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THE DEATH PENALTY IN PORTUGAL



The death penalty in Portugal



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**«... Portugal provides all Europe
with an example to follow!»**

VICTOR HUGO

Early in 1970 the Radical Manifesto was published in France, following on the appointment of M. Jean-Jacques Servan-Schreiber as Secretary-General of the Radical Party. On page 41 of the document, signed by the new Secretary-General, after considerations affecting French matters that it is not our place to analyse or discuss here, there occurs the following statement: «The fact that the only European countries to have maintained capital punishment are Portugal, Spain and France...» This sentence contains an error of fact, due, no doubt, to lack of information. The death sentence was abolished in Portugal over one hundred years ago.

The abolition of the death penalty in Portugal was not merely an act of legislation that can be attributed to a given moment of history, but a gradual process, due to the deep-rooted consciousness of the people that this form of punishment was intrinsically inhuman, the growing repugnance caused in both juries and judges, the systematic recourse to royal pardon and reprieve and, finally, its legal abolition, as the culmination of a sociological process that engaged the feelings of a whole nation. We shall quote some of the most significant dates in this development.

The last time a woman was executed in Portugal was in 1772. It is true that another woman was condemned to death in 1811 for political crimes but the sentence was not carried out. So that, while in Europe, especially in France after 1792, death sentences

were carried out without distinction of sex or age, in Portugal the natural tolerance of courts and the people led to the abolition in practice of the death penalty for women.

In 1832 the Judicial Reform made it compulsory to appeal to royal clemency in all cases where the courts had imposed a death sentence. The last execution for political crimes took place in 1834, while the last execution for civil crimes on Portuguese territory in Europe took place in the town of Lagos in 1846. After that year, in the few cases of death sentences brought in by the courts, there was systematic use of the royal clemency, under Maria II, Pedro V and Luís I.

Art. 16 of the Additional Act to the Constitutional Charter abolished in 1852 the death penalty for political crimes, which had not been applied for 18 years. The law was not very precise as to the definition of 'political crimes', but at the time the existence of the death penalty for political offences was identified with the absolute monarchy, and above all the dictatorship, recently ended, which, while it had not actually used this sanction, had in fact been exceptionally harsh in putting down revolutionary acts. Moreover, the inclusion of this article in the text of the Additional Act, which had constitutional force, at the suggestion of a member of parliament, greatly displeased the government, which had intended to put abolition before the two Chambers in a separate item of legislation, accompanied by suitable pro-Governmental publicity.

Also dating from 1852 we have the Criminal Law Code which limited the application of the death penalty, in civil crimes, to treason, sedition and deliberate, premeditated murder. But this 1852 Code did not satisfy anybody and the Government almost immediately appointed a committee, due to the pressure of public opinion, to revise it. This committee was itself altered on several occasions and put forward several draft Codes, and finally a final draft. These successive drafts showed the influence of thinkers like Ayres de Gouveia and Silva Ferrão and they were increasingly abolitionist in tone until, in the second version of the final draft, dating from 1864, the committee decided to eliminate once and for all the death sentence from the hierarchy of applicable sanctions. This decision was justified in its report by the need to satisfy «the wishes of the Nation, which has very significantly expressed its opposition to the death penalty».

Years went by without the draft being put before the two Chambers. The growing force of the abolitionist movement and its

urgent demand for an end to capital punishment could no longer brook any delay. In 1863, during a discussion on the budget, the problem was again posed in Parliament. Ayres de Gouveia proposed that the salary of the public executioner should be deleted from the budget as being offensive and unworthy of a civilized society. His motion was approved.

In 1864 the Government put before the two Chambers a Bill abolishing the death penalty for all civil and military offences except, in the latter case, during wartime. But the Bill was not debated, in spite of several interventions by Ayres de Gouveia and Aragão de Mascarenhas. In 1867, after Governmental changes, the Minister of Justice, Barjona de Freitas, Professor of Law at Coimbra, again insisted on the matter. Taking the opportunity of a scheme to reform prisons he presented a motion calling for the abolition of the death penalty for civil offences on 28 February. It was sent to the Committee for Penal Legislation, which only reported back on 17 May. The motion and the Committee's report on it were debated on 18 June.

This report enthusiastically supported abolition: among the reasons put forward was «**the experience of over twenty years, in which the penalty was de facto abolished in Portugal**» and also its de jure abolition «in political crimes», which dated from 1852. The motion was almost unanimously approved on 21 June and came up for debate five days later in the House of Lords, with a favourable report from the House Committee for Legislation, dated 25 June. It was approved in the course of the same meeting. King Luís I gave the royal assent under the Law of 1 July, so that art. 1 of this Law abolished for ever the death penalty in Portugal for civil offences.

Capital punishment for military offences was retained in law until the early days of the Republican regime, but **it was never put into practice**. In 1874 the murder of Sub-lieutenant Brito by Private António Coelho led to discussion of the possibility of enforcing it, but public opinion against its use made it impossible for the Government to carry out any such intention, which meant the de facto abolition of the penalty for military crimes.

Thus, to sum up: the death penalty for political crimes was abolished in 1852, in 1867 for civil crimes and in 1911 for military offences. **Since 1845, at the very least, no one in Portugal has ever been executed in pursuance of a death sentence.**

Moreover, the 1933 Political Constitution made this legal precept into a constitutional imperative, when it declared in art. 8 that «The

rights, freedoms and individual guarantees of Portuguese citizens are ... 11. There shall be no perpetual sentences, nor death sentence except, as regards the latter, the case of war with a foreign country, to be applied in the theatre of war» ..., another condition that has never been applied in fact. The history of the abolition of the death penalty clearly proves the statement made at the outset of this article. The penalty has disappeared from Portuguese legislation, not thanks to the victory of a philosophical or political current of opinion over a different ideology, but because it does not fit in with the particular features of the Portuguese people, their simple, good-hearted nature, what is conventionally called the gentleness of our customs.

The death penalty for women disappeared very quietly, because the courts refused to apply it and because the people could not bear it to be carried out. When, after the Napoleonic invasions, in a period characterised by unrest and disturbance, a court found it necessary to sentence a woman to death it did not find it equally necessary to have the sentence carried out.

The death penalty for political crimes disappeared in effect with the victory of the liberal forces, which employed more subtle forms of retaliation against the supporters of the absolutist King Miguel. It was abolished in 1852 as a consequence of the Regeneration, a military revolution that was the culminating point of a series of popular uprisings against the dictatorship of Costa Cabral.

Capital punishment for civil crimes had ceased to be applied because it was repellent to the courts. It was restricted legislatively to very serious offences, and was made practically null and void by the systematic use of royal reprieve. It was finally abolished without debate by almost total consent of the legislative Chambers in 1867. It should be noted that the only two members who voted against abolition in the lower House justified their attitude, one because he had been denied an opportunity of speaking during the debate, the other because he preferred «that the penalty should exist but should not be applied, because of an awareness of its iniquity», a Romantic attitude that is even more abolitionist than the official view of the House.

As we have said, the penalty for military offences was abolished de facto, not by the Republican regime in 1911, but by the ordinary people, by public opinion, by intellectuals, by the Press, when the problem of its application was posed in 1874. In the process of its historical development, the whole Nation opposed death as a legal

punishment, without any ideological position, any sociological concerns, without particular thought of the right to life or social equality, merely because, as a naturally good-hearted, affable people, it was repellent to consider that legal execution could be used as the solution of any problem, because, deep down in its feelings, lies the sentiment of respect for one's fellow-men.

We shall close with the text of the letter written on 2 July 1867 by Victor Hugo to Eduardo Coelho: «So the death penalty has been abolished in noble Portugal, a small nation that has had a great History. I am moved by the recollection of the honour that is mine in contributing to this victory. As a humble worker in the cause of Progress, my heart throbs at every step forward that is taken. This one is sublime: to abolish legal execution, to leave divine death all its rights and all its mystery, is august progress for man to make. I congratulate your Parliament, your thinkers, your philosophers! I congratulate the Nation. Portugal provides all Europe with an example to follow'».

APPENDIX

INTERNATIONAL COLLOQUY TO COMMEMORATE THE CENTENARY OF THE ABOLITION OF THE DEATH SENTENCE IN PORTUGAL

At the meeting, held on 5 November 1966, of the Council of the Faculty of Law of Coimbra University, the suggestion was made that the centenary of the abolition of capital punishment in Portugal should be commemorated in the form of an international conference. In fact, this historic event is closely connected with the history of the Coimbra Law Faculty, among other reasons because the Minister who proposed abolition to the Chamber of Deputies was a professor of the Faculty.

The Colloquy was held between September 11 and 16, 1967. It was declared open by the President of the Republic in the Ceremonial Hall of the University. Papers were read by many Portuguese and foreign delegates. The meeting closed with approval of a motion which, by its broad terms, marks an important date in the pro-abolitionist movement; by its close link with the University, it might well be titled 'Coimbra Declaration against the Death Sentence'.

We cannot analyse all the papers read at the Colloquy. We shall merely indicate the titles and authorship of those presented

by the foreigners who expressed their desire to collaborate in this initiative of the Faculty of Law:

- GIORGIO DEL VECCHIO — «Pena di Morte e Giustizia Penale»
PAUL BOCKELMANN — Für und wider die Todesstrafe
EDUARDO GARCIA MAYNEZ — «¿Es la Pena de Muerte eficaz y justa?»
MANUEL LÓPEZ-REY Y ARROJO — «La Prevención del Delito y la Pena de Muerte»
JÜRGEN BAUMANN — «Die Todesstrafe im System strafrechtlicher Reaktionen»
GEORGES LEVASSEUR — «Considérations juridiques sur la Peine de Mort spécialement en Droit Français»
PAUL CORNIL — «La Peine de Mort en Belgique»
THORSTEN SELLIN — «The Death Penalty in the United States»
RICHARD LANGE — «Die Todesstrafe im deutschen Strafrecht»
INKERI ANTILLA — «The Death Penalty in Finland»
VLADIMIR BAYER — «La Peine de Mort»
PIETRO NUVOLONE — «Le problème de la Peine de Mort en Italie»
SULHI DONMEZER — «La Peine de Mort et le Droit Pénal Turc»
FRIEDRICH SCHAFFSTEIN — «Die Todesstrafe in Deutschland in Vergangenheit und Gegenwart»
RAYMOND SCREVENS — «La Peine de Mort en Belgique»
REINHART MAURACH — «Auch in der Bundesrepublik Deutschland — nie wieder Todesstrafe!»
SHELDON and ELEANOR GLUECK — «Beyond Capital Punishment»
WOLF MIDDENDORFF — «Todesstrafe und politischer Mord — Eine historisch-kriminologische Studie»
R. P. JOSEPH VERNET, S. J. — «Les crimes de sang nécessitent-ils une répression sanglante?»
FRANZ WIEACKER — «Das Naturrecht und die Aufklärung»
LUIS RECASÈNS - SICHES — «La Pena de Muerte, grave problema con multiples facetas»
EBERHARD SCHMIDHÄUSER — «Beitrag zum Kolloquium, das die Juristische Fakultät der Universität Coimbra veranstaltet, um das Jahrhundert der Abschaffung der Todesstrafe in Portugal zu feiern»
GIUSEPPE BETTIOL — «Sulla Pena di Morte»
ROBERT VOUIIN — «Observations sur la Peine de Mort»
SEBASTIAN SOLER — «Sobre la Pena de Muerte»
HELENO CLÁUDIO FRAGOSO — «Pena de Morte»
FILIPPO GRAMATICA — «L'abolition de la peine de mort dans le cadre de la Défense Sociale»
GIAN DOMENICO PISAPIA — «Il problema della pena di morte e la sua attualità»
ADOLF SUSTERHENN — «Zur Diskussion über die Todesstrafe»

- KARL PETERS — «Die Problematik der Todesstrafe in der Bundesrepublik Deutschland»
- WILLEM CORNELIS VAN BINSBERGEN — «La Peine de Mort dans le cadre du Droit Pénal Néerlandais»
- NELSON HUNGRIA — «A Pena de Morte no Brasil»
- GERHARD O. W. MUELLER — «From Death to Life»
- PAUL SAVEY-CASARD — «Les arguments d'ordre religieux dans les controverses sur la peine capitale en France au XIX^e siècle»
- JEAN GRAVEN — «Peut-on se passer de la peine de mort?»
- KARL ENGISCH — «Todesstrafe — ja oder nein?»
- FRIEDRICH NOWAKOWSKI — «Zur Todesstrafe — unter besonderer Berücksichtigung Österreichs»
- ERICH FECHNER — «Vier Thesen über die Funktionalität des Rechts in der menschlichen Gesellschaft (Ein rechtssoziologischer Überblick)»
- JACQUES LÉAUTÉ — «La peine de mort et la jeunesse estudiantine française»
- HELMUT COING — «Die Diskussion um die Todesstrafe im Deutschland des 19. Jahrhunderts»
- JOSÉ RAFAEL MENDOZA TROCONIS — «La denominada Pena de Muerte»
- NORVAL MORRIS — «Two studies on capital punishment»
- MARC ANCEL — «L'abolition de la peine de mort devant la loi et la doctrine pénale d'aujourd'hui»



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