

### **On death penalty issues**

**Abstract:** A nation that reached high level of development and respecting the moral nature of a human begins to doubt in a solvency of death penalty as punishment. Therefore, cancellation of death penalty is possible only after indigenous changes that must be accomplished in the moral development of a particular nation. However, it is wrong to claim that attitude to death penalty is the indication of moral health of society. The reason for retaining or rejecting this punishment by various states today also depends on many other conditions and circumstances: traditions, religion, status of crime, political ideas etc.

Sayings of various thinkers, including eminent scientists, lawyers with regard to death penalty are not yet the basis to judge about its morality or immorality. There should be opinion of the whole nation.

**Keywords:** measure of punishment; death penalty; good; moral sense; common sense; criminal legal aspect; bounds of punishment; refusal of death penalty; imprisonment for life.

When I get to know that the priests of Amon of Napata (the territory of Ethiopia today) sentenced to the death penalty (capital punishment) were thrown to the crocodiles by Pharaoh Ergamen's order, that Viking Ragnar Lodbrok was immured alive in a pit with snakes, and that in Persia, before cutting and tearing the flash of the convict into pieces, he was disemboweled and up to six-eight meters of his guts were ripped out, I want to scream: I am against the death penalty! I find it immoral and wild! In the days of Henry the Eighth in England the law said that the convict's neck

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incision had to be made high enough to enable the executioner to pull out the victim's tongue through the wound; the preamble of edict by Francis I issued in 1525 sets forth how the blasphemer's throat must be cut, saying: "Open the convict's throat with hot iron, pull out the tongue and cut it off and only then hang him". I cannot believe that 'burning at the stake' existed in Japan, China and Egypt up to the 20<sup>th</sup> century. Sheikh Mohammed bin Omar El Guri describes how death by burning alive takes place. "Shamgui" means turning a man into a wick. They took a big shallow pot of baked clay and filled it with tar-and resin-saturated tow. Convict's hands were tied to a long stick placed horizontally at breast height. The victim wore an iron ring with four-five long chains hanging from it. Then he was daubed with pitch and placed in a pot safely secured to camel's saddle. A few alight resinous wicks were fastened to the stick which convict's hands have been tied to. Victim's face was also daubed with pitch and tar and then, he was set on fire. The living wick was shepherd through the streets and squares of the town. In 2013, in Saudi Arabia the pedophile slayer, after being beheaded, was crucified in the fire.

We can give a great number of examples in the history of execution, which shows how during centuries this punishment has undergone a great deal of changes forcing to a continual search of, or it is safe even to say hunting after the most horrible, disgusting and cruel methods of execution that the imagination could only generate. The man attempted to use all his knowledge and intellective power in order to improve the art of killing. M. Montesquieu noted that "man's congenital cruelty never was offered a wider field of activity in history than the death by law" [7, p. 12].

Not content with simple and brute-force ways of beheading used by the ancients, the society spent plenty of efforts and talent to invent more devious and advanced methods of execution, which in our opinion were notable for a more immoral nature, although the mankind was developing in a civilized and cultured manner. It suffices to mention the guillotine invented during the Great French Revolution by Dr. Guillotin and Dr. Antoine Louis who was also a humanist and a scientist. It was the progress in mechanics that had played a key role in invention of this killing machine. Later, the advances in physics provided the built of electric chairs, as well as the

occurrence of chemical science discoveries in its turn resulted in creation of gas chambers. The following step was the usage of lethal injection as a new method of execution. It is thought that this is the most humane execution method. It is rather difficult to foresee the following step, provided of course that the death penalty does not vanish in the history. With all that, the surprising thing is that the death penalty by form of its execution had not resulted from state's proprietary creativity. The state only improved the methods earlier developed by the primitive culture. So, e.g. the caveman hanged his offender on the first tree at hand while the state started constructing special structures - gallows on the squares of its towns. However, it is amazing that these immoral and wild executions actually taking place before people's eyes did not hold others from committing the crudest murders, as well as from applying devious methods of execution. To our deep regret, the said punishment measure, which is a trace of old barbarism and a stain inflicting "a shame and a reproach" on mankind's reputation, conflicts also with the aesthetic sense of harmony and beauty, constituting a nasty and disgusting sight, still exists in the current world. The main point of the death penalty, which is quite understandable for everybody, means physical destruction or end of biological state of a man by a law enforcement organization having an indubitable right to do this. The Christian theologians consider death as the utmost and most horrible indication of the world evil - apostasy. As a rule, they consider death in three ways: physical death means loss of life eternity i.e. turning the human nature into mortal; spiritual death means deprivation of God's grace; and finally, death is not only punishment but blessing as well. We actually do not intend to discuss this issue; we only wish to emphasize once again that the death penalty is a punishment affecting human's life, which is the most valuable thing that we all have and that is given to us only once. Death is the simplest and cheapest punishment, which demands neither expenses nor special efforts from the state. This is precisely why the death penalty is certainly nasty, harmful and immoral in terms of moral sense because it gives the impression that criminal's life is not something sacred (untouchable), but that, on the contrary, his life can be sacrificed for the public benefit. Death is immoral because, unlike any murder where we have a particular

killer - a living man, in case of death penalty we have no a crime committer i.e. a living person; we have only an abstract state - killer. However, in the real social life, apart from moral sense dominates the principle of common sense based on the belief in the objective necessity, usefulness and justice of the death penalty as the measure to protect the common good against grievous crimes and evil deeds. Whatever the opponents of this punishment say, it has one pre-eminent feature: death penalty is rather exemplary, extremely frightening and therefore, it cannot be compared with the gravest of all types of imprisonment - the life sentence because however gloomy and grey the life-term prisoner's life is, still the perception of the loss of life impresses a man much stronger than the existence of a life-term prisoner. That is why now, in the 21<sup>st</sup> century, facing particular facts when a criminal rapes the mother before her little children's eyes and brutally kills her slashing her throat and then, in order to conceal the traces of his crime, he drowns these children in the bath, or when after robbing a dacha (summer cottage) the criminals burn the whole family alive together with their house, or when a criminal rapes the girls under age and then kills them, we ask ourselves: Is the death penalty so useless and harmful, unfair and also immoral in truth? What should be done? How shall we treat those villains through whose fault 334 persons including 186 children were killed in Beslan on September 1, 2004? Do these criminals have any right to life? People now and then ask themselves an absolutely fair and simple question: "Doesn't a person who has committed horrible, painful serial rape-murders like Chikatilo deserve death penalty?" In fact, no one can argue that this is a strong argument for the death penalty and also for the fairness as well as the morality of applying this punishment because the desire to revenge, though based on emotions, always was, is today and will be in man's nature until he dies. Yes, the death penalty is a trace of old barbarism. But then, the murder and violence against others are also traces of the past. Haven't we inherited these attributes from our barbarian ancestors?

Do the character and methods of murders and abuses (rapes) differ today by humanism and morality from those committed by our ancestors? Unfortunately, there only appeared new, more sophisticated, painful, cruel and cynical methods, as well as

the means of their implementation, resulting in numerous victims. We agree that ideally a civilized society must not have such a punishment measure as the death penalty. While murders and rapes should not occur in the said society, they are not only taking place at present but they are expanding, increasing, and becoming more embittered notwithstanding that the mankind in the process of its development always endeavored and endeavors today to transform the death penalty from a cruel, inhuman procedure into a purely clinical event to be implemented instantaneously and release the executed offenders from spare physical suffering to the maximum.

This cannot but have relevant effect on the moral sense of a man in relation to the death penalty. The fact that today, in the 21<sup>st</sup> century, the mankind faced a principal question 'to be or not to be' for the death penalty gives another evidence of indisputable and decisive meaning of the moral and ethical aspects of this type of punishment, not denying, of course, the role of the criminal and legal study of this problem. It should be always remembered that the "recognition of ethical inadmissibility of the death penalty is achieved not so much by logical inferences as by appeal to this moral sense i.e. the conscience of the cultured mankind" [12, p. 207]. Since the ancient times people have mused on the meaning and moral essence of the death penalty. A great number of philosophic, criminal and legal theories and ideas have been advanced since the time of ancient Greeks.

Some regard the death penalty as well as other punishments as moral and ethical necessity, while others consider it as social necessity. One thing is obvious: it is unlikely that there exists another problem in the area of criminal sentence, which is associated so closely with morality as the problem of the death penalty. The surprising thing is that even if the history has not preserved for us anything from some race other than its form of execution, we are still able to determine the level of its moral and cultural development. Though the morality and death penalty are supposedly ordinary and simple words being a widespread concept, they also are of great historical and world significance, as they have been generated by more than one nation and historical social period.

They are as old as the mankind itself. That is why the morality and death penalty should be considered as the world history's phenomena. As the life of mankind became more complex and progressed, and the concepts of morality and death penalty developed, each stage in the development of human society constituted a specific system and manner of punishment, which had to certainly match the morals of the nation itself.

Many rather distinguished and reputable intellects (brains) suggested that the time would come for a total abolition of the death penalty. So e.g. N.S. Tagantsev wrote: "... One need not be a prophet to predict that the time when the death penalty will disappear from the criminal codes is not far; and the dispute on the practicability of the death penalty for our future generations will seem equally as strange as the dispute on the necessity and fairness of 'breaking on the wheel' or 'burning the criminals' for us today" [13, p. 190].

These words were said over a century ago; however, this measure of punishment still exists and is really used in practice of many countries of the world, proudly indicating for us the long blood way, which has been already passed, and the future victims in half of the whole mankind. Another truth according to M.N. Gernet is that "the idea (the death penalty), which still seems strange for its strength and continues to annually destroy hundreds of human lives, weakens from year to year" because "neither knowing enemies nor having opponents before, it now is forced carry on a stubborn struggle for preservation, facing more and more often the disgraceful reproaches and grave accusations" [2, p. 133]. And the most important thing in this struggle is for all discussants to take into consideration the real life without being abstract humanists or, even worse, eternal and unyielding advocates of the death penalty, whom V.E. Kvashis reckons among those "verging on instincts", while the opponents are certainly reckoned among those who "appeal to reason" [5, p. 557]. Just one thing is obvious for us: not denying the vital meaning of different viewpoints, we assume that at present this problem should be relocated on the moral (ethnic) ground. It should be understood that in the 21<sup>st</sup> century, the very moral aspect of the death penalty is of indisputable and crucial importance rather than

common sense, when one answers the question: “Should this punishment be allowed or not?”

All that have been said would be quite sufficient to understand the core of the death penalty except for plenty of philosophic questions surrounding the moral essence of this punishment. Perhaps, the most important, core question of this problem is whether the death penalty is morally justified or not.

The answer will be, first of all, positive if this measure of society’s reaction can be assigned to the category of punishments. Otherwise, i.e. if this is not the case, we lose the sense and importance of considering morality or immorality of the death penalty. From the practical point of view, we may put the question like this: What should be considered a punishment?

The answer is simple - punishment is a specific instrument in the hands of the state or any other entity having the relevant rights to adopt and apply the said punishment for achieving definite aims. This is how the criminal law science sees the concept of punishment. But specifically, the law (legislation) traditionally gives the following definition of a punishment: “Punishment is a measure of the state enforcement imposed under the court sentence”. As we understand, such legal definition enables the legal entity to choose and apply any means including, naturally, the death penalty as a measure of punishment. In this case we have to admit that the death penalty as a form of punishment is morally justified, as well as other sanctions, if it is necessary, useful and fair. Common sense and logics demand this. However, it doesn't mean that it answers to the truly philosophic concept of punishment, which is directly associated with the human rights including the right to life, because as a result of the death penalty the convict, by fact of his crime, forfeits his/her rights, in the broad sense of the word. In other words, he is deprived of the first condition of any right - life.

You would think that logically all is true because until a criminal who has committed even the gravest crime reserves some right, the punishment still continues to have a criminal law implication. But once we deprive him of all his rights without exception, then the punishment forfeits its obligatory element - a criminal law entity-

and turns into unpunishment. In fact, if we consider punishment as a state conviction that affects definite rights of a criminal, are we then correct in assuming in this case that the death penalty is a punishment, if the guilty person is deprived of his legal personality, becomes rightless before the state and turns from a man into some other living being (creature)?

If the punishment has sense and value as long as the legal entity exists as a carrier of the law concept and a member of the legal union, it is unlikely that the death penalty can be taken as a punishment. This means the absolute power of the state over a personality. And what is to be done with the recognition of the inherent rights of man? After all, the state's effect on a personality by punishment is limited by essence of the punishment itself. Depending on the existing situation, the state can overpass the 'limit line' for increasing society's safety. However, this defensible overpass is patently no longer a legal punishment i.e. not a criminal legal act, but the act of a temporary public safety. As a rule, this occurs after revolutions, or during wars. Therefore, in this case the matter concerns the separation of punishment as a means of countering criminality and a measure of public safety. Is, in this case, the overpass of the punishment limit justified in the time of a sharp growth of gravest crimes and intentional homicides i.e. when the criminogenic situation is in critical state? In defining the said punishment limit, one should first proceed from the premise that the personality is not rightless and that he is a holder of the undisposed rights unliable to breach by the state. The content and scope of these rights can change for each given period, but the idea of existence of some undisposed rights stays unchanged.

Therefore, the accused, however grave the crime, is not deprived of his rights, and primarily of the right to life given him since his birth. May be this is stipulated by a social contract and the man has given his content to it in case of emergency in exchange for the state's obligation to ensure the security of man's life and that of his close relatives? In the event that such contract has taken place and the personality has willfully and voluntary accepted the said agreement, we can say that one of the most important conditions of moral principles related to the death penalty is observed. In

this case, one can hardly believe the idea that the society, represented by the state, usurped the right that was an exclusive right of justice of Heaven as an expression of divine omniscience. But if Anton Chekhov's words "the state is not God" are true and the state has no any right to take away something that it cannot return at will and this right belongs to the Creator only, then the act of society can be certainly considered, according to V.S. Solovyev, as "ungodly, inhuman and dishonourable", which generally means principal denial of fundamental moral relation to a man. The death penalty in this event is immoral because the human life is sacred, untouchable, and God's grace. Really, why should a man assign the right to take his life away to the state when it is his natural right given him by God? And speaking generally: where is the limit of rights assigned by an individual for the protection of public welfare? As well, with this approach one may state that an individual- a member of society did not also assign the right to life imprisonment to the state, as freedom is his natural right given him by God.

We may certainly dispute as well as express our point of view regarding these philosophic questions, but the fact remains that this right has fallen into hands of the state that has no more power over a criminal than a possibility to kill him. This is precisely why the question 'whether the state has the right to take the man's life' is a core question, both legally and morally. Beccaria Cesare once said that 'the death penalty is not basing on any legal right and consequently, it is unfair and immoral'. Not referring to other authors, it should be noted only that they all take men's natural right as a basis of their opinion: some assert one thing, and others - just the opposite, while scientifically this very basis gives rise to doubt. Let's proceed from the premise that since the origin of state, the man has decided to assign his right to kill his aggressive offender to a new formation (state) saying: "Respect my life, defend it; in return I shall act alike towards others i.e. I promise not to take anybody's life; we shall mutually agree to be deprived of life by the state authority, if we unjustly take the life of one of our society's member". This tacit and voluntary agreement between the authority and an individual doesn't actually mean that the state has been given the right to apply the death penalty; it means that exactly the criminal has lost his right to

life. The society fails to create a new right; it only uses the old natural right falling into place of an individual person in using this punishment. It follows hence that the individual reserves the right to withdraw his right to blood vengeance once assigned to the state, if he sees a flat violation of the principle of justice stipulated and approved in the agreement.

Therefore, if the members of society assigned this right to the state some time ago on the basis of real necessity, usefulness and fairness, then they themselves may renounce the administration of the death penalty when they are convinced that it is useless and immoral. “The death penalty as slavery, torture and mutilating punishment will be banished from the legislation not by theoretical reasoning alone, but also by unceasing, growing and total protest of the indignant moral sense” [8, p. 209], V.D. Nabokov said once.

Why to date only half of mankind has abolished the death penalty when all people agree that it is an immoral measure? Beccaria Cesare stated in his time: “The severity of punishments should match the state of the nation itself. The uncivil people who have just come out of barbarism should be impressed by stronger and more sensitive measures. To strike down a savage lion one needs a lightning because the discharge of a rifle will only irritate it. However, as the soul of people living in the society softens and their sensitivity grows ... the severity of a punishment should decrease” [1, p156].

Thus, abandonment of the death penalty depends on the level of development of one or another nation. It's not difficult to understand what Beccaria Cesare has put in the concept of the state of the nation itself. It is obvious that the matter concerns here not the culture or civilization but the level of moral sense. Therefore, the Europeans' assertion that the existence of the death penalty indicates not only nonobservance of ethical principles, but characterizes also the low level of the cultural development of various nations is incorrect and absurd. Culture is always ethnic but never extra national. So, there cannot be the general level of culture.

As you know, the European were the first to abolish death penalty because, as they believed, this measure did not comply with the level of their moral conscience

and development, in the broad sense of the word. We should agree that the human qualities, such as moral or ethical knowledge, judgements, feelings, and behavior, have become for the European a kind of belief and guidelines in the area of ethnical activity. But the Japanese morals are not a bit lower than those of Germans or French people. Then why, according to statistics, the overwhelming majority of this nation supports the administration of capital punishment in this country? The reason is that the relation to this measure of punishment depends not only on the level of moral sense of one or another nation, but on other reasons having religious, philosophic, legal, political and even traditional grounds.

Death penalty and religion. All of us very well know that system of punishments in Islamic states stipulates death penalty not because the moral level of these nations is lower than that of the states which cancelled this measure of punishment, but because this derives from Quran that, at first queue, is precisely focused on protecting the moral principles of life and behaviour of Muslims.

Proceeding from that, punishment in Islam is about protecting the five major values - Religion, Life, Mind, Continuation of Offspring and Property. That's why death penalty is applied for sodomy of two adults; 80 lashes for drunkenness, which causes essential damage to human mind and promotes its degradation. The role of punishment, on which depends the well-being of the entire community, is the protection of a moral status of Muslims. This, surely, has a great crime counteraction.

Unlike the Europeans, religion of Islam believes that there must be tough punishment for homosexuality that corrupts the nation. Present-day Islamic scientist Nadia-Al-Awadi, who analysed the statistical data on relation of pederasty with blood diseases writes: "Looking at these figures one start thinking that extermination by Allah of Sodom was a manifestation of His Mercy to the entire humanity, because it is not known what kind of frightful diseases might have spread out from this city all around the world. Since, medicine was at that time in a very low level and therefore these diseases could destroy whole population of the planet" [9, p. 60]. As per grounded opinion of I.M. Kleymenov, "Anti-criminogenic potential is determined through understanding of the moral as a moral law. Moral to Muslims is not the

whole of subjective (and variable as a result of this) representation of good and evil; moral is an objectively existing and acting unchangeable Law, bestowed by God and having practical significance. Sin is an offense against Moral Law” [6, p. 221].

In modern secular countries of the Muslim world, criminal legislation, in particular the system of punishments is not based on traditional Law of Islam with the exception of some states. So, e.g., Sudan continues to use *lex talionis*: “tit for tat”. In Iran commissioning of a willful murder still entails “*qisas*” in a form of death penalty or payment of compensation in an established amount if such compensation is stipulated by the law.

The system of punishments in Saudi Arabia envisages both death penalty and physical punishment. There are about 26 thousand people detained in prisons of this country, nearly half of whom are foreigners (46%). After introduction in Saudi Arabia in 1987 of death penalty for smuggling drugs in the country, tens of foreign citizens had their heads cut off [11, p. 76].

It is indisputably that tough system of penalties, including death penalty is still retained namely in the countries with strong Islamic traditions. In 2012 criminal legislation of Kuwait was amended in such a way that blasphemy or insult of Prophet Muhammad would be punished by death penalty if an accused person acknowledged this in court and did not deny his words. One can also remember a loud story about the Sudanese doctor Meriam Yahya Ibrahim who was sentenced by court to death penalty through hanging for apostasy from Islam, and then pardoned. The bottom line of punishment according to Quran is only part of a much bigger integrated whole. It is considered an integral part of the justice concept. Meaning and functions of punishment are determined first of all by an attitude to the crime concept. Most important thing is that punishment by Quran is designed to maintain among the members of a community of a feeling of justice by publicly condemning those actions that are behind the boundaries established by Allah.

Death penalty and traditions. It is difficult to understand reasons of existence of death penalty in Japan without clarifying the culture and psychology of this nation that are conditioned by specific features of mentality and psychology of the Japanese

inseparably connected with the centuries-old traditions and customs of the country. And disregarding historically established attributes of a public life in Japan is not a common thing. That is why death penalty in Japan is also the evidence of preserved centuries-old customs and traditions, an established mode of life rather than low level of moral and cultural development of the nation.

Japan, perhaps, is one few countries that has been “clinging” for ages to its uniqueness and originality avoiding European influence like the plague.

In addition to that it should be understood that uniqueness and particularity of existence of death penalty in Japan also involves specific national forms of social control which has been preserved to present time in this country where fundamentals are the traditional community and moral values, although the country took over economic and democratic principles from West. This is explained by the fact that share of homicide in Japan within the structure of crime for the latest 50 years has not exceeded 0.2%, and the share of violent crime within the general structure of crime has not exceeded 15 % for decades. Comparative data of the yearly UN reviews demonstrate effectiveness of Japanese system to affect the crime, specifically the category of serious crimes, which indicates long-term and generally more favourable tendency of crime development.

Through present times the Japanese by their moral and structure of psychology differ from the Europeans who are known to consider themselves more developed morally forgetting that the concept of morality in each nation has its own evaluation and history.

Perhaps, the Japanese are one of the nations that refuse to copy Western legislation, particularly, the criminal one in terms of cancellation of death penalty. While comparing the mentality and psychology of the Japanese with the Europeans it will be necessary to acknowledge this being not just different morality and culture, customs and traditions, but different civilizations with different historical past and philosophical education. Fidelity to duty, courtesy, wisdom, tranquility, tolerance, belief, feeling of shame for improper acts - all these principles are based on Confucianism, the primary principle of which reads as follows: “People must not

know the laws and just obeys them”. And from this it follows: “Uncertainty of upcoming punishment deters commissioning of crime stronger than exact knowledge of a certain punishment”.

Unlike the Japanese, existence of death penalty in some countries is not connected with the national traditions and is conditioned by the criminogenic situation, i.e. by the status of willful crime conduct in the country. By denying death penalty from the standpoint of morality, these countries, nevertheless, are confident that this measure of punishment has the highest feature of anticrime. Growth of crime and nature of crimes, new methods committed, facilities and murder weapons of a massive nature more and more often force many to think about reasonability and helpfulness of retaining death penalty as a mean of intimidation.

Yet B.N. Tchitcherin wrote that if intimidation of criminals is required for protection of society, death penalty is the best tool. This is the only thing that stops tough criminals, who are quite indifferent even to life sentence. It is helpful for the society to amputate an infected member. If there are incorrigible criminals, it is better to get rid of them at once [15, p. 156]. Although advantage of death penalty from the point of view of achieving the objective set is controversial, nevertheless it must be recognized that fear of death is a serious barrier to criminal. Guided by a common sense, people are scared of death more than of any other most serious punishments.

Death penalty and policy. Institute of death penalty has already long ago exceeded the scope of criminal politics and became an issue of state politics. Therefore, the solutions adopted in relation to death penalty are not always linked to real criminogenic situation in the country with the national traditions, people customs, moral status and level of consciousness of society. In particular, this applies to Post-Soviet countries. It is inappropriate to accept the ideas about nature of punishment under political pressure, in particular, about death penalty without objective conditions.

That's why we believe that many modern states without considering these features of their people hastened with adopting decision on refusing from death

penalty purely driven by political considerations, essentially, under pressure of Europe.

It is a mistake to believe that the Europeans will consider nations which refused from this punishment as nations which reached European level of development. Europe, in fact, is trying to convince other nations that it is more civilized and level of its culture is higher than that of the other nations. Presently, the Europeans indeed have powerful resources to influence other nations, including in terms of legislative activity, believing that they are more civilized than others, that their moral level is higher than that of the other nations on the planet. At that, they take civilization as a culture that was developed by the Romans and Germans of Europe. Accordingly, the Romans and Germans are understood as civilized nations at first instance and then those other nations that accepted European culture.

However, it must be recognized that unlike many nations, the Europeans by theoretical side of moral consciousness have already lived long by the principles of practical side, i.e. for them moral choice in practice is the standard of their life. Namely because of this the level of crime is lower in their countries than that of the others, in particular, of the post-soviet nations. And this means that the Europeans do not need a system of tough punishments, as well as death penalty.

Death penalty and public view. We should not forget that in many countries public view also supports the retention of this measure of punishment and not only in the countries where death penalty exists but also in those countries which refused from it.

In 2001 one of the most representative polls among the population of Russia demonstrated that 72% of respondents supported death penalty. Polls conducted the same year in various countries are as follows: in the Czech Republic - 58%, in Hungary - 64%, in Poland - 72%, in Lithuania - 76%. Already in 2000, 84% of respondents in Russia voted against cancellation of moratorium on execution. In all countries where death penalty exists, public view supports its retention.

It should be noted that many countries, including Great Britain, France, Italy, Lithuania and others refused from this punishment despite of the fact that vast

majority of the population in these countries objected this solution. In fact, why any arguments against death penalty “like waves of ultrasound, practically, bypassing the hearing of the population especially if it is exacerbated, plunged into delusion as in Russian marshes, and in no way want to get out of them)” [10, p. 118]. But, as seen from the geography of the poll the issue is not about swamp. The cause is much more serious and deeper.

Death penalty and life imprisonment. If we refuse from death penalty because of it being immoral in present conditions of human civilization, it is necessary to find a substitute for it which would be more moral on the one hand and providing no less frightening effect on the other hand as basic task standing before the society is the prevention of severe and extremely serious crime. Without doubt, life imprisonment currently substituting death penalty in many countries is quite severe obligingly and is a frightening influence to prevent crime and the most determined man. However, we must admit that fear of death penalty is stronger than of any other type of punishment. In this sense there is no alternative to it. Criminal who is taken to execution of death penalty prefers the toughest and the longest deprivation from freedom, the most serious work and conditions of imprisonment to loss of his life. Therefore, we must agree that fear death is a serious barrier to criminal. V.N. Zhukovsky wrote: “The execution is a true representation of sharp truth pursuing evil and protecting from it the public order established by God.

Death penalty is like frightening far off with its sword of Nemesis, like fear of possible death, like a ghost hunting a criminal, dreadful with its invisible presence and thinking about it refrains many from outraged” [3, p. 186].

Therefore, arguments about fear of life imprisonment capable of withholding from commissioning a crime to the same extent as death penalty are denied by scientific data of psychology, sociology and other sciences. As for morality of deprivation of freedom for life in comparison with death penalty, there are questions too: Is not life imprisonment a torment? Is it moral to legitimize life torment? Yet Ch. Beccaria believed that lifetime servitude was an example of permanent and executed

serious suffering where human deprived of freedom reimburses with his backbreaking work the damage caused by him to society [1, p. 170].

Although today servitude does not exist, nevertheless psychologists authentically defined that long stay at places of detention resulted in irreversible changes in human's psyche. Therefore, it is not quite clear why deprivation of a human from freedom till the end of his life is considered to be more moral than execution. I.I. Carpets is rightfully claiming that substitution of death penalty with life imprisonment does not make any good [4, p. 361].

When state applies death penalty it pursues a target to stop crime by any means, that impertinently and massively attacks, when intentional serious murders precipitously grow, when other forms of punishment become useless. Is this immoral? Cannot the society appeal to killers and say: "Your life became dangerous to the life of your fellow creatures as you do not recognize their rights to live, it ceased being sacred to me because you abuse it, it does not any longer belong to you; I sacrifice it to my right, tranquility and safety" [14, p. 195].

What does state want to achieve through life imprisonment? Only one thing - torment, suffering, pain, hopelessness and expectation of death in prison at the end, and nothing more.

So, is death penalty moral? If to proceed from that morality is a set of regulations determining behaviour of a human in a society, relations between an individual and the groups, and death penalty is a mean to achieve the target set, there is a doubt arises as to the reasonableness of statement of "Morality of death penalty" concept itself. "Morality of society" can be considered more correct concept to use which is a subject of law for the application of this punishment. Can existence of death penalty be a judge to the level of spiritual and moral status of society? A nation that reached high level of development and respecting the moral nature of a human begins to doubt in a solvency of this punishment. Therefore, cancellation of death penalty is possible only after indigenous changes that must be accomplished in the moral development of a particular nation. However, it is wrong to claim that attitude to death penalty is the indication of moral health of society. The reason for retaining

or rejecting this punishment by various states today also depends on many other conditions and circumstances: traditions, religion, status of crime, political ideas etc. Sayings of various thinkers, including eminent scientists, lawyers with regard to death penalty are not yet the basis to judge about its morality or immorality. There should be opinion of the whole nation.

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