

The History, Policy, and Influence of the Abolition of the Death Penalty in Europe

Yang Jiao

Faculty of International Law, China Foreign Affairs University, Beijing, China.

jiaoyang@cfau.edu.cn

Abstract

In today's world, abolition of the death penalty has become a general historical trend. All the EU's 28 member states have abolished capital punishment. Abolition the death penalty is also a pre-condition for entry into the Union. Europe acts as a pioneer in the restriction of death penalty worldwide leading towards ultimate abolition. As can be seen from the EU's experience, the reform of the death penalty needs to start from idea change, politicians' decision-making power has played a key role. According to the objectives above, EU policy on the death penalty affected many non-EU countries.

Keywords

The Death Penalty, The Policy In Europe, Capital Punishment, Legal System.

1. Introduction

The death penalty is the oldest punishment in the history of humanity and was at one time the clearest manifestation of the nature of punishment. After about two and a half centuries of debates, restriction and even abrogation of the death penalty has been recognized by more and more international instruments, and the pitch of cry for abolition of capital punishment becomes higher and higher. In today's world, abolition of the death penalty has become a general historical trend. A growing number of countries are abolishing the death penalty: more than 130 countries have done so in practice or in law.

Portugal had abolished the death penalty for murder in 1867, which is the first country of abolition for all ordinary crimes in Europe.[1] Before World War II, the death penalty was still a problem in domestic law, no regional convention concerned about this issue. World War II had promoted the development of international law, also promoted awareness of human rights in public. In 1980s, the Six Protocol Concerning Abolition of Death Penalty of European Convention on Human Rights (1985) was successively adopted, so it begins, in a certain extent, to become a rule of international law to abolish death penalty. The 13th Protocol (abolition in all circumstances) to the European Convention on Human Rights prohibit the death penalty in 2002. In 2011 Latvia was the latest country to ratify Protocol 13 in abolishing the death penalty for all crimes. The legislation entered into force three months after the instrument of ratification was deposited in 2012.

The absolute ban on the death penalty is enshrined in both the Charter of Fundamental Rights of the European Union(EU) and the European Convention on Human Rights of the Council of Europe, and thus considered a central value. The EU is the leading institutional actor and largest donor to the fight against the death penalty. All the EU's 28 member states have abolished capital punishment. Abolition the death penalty is also a pre-condition for entry into the Union. The EU regards abolition as essential for the protection of human dignity, as well as for the progressive development of human rights. Abolition is also a key principle guiding EU's foreign policy. But why the EU have paid closer attention to this issue? In the process of abolishing the

death penalty in EU countries, what arguments do they have? Should China follow the EU's footsteps on the issue? These problems will be discussed in this paper.

2. The process of abolition of the death penalty in the EU

2.1. Some debates in the process of abolition of the death penalty in the EU

In the EU process of abolition of the death penalty, there is some controversy on the issue of the death penalty's legitimacy. These arguments will be discussed divided into four parts.

2.1.1. A. Human rights

Abolitionists believe capital punishment is the worst violation of human rights, because the right to life is the most important, and judicial execution violates it without necessity and inflicts to the condemned a psychological torture. Modern society is a society of human rights, the right to life is the core of human rights.

Punishment for criminals is a national responsibility, but the power is limited. No country has the power to deprive the lives of others, even if this person is guilty. No one would dedicate his life to the country. Thus, the death penalty violates principles of the fundamental human rights, there is no justification.

However, someone said that defense of life may be held of justify, why the death penalty is a threat to life? In their opinion, the function of the capital punishment is the same as the justifiable defense; the human rights of crime should be denied. But it is not an act of defense against an immediate punishment to one's life. It is the premeditated killing of a prisoner for the purpose of punishment—a purpose that could be achieved by other ways of torture. Immediate punishment is much better than grievous physical and mental harm to a prisoner.

2.1.2. B. The wrongful execution

One of the vital reason, which for abolishing the capital punishment, is that it leads to miscarriage of justice through the wrongful execution of innocent persons. Many people have been proclaimed innocent victims of the death penalty. Some have claimed that as many as 39 executions have been carried out in the face of compelling evidence of innocence or serious doubt about guilt from in the US from 1992 through 2004. Newly available DNA evidence prevented the pending execution of more than 15 death row inmates during the same period in the US.[2] Even in China, it is a hot topic of media to explore the innocent persons in unjust cases. The death penalty makes innocent people lost their lives, it is unfair and brute. Once the false sentence of the death penalty is implemented into action, the innocent will be killed wrongly and there will be impossible for any remediation in the future.

2.1.3. C. Retribution

Here one argues that justice requires the death penalty just because of retribution.[3] Those who commit the most premeditated or heinous murders should be executed simply on the grounds that they deserve it. Life without parole, according to this view, is simply insufficient punishment for those who commit the most heinous and premeditated murders. Retributive arguments are often made in the name of families of homicide victims, who are depicted as "needing" or otherwise benefitting from the retributive satisfaction that the death penalty promises. In reality, the Swiss started collecting signatures to conduct the referendum to reinstate death penalty. The initiative was set forth by a group of seven people, whose relatives had fallen victims to pedophile rapists. The members of the group believe that Switzerland should retrieve death penalty "for those committing a murder or responsible for a death resulting from sexual abuse of children, sexual violence or rape." [4] Hence we can see that the issue of abolition of death penalty is related with public attitudes, in a certain extent, it also may occur repeatedly.

Those who oppose capital punishment can reasonably respond by pointing out that the death penalty offers much less to families of homicide victims than it first appears. Indeed, we are aware of no research specifically studying the short-term and long-term effects of the execution of a killer on the family of the homicide victim, or on the family of the executed inmate. Some researchers show that in some respects, life imprisonment without parole can be even worse than execution. Unlike the arguments reviewed above, retribution is a non-empirical justification and thus all but impossible to test with empirical data. Nobody can say that the death penalty is no deterrent effect, to future people who want to commit crimes, the death penalty could make him fear. But modern society is a civilized society, we have gone through "an eye for an eye" revenge era. In order to achieve the purpose of maintaining social order, deprivation of human life for retribution, is contrary to the norms of modern civilization.

2.1.4. D. Religious views

As doctor Roman Catholic Church St. Thomas Aquinas once said, accepted the death penalty as a deterrent and prevention method but not as a means of vengeance. Thus, The Roman Catechism stated this teaching: Another kind of lawful slaying belongs to the civil authorities, to whom is entrusted power of life and death, by the legal and judicious exercise of which they punish the guilty and protect the innocent. The just use of this power is an act of obedience to this Commandment which prohibits murder. The end of the Commandment is the preservation and security of human life. Now the punishments showed by the civil authority, which is the legitimate avenger of crime, naturally tend to this end, since they give protection to life by pushing out violence.

Pope John Paul II suggested that capital punishment should be avoided only if it is the only way to defend society from the offender in question, opining that punishment ought not to go to the extreme of executing the offender except in cases of absolute necessity: in other words, when it would not be possible otherwise to defend society. Today however, as a result of steady improvements in the organization of the penal system, such cases are very rare, if not practically non-existent. And the most recent edition of the Catechism of the Catholic Church restates this view. That the assessment of the contemporary situation advanced by John Paul II is not binding on the faithful was confirmed by Cardinal Ratzinger when he wrote in 2004 that, if a Catholic were to be at odds with the Holy Father on the application of capital punishment or on the decision to wage war, he would not for that reason be considered unworthy to present himself to receive Holy Communion. While the Church exhorts civil authorities to seek peace, not war, and to exercise discretion and mercy in imposing punishment on criminals, it may still be permissible to take up arms to repel an aggressor or to have recourse to capital punishment. There may be a legitimate diversity of opinion even among Catholics about waging war and applying the death penalty, but not however with regard to abortion and euthanasia.

While all Catholics must therefore hold that "the infliction of capital punishment is not contrary to the teaching of the Catholic Church, and the power of the State to visit upon culprits the penalty of death derives much authority from revelation and from the writings of theologians", the matter of "the advisability of exercising that power is, of course, an affair to be determined upon other and various considerations."

2.2. The process of abolition in EU countries

In Europe, capital punishment has been abolished country by country, and today it is nearly a death penalty-free area. Since 1999, there have been no executions in the Council of Europe region. The abolition of the death penalty is presently a condition for membership in both the Council of Europe and the European Union. The European Union holds a strong and principled position against the death penalty. The global abolition of the death penalty is one of the main objectives of the EU's human rights policy.

The abolition date of the death penalty in EU countries

Country	Date (A)	Date (AO)	Date (last ex.)
AUSTRIA	1968	1950	1950
BELGIUM	1996		1950
BULGARIA	1998		1989
CROATIA	1990		1987
CYPRUS	2002	1983	1962
CZECH REPUBLIC	1990		
DENMARK	1978	1933	1950
ESTONIA	1998		1991
FINLAND	1972	1949	1944
FRANCE	1981		1977
GERMANY	1987		
GREECE	2004	1993	1972
HUNGARY	1990		1988
IRELAND	1990		1954
ITALY	1994	1947	1947
LATVIA	2012	1999	1996
LITHUANIA	1998		1995
LUXEMBOURG	1979		1949
MALTA	2000	1971	1943
NETHERLANDS	1982	1870	1952
POLAND	1997		1988
PORTUGAL	1976	1867	1849K
ROMANIA	1989		1989
SLOVAKIA	1990		
SLOVENIA	1989		
SPAIN	1995	1978	1975
SWEDEN	1972	1921	1910
UNITED KINGDOM	1998	1973	1964

Abbreviations: Date (A) = date of abolition for all crimes; Date (AO) = date of abolition for ordinary crimes; Date (last ex.) = date of last execution; K = date of last known execution; Ind. = no executions since independence

The EU countries have different process on abolishing the death penalty. Take Germany for example. Compared with other European countries, abolition of the death penalty process in Germany is a certain complexity. In west Germany, it's common knowledge that the inclusion of Article 102 of the Grundgesetz (Basic Law), which abolishes the death penalty, was motivated by disgust at the excessive use of the death penalty in Germany by the National Socialist regime. The Parliamentary Council's 1949 decision call for the abolition of the death penalty in the Basic Law: "As the extent of Nazi atrocities and abuse of the death penalty became clear, everyone was horrified, and the founders of the Federal Republic of Germany decided the State could never again be allowed the power to kill." So the death penalty had been abolished in May 6th, 1949 in the Federal Republic of Germany.

The reasons for end the death penalty in German Democratic Republic are so different. Firstly, after the establishment of Berlin Wall, East German society remained stable. In 1980's, crime rate had been decreased, violent crime had been reduced significantly. People thought that if the death penalty was lost, the society order is still good. Secondly, the last execution in GDR was in 1981, death concept had gradually disappeared from the public. People do not need the death penalty for maintaining the society's security, so the abolishing programmer went smoothly. Lastly, GDR was under pressure from the international community. Their Foreign Ministry said, "The German Democratic Republic will not be the last country to abolish the death penalty." [5] Death penalty policy has become the ruling party's main policy in GDR. In

July 17th, 1987, State Council of GDR issued a decision on abolishing the death penalty. After that, they amend the Penal Code, the death penalty was excluded from the law.

Other European countries have their different causes, processes and methods for abolishing the death penalty, which presumably depends on national historical traditions, religion views, human rights awareness and attitude of the people. Politicians' decision-making capacity plays a key role in the death penalty abolition movement. Note that the public should not become obstacles to the abolition of the death penalty. The public opinion polls by IFOP suggested about 63% French people support the death penalty, only 27% people agree abolition in 1972. But the French government still announced the abolition of the death penalty in 1981.

3. EU policy on the death penalty

Former President of European Commission Barroso said that "The European Union is unreservedly opposed to the use of capital punishment under all circumstances and has consistently called for the worldwide abolition of this punishment. Death penalty is against human dignity. We want to give visibility to the efforts of the many Non-Governmental Organizations and individuals who strive, day after day, towards the abolition of the death penalty." The Committee of Ministers of the Council of Europe decided in September 2007 to declare a "European Day against the Death Penalty" which is to be marked each year on 10 October. In December 2007, this European Day was also declared by the European Union.

The EU first addressed the issue of capital punishment in the Final Act of Amsterdam Treaty, which was adopted on 2 October 1997. The Final Act includes a number of declarations, of which the first is a "Declaration on the abolition of the death penalty". The Amsterdam Treaty's declaration on capital punishment provided the impetus for the General Affairs Council of the European Union to adopt, on 29 June 1998, the 'Guidelines to EU policy Towards Third Countries on the Death Penalty'. [6] The guidelines declare that 'the death penalty should not be imposed for non-violent financial crimes or for non-violent religious practice of expression of conscience'.

The Charter of Fundamental Rights of the European Union, which was adopted at Nice in December 2000, states: (a) Everyone has the right to life; and (b) No one shall be condemned to the death penalty, or executed. The Charter was included in the draft European Constitution, whose adoption has been deferred.

The objectives of the European Union are: where the death penalty still exists, to call for its use to be progressively restricted and to insist that it be carried out according to minimum standards as set out in the attached paper, while seeking accurate information about the exact number of persons sentenced to death, awaiting execution and executed. [7]

According to the objectives above, EU policy on the death penalty affected many non-EU countries. Turkey has recently, as a move towards EU membership, undergone a reform of its legal system. The death penalty was removed from peacetime law in August 2002, and in May 2004 Turkey amended its constitution in order to remove capital punishment in all circumstances. It ratified Protocol no.13 to the European Convention on Human Rights in February 2006.

The abolitionist movement has now spread far beyond its cradle in the EU countries. The abolition of the death penalty is one of the thematic priorities under the European Instrument for Democracy and Human Rights (EIDHR). Since 1994, the European Commission has funded through the EIDHR over 50 projects worldwide, with an overall budget of more than €33 million. [8] Its aim is to provide support for the promotion of democracy and human rights in non-EU countries. Besides, European leaders have called on the US, Japan and other nations to "completely abolish" the death penalty, calling the penalty "contrary to the fundamental values

for which our countries stand". The European Union also reaffirmed that it was "opposed to the use of capital punishment in all cases and under any circumstances. Its universal abolition is one of the key objectives of EU human rights policy." [9] These actions brought pressure to other countries which retain the death penalty, the EU's foreign policy contains these content. EU funding also allows non-governmental organizations to campaign for the abolition of the death penalty. NGO funding is a central component of EU foreign policy, some NGOs such as World Coalition Against the Death Penalty, Amnesty International are supporting actions on human rights and democracy issues in areas covered by EU Guidelines, including on capital punishment.[10]

4. Conclusion

Abolition of the death penalty in the EU plays a model rule in the world. Europe acts as a pioneer in the restriction of death penalty worldwide leading towards ultimate abolition. Regional integration contribute to the formation of shared values, regional conventions provide legal guarantee for the abolition of the death penalty.

As can be seen from the European Union's experience, the reform of the death penalty needs to start from idea change, politicians' decision-making power has played a key role. The death penalty has lost its previous dominant status in the criminal penalty system and it has become a universal orientation to restrict, reduce and even eradicate death penalty. [11] The death penalty policy in the European Union won the world recognition.

Along with this trend of social development, the issue of restriction and abrogation of death penalty has become a hot topic among the circle of criminal law in nowadays China. Recent developments in China, such as the Supreme People's Court announcement in October 2005 that it will take back all review of death penalty cases, and the requirement that second instance hearings of capital crimes must now be an open trial, show the Chinese government is taking concerns about the use of the death penalty seriously. Among Chinese criminal law scholars, a consensus has to some extent been reached on "taking a long-term view of the abolition of the death penalty." That means, China should restrict death penalty seriously these years, but the abolition of the death penalty needs to be carried out stage by stage, step by step. During the human right dialogue between China and EU, the two sides should increase mutual trust, understand and respect other side's public attitudes, level of civilization, and development of the rule of law.

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