

AMERICAN UNIVERSITY OF ARMENIA

THE REPUBLIC OF ARMENIA'S COMMITMENTS AND RESPECT
FOR THE BASIC VALUES OF THE COUNCIL OF EUROPE
AND THE PROBLEM OF THE DEATH PENALTY

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Abstract

The purpose of this Master's Essay is to examine the problem of abolition of the death penalty in Armenia.

Part I deals mainly with arguments in favor of and against the death penalty, with the subsequent conclusion that those in support of abolition of the death penalty are more well-founded and supported by the statistical data, as well as more exactly reflect that type of society that member states of the Council of Europe are trying to build and consolidate. Also, some brief excursus is made into the past to show how the Council of Europe came to recognize that the death penalty is a violation of fundamental human rights.

Part II discusses the problem of abolition of the death penalty in Armenia, as well as the main reasons why the ratification of Protocol No. 6 to the European Convention on Human Rights is still held up in Armenia by means of examining, in main, the contents of reports prepared by the Parliamentary Assembly's Committee on the Honoring of Obligations and Commitments by Member States of the Council of Europe during its visits to Armenia in 2001 and 2002.

Introduction

27 October 1999 will forever remain a tragic day in the history of Armenia. On that day four gunmen led by Nairi Hunanian, an obscure former journalist, murdered Prime Minister Vazgen Sarkisian, Speaker of Parliament Karen Demirchian and six other officials in a surprise terrorist attack on the Armenian parliament (Motyl 2001).

At present, the tragic events of 27 October 1999 are the main reason why the Republic of Armenia has not ratified Protocol No. 6 to the European Convention on Human Rights. Upon its accession to the Council of Europe on 25 January 2001 Armenia signed Protocol No. 6 to the European Convention on Human Rights, which is an agreement to abolish the death penalty in peacetime and which is one of the main requirements for being accepted a member of the Council of Europe.

The ratification of Protocol No.6 is still being held up in Armenia by strong domestic opposition to any clemency for the five perpetrators of the October 1999 massacre in the Armenian Parliament. However, Armenia has observed a moratorium on the death penalty since 1991: no one has been executed in Armenia since 1991, even though the courts have continued to hand down death sentences (Report of the Monitoring Committee 2002).

The fact that Armenia has not ratified yet Protocol No.6 means that the country has not fulfilled a fundamental commitment given at the time of accession to the Council of Europe. Thus, abolition of the death penalty in Armenia can be viewed as a major obstacle to “Armenia’s rapid and unimpeded integration into the European family, and may well lead to the imposition of political sanctions against the country (Khachatrian 2002).

Methodology

The method chosen for the study of the problem of death penalty in Armenia is a comparative analysis of various research, reports, laws, sessions, etc. The units of analysis are different arguments against and in favor of the death penalty. The study in its nature is descriptive, exploratory, and explanatory. The main focus is on the problem of abolition of death penalty in Armenia.

Literature Review

At the beginning of the 20th century only three states, namely Costa Rica, San Marino and Venezuela had permanently abolished the death penalty for all crimes. The pace of abolition has accelerated in the second half of the 20th century, especially in the past 20 years. In 2001, there were 111 countries that abolished the death penalty both in law and practice, and 84 other countries could be said to retain the death penalty, but the number of countries which actually execute prisoners in any one year is much smaller.

If previously there was very little literature devoted to the problem of the death penalty, movement to abolish the death penalty has given rise to a lot of research in this area and has been reflected in books and articles about different aspects of this problem.

Thus, the Council of Europe, an organization promoting democracy and human rights has published a number of books and brochures that, along with the examination of the problem and arguments against the use of the death penalty, contain information on the process of abolition of the death penalty in member states of the Council. At present Armenia is one of the few member states of the Council of Europe that has abolished the death penalty only *de facto*.

Another organization actively campaigning against the use of the death penalty is Amnesty International. Its website contains a lot of up-to-date information about abolitionist and

retentionist countries, initiatives to abolish the death penalty, significant court decisions contributing to progress towards worldwide abolition, as well as data on death sentences and executions and on the use of the death penalty against the innocent, women, child offenders, and those suffering from mental illnesses in countries that have retained the death penalty.

The community of nations has adopted four important international treaties providing for the abolition of the death penalty. These are Protocols No. 6 and 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention on Human Rights”), the Second Optional Protocol to the International Covenant on Civil and Political Rights and the American Convention on Human Rights to Abolish the Death penalty. Protocol No. 6 is the most widely ratified of the four international treaties.

Some research has been dedicated to the effect on abolition on crime rates and provided one of the most important arguments against the use of the death penalty, that is, executions have no greater deterrent effect than life imprisonment. While discussing the effects of abolition on crime level, Hood (1996) claims that scientific proof that the death penalty is a deterrent is unlikely to be forthcoming.

The analysis of the process of abolition of the death penalty, the ratification of Protocol No. 6 by Armenia and reasons for its delay has been based on two reports prepared by the Committee on the Honoring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) as a result of its visits to Armenia in 2001 and 2002, report on the 31st sitting of the Parliamentary Assembly of the Council of Europe on 26 September 2002, as well as articles containing information about the adoption of the second part of the new Criminal Code and ratification of Protocol No. 6 by Armenia as part of its commitments made at the time of accession into the Council of Europe.

Part I

The Process of Death Penalty Abolition in Europe

The ongoing controversy over the problem of the death penalty in Armenia once again proves the fact that capital punishment is a highly emotive issue: passions tend to run high whenever a heinous murder or a terrorist act is committed. Justice, revenge, crime prevention, deterrence are among the most commonly used arguments justifying retention of the death penalty. Those in favor of the death penalty argue that even if occasionally innocent people are executed “by mistake”, the welfare of society as a whole prevails over the welfare of an individual.

But if you leave aside emotions and shock and try to examine the problem of death penalty carefully, you will come to the conclusion that arguments in favor of the death penalty abolition more exactly reflect that type of society that European countries, as well as countries sharing European values are trying to build and consolidate. The Council of Europe, an organization promoting democracy and human rights takes an uncompromising stance that the death penalty should be abolished, first of all, for the simple reason that execution is an evil. This viewpoint is shared by the United Nations. UN General Secretary Kofi Annan, when presented with the “Moratorium 2000” petition for a moratorium on executions bearing three million signatures in December 2000, said the following remarkable words, “The forfeiture of life is too absolute, too irreversible, for one human being to inflict it on another, even when backed by legal process. I believe that future generations throughout the world will come to agree.” (Amnesty International 2001,1).

The following chapters contain some information demonstrating that such arguments in favor of death penalty as justice, crime prevention, and crime deterrence are neither logically well-founded nor supported by statistical data.

During 2001, at least 3,048 prisoners were executed in 31 countries, and 5,265 were sentenced to death in 69 countries. These figures include only cases known to Amnesty International; the true figures are certainly higher. In 2001, 90 percent of all known executions took place in China, Iran, Saudi Arabia, and the US (Amnesty international 2001).

At the same time, in 2000, no death penalty sentence was delivered and conducted in Europe composed of 43 states-members of the Council of Europe. A lot of effort has been put into this achievement. According to Walter Schimmer, General Secretary of the Council of Europe, “even in Europe that suffered two global wars and several totalitarian regimes, the process of death penalty abolition has been a hard one; today the Council of Europe takes pride in the fact that 800 million citizens in 43 countries-members live in a region virtually free from death penalty use.”(Council of Europe 2001, 4)

The Council of Europe was created after World War II with the aim of uniting Europe on the basis of common principles of human right respect and pluralism. From 1949 to 2001 its membership increased from 10 countries-founders to 43 countries-members, with Armenia and Azerbaijan becoming members on January 25, 2001. “More and more countries are sharing values and principles of the organization and have pledged themselves to consolidate these ideals in their own societies.” (Council of Europe 2001, 6).

The main mechanism determining The Council of Europe’s activities is the European Convention on Human Rights that guarantees protection of rights of all citizens on the territory of Europe. The Convention was adopted in 1950. Right to life is provided in Article 2 of the

Convention stating “No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”

After atrocities committed by the Nazi, Europe was not prepared to abolish the death penalty, as evidenced by the Nuremberg tribunal. That is why in mid-1940s most European constitutions contained provisions allowing for the death penalty.

However, by the late 1960s Europeans came to realize that the death penalty is yet another form of murder sanctioned by the state. A broad consensus began to form that the principle of the sanctity of human life so much devalued in the 20th century must be restored.

One of the arguments against the death penalty is that human life is sacred, and, therefore, capital punishment is an evil. Before describing the activities of the Council of Europe in the second half of the 20th century, let us dwell on the principle of the sanctity of human life.

The recognition of *the sanctity (or sacredness) of human life* is deeply rooted in the Judeo-Christian tradition (Earll 1999). The sanctity of human life is first described in the Holy Bible in Genesis 1:12: “So God created man in his own image, in the image of God. He created him, male and female. He created them.” Scholars like Cameron note that being created in the image of God (*imago Dei*) means more than having certain abilities and attributes. It means that humans are the images of God, regardless of what they can or cannot do. This image bearing of the Creator is a privilege extended uniquely to humans. No other “creation” of God can make this claim.

According to the Christian religion, in God’s eyes, people are all endowed with a touch of God. Each human carries within his or her being the eternal, holy breath of God, the Creator. Therefore, each human life exists as an expression of God and his Character. People are not

merely flesh and blood, they are also the image-bearers of God. Since they embody God's image, the sacredness of human life, and the dignity it demands, is based on something beyond our characteristics and abilities.

Christian author and commentator Chuck Colson says being made in the image of God means that we find our ultimate identity and worth in reflecting our Creator. Men, women and children created in the image of God should be respected, regardless of their mental capacity, physical abilities, faith (or absence of faith) and social position. Therefore, human body is sacred and should be held in honor and respect, not violated, abused, or harmed (Earll 1999).

Characteristics we may attribute to God (benevolence, love, creativeness, etc) may or may not be present in each of his created human beings. The recognizable presence or absence of such desired characteristics does not determine the worth of the individual.

It is noteworthy that, unlike the Christian experience of being indwelt by the Holy Spirit of God, the sacredness of human life is not based on accepting Jesus Christ as Savior. Every human life, Christian or not, is sacred and of inestimable value. This status is not reserved only for Christians but extends to every member of mankind (Earll 1999).

Human dignity is also innate, bestowed upon every human being by God. Human dignity is not a characteristic we can forfeit; it is an integral part of us.

Failure to honor human dignity is evidenced in the use of the death penalty. Those who counter the view that the death penalty serves a useful purpose and join campaigns to abolish the capital punishment make a significant contribution to the restoration of human dignity.

According to the old ethical traditions of the sanctity of human life and the dignity of the individual, all human beings' lives are sacred and worthy of protection. But even now, at the

beginning of the 21st century the Sanctity of Human Life Ethics is eroded by a number of regrettable practices, including the use of the death penalty.

So it is important to restore the Sanctity of Human Life Ethics by keeping high the value and worth of each human life, even if it is the life of a criminal. Death penalty abolition movement is part of the struggle to acknowledge the intrinsic worth of each individual. To advocate for the death penalty abolition means to advocate for the passage of life-affirming laws that restore the values of the sanctity of human life and human dignity in society

Thus, the opinion began to form that the death penalty served no useful purpose in a civilized society based on respect for fundamental human rights – the right to life and the right not to be subjected to cruel inhuman or degrading punishment. Quite the opposite, the death penalty is a violation of these fundamental human rights. The Parliamentary Assembly of the Council of Europe composed of members of national parliaments of all member states initiated proposals for abolition of the death penalty *de jure* in Europe. As a result, Protocol No.6 of the European Convention on Human Rights prohibiting death penalty in peacetime unconditionally was developed. It was open to the signature in 1983. Since then it is a precondition for accession to the Council of Europe that states institute an immediate moratorium on executions with a view of abolition of the death penalty in the long term. The 43 member states of the Council of Europe are either abolitionists or have instituted moratorium on executions (Amnesty International 2001).

Taking actions aimed at adopting Protocol No.6, the Parliamentary Assembly was interested in its coming into effect in all European countries. “Since 1994 one of the conditions to become a member of the council of Europe has been to declare an immediate moratorium on

the death penalty, along with an obligation to sign and ratify Protocol No.6 within one-three years from the moment of membership.”(Council of Europe 2001, 8).

Not all states were prepared to abolish the death penalty, citing public opinion as a main obstacle to it. As a rule, not enough efforts were made in these countries to endorse the idea of the death penalty abolition logically. By organizing conferences, making reports and recommendations, the Parliamentary Assembly has been trying to put forward arguments in favor of the death penalty abolition, along with putting pressure on states to make them honor their pledges given at the time of becoming a member of the Council of Europe. In addition, the Council of Europe started financial support and cooperation with national governments and NGOs with the purpose of launching information campaign to abolish the death penalty. For example, during the extraordinary session of the European Parliament held on 5 July 2001, the resolution on the death penalty in the world was passed proposing that a European Day against the Death Penalty be introduced and commemorated (Amnesty International 2001).

It is noteworthy that the appeal of the Council of Europe to abolish the death penalty goes not only to the member countries, but also to other states. Thus, the year 2001 was marked by a significant event: the First World Congress was held in Strasbourg on 21-23 June under the auspices of the Council of Europe. It was coordinated by the French-based organization *Together Against the Death Penalty* and brought together non-governmental organizations, parliamentarians, lawyers, experts, writers, ex-death row prisoners and others involved in the fight against the death penalty from all around the world. An appeal calling on all states to introduce a worldwide moratorium was signed by the presidents of 13 national and two regional parliaments (Amnesty International 2001).

An increasing attention is being devoted to educational aspect of this problem. It is undeniable that violence engenders violence. By legalizing cold-blooded murder under the pretext of justice, the death penalty makes society crueler and more embittered. It would be a mistake to consider the death penalty as a means of justice, as well as crime prevention. In the United States, for example, the death penalty has an unfair, indiscriminate, and arbitrary character, let alone inhuman conditions in which those waiting on death row are kept. Thus, despite the fact that the Supreme Courts of several American states have ruled that use of the electric chair is unconstitutional, because it inflicts cruel and unusual punishment, two states, Alabama and Nebraska, continue to use the electric chair as the sole means of execution, while use of the electric chair remains legal in nine other states which allow lethal injections as an alternative. To give another example, even in the United States where democracy and the rule of law are alive and well, cases of execution of those suffering from mental illnesses are possible, mainly because in some jurisdictions evidence of mental illnesses is either undocumented or ignored (Amnesty International 2001). Taking such facts into consideration, the Parliamentary Assembly of the Council of Europe issued Order No. 574 (2001) instructing two of its Committees – on Legal Affairs and Human Rights and on Political Affairs – to enter into a dialog with parliamentarians from the United States and Japan with the aim of supporting legislators in their endeavors to institute moratoria on executions and to abolish the death penalty and also in their efforts to engage the opponents of abolition in informed debates (Amnesty International 2001).

Death penalty abolition is a politically bold step on behalf of leaders who are going to take it, as well as one of those fundamental social values in defending which politicians should play a leading role, and not follow blindly public opinion. It does not mean ignoring important

social issues, but it requires certain courage to acknowledge the fact that the death penalty is not a panacea for reducing crime level, improving public morals, and ensuring legality. Like torture, capital punishment has an unfair character.

Thus, the Council of Europe has been trying to bring to the notice of European governments arguments in favor of the death penalty abolition using political methods, as well as technical findings. Death penalty abolition in Albania, Russia, and Ukraine did not lead to mass disorder; “on the contrary, it caused national governments to take a number of important measures in the sphere of criminal legal policies including improving the professional level of law enforcement agents, developing relations between the population and the police, with the main focus being on crime prevention.” (Council of Europe 2001, 9).

The history of the death penalty abolition in Europe is a history of European peoples’ unification on the basis of common social values. These values are secured in The European Convention on Human Rights, as well as in other juridical documents. These documents form a legal structure, while putting their spirit into practice depends on certain people in all European countries.

Death Penalty and Democracy

It would be completely wrong to consider the death penalty as a separate issue, without discussing its social, political and other aspects.

The consequences of the death penalty go far beyond the execution of a particular criminal. When a state deprives a human being of his/her life, the implication is that murder may be sanctioned by law in some other situations, that is, murder of political opponents, ethnic minorities, poor citizens, etc. may be acceptable in some cases. In other words, such a state

legalizes cold-blooded, deliberate murder as a means of administering justice. This logic is simply inadmissible in a democratic society that protects rights and freedoms of all citizens.

One question that arises in this connection is:

When the majority of the population of a country is in favor of the death penalty, is it democratic to abolish the death penalty in such a country?

The fact is that the death penalty abolition is a very sensitive issue, and politicians need great political skill and tact while dealing with it. First of all, the death penalty abolition is one of the least popular issues in some societies, and a good example here is Armenia. Second, the death penalty is one of those issues where public opinion is often based on miscomprehension of some facts, thus representing a kind of manipulation of simplified information. The results of public opinion surveys highly depend on how questionnaires are constructed. It has been proven that the more people are familiar with the problem of the death penalty, reasons for its abolition, as well as alternatives to this punishment, the less they tend to object to the idea of the death penalty abolition.

So political figures in Armenia should play a more direct and active role in the society, while taking important political decisions and forming public opinion. Those who claim that politicians should follow “majority opinion” on the problem of death penalty are grossly mistaken, since respect for human rights should not depend on vagaries of public opinion.

The decision to abolish the death penalty has to be taken by the government and the legislators. Such a decision can be taken even though the majority of the public favors the death penalty. Historically this has probably almost always been the case. Yet when the death penalty is abolished, usually there is no great public outcry, and once abolished, it almost always stays abolished. This must mean that although a majority of the public favors the death penalty in a

given country, it is also the case that a majority of the public is willing to accept abolition. This is a feature of public opinion, which is not usually revealed by polls asking respondents to state their position on the death penalty. If the questions were more sophisticated, the polls would probably give a better sense of complexities of public opinion and the extent to which it is based on an accurate understanding of the actual situation of criminality in the country, its causes and the means available for combating it (Amnesty International 2001).

Besides, nationwide opinion surveys conducted in countries as different as the United States, Canada, South Korea, reveal that in each of these countries the number of citizens who oppose the death penalty is growing. In Canada, for example, a survey conducted by Ipsos-Reid for the Globe and Mail newspaper in Toronto showed that support for the death penalty has dropped dramatically in recent years, from 73 percent in 1987 to 52 percent (Amnesty International 2001).

The second question that arises can be related to the current situation in the United States, which is a democratic country, however, the death penalty has not been abolished in many states of this country.

The argument here is that the United States, whose democratic achievements with respect to human rights, as a whole, are undeniable, is still behind other countries when it comes to the problem of abolition of the death penalty. Due to its policies of the death penalty use, the country has drawn upon itself wide international condemnation, criticism from the Council of Europe. On June 25, 2001, the Parliamentary Assembly of the Council of Europe adopted resolution 1283 calling for an immediate moratorium on execution in the United States and Japan and for improvement in death row conditions in these two countries (Amnesty International 2001). In addition, many American citizens, as well as political leaders have launched campaigns

against the death penalty, pointing to an undemocratic character of the American policies in this area which is incompatible with modern democracy. Thus, by the end of the year 2000, 62 local governments in the United States passed resolutions supporting a moratorium on executions in their states (Amnesty International 2001).

Moreover, there is enough empirical data on the death penalty to demonstrate the fact of racial discrimination, as well as discrimination against poorest elements of the country at different stages of juridical procedure in the United States. In August 2001, in Geneva the UN Committee on the Elimination of Racial Discrimination issued its concluding observations on the report by the United States of the measures it had taken to implement the provisions of the Convention on the Elimination of All Forms of Racial Discrimination, to which the United States is a party. The Committee noted that there was “a disturbing correlation between the race both of the victim and the defendant, and the imposition of the death penalty” in America and called on the United States to ensure that no death penalty was imposed as a result of racial bias (Council of Europe 2001). These and other facts indicate that death penalty in the US (and elsewhere) may well have an arbitrary and unfair character. Therefore, this aspect of the American society cannot be considered an appropriate model for other countries striving to build a democratic society, including Armenia.

Death Penalty and Justice

According to public opinion, criminals who have committed heinous crimes deserve capital punishment.

Human rights are applicable to all including those individuals who have committed very cruel crimes. The main principle of human rights is their inalienability. Human rights cannot be

given for good behavior and taken away, even if an individual has committed hideous deeds. In a society based on respect for human rights, these rights are never to be violated. This principle is applicable to all of us.

Death penalty violates fundamental human rights. Death penalty is a gross violation of the right to life, as well as the right not to be subjected to cruel, inhumane and humiliating treatment.

One of the most important developments in recent years has been the adoption of international treaties whereby states commit themselves to not having the death penalty. Four such treaties now exist:

- **Protocol No.6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)**, which has been ratified by 39 states and signed by three others. Protocol No.6 is an agreement to abolish the death penalty in peacetime.

- **The Second Optional Protocol to the International Covenant on Civil and Political Rights**, which has been ratified by 46 states. Seven others have signed this Protocol, indicating their intention to become party to it at a later date.

- **The Protocol to the American Convention on Human Rights to Abolish the Death Penalty**, which has been ratified by eight states and signed by one other in the Americas. The Second Optional Protocol to the International Covenant on Civil and Political Rights, as well as the Protocol to the American Convention on Human Rights to Abolish the Death Penalty provide for the total abolition of the death penalty, but allow states wishing to do so to retain the death penalty in wartime as an exception.

- **Protocol No.13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)**, which was open for signature on 3 May, 2002. Protocol No.13 provides for the total abolition of the death penalty in all circumstances.

Criminals sentenced to death have violated rights of their victims, often in a cruelest and most barbaric way. These victims can no longer protect their own rights. It is fair and appropriate that the state protects rights of these victims by punishing severely criminals.

But the state never protects the rights of victims by conducting the death penalty. Yet another murder neither relieves pain and suffering inflicted on the victim nor brings the victim back into existence. The death penalty is an additional evil contributing to further violence and cruelty, increasing human suffering and the number of victims, but not restoring human rights. It is likely to cause an irreparable damage to society.

As a matter of fact, the death penalty is a manifestation of the disrespect towards the victim. It is not a coincidence that families of many victims also denounce the death penalty and consider it to be a lack of respect for their values.

It goes without saying that crimes must not go unpunished. But punishment must be inflicted in a fair and proper way; it must fit the crime. It is equally important to pay respect and homage to victims and their families, and to provide a necessary state support to them.

The death penalty is a completely just and deserved form of giving criminals their own due for some outrageous crimes committed with respect to innocent victims.

It would be wrong to equate the death penalty abolition with connivance. No doubt people who have committed crimes with respect to innocent victims must be punished severely.

But can revenge be an adequate response to crimes? Does anyone have the right to decide who deserves death, and who does not?

Policies in the field of criminal law can be called humane and moral in the event that these policies distinguish between the notions criminal and crime. Only such policies are appropriate for a democratic society, in which human rights are observed.

No system of criminal legal procedure is guaranteed against discrimination, arbitrariness and human errors. No system can decide in a just, consistent and unerring way who must live and who must die. Such factors as expedience, overwhelming public opinion, etc. may play a crucial role at all stages of judicial hearing from investigation to verdict. This means that there is likelihood that the death penalty may be used with respect to those who have not committed crimes but who have not been able to defend themselves, or have been victims of discrimination, or perhaps have encountered biased or strict judges or prosecutors. Practice shows that this has been the case on many occasions.

Between 1973 and the end of 2001, 98 people were released from death rows in the United States after compelling evidence of their innocence emerged. The large number of such cases has been the reason for the unprecedented concern about the fairness and reliability of the capital justice system in the country, and probably accounts for the declining support for the death penalty in public opinion polls (Amnesty International 2001).

No doubt, everyone whose relative or friend has been a victim of a hideous crime usually experiences a variety of strong emotions including rage, shock, anguish, disgust, and desire to take revenge and punish the criminal. This is a natural human reaction. Everyone would like to see the criminal being caught and punished as soon as possible. This requires the existence of an efficient judicial system in which all crimes are thoroughly investigated, and those guilty

punished. The problem is that the death penalty does not guarantee that the real criminal will be punished. Very often it represents an excessively dramatic reaction intended to cover inefficiency of the criminal judicial system.

The death penalty, that is, the murder of a criminal, is nothing more than a barbaric and outdated response to a tragic situation that contradicts the principles of a civilized legal state. The history of efforts directed towards establishment of the rule of law is the history of gradual exclusion of the idea of personal revenge from the field of legislation and state policies. This is the history of efficient and fair procedures accepted in a humane society where, along with punishment of criminals, the basic human rights are observed.

Death Penalty and Factor of Deterrence

The death penalty may deter people from committing crimes. In case of the death penalty abolition the number of crimes is likely to grow.

The widespread opinion that the death penalty is a factor restraining crime is only a myth.

Scientific studies have consistently failed to find convincing evidence that the death penalty deters crime more efficiently than other punishments. The most recent survey of research findings on the relation between the death penalty and homicide rates conducted for the United Nations in 1988 and updated in 1996, concluded:

“Research has failed to provide scientific proof that executions have the greater deterrent effect than life imprisonment and such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis.” (Hood 1996, 238).

Reviewing the evidence on the relation between the changes in the use of the death penalty and crime rates, a study conducted for the United nations in 1988 and updated in 1996

stated that “the fact that all the evidence continues to point in the same direction is persuasive *a priori* evidence that countries need not fear sudden and serious changes in the curve of crime if they reduce their reliance upon the death penalty.” (Hood 1996, 187).

Recent crime figures from abolitionist countries fail to show that abolition has harmful effects. In Canada, the homicide rate per 100,000 of the population fell from a peak of 3.09 in 1975, the year before the abolition of the death penalty for murder, to 2.41 in 1980, and since then it has declined further. In 1999, 23 years after abolition, the homicide rate was 1.76 per 100,000 of the population, 43 percent lower than in 1975. The total number of homicides reported in the country fell for the third straight year (Council of Europe 2001).

Transition countries are no exception. Since 1996 no criminal has been executed in Lithuania, but the number of crimes has been decreasing. In Georgia the death penalty was abolished in 1997, and since then a marked decrease in crime has been observed. (Council of Europe 2001).

At the same time, in the United States where the use of the death penalty varies from state to state, the research result shows inefficiency of the death penalty in terms of crime prevention. The crime level and the number of murders in states where the death penalty is allowed by local legislation are not lower than in those where the death penalty is not conducted. In states where the death penalty was first abolished then restored, no significant changes in crime level have been observed (Council of Europe 2001). Several factors account for this.

First, crimes followed by punishment in the form of the death penalty are usually committed in conditions when rational considerations about consequences both for the victim and the criminal do not tend to prevail.

The assertion that the death penalty helps restrain crime assumes that those committing murders and other grave crimes are able to calculate in advance consequences of their actions, including the possibility to be executed. Such an assertion is based on a completely wrong notion about criminals, as well as conditions in which crimes entailing the death penalty are committed. The majority of such crimes are committed at the moment of great emotional stress, or under the influence of drugs or alcohol, i.e. at moments when rationality and logic are at low ebb. In some cases, serious crimes are perpetrated by people suffering from mental or emotional disorders. In all of the abovementioned cases criminals are merely not able to take into consideration the threat of any possible punishment in case of their arrest. However, executions of mentally retarded people are not ruled out in retentionist countries. In the United States, execution of those suffering from mental retardations is prohibited only in 19 jurisdictions – 18 states and the Federal government, with five states passing legislation banning the execution of mentally retarded people in 2001 (Amnesty International 2001).

Secondly, those who rationally plan crimes usually fear not the severity of punishment but the possibility of being captured and tried.

Even the threat of severe punishment cannot keep from committing crimes those who hope to avoid being detected and arrested. The key element of deterrence is not the severity of punishment but the increasing possibility of criminals being tracked down, arrested and tried. This means that efforts to prevent crimes must be concentrated on improving the efficiency of law enforcement agencies. The main factor that plays a significant role in curbing crime is the confidence of the society that all crimes will be professionally and in good time investigated, and all criminals will be put on trial. This implies the necessity of consolidating relations based on the mutual trust between society and law enforcement agencies, as well as increasing faith in

efficiency of the justice system. Creating an atmosphere of legality where everyone can live in a peaceful and stable society may contribute to crime prevention and detection.

Thirdly, the death penalty is not a necessary means in the fight against terrorism and organized crime. There is no evidence that the death penalty contributes to a decrease in organized crime and terrorism. On the contrary, officials responsible for fighting terrorism and political crimes have repeatedly pointed out to the fact that the death penalty is likely to have an opposite effect, namely that the execution of a criminal may make this person a martyr, while his memory may become a symbol and driving force for different terrorist organizations to carry out other acts of terrorism.

Also, it has been proven that the threat of the death penalty plays no significant role to groups engaged in human and drug trafficking. As a rule, it is not members of influential criminal groups who are sentenced to death in countries where the death penalty has been used. For example, among hundreds of people sentenced to death in Russia until moratorium on the death penalty was declared in August 1996, there was no single drug trafficker, terrorist, or Mafioso. Quite the opposite, people executed by the state come from the poorest and most unprotected social strata; as a rule, they commit crimes stupefied by alcohol and driven to a brute state (Council of Europe 2001).

In addition, the death penalty has become an insurmountable obstacle in the fight against international organized crime, since states where the death penalty has been abolished do not extradite suspects to those countries where these people might be sentenced to death. A landmark decision taken by the Supreme Court of Canada provides a good example. In 1991 the Supreme Court of Canada ruled that Charles Ng and Joseph Kindler could be sent back to the United States for trial without guarantees that their lives would be spared and that this course of action

did not violate the Canadian Charter of Rights. This decision was reversed in February 2001 when, in the case of Burns and Kafay, the Supreme Court held unanimously that the Canadian government must routinely seek and obtain assurances in extradition cases “in all exceptional circumstances” (which the Court declined to define). The two men were accused of murdering a family in 1994 in the US state of Washington and then escaping to Canada, where they were imprisoned in Vancouver. Following the Supreme Court’s decision, the Canadian government received assurances from the prosecutor of Washington, where the trial would be held, that the men if found guilty would not be sentenced to death. Also, the Supreme Court of South Africa refused to hand over a Tanzanian national to the US authorities without first obtaining assurances that he would not face the death penalty in the United States (Amnesty International 2001).

Another argument against the death penalty is that there is no reason to execute some criminals in order to prevent them from repeating their crimes.

It goes without saying that a dead person will not be able to commit crimes in future. But this inhumane and totalitarian approach to the problem of crime prevention does not correspond with the principles of civilized society. Experience of many countries where the death penalty has been abolished shows that, instead of executing most dangerous criminals, it is possible to keep them in prison without any threat to society. Those sentenced to death constitute a small part of the total number of prisoners, and we have no reason to believe that people sentenced to the death are more inclined to repeat crimes than other criminals. As a matter of fact, the aim of death penalty is to prevent a criminal from committing some hypothetical crimes in future, whereas the overwhelming majority of criminals would repeat crimes in any case.

The use of the death penalty is a complete negation of the principle of rehabilitation and human rights observance. Such an attitude to criminals as most unwanted elements of society

who must be exterminated is a totalitarian one. After all, criminals are not monsters, but human beings and, therefore, product of society. Very often crimes are committed on the spur of the moment and under circumstances connected with stress; they may also be a kind of reaction long to a long-term suffering and abuse.

Those opposed to the death penalty maintain that there is always a risk of executing an innocent person, a risk that cannot be avoided by means of different procedures, including DNA tests. The risk of making mistakes and putting to death innocent people is a real one. And, of course, there is no way to bring back into existence the executed people. Since 1976 when the Supreme Court of the United States restored death penalty more than 80 people sentenced to death have been released later after being found not guilty. During the same period more than 650 people have been executed. This means that one out of the eight individuals waiting on death row is an innocent one. There are 25 recorded cases showing that since the early 1990s innocent people have been executed, and this figure does not reflect a real state of affairs due to the fact that it is not an easy matter to prove innocence of a person who is no longer alive (Amnesty International 2001). If situation is so serious in the United States with its significant procedural guarantees, it is not difficult to imagine how great the risk of executing innocent people is in those countries that are on their transition to democracy and creation of independent and impartial judicial systems. This is especially evident in countries where the quality of juridical help to the poorest strata is extremely low, and where judges, lawyers, policemen, etc. have to work in very hard conditions, which is likely to lead to rife corruption in judicial system.

Or, to give another fact, since 1973, 102 prisoners have been released from the death penalty row in the United States after evidence emerged of their innocence of the crimes for which they were sentenced to death. Some had come very close to execution after spending

many years under sentence of death. Recurring features in their cases include prosecution or police misconduct, the use of unreliable witness testimony, physical evidence or confessions, and inadequate defense representation. Other US prisoners have gone to their deaths despite serious doubts over their guilt.

The case of Chekatilo provides yet another sad example. In Russia, where in Soviet times executions were carried out, before the arrest of sexual maniac Chekatilo, three innocent people were executed, suspected of that mass murders. That was the investigation's mistake (Yugov 2002).

The Governor of the US state of Illinois, George Ryan, declared a moratorium on executions in January, 2000. His decision followed the exoneration of the 13th death row prisoner found to have been wrongfully convicted in the state since the United States reinstated the death penalty in 1977. During the same period, 12 other Illinois prisoners had been executed.

Announcing this moratorium, Governor Ryan said: "I cannot support a system which, in its administration, has proven so fraught with error and has come so close to the ultimate nightmare, the state's taking of innocent life... Until I can be sure that everyone sentenced to death in Illinois is truly guilty, until I can be sure with moral certainty that no innocent man or woman is facing a lethal injection, no one will meet that fate." (Amnesty International 2001, 3).

There is no way to avoid human errors. Regardless of the number of procedural guarantees established in a juridical system, or the level of scientific and technological methods used in it, it is human beings who operate this system, and they are prone to make mistakes. "Even the reliability of DNA tests depends on professionalism of people who collect and interpret data, let alone the possibility of fabricating evidence. Moreover, it is not always possible to discover DNA traces on the scene of crime." (Council of Europe 2001, 24).

Finally, innocent people may be executed intentionally. In some cases the death penalty has been used as a shameful means of removing political opponents, like execution of Ken Saro-Wiwa, a journalist and minority rights campaigner, who posed a threat to the Nigerian dictatorship and who, along with eight other people, was hanged on November 10, 1995, after a sham trial (MOSOP 2002). As a rule, the victim is sentenced to death in the course of unfair hearing. It is an irrevocable character of the death penalty that makes it a very convenient tool for abuse.

Death Penalty and Prisoners

Some criminals prefer capital punishment to poor prison conditions.

But this only speaks of extremely poor, cruel prison conditions as such. Treaties on human rights call upon to put an end to such barbarism. International, as well as European treaties state “No one shall be subjected to torture or to inhumane or degrading treatment or punishment.” If prison conditions do not correspond to international standards, they must be improved, and not used as a pretext for the death penalty use.

The practice of keeping prisoners in dirty, overcrowded cells, putting physical and mental pressure on them, banning relatives from visiting them is an unacceptable one. Prisoners must also guaranteed the right to respect for private and family life provided for by the Article 8 of the European Convention on Human Rights, including the right to correspondence and the right to be visited by their family members. This is especially important for people convicted to long imprisonment, since they are deprived of usual means of keeping touch with the outside world, something that is a key factor for rehabilitation.

In humane systems of legal proceedings, the decisions by the courts about long term imprisonment, for example life imprisonment, should be based not only on the criterion of the crime gravity, but also on risk and danger that the prisoner poses to society, the latter changing with time. This is particularly important for prisoners serving life sentences for crimes committed in youth, since in such cases it is necessary to take into consideration all psychological and individual changes that these people might undergo over time.

Humane criminal legal policies should acknowledge the fact that every criminal deserves an individual approach, and that prisoners constitute an inseparable part of society. It is crucial to go beyond the limits of a particular crime and examine those circumstances that urged a person to commit the crime. The aim of penitentiary system is not solely punishment of criminals, but also the rehabilitation and return to normal life of those who undergone positive changes and are prepared to make their contribution to the social life. It would be wrong to call such an approach a mild one, a complete forgiveness. Quite the opposite, this approach tends to consider the idea of crime in a broader social context, which may have a positive impact on development of society in general and crime level in particular.

With the aim of increasing its activity in this field, the Council of Europe established in 1989 a specialized organ called the European Committee on Torture Prevention vesting it with the power of visiting any prisons to check conditions in which prisoners are maintained. The task of the Committee is to work in close cooperation with authorities of member states of the Council of Europe with the intention to protect prisoners from torture and abuse, improve prison conditions, and establish penitentiary system preparing those serving prison terms to future reintegration into society.

The death penalty cannot be abolished due to an insufficient number of prisons for the maintenance of those sentenced to life imprisonment.

All states encounter this problem after declaring a moratorium on the death penalty, that is, they do not know how to handle the problem of prisoners whose death sentence has been replaced with life imprisonment. As a rule, this results in an overload of prison system function because of an increased number of those serving life sentences, while no sufficient funds have been allocated for this purpose. This is connected with a number of political and practical problems that have a temporary character; moreover, a wide experience has been accumulated in this area.

In addition, the number of criminals sentenced to death is usually very small in comparison with the total number of prisoners. Even in Russia where the number of people sentenced to death is relatively large, namely 600, this figure seems insignificant when compared with the total number of prisoners that amounts to more than one million (Council of Europe 2001, 27).

In order to solve this problem, there is no need to develop urgently programs aimed at building special prisons for this category of prisoners. Those serving life sentences may well be kept with other prisoners. In the United Kingdom where the death penalty was abolished de facto in 1965 a long experience has been accumulated in the area of maintaining prisoners serving life sentences. Personnel of British prisons are unanimous in their opinion that this category of prisoners has, in general, a stabilizing effect on prison inmates as a whole (Council of Europe 2001).

One should not forget that it is society that creates criminals, and that prisoners constitute an inseparable part of society. Perhaps we would like to wash our hands of people, who have

committed crimes, but it would hardly put an end to crime, moreover, it would complicate the work of the prison system personnel who are devoted to their cause. It is important to create the possibility of contacts between prisoners and the outside world so that in future these people will be able to live and communicate in society.

It is too expensive to keep criminals sentenced to life imprisonment.

But there is nothing more invaluable than human life. Besides, the death penalty cannot be called a cheap alternative to imprisonment, at least, until all necessary guarantees against miscarriages of justice are available. The death penalty may even be more expensive than maintaining criminals in prisons. In the United States even those in favor of the death penalty complain about extra expenses connected with the death penalty cases, pointing out that these expenses are about twice as much as those to organize life imprisonment.

It should be mentioned that prison budgets mainly depend not on the small percentage number of those serving life sentences, but rather on changes in the practice of verdict delivering intended to reduce the total number of prisoners. The first step in the solution of the financial problem may be reducing the number of prisoners and long-term sentences delivered for less grave crimes, as well as ending the practice of preliminary detention with respect to minors.

If death penalty has become a "tradition" in a country, there is no reason to abolish it. Representatives of the European community do not have the right to criticize national traditions and impose their own values.

Every country has its own culture and traditions, and at one time in the past the death penalty was used in almost all countries. However, human rights have a universal and inalienable character being a kind of derivative of values acknowledged in all countries, namely such values as human dignity and sanctity of human life.

Too often cultural and national traditions serve as an argument for authoritarian regimes to justify their own positions that have nothing to do with a real diversity of culture and traditions of a nation.

It is also noteworthy that countries differ from each other in terms of their traditions, which leads to different rates at which standards in the field of human rights have been introduced and applied. For example, although the death penalty in Great Britain was abolished several decades ago, Protocol No. 6 of the European Convention on Human Rights was ratified only in 1999, that is, later than in many other countries-members of the Council of Europe, such as Georgia, Moldova, Portugal, Iceland. Countries that refused to use the death penalty have adapted their customs to universal standards, so there is reason to believe that any country can apply these standards. Human life is priceless, and all human beings are of equal value, no matter in what country they live.

PART II

The Problem of the Death Penalty in Armenia

At present, Armenia, Russia and Turkey are those three member states of the Council of Europe where the death penalty has been abolished only *de facto*. “*De facto* abolition means that a country has declared a moratorium on the death penalty for at least five years, or it has taken an official obligation to observe such a moratorium (even if the constitution of the country in question has a provision on the death penalty.)” (Council of Europe 2001, 31).

The overwhelming majority of the member states of the Council of Europe abolished the death penalty completely, that is, these states refused to use the death penalty not only in peacetime, but also in wartime.

In a few member states of the Council of Europe, namely in Albania, Estonia and Latvia, the death penalty has been abolished only in peacetime (Council of Europe 2001).

Thus, among member states of the Council of Europe Armenia stands out as being one of those very few where the death penalty has been abolished only *de facto*, but not *de jure*.

As it was mentioned previously, there is currently strong domestic opposition against abolition of the death penalty in the country. There has been public outrage over the bloody assassination of the eight top-level Armenian officials, including the then Prime Minister Vazgen Sarkisian and the then Speaker of Parliament Karen Demirchian on October 27, 1999. The video footage depicting five gunmen breaking into the Armenian Parliament at the time of a parliamentary session and mercilessly murdering the Armenian parliamentarians left an indelible impression on every Armenian. People resent this unprecedented crime and demand the execution of Nairi Hunanian who led the group and four other perpetrators.

The adoption of the new Criminal Code and amendments to the 1995 Constitution of the Republic of Armenia appear to add fuel to the flames: they make the Armenians react more strongly to the problem of abolition of the death penalty in the country, and also tend to hamper the ratification of Protocol No.6 to the European Convention on Human rights, which was signed by Armenia at the time of accession to the Council of Europe on January 25, 2001, and which forbids member states of the Council of Europe from using the death penalty in peacetime unconditionally. The problem is that the new Criminal Code, which is passing through parliament at the present time, while formally abolishing the death penalty, allows for the gunmen's execution as an exception from the rule. The special clause stipulates that those individuals that committed serious crimes before the new Criminal Code's entry into force could be sentenced to death (Khachatryan 2002). This appears to contradict Protocol No.6 to the European Convention on Human Rights, which bans the death penalty in all cases except "in time of war or of imminent threat of war." (European Convention on Human Rights 1998, 37). At the time of writing this Master's Essay, namely the fall of 2002, the Parliamentary Assembly of the Council of Europe has set a new deadline for Armenia to abolish the death penalty unconditionally – June 2003 – or to face the possibility of sanctions (Report of the Monitoring Committee 2002).

After outlining the general situation around the problem of the death penalty abolition in the country and the ratification of Protocol No.6 by Armenia, let us turn attention to two visits to Armenia, in 2001 and 2002, by the Committee on the Honoring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) of the Parliamentary Assembly of the Council of Europe (PACE). The examination of two reports prepared by the Monitoring Committee as a result of its visits to Armenia will enable to clarify

whether there has been any progress made in terms of abolishing the death penalty *de jure* in Armenia from January, 2002 (the time of accession to the Council of Europe) up to present. With the same purpose the contents of the report on the 31st sitting of the Parliamentary Assembly ordinary session held in Strasbourg on September 26, 2002 have been used.

Monitoring Committee's Visit to Armenia in 2001

The first visit of the Committee on the Obligations and Commitments by Member States of the Council of Europe' Parliamentary Assembly (the Monitoring Committee) to Armenia took place from 15 to 18 October 2001, i.e. ten months after the country joined the Council of Europe.

As co-reporters Mrs. Irena Belohorska (Slovakia, European Democratic Group) and Mr. Jerzy Jaskiernia (Poland, Socialist Group) put it in the beginning of the report prepared after the visit, “ accession to the Council of Europe is regarded by the Armenian authorities as their country's most important political initiative and most significant moral commitment of recent years. During our discussions, the Armenian authorities constantly restated their firm wishes to honor their obligations and commitments, and their absolute commitment to consolidating the rule of law and stabilizing the democratic process in their country. Thus the government and the National Assembly have given us their strongest assurances that the necessary reforms are already in progress, or soon will be, and will be complemented within the time limits laid down.” (Report of the Monitoring Committee 2001, 3).

The Report's Chapter 5 “Improving Human Rights Protection”, Part A. dealing with abolition of the death penalty opens with the following words: “During our visit, we felt it appropriate to remind those with whom we spoke of some of the fundamental values upheld by

the Council and its Parliamentary Assembly, in particular the need for Armenia to abolish the death penalty.” (Report of the Monitoring Committee 2001, 18).

The report refers to abolition of the death penalty as “a very sensitive topic in Armenia and doubtless one of the most difficult commitments for the country to comply with, bearing in mind the animated debate currently taking place in the National Assembly.” (Report of the Monitoring Committee 2001, 18).

The importance of reforms, currently before the National Assembly, is emphasized, since abolishing the death penalty in the Armenian domestic law would require amendments to both the Criminal Code and Article 17 of the 1995 Constitution of the Republic of Armenia.

The Monitoring Committee points out that during the period from 1991 to 2001 Armenia observed a moratorium on the death penalty, and even though the courts continued to hand down death sentences, no one was executed. The number of prisoners under sentence of death is 31, all being held in Nubarashen prison. However, the Monitoring Committee did not meet them during its first visit, notwithstanding that the Armenian authorities assured the Committee that their detention condition had been improved.

Points 116 and 117 of the Report reveal those factors that would prevent the ratification of Protocol No. 6 to the European Convention on Human Rights within the specified time limit, i.e. by 25 January 2002. The co-reporters Mrs. Irena Belohorska and Mr. Jerzy Jaskiernia call the main obstacles to the ratification of Protocol No.6 the revision of the Constitution and the adoption of the new Criminal Code. During the first visit of the Monitoring Committee to Armenia the Speaker of the National Assembly, Armen Khachatryan, and the majority of the members of the National Assembly, while confirming in unequivocal terms their opposition to the death penalty, indicated these required amendments to the existing Constitution and Criminal

Code as the reasons why they were not optimistic about the ratification of Protocol No.6 by 25 January 2002 (Report of the Monitoring Committee 2001).

The tragic events of 27 October 1999, which took place at the Armenian Parliament and which cost the life of eight senior figures including Vazgen Sarkisian, the then Prime Minister, and Karen Demirchian, the then Speaker of the National Assembly, are mentioned as another obstacle to the ratification of Protocol No. 6. These events “had such an effect on people’s minds and made such an impact on public opinion that the majority of parliamentarians themselves refuse for the time being to abolish the death penalty, awaiting the outcome of the trial of the perpetrators of the atrocity. Some of the accused in this trial still taking place in Yerevan could very well be sentenced to death.” (Report of the Monitoring Committee 2001, 19).

It is worth noting that several members of the National Assembly told the Monitoring Committee during its first visit in 2001 that they were prepared to ratify Protocol No. 6 but on condition that the Council of Europe and the Parliamentary Assembly agreed to consider the tragedy of 27 October 1999, a highly emotionally charged event, as an exception to the application of the death penalty and to put back the deadline for the ratification of Protocol No. 6 after the trial had been completed.

The stance taken by the Monitoring Committee can be defined as unequivocal and uncompromising, which is reflected in Point 119 of the Report:

“Clearly, membership of the Council of Europe can brook no exception on this point.” (Report of the Monitoring Committee 2001, 19).

The Monitoring Committee attaches much importance to the fact that “popular feelings should not be a reason to delay essential reforms which were freely agreed to and accepted on

joining the Council. A crime is a tragedy irrespective of whether it concerns the death of a prime minister or an unknown person.” (Report of the Monitoring Committee 2001, 19).

In the light of this, the Monitoring Committee called on the Armenian authorities in 2001 not to defer any longer the amendment to the 1995 Constitution and the adoption of the new Criminal Code, and to show genuine determination by abolishing the death penalty without delay.

It is pointed out that, “if the verdict of the trial of the alleged perpetrators of the events of 27 October 1999 were given before the amendment to the Criminal Code and the ratification of Protocol No. 6, and death sentences were handed down, this would doubtless have a disastrous effect on international opinion.” (Report of the Monitoring Committee 2001, 19).

It is interesting enough that, according to the Report, some senior figures in Armenia, among them President Kocharian whose abolitionist views are well known, were more confident that Armenia would be able to honor such an essential commitment as the ratification of Protocol No.6 than part of the members of the National Assembly. Such an abolitionist position is recognized as a political risk just one and a half years away from the presidential elections (Report of the Monitoring Committee 2001).

The end of the Chapter 5, part A. “Abolition of the death penalty” deals with Protocol No.13 on the abolition of the death penalty in all circumstances which would be open for signature at the beginning of 2002. It is acknowledged that the defense of this principle with the public would require from the Armenian authorities a degree of political courage, but they could take the initiative and seek to promote with immediate effect the future Protocol No. 13. Chapter 5, part A. is concluded by the following words: “The Armenian authorities could take the opportunity currently available to them to reform the Constitution and the Criminal Code in

order to incorporate into domestic law not the provisions of Protocol No.6 but those of Protocol No.13 which will be open for signature at the beginning of next year, and totally abolish the death penalty including in times of war or imminent danger of war.” (Report of the Monitoring Committee 2001, 20).

Thus, according to the Report of the Monitoring Committee prepared as a result of its visit to Armenia in October 2001, despite the fact that Armenia, when joining the Council of Europe on 25 January 2001, signed the European Convention on Human Rights (ECHR), in the fall of 2001 it was for Armenia to honor within the time limit, namely during the year following its accession, the commitment to ratify the European Convention on Human rights and Protocols Nos.1, 4, 6, 7. The current constitutional reform was an obstacle to the honoring of this commitment. However, the Venice Commission (Opinion adopted on 14 December 2001 at its 49th Plenary Meeting) saying that the European Convention on Human rights can be ratified without any prior constitutional amendment was seized by the Armenian authorities (Report of the Monitoring Committee 2001).

Chapter 4 of the Report “Consolidation of the Rule of Law: Constitutional Reform and Legislative Program” notes that by the Fall of 2001 a new draft Constitution had been prepared by the Presidential authorities, and that certain provisions had been amended to rid the constitution of inconsistencies with the European Convention on Human Rights and the Protocols thereto, which should help Armenia to honor its commitments, particularly in respect of abolition of the death penalty. “The people we spoke to do not exclude the possibility that the government will have to work hard to sway public opinion in favor of some of the new provisions, including the abolition of capital punishment.” (Report of the Monitoring Committee 2001, 11).

As far as the new Criminal Code is concerned, the Report notes that its general part was adopted in 1999, whereas the second part was being debated at the time of the first visit of the Monitoring Committee, that is October 2001, and “it was adopted at first reading and should be adopted finally during the 2001-2002 parliamentary session.” (Report of the Monitoring Committee 2001, 12). When Armenia joined the Council of Europe, it undertook “to adopt, within one year of its accession, the second (specific) part of the Criminal Code, thus abolishing *de jure* the death penalty.” (Report on Armenia’s Application for Membership of the Council of Europe 2000, 4). According to the Monitoring Committee, the “second part of the Code can reasonably be expected to be adopted at the same time as the reform of the Constitution in 2002.” (Report of the Monitoring Committee 2001, 12.)

Monitoring Committee’s Visit to Armenia in 2002

The second visit of the Committee on the Honoring of Obligations and Commitments by Member States of the Council of Europe to Armenia took place in September 2002.

As a result of this visit another Report by the Monitoring Committee – Document No. 9542 – has been prepared by the co-reporters Mrs. Irena Belohorska and Mr. Jerzy Jaskernia.

The close examination of this report enables to compare the situation around the abolition of the death penalty in Armenia in 2002 with that in 2001 and gives much food for thought.

First of all, the comparison of Chapter 5 “Improving Human Rights Protection”, Part A. “Abolition of the Death Penalty” of the 2002 Report with the same Part A. of the 2001 Report reveals that this highly sensitive topic called in the previous Report “one of the most difficult commitments for the country to comply with” (Report of the Monitoring Committee 2001, 18) is

now recognized by the Committee as “the most difficult commitment.” (Report of the Monitoring Committee 2002, 20).

According to the Report, at 27 May 2002 there were some 39 prisoners under sentence of death, all being held in Nubarashen prison. Bearing in mind the number given in the previous report – 31 prisoners under sentence of death in Armenia in 1991 – it is not difficult to conclude that the courts continue to hand down death sentences. The number of death sentences passed by the Armenian courts since January 2000 is estimated to be nine. Again, the Monitoring Committee was not able to visit prisoners under sentence of death with the aim of checking their detention conditions.

Like the previous report, the 2002 Report recognizes the importance of amendments to both the Criminal Code and the Constitution (Article 17 of the 1995 Constitution), since, according to the Armenian authorities, the ratification of Protocol No. 6 is conditional on these reforms being made.

However, careful reading of the 2001 and 2002 Reports prepared by the Monitoring Committee shows that amendments to both the Criminal Code and the 1995 Constitution are still before the National Assembly, despite the fact that the Armenian authorities told the Monitoring Committee in 2001 that “the referendum on the Constitution is scheduled to take place next spring, and the new Criminal Code should be approved shortly thereafter.” (Report of the Monitoring Committee 2001, 19).

Moreover, if during the Monitoring Committee’s first visit to Armenia in 2001 members of the National Assembly were not optimistic about the ratification of Protocol No.6 by 25 January 2002 and indicated amendments to the Constitution and the Criminal Code as the main obstacles to this, during the Committee’s second visit in 2002 the parliamentarians “were

extremely pessimistic about the ratification of Protocol No. 6 and the adoption of the New Criminal Code because of the pressure of public opinion: no reform is expected before the elections.” (Report of the Monitoring Committee 2002, 20).

Again, it is pointed out that some senior figures, first and foremost President Kocharian, were more confident that Armenia would be able to honor this commitment than the assembly members who, however, confirmed in unequivocal terms their opposition to the death penalty. It is interesting enough that the 2002 Report, while admitting that President Kocharian’s well known abolitionist views mean that he is taking a political risk, omits the words “before the presidential elections”, something which was mentioned in the previous report.

The 2002 Report brings out a weak point in the argument of the Armenian side insisting that the tragedy of 27 October 1999 be considered as an exception to the application of the death penalty by the Council of Europe and the Parliamentary Assembly: “the argument is all the refutable insofar as the authorities, including the members of the Assembly, agreed to abolish the death penalty in spring 2000,i.e. well after the tragic events in question.” (Report of the Monitoring Committee 2002, 20).

The stance of the Monitoring Committee is clear-cut: the Council of Europe will make no exception on this point.

The report says that today Armenia must make a definite choice between “fostering the values of a democratic, humanist and tolerant Europe or giving way to demagogy by pandering to popular resentment.”(Report of the Monitoring Committee 2002, 20), a choice in which popular feeling should not be allowed to prevail, since in this case public opinion delays the implementation of reforms essential for the future of the country. The Monitoring Committee proposes that the Parliamentary Assembly of the Council of Europe call on Armenia to abolish

the death penalty without further delay and, in the event, by June 2003, failing which the reporters propose the Parliamentary Assembly reconsiders the credentials of the Armenian parliamentary delegation (Report of the Monitoring Committee 2002).

In the Summary of the Report prepared by the Monitoring Committee in September 2002 the reporters regret that a number of fundamental commitments have not been honored by Armenia within the time limits previously agreed to, most particularly ratification of Protocol No.6 to the European Convention on Human Rights and the adoption of the new Criminal Code.

At the end of Chapter 5, Part A. “Abolition of the death penalty” the Monitoring Committee again expresses hope that the Armenian authorities will be able to make the required amendments to the 1995 Constitution and the Criminal Code with the aim of including into domestic law “not the provisions of Protocol No.6 but those of Protocol No.13, which has been open for signature since May 2002 and totally abolish the death penalty including in times of war or imminent danger of war.” (Report of the Monitoring Committee 2002, 21).

Conclusions and Recommendations

In Part I of this Master’s Essay a number of arguments have been brought in favor of abolition of the death penalty. Each of these arguments is applicable to Armenia.

One argument against the death penalty is that human life is sacred, and therefore execution is an evil. The recognition of the sanctity of human life is deeply rooted in the Christian tradition. The right to life is provided in Article 2 of the European Convention on Human Rights that is the main mechanism determining the Council of Europe’s activities. The death penalty is a violation of fundamental human rights – the right to life and the right not to be

subjected to cruel, inhuman and degrading punishment, which are recognized in the Universal Declaration of Human Rights, other international and regional human rights instruments and national constitutions and laws.

So the death penalty must be abolished not only *de facto*, but also *de jure* in Armenia, which was the first country in the world to adopt Christianity as a state religion, and which is currently a member state of the Council of Europe sharing the values and principles of this organization and having commitments to consolidate these ideals in its own society.

Second, there is at present strong domestic opposition to any clemency for the five perpetrators of the October 1999 massacre in the Armenian Parliament, which prevents the ratification of Protocol No.6 to the European Convention on Human Rights prohibiting the death penalty unconditionally in peacetime. Many in Armenia take the view that the new Criminal Code, while abolishing the death penalty formally, should allow for the execution of the perpetrators of the October 1999 massacre in the Armenian parliament as an exception from the rule. Moreover, there are opinions that such conduct of the Armenian authorities would mean ignoring public opinion.

But, as it has been explained in Part I, Chapter “Death Penalty and Democracy”, it is entirely wrong to believe that government behaves in a democratic way by following public opinion blindly on the issue of the death penalty.

The death penalty is one of those issues where public opinion is often based on miscomprehension of some facts. One feature of public opinion, which is not usually revealed by polls asking people to state their position on the death penalty, is that although a majority of the public favors the death penalty in a given country, it is also the case that a majority of the public is willing to accept abolition. Therefore, the government and the legislators have to take the

decision to abolish the death penalty. Such a decision can be taken even though public opinion favors the death penalty. Historically, this has almost always been the case.

Several members of the National Assembly have asked the Council of Europe and the Parliamentary Assembly to consider the tragedy of 1999, a highly emotionally charged event, as an exception to the application of the death penalty and to put back the deadline for ratification of Protocol No. 6 after the trial has been completed. The stance taken by the Council of Europe is the following: there should be no exception on this point. According to the Monitoring Committee, the argument put forward by the Armenian parliamentarians is refutable, since the Armenian authorities agreed to abolish the death penalty in Spring 2000, i.e. at the time of Armenia's application for membership in the Council of Europe and well after the tragic events in question. Popular feeling should not be a reason to delay abolition of the death penalty in the country. Armenia must demonstrate it fully shares with other member states of the Council of Europe the principles dearest to this organization.

At the same time, recent crime figures from abolitionist countries fail to show that abolition of the death penalty has harmful effects. This holds good for developed countries, like Canada, as well as for transitional ones, like Georgia and Lithuania. There is no reason why Armenia should be an exception and crime in the country should increase after abolition of the death penalty *de jure*.

Thus, *a second argument* against the death penalty is that there has been no scientific proof that the death penalty has deterrent effect.

A third strong argument against the death penalty is that there exists a risk of executing innocent people. Even in the United States with its significant procedural guarantees, such risk is not ruled out. It is enough to mention that there is recorded evidence that since the early 1990s

25 innocent people have been executed in the United States, and this figure does not reflect a real state of affairs due to the fact that it is difficult to prove innocence of a person who is no longer alive. Taking into account the today's condition of Armenian legal proceedings, rampant corruption, the weakness of the rule of law, mistakes are very possible, and innocent people may well be executed.

In the light of the arguments in favor of abolition of the death penalty in Armenia, the following recommendations can be made:

It is now the proper time to abolish the death penalty in Armenia not only in practice, but also in law. It goes without saying that Protocol No.6 to the European Convention on Human Rights should be ratified before the deadline – June 2003, since in the event Armenia fails to do so, it may face the possibility of political sanctions. According to the Report of the Monitoring Committee prepared after its visit to Armenia in September 2002, “Armenia’s elected representatives have a clear choice to make between fostering the values of a democratic, humanist and tolerant Europe or giving way to demagoguery by pandering to popular resentment.”

The government should take on the task of educating the public on the uncertainty of the deterrent effect of the death penalty. A better public understanding of crime prevention and criminal justice would provide more support for anti-crime measures, which are genuine and not merely palliative. Politicians should not make demagogic calls for the death penalty, misleading the public and obscuring the need for genuine anti-crime measures. The fact of a monstrous murder should not be used in the populist rhetoric of politicians calling on to intensify the fight with crime by means of the death penalty, since it may not be conducive to discussion of the problem of death penalty in an informed and reasonable way. Desire for revenge is a normal human reaction. However, political leaders should try to conduct discussion of the problem in a

more open and knowledgeable atmosphere. In considering the problem, it is important to analyze the system of criminal legal proceedings as a whole, including relations between the police and the population, detention conditions, as well as prisoners' opportunities for rehabilitation.

It is regrettable that since January 2001 no progress has been made by Armenia in terms of abolishing the death penalty de jure. Today Armenian parliamentarians are pessimistic about the ratification of Protocol No. 6 and the adoption of the second part of the Criminal Code because of the pressure of public opinion, and no reform is expected before the elections. As the Monitoring Committee pointed out, "if most politicians were not tempted to exploit these tragic events and the pain of the victims' families for purely electoral purposes, the Assembly could conduct a useful debate on these fundamental reforms and the justice system would be in a better position to judge such acts in all serenity." (Report of the Monitoring Committee 2002, 21).

Statements from religious leaders, respected public figures, influential organizations and the media can create a moral climate in which the public would be comprehensive of the need for abolition of the death penalty.

Also, the national debate on the death penalty is often conducted in purely national terms, whereas countries like Armenia can only gain by learning from other countries' experience.

The Parliamentary Assembly of the Council of Europe, taking into consideration the arguments that criminal procedures against those involved in the shooting in the Armenian Parliament in 1999 are still in progress and the general election is pending, has agreed to postpone the deadline for ratification of Protocol No. 6 until June 2003. Meantime, Mrs. Wohlwend, Chairman of the Abolition of the Death Penalty Sub-Committee of the Committee on Legal Affairs and Human Rights, suggested the holding of a seminar on the death penalty in

Armenia, similar to those held in other countries (Report on the 31st Sitting of Parliamentary Assembly Ordinary Session 2002).

In the end, abolition of the death penalty means an acknowledgement of many fundamental values forming the base of any society, namely freedom, democracy and respect for human rights. Bringing about abolition of the death penalty requires courageous political leadership. It is not possible for a government to respect human rights and retain the death penalty at the same time. Let us hope that in the near future the Armenian society, authorities and political figures will prove themselves capable of defending human rights in the country by ratifying Protocol No.6 to the European Convention on Human Rights.

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