

Death Penalty in Georgia and Former Eastern Bloc Countries

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Abstract

The article reviews death penalty as a type of punishment that has been used in Georgia from the ancient times till the end of the 20th century. It contains a brief description of legislation in both feudal and soviet eras. The article also discusses the way Georgian state and law have been passed concerning the important issues such as rejection of death penalty as the capital punishment. Along with the Georgian example, the research deals with experience in utilizing and abolishing of death penalty in the countries of former socialist block. The article provides the research results concerning the societal attitude towards the death penalty conducted by different organizations in different periods of time.

The research emphasizes international legislation, particularly international conventions and agreements that regulated and still regulate possibility of use of death penalty in the civilized world. Namely, it is applied to crimes and cases that were committed for which international legislation allowed death penalty as a possible measure of punishment. The article also talks about the modern worldviews, arguments often presented by the supporters and opponents of the abolition of death penalty, principles of humanism and state competence on using the capital punishment.

In conclusion, the article stresses author's opinion about the problematic issues.

Keywords: abolition of death penalty, criminal law, capital punishment, criminal code

Case Study

Death penalty is considered to be utmost and the oldest kind of punishment in different times used almost in all countries. In this respect Georgia is not an exception. In Georgian Law the death penalty was exercised as one of the penalty measures for a serious crime as far back as in the feudal time. Documents of Feudal Georgian Law preserved the indication of methods of punishment and those crimes commission of which entailed the use of these sanctions against a criminal. Nevertheless, it should be mentioned that in the 12th century, in the golden age of Georgia, when the country was under the reign of King Tamar, at the time when the state system reached its high point, the society of that time refused using death penalty. Consequently, for a certain period of time, the death penalty was abolished in Georgia (The Georgian Chronicles, 1959). However, later, through weakening king's centralized authority and in the long period of occupation government of the Georgian State again faced necessity of introducing this kind of punishment (Javakhishvili, 1954, p.26).

As a punishment measure death penalty was also used in the eighteenth century when the Russian Empire abolished the king's power in Georgia and the country became a part of the Russian Empire. Justice in this period was exercised according to the Russian legislation and these sanctions were generally used against state criminals or

recidivists. (Nadareishvili G., 2005)

The use of the death penalty as an extreme penalty in Georgia reached the unprecedented scales during the first 30 years of Communist government. During this period shooting as a form of the death penalty strongly dominated over other forms of punishment. In Soviet Georgia a death sentence was imposed not only for the most serious crimes, but also for such crimes as, for example, pilferage. However, if an individual was suspected in disloyalty to the Soviet government, this meant inevitable death. It should be emphasized that during this period a sentence was often imposed not by judicial authorities, but by the famous Soviet "Trinity" who passed and executed death sentences "without court processes and investigation". These methods were used for fight against "people's enemies". On one hand, they served for terror and threatening the population, and on the other hand, they gave the governing elite of that time an opportunity to get rid of elements dangerous for them, to suppress even a possibility of dissidence in the society. During the Soviet era this period is known as "Red Terror" that eventually resulted in millions of victims throughout the whole Soviet Union.

In the 1970s and 1980s, when the Soviet Union reached its peak in terms of corruption in the public sector, the government of that time made a decision to increase the struggle against so-called bribers and persons who were in criminal relations with them. In this period a death

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penalty was given to bribe-takers blamed in most serious crimes, and less frequently – for state crimes. (Nadareishvili G., 2005)

Executions in the Soviet Republics after 1945 are completely applicable to the countries of the Central Europe of the former Eastern bloc. After the World War II their laws were copied from soviet laws. In the late 1940s – in the early 1950s in Hungary, Czechoslovakia, Bulgaria, etc. were conducted trials against the “Enemies of People” according to the soviet model, which usually ended in hanging or shooting. Since 1990, after “Velvet Revolutions” in post Soviet republics including Romania, death penalty was canceled.

Nowadays Belarus is the last country, where death penalty is applied. Death penalty in Belarus is carried out with shooting. It is imposed for 12 categories of crime in peaceful times and 2 - in conflict time. In November 1996 republican referendum showed that 80.50% of citizens voted against abolition of death penalty.

In conditions of independent Georgia death penalty existed for only 5 years. In 1997 the Parliament of Georgia adopted the law according to which courts were prohibited to pass death sentences to the accused. But if we take it chronologically, in the early 1990s Article 13 of the Criminal Code of Georgia envisaged the death penalty for different hard crimes. During that time the society supported application on the death penalty. Non-governmental organizations, free press and some groups in the government oriented to reforms played an important role in turning public opinion against the death penalty. The result of the efforts of these groups was the consensus reached in the society regarding abolition of the death penalty. In 1995-1996, a moratorium was declared, however courts continued to impose death sentences when necessary, though they were not executed. The last death sentence in Georgia was enforced on 14th of February 1995. On October 12, 1996, a group of non-governmental organizations founded a Coordination Center for struggle against the death penalty that later was joined by many other non-governmental organizations. For a short period of time, the Center conducted a large-scale elucidative campaign against the death penalty in Georgia (Nikolaishvili, 1998, p.22). It took various measures – organized press-conferences, published articles, etc. This campaign was also actively supported by mass-media. This activity of the society allowed the reformers in legislative bodies to increase their struggle in the Parliament for adoption of new legislation that would not envisage the death penalty as a form of punishment. As a result, at the end of 1996, the number of articles stipulating for the death penalty was reduced. Their number decreased from 13 to 4 articles. Then, during the whole year, the same organizations and private persons conducted PR-campaigns for full and final abolition of the law that envisaged the death penalty in Georgia. According to the statistical data, at the

end of 1995 and at the beginning of 1996, after the campaign conducted throughout the whole country, only 10-20% of the population supported abolition of this special measure of punishment. At the end of 1997, the study of public opinion showed that this figure reached 50-55%. Finally, on the 11th of November 1997 the Parliament of Georgia abolished officially the death penalty (Nikolaishvili, 1998, p.24). And for the individuals who were waiting for execution of death penalty, the latter was replaced by life-imprisonment and in some cases – by 20-year imprisonment. Georgia, after Moldova, became the second post-Soviet country that did away with this extreme kind of punishment. Later, the death penalty was abolished in a number of post-Soviet countries, such as Azerbaijan, Armenia, Lithuania, Latvia, Estonia, Turkmenistan, Ukraine and the Kyrgyz Republic. The most important thing is that abolition of death penalty did not challenge increase in crime level and new legislation gave chance to Georgia to become a member of several international organizations.

We should pay a special attention to the attitude of international community towards this issue – it regards the death penalty as an extreme punishment mechanism. In the international legislation the problems of the death penalty and protection of rights of individuals sentenced to death are governed by several international agreements. One of the most important agreements is the “International Covenant on Civil and Political Rights” adopted in 1966. In its Article 6 it is specified that a death sentence may be imposed only for most serious crimes in accordance with the existing law and not contrary to the provisions of this Covenant (International Covenant on Civil and Political Rights, 1966). Here are explained the rights of the people sentenced to death who seek pardon or commutation of the sentence. The second optional protocol to the “Covenant on Civil and Political Rights” regarding abolition of the death penalty was adopted in 1990 and is also valid to the present day (International Covenant On Civil and Political Rights, 1966). The states that signed the Protocol believe that abolition of the death penalty “contributes to enhancement of human dignity and progressive development of human rights” (preamble). The Protocol demands from the state parties to suspend capital punishment and to take all possible measures to abolish it. No reservation is admissible to this Protocol, though states may reserve the right to use the death penalty during wartime against persons who committed most serious crimes of a military nature. However, all states that joined this agreement are to notify the Secretary-General of the United Nations on the time of the beginning and the end of this war (Smith, 2003, p.3).

As we see, today the international law condemns unambiguously the death penalty. At the end of the 20th century such political environment was created when the majority of international organizations adopted conventions and protocols related to abolition of the death penalty,

though some states have not yet resorted to these actions. Today, the death penalty still exists, for example, in Saudi Arabia, China, Iran, as well as in some of the USA states, etc. The International Covenant shows vividly the attitude of the international community to the death penalty. Article 6 contains the appeal to the states where this extreme penalty still exists, to be careful in using this form of punishment (International Covenant on Civil and Political Rights, 1966).

For years there has been a dispute between supporters and opponents of abolition of the death penalty. Both parties have serious arguments. Here I will express my own attitude and I will join the ranks of opponents of application of the death penalty as a punishment since the death penalty as a punishment contradicts in its essence the purpose of punishment. The purpose of punishment is to prevent a crime, to reform a criminal and to return him as a member of the society. Indeed, we can argue how far the forms of punishment facilitate correction of criminals and changing them into full-bodied members of the society, but one thing is indisputable – the death penalty exceeds the limits of humanism and principles of modern values. When the death penalty as an extreme penalty is used, state and society become like a machine possessed by the lust of vengeance and wish, using barbarian methods, to pay back to the individual who committed a crime. We, on the one hand, censure and condemn a criminal for a most serious crime committed by him, but on the other hand, we give the right to another individual, the judge, to decide a person's death and life fate. Sentences are passed by usual people and everybody might make mistakes. A question arises whether a state has the right to authorize one or another person to deprive a criminal of life by making a decision even in full compliance with law. If we assume that deprivation of human life by passing a death sentence is cruelty, we might free society from crime, but at the same time we receive another murderer, a person who executes the death sentence imposed by the court. One crime entails another crime (Penal Reform International, 2012).

Conclusion

I would conclude that modern democratic society recognizes the principles of human equality – everybody is equal to law and no one has the right to take away another man's life. Based on this principle, the application of the death penalty as a punishment form is, mildly said, anti-constitutional and strongly violates the norms recognized by the international community.

And finally, we should all analyze which is the worse punishment for a criminal – to spend his whole life in a cell, in four walls, isolated from the society, or to finish his life by one shot.

References:

- Aukchishvili Q., (1959) The Georgian Chronicles, Volume II, Part II, Tbilisi
- International Covenant on Civil and Political Rights, Among at the Abolition of the Death Penalty. December 16, 1966 (Vol. 999). (n.d.). UNTS.
- Javakhishvili, I. (1954). History of Georgia. Part VII.
- Nikolaishvili, G. (1998). Critical Analysis/UNDP. Human Rights in Georgia.
- Nadareishvili G. (2005) History of Georgian State and Law, Tbilisi
- Office of the UN High Commissioner for Human Rights, Second Optional Protocol to the International Covenant On Civil and Political Rights, Among at the Abolition of the Death Penalty, 1990, retrieved in August 2012, from www.2ohchr.org/english/law/ccpr-death.htm
- Penal Reform International. (November 2012). Retrieved on December 2012, from <http://www.penalreform.org/publications/abolition-death-penalty-and-its-alternative-sanction-south-caucasus-armenia-azerbaijan>
- Smith, R. K. (2003). International Human rights. Blackbone Press

Additional Literature:

- Life Imprisonment and Conditions of Serving the Sentence in the South Caucasus Countries, Project "Global Action to Abolish the Death Penalty" DDH/2006/119763