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Classical and the latest argumentation in the dispute over the death penalty. Comparative law study

Summary

The ultimate punishment continues to be a highly debated moral dilemma related to the functioning of the legal system and the question of the functions and objectives of criminal sanctions in general.

There are several fundamental reasons justifying the need for reflection on the death penalty. First of all, the modern debate between abolitionists and retentionists, or more precisely their moderate versions. International organisations (Council of Europe) and NGOs (e.g. Amnesty International) are currently the most active and powerful abolitionist groups which campaign for the abolition of the death penalty. Moderate abolitionists proclaim a decisive renunciation of the capital penalty on the grounds of the inherent and inalienable dignity of the human being. However, it should be emphasised, that the abolitionists do not exclude the possibility that in the future, which cannot be foreseen, as in the life of every human being, a situation of self-defence may arise, with a moral consequence of the so-called double effect, i.e. self-defence and an unintended death of the attacker. On the other hand, radical retentionists, who are more strongly associated with socio-political movements, treat the death penalty as a kind of legitimate reaction, social revenge with a deterrent function in relation to selected most serious crimes. Moderate retentionists do not treat the death penalty as a retaliation, but as a kind of social defence here and now, invoking the principle of double effect.

Two recent decisions of public authorities have contributed to the revival of the dispute over the death penalty: ratification by the Republic of Poland of Protocol no. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances (Journal of Laws of 2014, item 1155) and the change in the teaching of the Roman Catholic Church on the death penalty, expressed in a new edition of no. 2267 Catechism of the Catholic Church (Letter to the bishops concerning the death penalty and the new editorial office of the aforementioned number of the Code of Criminal Procedure, signed by Pope Francis on June 28, 2018). It should be pointed out that the previous position of the Catholic Church regarding the acceptance of the death penalty was different.

According to the new wording of canon 2267, "The Church teaches in the light of the Gospel that the death penalty is unacceptable because it is an attack on the inviolability and dignity of the individual and is determined to abolish the death penalty throughout the world".

The sociological analyses, i.e. the observed stratification between the social elites conducting the abolitionist campaign and the society itself are also worth mentioning. Research shows that while the elite of power promotes abolitionism, society, in the context of brutal crimes, both of individuals and of organised crime and terror, wants the perpetrators to be severely punished and, in some cases, eliminated from society by being sentenced to death.

This thesis quotes representative data, showing that over 55% of the surveyed members of the Polish society still consider the use of the death penalty as justified.

It is therefore difficult to talk about a general consensus on the attitude towards the death penalty. According to many, the Penal Code is too liberalised and there is a need to tighten it up and, as part of this, to reintroduce the death penalty.

Some representatives of the doctrine of criminal law also argue that a possible reintroduction of the death penalty would not be contrary to the axiological values represented by the 1997 Penal Code.

On the other hand, arguments are also raised, that the rational legislator follows a particular system of values in its actions and sets objectives possible to be achieved according to this system. A departure from this axiom results in irrational actions of the legislator, who, in order to achieve the needs of society for goals impossible to be achieved in the field of combating criminality, introduces excessively severe criminal sanctions, including the death penalty, which in effect results in ineffectiveness of the legal regulations and lack of respect for the law as a whole.

The starting point of this thesis was the description of this problem due to its nature and the justification of the death penalty from the historical point of view.

The presentation of the basis of axiological normative regulations and the principles of the practical functioning of the death penalty in Poland and in the world over the years was an important task. Without tracing the development of the approach to capital punishment, it would not have been possible to discuss its essence at the present stage of the civilization development. It was necessary to present an axiological

perspective based on international standards, with particular emphasis on the protection of human rights, the protection of life and the prohibition of torture, and inhuman, cruel or degrading treatment or punishment, by presenting the protection systems of such world organizations as the United Nations, the Council of Europe, the European Union and domestic contained primarily in the Polish Constitution.

The research problem was the attempt to answer whether it would be advisable to reintroduce the death penalty into the Polish legal system in the context of civilisation experiences and the process of gradual humanisation of the law, and whether a possible attempt to introduce the death penalty into the penal code or any other act is possible, in the context of the axiology of the Constitution and international agreements ratified by Poland. Moreover, whether from the point of view of the ethical and moral dilemma, this attempt would be consistent with the system of values and assessments shared in this respect by the Polish society.

In the face of the above mentioned research problem, formulated in the legal and moral dimension, the following position can be taken. We assume that in the modern judicial systems being after the Second World War under the influence of the axiology of categoric change, in the form of leaving behind the death penalty and the axiology of paying respect to human life and dignity, the death penalty cannot be imposed and carried out, and thus cannot be introduced into the penal law system. This thesis indicates the transition from moderate to absolute abolitionism, i.e. a position that assumes a constant civilizational development and a growing sensitivity for socially important values, with a particular status of human dignity. At the same time, this thesis means a departure from the argument that social situations may arise in the future, when we will have to return to the highest level of punishment. Assumptions, analyses on the historical, normative and axiological level indicate that the argumentation in favour of absolute abolitionism prevails.

Regardless of the arguments in favour of the legitimacy or lack of legitimacy of the death penalty, the implementation of the retentionist concept seems unacceptable at the present stage of civilizational development. In Poland, it would fail because of international agreements, signed and ratified, and the axiology of the Polish Constitution.

The most important of the above-mentioned agreements concern issues regulating the protection of human rights, including the natural and inalienable right of human

dignity, as well as regulating and protecting the human right to life and the prohibition of torture. The most far-reaching international agreements abolish the death penalty for every human being and prohibit its execution for anyone. They also exclude the possibility for countries which have signed them to evade any obligation relating to the death penalty contained therein. Poland has signed and ratified these agreements.