

BLOG POST

ABOLITION OF THE DEATH PENALTY: A EUROPEAN EXCEPTION TO BE PROMOTED

10/10/2020 | BENJAMIN COUTEAU | DEMOCRACY AND CITIZENSHIP

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"In the overwhelming majority of Western democracies, especially in Europe, in all the countries where freedom stands in institutions and is respected in practice, capital punishment has disappeared."¹

As we get ready to celebrate the World Day Against the Death Penalty on 10 October, these words expressed by Robert Badinter during the vote on the abolition of the death penalty under all circumstances in France reflects the European exception regarding this issue. Europe is the only continent to have completely eradicated capital punishment, with the noteworthy exception of Belarus.

Seventeen years on from the creation on this World Day initiated by the World Coalition against the death penalty, it has to be said that its aim is still highly topical, as fifty-six states still have this penalty built into their legislations. According to figures by Amnesty International, 657 executions were recorded in 2019 worldwide (with the exception of China), 90% of which took place in the Middle East (Iran, Saudi Arabia, Iraq and Egypt)².

A European acquis requiring protection

The Council of Europe and the European Union prohibit a national jurisdiction in their Member States from condemning a defendant to death. Under the influence of protocols 6 and 13 to the European Convention on Human Rights, amending article 2 of the Convention, all Member States of the Council of Europe abolished the practice of capital punishment. Russia is an exception, as, although its Constitutional Court has prohibited the application of the death penalty across the territory of the Russian Federation and while no execution has been recorded since 1999, the abolition of capital punishment has yet to be enshrined in legislation.

The European Union, all Member States of which are party to the European Convention on Human Rights, has also made the abolition of the death penalty a pre-requisite to membership of the EU, by making the Charter of Funda-

¹. Speech by Robert Badinter, French Justice Minister, on the abolition of the death penalty at the French National Assembly, 17 September 1981.

². "Death penalty: key facts about the situation in Europe and the rest of the world", European Parliament website.

mental Rights legally binding through the Treaty of Lisbon. Article 2 of this Charter prohibits all sentences with the death penalty. As a result, when the Turkish President Recep Tayyip Erdoğan calls for a reinstatement of the death penalty in his country - although it was abolished by his own government in 2004 with a view to joining the European Union -, he directly brings about an immediate stoppage of accession negotiations.

While the legal principle of abolition under all circumstances is enshrined in European legislation and in all national legislations of European Union Member States, it is far from being unanimously supported in public opinion.

In France, support for a reinstatement of the death penalty rose following the 2015 attacks: more than one in two French citizens polled claim to be currently in favour of this³, a record high. Such support is greater than that noted in the USA⁴, where citizens are viewed as fierce advocates of capital punishment and where 22 executions took place in 2019. It coincides with the figure recorded in the United Kingdom, where 56% of citizens polled claimed to support the death penalty for a murderer⁵. In Hungary, the rate of support rose to 76%, thereby bolstering the position of Prime Minister Viktor Orbán whose declarations suggest a reintroduction of the death penalty to guarantee the security of his fellow citizens⁶.

Conversely, only 1 Spanish person in 5 claimed to approve of the death penalty in 2012, a figure which triples for the opinion of young people aged between 15 and 24⁷, confirming a trend observed in France for this age group. Support for the death penalty is also lower in Italy, where 36% of people polled claim to be in favour of the application of this penalty⁸.

In order to protect this common acquis, the European Union must continue to finance public awareness projects conducted by civil society, as it already supports the French association Ensemble contre la peine de mort, a member of the World Coalition against the death penalty. The perception that Europeans have of the administration of justice in their country also plays a key role in their opinions on capital punishment. The more the trust citizens place in their judges and sentencing is eroded, the more the death penalty is viewed as the appropriate punishment for the most heinous crimes. The European Union must therefore promote initiatives conducted by Member States with a view to restoring trust in national judicial institutions, as it has started to do in its first report on the rule of law published in September 2020⁹.

Outside our continent, the death penalty is still carried out in a number of countries, and even within some democratic nations such as the USA, India and Japan. It is up to the European External Action Service (EEAS) to step up its abolition diplomacy further in order to achieve the broadest possible repudiation of capital punishment.

3. « Fractures françaises : Vague 8 - Ipsos/Sopra Steria on behalf of Le Monde, the Fondation Jean Jaurès, the Institut Montaigne and CEVIPOF », 14 September 2020.

4. J. Baxter OLIPHANT, "Public support for the death penalty ticks up", *Pew Research Center*, 11 June 2018.

5. Death Penalty, *Gallup*, study conducted from 1 to 13 October 2019.

6. Balázs PIVARNYIK, "More Hungarians support death penalty than 10 years ago", *The Budapest Beacon*, 30 October 2017.

7. "El 56,5% de los jóvenes españoles admiten la pena de muerte para delitos muy graves", *elDiario.es*, 2 September 2014.

8. "Pena di morte in Italia il consenso sale al 36%", *Il Gazzettino*, 13 March 2019.

9. "2020 Rule of Law Report, The rule of law situation in the European Union", Communication of the European Commission, Brussels, 30 September 2020, COM(2020) 580 final.

Diplomacy focused on abolition must be stepped up

In India and Japan, the debate on abolishing the death penalty is not on the agenda, with both Asian states regularly carrying out executions. India has even recently extended the legal possibility of capital punishment in relation to acts of sexual violence and condemned 162 people to death in 2018 - a record in almost 20 years - while Japan has categorically refused to abolish the death penalty multiple times before the United Nations.

Globally, the People's Republic of China remains the country which executes the most convicts. While the number of executions is unknown as the regime considers official statistics a state secret, it is estimated that thousands of people are executed each year.

The determination of a few States must not, however, overshadow a general decline in the application of capital punishment across the globe. Major progress has been made in recent years and 2019 saw the lowest number of executions in ten years. These executions were carried out in only twenty countries out of the 193 UN Member States.

Against this backdrop of a global drop in capital punishment, the European Union's unique position and diplomatic influence afford it the means to act as a driving force in advancing the abolitionist agenda. It has made this one of the priorities of the EEAS in the field of human rights.

The Council of the European Union adopted the EU Guidelines on the Death Penalty back in 1998, its very first human rights guidelines, stating its unwavering opposition to the death penalty under all circumstances. On the strength of these Guidelines, the European Union has constantly taken action:

- firstly by supporting all resolutions of the United National General Assembly aimed at abolishing the death penalty, through its permanent observer status,
- by conducting extensive campaigns to subsidise civil society organisations fighting for abolition throughout the world,
- by adopting resolutions¹⁰ and holding debates within the European Parliament with a view to condemning the actions of retentionist countries.

The trade policy has also been leveraged to support this cause. A 2016 regulation of the Parliament and the Council prohibits the provision of certain goods likely to be used in relation to capital punishment, torture or other cruel, inhuman and degrading treatment or sentences. This measure impeded the execution of death sentences in the USA by causing a real shortage of products necessary for lethal injections to date¹¹.

This active diplomacy has paid off and extending its reach would provide real support to those who campaign for abolition. This would be particularly the case with regard to the last European country to apply the death penalty: Belarus. While the number of executions has fallen significantly in the country since the early 2000s, two to five people are still executed each year¹².

¹⁰. In the [European Parliament resolution of 8 October 2015 on the death penalty \(2015/2879\(RSP\)\)](#), (point 9) the European Parliament "condemns in particular the use of the death sentence to suppress opposition, or on grounds of religious belief, homosexuality or adultery".

¹¹. Sofia Sanchez MANZANARO & Lucia Riera BOSQUED, "US government plans to use drug for execution that Europe banned exporting to them", *Euronews*, 29 July 2019.

¹². "Death penalty in Belarus in facts and numbers", *Belarusian Helsinki Committee*.

In the period of major tension currently experienced in Belarus, the European Union's voice must be heard so that the country can move towards democracy, respect for the rule of law and human rights. This shift would necessarily imply the abolition of the death penalty. The European Union, which has already initiated dialogue with this in mind - in cooperation with the Council of Europe - by calling on Belarus to become an abolitionist country, has the means to display its leadership and must therefore step up its external action for the global abolition of capital punishment.

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