

THE RIGHT TO LIFE AND THE DEATH PUNISHMENT AS ITS DEROGATION

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Abstract: Although in developed countries (many these countries) the existence of the death penalty is no longer questioned, nor is there a dilemma regarding this penalty in modern legislation, the reports of international organizations that monitor this phenomenon are worrying. According to the latest reports, in the year 2023, 1,153 death sentences were carried out in the world, which shows that even though the number of countries abolishing this punishment is increasing, the number of executed death sentences, accordingly, should be decreasing, but it is not. In addition, new methods of execution of the death penalty are being introduced, which shows that there is no intention to abolish it, although international acts require such an obligation. This was a signal to the authors of the paper to try to explain the concept of the death penalty and the issues related to it that arise in science, practice, religion, morality, and increasingly in society from a scientific and professional perspective. The main scientific goal of the work is to understand the reasons for the introduction, and still exist, of the death penalty in certain countries, as well as to find modalities of punishment that are an adequate substitute for the death penalty and to achieve fairness and proportionality in punishment. In the research, almost all basic methods of knowledge and research were applied, and statistical and comparative methods were used from the general scientific methods, while from the methods for data collection, only the method of content analysis of documents, laws and annual statistical reports of the Republic Institute of Statistics was used. Using the historical-comparative method, in the first part of the work, the authors dealt with the historical aspects of the origin of this punishment, its morphoses, as well as its disappearance from most legislation. After that, we carry out a detailed analysis of the application of the death penalty on the territory of Serbia, today's Republic of Serbia, but also in the world. The work ends with the discovery of perspectives related to the death penalty, its abolition, but also its reintroduction in some countries or changing the methods by which it is carried out, which is widely debated in society today. This is exactly what explains the social goal of the work, which consists in proving the harmfulness/benefit of the executed death penalty on the increase/decrease of criminality in society and its moral, religious, medical and legal justification. The death penalty has its alternatives and can be very effectively replaced by some other punishments that would also justify the purpose of punishment. For example, the introduction of life imprisonment (with or without the possibility of parole or some other variation) is one of many alternatives to the death penalty. Although life imprisonment has its advantages and disadvantages, and it is not the most ideal, at least it has the possibility of "correcting a mistake" if a mistake occurs in the court proceedings, it is more humane and allows convicted persons to have at least some hope that one day they will be free again (life imprisonment with the possibility of parole) which is already a step forward in the development of humanity. If, even after all the arguments presented, there is doubt as to whether the death penalty should be included in the legislation or not, it is only necessary to answer the research question: has crime and illegal behavior been eradicated in countries that have the death penalty, and has its application had a good effect to reduce criminal activity? The answer is: No! Therefore, the conclusion is that the purpose for which the death penalty was introduced was not achieved.

Keywords: fundamental human rights, right to life, death penalty, derogation of the right to life, amnesty.

Field: Social sciences

JEL classification: K10, K14, K38, K42

1. INTRODUCTION

The meaning and importance of the right to life, the appropriate way to protect this right, but also the limitations in its enjoyment have always represented a huge moral, religious, legal, but also social dilemma and represented an issue around which consensus in society was very difficult to achieve. How to protect the right to life? Who should protect the right to life? Who can limit the right to life? How should the state react in case of non-respect of the right to life? How should society react in case of disrespect, denial of the right to life? To what extent should international law be allowed to interfere with the protection of the right to life in domestic, national law? Is the existence of the death penalty the main and most severe form of derogation of this right? Are all other rights worthless if the right to life is derogated? These are all dilemmas that the authors deal with in this paper and that they recognized as currently and permanently socially relevant, which is supported by the latest announcements of organizations that deal with the research of these phenomena, where it was stated that in the previous year (2023) the most of

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death sentences since 2015. What is generally noticeable is that the number of countries that apply the death penalty is decreasing (either they have abolished the death penalty in their legal system or such a penalty still exists formally in law, but is not applied in practice), but that the number of executions of death sentences is increasing.

The Republic of Serbia has had a clear position on this type of derogation of the right to life for a long time. The death penalty does not exist in the Republic of Serbia. However, the issue of re-introduction of this type of punishment is often present as a social issue in the case of the murder of a child, in the case of the murder of several persons, in the case of great recklessness, the use of violence and the manifestation of treachery during the execution of criminal acts, which is why the re-introduction of this punishment is very often mentioned.

2. THEORETICAL FRAMEWORK

The death penalty appears as the most severe form of denial of the right to life (exerted by the state). There are also other ways of attacking the right to life (for example, various types of murder that come from individuals, members of a society that is known to be illegal in any case and under any circumstances), but there are also some types of deprivation of the right to life, which are justified and allowed in some countries, which are legal and legitimate, and such ways of derogating the right to life cause polemics and do not find justification, approval and acceptance around the world, i.e. there is no uniform practice or equal treatment in all countries (for example: euthanasia, killing in self-defense, killing in war, environmental hazards, etc.).

The authors decided to emphasize the problem of the existence of the death penalty as a form of derogation of the right to life, for the reason that we believe that the biggest problem is the violation of fundamental human rights by the state, and that if the right to life is attacked by the state that is primarily expected to provide protection that right, then it is completely worthless to discuss the violation of the right to life by individuals, residents of that country.

Mention of the death penalty dates to Hammurabi's code around 1750 BC. Whenever it was mentioned, it carried with it some restrictions in the form of methods or conditions of execution, and it was precisely these restrictions that led to its final abolition.

Among the first countries to abolish the death penalty were Venezuela (1863), San Marino (1865) and Costa Rica (1877). The Republic of Serbia, as a responsible, democratic state, also abolished the death penalty in accordance with its obligations from the International Covenant on Civil and Political Rights (Second Protocol from 1989), as well as Protocols No. 6 (from 1883) and No. 13 from in 2002 with the European Convention on Human Rights (1950). The Republic of Serbia ratified the European Convention on Human Rights on December 26, 2003, and it has been legally effective since March 3, 2004.

This convention strictly states that the right to life is a fundamental right and that because of its existence, states have some positive and negative obligations. Under negative obligations, it is understood that the signatory states of the Convention must not undertake actions that harm basic human rights. It is also determined that states have a few positive obligations in the form of undertaking protection, i.e. ensuring the conditions for the realization of basic human rights (primarily the right to life). Article 2 of the European Convention on Human Rights directly protects the right to life of "every person". This term has been called into question many times through science, because a dilemma has arisen whether natural and legal entities can be classified under this term, or whether it directly refers only to human life. The dilemma was resolved through practice, so it was established that the European Convention on Human Rights can also apply to legal entities, i.e. companies, in the part that defines the right to property, the right to a fair trial, the right to freedom of expression, the right to association, the right to freedom of religion etc. The main purpose of Article 2 of the mentioned Convention is that it protects the individual from "unlawful taking of life". Therefore, taking a life in accordance with the law of a sovereign state is allowed (so, taking a life is not illegal if it is for the purpose of defending a person from illegal violence, if it is for the purpose of preventing the escape of a person legally deprived of liberty, if it is for the purpose of suppressing disorder, if in deprivation of life as part of legally permitted actions in the event of a war conflict, etc.).

According to the Constitution of the Republic of Serbia (Constitution of the Republic of Serbia, 2006) in Article 24/2 it is determined that "There is no death penalty in the Republic of Serbia". During its existence and implementation, it was carried out without the presence of the public, before a commission consisting of a judge, a public prosecutor, a prison warden and a lawyer - a defense attorney for the convicted. The punishment was carried out by a firing squad of eight policemen shooting at the condemned, and only half of them had combat ammunition, and the policemen (executioners) did not know what ammunition they

had (due to “conscientious objections”), so it was not known which shot was deadly. The death penalty in the Republic of Serbia was partially abolished by the Constitution of the Federal Republic of Yugoslavia (1992) when it was prescribed that the death penalty be abolished only for criminal offenses prescribed by federal law, which meant that it could be imposed for criminal offenses that were under the jurisdiction of federal units. All dilemmas regarding the death penalty in the Republic of Serbia were removed on March 8, 2002, when the provisions of the amended Criminal Code (Criminal Code of the Republic of Serbia, 2019) entered into force, which formally abolished the death penalty.

It is necessary to note that even when the death penalty existed in the Republic of Serbia, it had certain limitations, and the legislator strove to be fully in accordance with the principle of legality and the principle of humanity. The death penalty could not be imposed on a person who had not reached the age of 21 at the time of the commission of the crime, as well as on a pregnant woman - thus denying the right to life of the unborn child.

3. RESEARCH CONTEXT

In this part of the work, we will investigate the derogation of the right to life in the territory of today's Republic of Serbia and, with the application of the historical-comparative method, find out at what level of development the Republic of Serbia is in relation to other developed countries, viewed through a historical prism regarding the establishment, application, and abolition of the death penalty. Written traces of the existence of the death penalty date back to 1804, and data on the state of sentences pronounced and carried out can be traced back to that period. However, it is known that deprivation of life was punished in the territory of today's Republic of Serbia long before the mentioned period.

For example, looking at the Collection of Laws and Decrees of the Principality of Serbia issued in 1858, we see that some dilemmas arise regarding the death penalty. The question is how to carry out the death penalty and what to do with the dead bodies? Prince Aleksandar Karađorđević issues the order to kill the person sentenced to death with a rifle and to bury his body immediately in the ground (Principality of Serbia, 1858). Back in 1859, when Prince Miloš Obrenović came to power, the punishment of whipping was abolished, because it was considered “against the spirit of the times and humanity”. It is replaced by a prison sentence according to the scale set in the Decree of January 31, 1853, which shows us that in the territory of today's Republic of Serbia, there was also an awareness of the inadmissibility of inhuman and degrading treatment (Principality of Serbia, 1859). Later, by order of Prince Milan Obrenović, from December 11, 1873, corporal punishment was completely abolished (Principality of Serbia, 1874).

The death penalty in the Kingdom of Yugoslavia was carried out by hanging (Lazić, 2020). This punishment is something that is used in a state of emergency due to the needs of the country. Before these provisions, the death penalty was carried out by firing squad. It was expected that the execution of the death penalty by hanging would be much more humane, and that it would produce much less pain during the execution, which takes place in the shortest possible time. This sentence cannot be imposed on a person who has not reached the age of 21. The death penalty, according to the Criminal Code of the FRJ, could be executed by shooting or hanging.

The authors reviewed the Bulletins of the Republic Institute of Statistics regarding the issue of the death penalty and the frequency of its execution, starting from the first written traces, and present the available data in the following tables. The years of the observed period are presented in the first column, and the number of death sentences imposed in the second column.

Table 1: Number of persons sentenced to death in the territory of today's Republic of Serbia observed in the period from 1947 to 2002

1947.	1948.	1949.	1950.	1951.	1952.	1953.	1954.	1955.	1956.	1957.	1958.	1959.
127	56	187	180	48	70	30	11	11	12	5	15	2
1960.	1961.	1962.	1963.	1964.	1965.	1966.	1967.	1968.	1969.	1970.	1971.	1972.
3	5	4	6	1	3	5	0	2	4	3	0	4
1973.	1974.	1975.	1976.	1977.	1978.	1979.	1980.	1981.	1982.	1983.	1984.	1985.
3	1	4	6	4	4	5	3	3	0	3	1	3
1986.	1987.	1988.	1989.	1990.	1991.	1992.	1993.	1994.	1995.	1996.	1997.	1998.
3	4	2	1	0	0	0	0	0	0	0	2	3
1999.	2000.	2001.	2002.									
0	1	2	0									

Source: Author's research / Bulletins of the Republic Statistical Office from 1947 to 2002

Based on the collected and analyzed data during the 55-year observed period, according to the official data of the Republic of Serbia, a total of 852 death sentences were imposed (an average of 16 death sentences were imposed annually). According to the Bulletins of the Republic Institute of Statistics, it is not possible to know how many of the imposed death sentences were carried out.

However, there are studies that document that from 1804 to 2002, on the territory of today's Republic of Serbia (it should be emphasized that this period also included the period of Yugoslavia's existence, and that the territory was much larger than what we consider today to be the territory of the Republic of Serbia) imposed a total of 7,039 death sentences (Serbia against the death penalty, 2024). Of these, 4,964 people were sentenced, of which 145 were women. We have 1,769 amnestied persons and no death sentence was carried out on them. If we look by gender, 169 female persons were granted amnesty in the observed time period. There are also sources that indicate that 126 persons escaped or died before the execution of the death sentence (six of which were female).

Although it seems that the number of persons sentenced to death penalty is large, it should be kept in mind that this is a very long period of time that is being discussed, that the research in the paper covered almost the entire century of the existence of a state from its roots, from the first written traces and that in that period there were also war conflicts when death sentences were pronounced more often (for example, for the crime of high treason, espionage, etc.). In the final number of death sentences imposed, a very large number of death sentences were imposed by military courts (1974 persons), while regular courts, courts of general jurisdiction, imposed a total of 2,906 death sentences, of which 1,240 persons were amnestied or escaped before the execution of the death sentence or died before execution of the death penalty.

Based on all of the above, we can conclude that the death penalty, in the territory of Serbia, has never been a high-frequency criminal sanction, and that the courts in the territory of the Republic of Serbia have always chosen its alternatives that would satisfy the purpose of punishment.

4. DISCUSSIONS

There are many written and unwritten traces dating back far into the past about various types of deprivation of life and customs of punishing persons who claim the right to take someone's life. For example, even in tribal communities "among the tribes at the mouth of the Wanigela River, in New Guinea, a man who kills someone is considered impure until he undergoes certain purification rites. And when he has passed them, he puts on his best jewelry and as many badges as the men he has executed; then armed, he goes outside and struts around the village. The next day, the locals smeared kangaroo liver on his back. Then he goes to the nearest river, steps into it, spreads his legs, and while he is washing, all the young and inexperienced warriors swim between his legs, gaining courage and strength. The next morning, he rushes out of the house fully armed and loudly shouts the name of his victim. Only after he was convinced that he had completely frightened the spirit of the murdered man, he would return home." (Avramović & Stanimirović, 2009).

These practices or practices similar to these cannot be allowed nowadays, when the awareness of human life, rights, obligations, and morality is at a much higher level than it used to be. It is unacceptable that there is any country or any part of the world where human life is not safe, where there is no primacy in protection and where human rights are violated to the point of complete denial of the right to life. International organizations have contributed a lot to protect the right to life, from many derogations, not only from a direct attack on life in the form of the death penalty, but also from other types of attack (illegal use of excessive force, killings while persons are deprived of their liberty, environmental hazards, denied medical care, etc.), but the reports of organizations that monitor the state of protection of the right to life indicate that practice and regulations are still not harmonized.

In many cases, we observe that the practice of the European Court of Human Rights has helped in understanding, forming the right/legal opinion about the existence or non-existence of violations of rights (national and international) regarding the death penalty or the fear caused by the very threat of its existence. By analyzing cases such as: *Incal v. Turkey* (1998), *Çiraklar v. Turkey* (1998), *Vilvarajah and Others v. the United Kingdom* (1991), *Campbell and Cosans v. the United Kingdom* (1982), *H. L. R. v. France* (1997), *Ocalan v. Turkey* (2005), *Furman v. Georgia* (1972), (Mugambi, 2022) we can clearly establish which articles of the Convention and its associated Protocols are respected and are working in practice.

The work of international bodies and organizations has had an effect, but the data provided by Amnesty International in the latest report on the issue of the death penalty and the frequency of its execution (Amnesty International Global Report 2023, 2023) are devastating and indicate that all of

humanity must be involved in the fight against such practices of individual countries (Lago, Fajar, & Syofyan, 2023).

According to the latest report for the previous year (2023), there are twelve countries in which death sentences are constantly carried out, and in some of them, or rather most of them, the number of death sentences imposed and carried out is increasing. Those countries are China, Iran, Iraq, Egypt, Saudi Arabia, Yemen, USA, North Korea, Vietnam, Bangladesh, Syria and Somalia. For some of the mentioned countries, the data are not surprising, given the level of social development and awareness, the way of government, economic power, the level of state (lack of) control, but the data for individual countries are absolutely surprising, considering the level of their development, but also their struggle (at least the one that is shown to the rest of the world) for human rights, as well as the degree of technical and technological development (USA and China).

If we look back at the ways of executing the death penalty, this way of derogating the right to life, (in Saudi Arabia the death penalty is carried out by beheading, in some countries by hanging - Egypt, Iraq, Iran, Singapore, Syria, Bangladesh, in some countries the death penalty is used injection - China, USA, Vietnam, and in some it is carried out by shooting - Somalia, Yemen, China, Palestine, North Korea, Afghanistan) we note that they are completely contrary to the guaranteed fundamental rights - the right to life, but also contrary to the postulates of prohibition torture and inhuman degrading treatment. Preparation for the execution of the death penalty, the act of shooting, giving the lethal injection, hanging, are all stages of the execution procedure that cannot be made more humane in any way except to be completely abolished.

The crimes for which the death penalty is most often imposed as a form of derogation of the right to life are crimes related to intoxicants - narcotics (China, Iran, Kuwait, Saudi Arabia, Singapore), corruption (China), apostasy (Iran), sexual relations before marriage (Iran), kidnapping (Saudi Arabia), rape (Bangladesh, Egypt, Iran, Pakistan and Saudi Arabia), as well as espionage, treason, terrorism and similar acts committed against the government (Iran and Saudi Arabia).

Compared to all the countries around the world, we can establish that Serbia (both in the form it is in today and in the form and state structure it has been in since its creation) is a country that was created, developed, changed, increased and reduced its borders, but always protected democratic principles, basic, human, fundamental rights. It is true that the principle of "talion" was applied in the territory of today's Serbia, it is also true that in the era of Dušan's code, the principle of "an eye for an eye, a tooth for a tooth" was present, but it is also true that until the abolition of these principles (formally or factually) on the territory of today's Serbia, came much earlier than in most countries that are considered "cradles of democracy and legal security".

5. CONCLUSIONS

The death penalty is still a reality, although there is a tendency to abolish it in many countries of the world.

New reasons for abolishing the death penalty are noticeable every day. In addition to the fact that the whole concept of the death penalty is inhumane and outmoded, the loudest advocates are those who claim that no one has the right to deprive someone of their right to life, that when the death penalty is carried out there is no "possibility of correcting a possible judicial error" (there are data that testify that in during the 20th century in the USA in more than 450 cases it was proven that the death penalty was carried out on innocent people), and that the "preventive function" that was believed to be very pronounced in the case of the death penalty does not actually exist, and that the countries that introduced the death penalty and which have retained it and apply it, also have a high level of criminality. The act of executing the death penalty in most countries is very inhumane, as well as staying in "death cells" while awaiting execution, after which executions often happen (there are studies that testify that during the year 2000, 682 sentenced persons were awaiting the execution of the death penalty, and it was executed on them 19).

The authors are pleased with the tendency to abolish this type of punishment, which is supported by the data that in 1977 only sixteen countries abolished the death penalty. After thirty years, 129 states have formally or in practice abolished the death penalty. At the time of writing, 144 countries have abolished this penalty. This year (2024) the death penalty was carried out in 15 states.

What is worrisome is that some countries have marked the data on pronounced and executed death sentences as a state secret (China and Vietnam), while others publish data that is either reduced or very difficult to access (Iran, Saudi Arabia, North Korea, Belarus), so the data that exists is collected from the family, from the defenders, from the media, associations for the fight for human rights, etc.

In the course of 2023, of the 193 members of the United Nations, the death penalty was applied in fifteen, that is, in 8% of the membership, which is statistically a minority, but taking into account how much of a "stroke" it is to human rights and human freedoms and what consequences it brings carries, as well as what the situation in that country indicates, then it is clear that even a percentage that is at the level of a "statistical error" cannot be tolerated.

Of particular concern is the fact that society justifiably expects that countries that apply this punishment will take steps towards abolishing the death penalty, while the situation is quite different, and that some are introducing completely new methods of execution. The methods of executing the death penalty are different and have changed over time, including stoning, shooting, beating to death, electric chair, beheading, breaking with a wheel, lethal injection (Lee, 2022), and now, in the year 2024, the U.S. nitrogen gas poisoning as a form of execution also withered. A man in Alabama, USA, is the first victim who was deprived of his life in this way. The reasoning of the American authorities was that the main reason for introducing a new method of taking life is that it is difficult and expensive for the state to find the ingredients of a lethal injection, as well as that the victim does not suffer pain in this way, death occurs quickly, and this method is even more humane from previously applied ones. Inventing new methods of execution is a step backwards for humanity.

Disputing the existence of the death penalty and its application is understandable for several reasons: (1) in many countries, it is allowed to carry out the death penalty on persons who are eighteen years of age or younger (although it is mainly in those countries for coming of age and acquiring certain rights and obligations it is necessary to turn 21 years old) - in some countries, the death penalty was carried out on minors who failed to prove their date of birth due to the lack of proper state records (Congo, Iran, Nigeria, South Sudan, etc.), (2) due to inadequately conducted criminal proceedings, evidential procedure primarily, due to corruption in the judiciary or other procedural bodies, the persons failed to prove their insanity (Avvisato, 2021), (3) the death penalty is imposed based on the confession of a person, and that confession can be, and often is, the result of torture by state authorities or the absence of a defense attorney (Niven & Mallory, 2024), (4) the imposition of the death penalty in some countries is at the level of "mandated punishment" which is the result of a "shortened procedure", (5) there are countries in which military courts pass verdicts against civilians that result in the imposition of the death penalty, (6) the existence of the death penalty does not contribute to reducing the level of criminality, which was best demonstrated in countries that abolished and re-introduced the death penalty, and the level of crime did not decrease or increased rapidly (7) the death penalty is a "final decision that has no possibility of correction" and if the error is subsequently established, if discovers that a person has been unjustly convicted, the "mistake" cannot be corrected, etc.

In the Republic of Serbia, the death penalty has not formally existed for 22 years, and it has not been carried out for 32 years. However, what is troubling is that more and more public opinion polls are emerging that show that most of the population is in favor of reintroducing the death penalty. Namely, due to the legal uncertainty that the population feels, due to events that appall the public, such a "mood" is formed in the public. During 2022, two years ago, research was conducted (Ipsos Strategic Marketing, 2022) in which 1,008 people were interviewed in 139 municipalities in the Republic of Serbia and as a result, 33% of respondents were against the reintroduction of the death penalty, and 67% of them were in favor of the reintroduction of the death penalty. Such understandings of society should be understood to some extent, because such an opinion in society arises precisely when society is faced with some major crimes for which citizens would prefer to apply "emergency judgment". In the previous period, the Republic of Serbia was rocked by many tragedies (the mass murder of students in the "Vladislav Ribnikar" elementary school, the mass murder of very young people in Dubona and Malo Orašje, the mysterious disappearance of a two-year-old child, the kidnapping and rape of a minor girl, etc.) which led to such an understanding in society, and we also believe such results of the conducted survey. Despite this, it is good that there are no official initiatives for the reintroduction of the death penalty, and everything remains at the level of "optional conversations", "desire of society caused by some unfortunate event", "result of an unprecedented tragedy", etc.

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