from committing the most serious crimes, which is certainly questionable and easy to undermine thesis. Therefore, retention related followers trying to refute negative their position on the preventive, proclaim that no punishment is effective to eliminate the criminal element completely, but nobody

³⁶ P. Bartula, *Kara śmierci - powracający dylemat*, Kraków 2007, p. 69.

³⁷ T. Ślipko, *Kara*, pp. 52-53.

³⁸ B. Wolniewicz, *Filozoficzne aspekty kary głównej*, "Edukacja Filozoficzna", no. 20, 1995, pp. 18-20.

proposes to eliminate other penalties for criminal activity. Crime cannot be defeated completely, but through a system of penalties and disincentives to commit crimes against the death penalty at the helm, according to the retention related followers, it is possible only to think how to maximize the effect of general prevention.³⁹

The arguments of opponents of the death penalty

Through abolitionism, the attitude is understood expressed in the recognized need to eliminate or reduce the use of the death penalty. It is true that the word abolition derives from the Latin “abolitio” (abolition, remission), although in encyclopedias, reference books or dictionaries concept is related only to the social movement, which advocates the abolition of slavery. Relatively few people use this term in connection with the activities for the abolition of the death penalty. However, for this Article, the term “abolition” refers to the attitudes expressed in the need to abolish the death penalty in the dimension of modern legislation. It should be emphasized that the abolitionist stance need not be synonymous with action to eliminate completely the death penalty from the legislation, because many of them authorize the use of death penalty in cases of extreme danger. You may also note that despite the stability of the arguments of opponents (and followers), the impact of the death penalty on abolitionist ideas in a social context is quite slim. It is extremely rare to encounter a situation in which a significant overwhelming majority advocates the use of the death penalty. As the question of removing the death penalty from the legislation of individual countries always arouses lively discussions and some controversies and doubts.⁴⁰

Accordingly, abolitionists can be divided into two movements, the extreme and moderate one. The first indicates the immediate abolition of the death penalty. The second one says that the decision to abandon capital punishment should translate into gradual steps in this direction. Initially, it is necessary to limit the categories of crimes punishable by death, and then the category of persons who might be at risk. It is also necessary to establish the appropriate amount of contracting process that efficiently protects innocent people against being punished. Complete abolition of the death penalty should precede the introduction of a de facto amnesty, or status, where it is true, formally as the risk for the death penalty in criminal law, but is not subject to adjudication or feasibility. This situation allows for quick restoration in the event of a sharp increase in the number of crimes, which often helps to convince supporters of the use of the death penalty, and also reassures the public who initially worried about the impact of changes to its security.⁴¹

As the main argument raised by opponents of the death penalty, it is considered the inalienable right to live, which extends to any individual. A man should not be

³⁹ M. Szyszkowska, *Zarys*, s. 44.

⁴⁰ H. Wantuła, *Abolicjonizm więzień: podejście racjonalne i humanistyczne, o karze pozbawienia wolności, o jej skutkach i możliwościach jej ograniczania*, Kraków 1997, pp. 11-14.

⁴¹ T. Ślipko, *Kara*, p. 106.

deprived of this right, and thus, become the subject of the assault, especially from the state, which should guarantee his rights. Although abolitionists try to establish their thesis in the field of morality, and the right to life is expressed in the standard “do not kill”, even among them there is disagreement on the issue of understanding of that prohibition. For some it applies unconditionally to all men in all circumstances. For others, the life itself is not the most important thing, but the desire of life that finds its source in the human biological instinct and the need for moral comfort. Accordingly, the death penalty is opposed to both of these points. At this point, it is worth asking whether, that is this “moral comfort”. Do you express this common improve the well-being of people, which stems from the conviction that the possibility of human transformation in the process of rehabilitation is unlimited, because it is the essence of the moral, and the good is an essential feature derived from his nature? Or is it that humans reached a level of civilization, characterized by a system of values, which precludes any desire for revenge for the damage because it is a sign of low instincts? Trying to answer this question, we can conclude that both assumptions are of excessive idealism and not related to reality. Therefore, you can still wonder whether it is not only to highlight the fact that the death penalty stimulates evil instincts, and perhaps increases the degree of aggressiveness among criminals? However, such reasoning seems to be wrong and can refute the argument that death penalty does not warp the characters of honest people, and criminals can effectively be prevented from committing crimes. Non-public executions solve the problem of preventing the spread of evil instincts of the public, and so easily toppled is another argument. In summary, it can be stated that the assumptions of abolitionists, as those of the retention related followers, are anchored in the emotional aspect, which leads to ongoing discussion and disputes between them, and neither party can have their theses rationally justified, which has the effect of any dispute between them to a standstill.⁴²

Another dubious argument on the side of the abolitionists is that more important than the physical existence is “a dignified life and death with dignity”. What is more, they believe that every human life should be regarded as the highest value. However, according to this absolutist approach, we must also recognize the sanctity of life of the greatest criminals, and loss characteristics of humanity follow, therefore, only with the cessation of vital functions of the human body.

Abolitionists strongly oppose the argument on the usefulness of the death penalty in the context of the cheapest means of getting rid of the criminal because they do not take into account the possibility of an offender changing and possibly being useful to the society in the future perspective. Unfortunately, this counter-argument seemed to be unjustified and easy to overthrow by the retention related followers. The economic calculation would be much more in favour to be compared with the actual cost of maintaining a prisoner about the costs necessary to carry out the sentencing to death. For example, in the US, these costs are often comparable, and sometimes even higher in the case of a conviction, and to carry out executions of convicted person. It calcu-

⁴² M. Mitera, M. Zubik, *Kara*, pp. 12-13.

lates that every year the state seems to pay approx. 185 million US dollars for maintaining the “death cells”.⁴³

Abolitionists reject the justification of the death penalty regarding preventing recidivism. In their view, the primary function of punishment cannot be the anticipation of possible events, so those that could, but need not occur in the future. Therefore, the penalty should not be a preventive measure, but only a response to an apparent fact. According to opponents of the death penalty, the retention related followers put on a par the actual deprivation of life of the perpetrator of an alleged murder of in the future and the hypothetical victim. In their view, it is unacceptable to justify the application of preventive measures only prediction as to the possibility of committing a particular action by a particular person. Abolitionists subject for discussion also the argument provided by the retention related followers for automatic death penalty for murderers. According to them, the criminal, who is outside the law and is excluded from its protection, automatically excludes himself or herself from the norms of criminal law, so he/she cannot be subjected to an automatic death sentence.⁴⁴

An important argument for opponents of capital punishment is the thesis that it causes a convict much more suffering than that experienced by his/her victim, and so the penalty is disproportionate to the offense. According to the abolitionists, the accused feels the uncertainty whether it will be condemned to the death penalty sentence. Then he/she lives, expecting strong emotional tension on the enforcement of the sentence or the possible application of the law of grace, which is mostly illusory hope, and death itself is here the least painful in comparison with the events preceding it. Since the establishment of the death penalty, it is largely a physical ailment to the accused, it is not possible to protect him/her from all over the suffering that meets him/her before the execution. Accordingly, the death penalty should be abolished. Abolitionists emphasize that knowledge about death itself is very dim, and there is no guarantee that it is painful. It is certain, however, that the fear of it is incredibly painful. In summary, capital punishment from this perspective cannot be considered as fair.⁴⁵

The last important abolitionists’ argument to abolish the death penalty is a total negation of the death penalty in the context of the qualitative aspect of justice. Sentencing people to death, is nothing other than returning to the rule of talion and it has nothing to do with justice, because it is sanctions revenge in the framework of criminal law. It is also in conflict with the assumption that the death penalty is regarded as an exceptional measure.⁴⁶

⁴³ *Na pohybel karze śmierci*, <http://wiadomosci.onet.pl/na-tropie/na-pohybel-karze-smierci/hbl89> [February 14, 2015].

⁴⁴ J. Filek, *Etyka wobec problemu kary śmierci*, “*Studia Filozoficzne*”, no. 10, 1989, pp. 221-222.

⁴⁵ D. Marczyński, *Filozoficzne aspekty kary śmierci*, “*Biuletyn Naukowy Humanistyka i Przyrodznawstwo*”, no. 2, 1994, p. 42.

⁴⁶ S. Wakulak, *Kara śmierci w polskim prawie karnym*, <http://karasmierci.manifo.com/> [February 16, 2015].

Conclusion

The death penalty is still carried out in 21 countries around the world, although nowadays it is overridden successively in the following countries, as well as actions aimed at civilizing the same methods of operation are carried out. Legal and moral considerations on the death penalty lead to the conclusion that with the progress of civilization and culture, it should be replaced by less drastic means of preventing hazards against persons who commit the most serious crimes. The position of Polish and European Union in this regard is unique, i.e. against the use of capital punishment. The Polish public opinion expresses a different opinion on the death penalty. Approximately 60-70% of Poles still advocates the use of capital punishment, irrespective of the fact that there is no possibility of its restoration, as well as the lack of evidence that the lack of this sentence would translate into the lower scale of the hardest crimes committed. Surprisingly, such an approach of the Polish society towards the death penalty did not change even under the influence of explicitly negative attitude to this issue manifested by the Church and Pope John Paul II.

Summary

THE SENSE OF PUBLIC SECURITY. DEATH PENALTY: CRUELTY AND JUSTICE?

From time immemorial, the death penalty has been used in all cultures, not only as a reward and consequence for evil done, but also as one of the important tools in the fight against the wider crime. The death penalty has always aroused a lot of emotion in societies. This approach to a way of justice administration has also been changed over the centuries. The supporters of the death penalty argue its use of the public interest by eliminating individuals who imperil the safety of others and betray the accepted values as well as the factor of effective prevention. The opponents believe that the death penalty is like the ultimate cruel, inhuman and degrading punishment, which violates the universally recognized right to live. Since the Enlightenment, the death penalty has been one of the most contentious issues of criminal law. Today, in European culture it has ceased to be an acceptable element of the enforcement of the law.

Keywords: death penalty, prevention, justice, security, criminality, humanitarian values

Streszczenie

POCZUCIE BEZPIECZEŃSTWA PUBLICZNEGO. KARA ŚMIERCI: OKRUCIEŃSTWO CZY SPRAWIEDLIWOŚĆ?

Kara śmierci stosowana jest od niepamiętnych czasów we wszystkich kulturach, nie tylko jako odплата i konsekwencja za uczynione zło, ale też jako jedno z istotnych

narzędzi w walce z szeroko rozumianą przestępczością. Ten najwyższy wymiar kary od zawsze wzbudzał w społeczeństwach wiele emocji. Zmieniało się też w ciągu wieków podejście do takiego sposobu wymierzania sprawiedliwości. Zwolennicy kary śmierci argumentowali jej stosowanie interesem społecznym poprzez eliminowanie jednostek zagrażających bezpieczeństwu innych i sprzeniewierzających się ogólnie przyjętej wartościom, a także jako czynnika skutecznej prewencji. Natomiast przeciwnicy uważali karę śmierci za najbardziej okrutną, nieludzką i poniżającą, która łamie powszechnie uznane prawo do życia. Od czasów oświecenia kara śmierci należy do jednych z najbardziej spornych problemów prawa karnego. Dziś w europejskim kręgu kulturowym przestała być akceptowalnym elementem egzekwowania porządku prawnego.

Słowa kluczowe: kara śmierci, prewencja, sprawiedliwość, bezpieczeństwo, przestępczość, wartości humanitarne

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