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## DEATH PENALTY DILEMMAS SELECTED ISSUES

**Abstract.** The death penalty has always been an emotionally charged issue. It has been employed since time immemorial, but attitudes towards it have changed over time, just like attitudes towards punishment in general. It seems that now the death penalty is no longer considered a “natural” element of the world order, at least in European culture. Everyone has the duty to oppose the crime of homicide. Every individual separately is responsible for his own actions and following the voice of his conscience, recognises the natural law mandating respect for another’s life. Similarly, the state authorities deriving their power from God, are entrusted with ensuring social order and protecting human dignity. The Catholic Church allows the use of the death penalty only as a last resort to protect society from aggressors. This position is confirmed by the teaching of the Church Fathers, comments made by Popes, letters of the Catholic episcopates as well as theologians’ reflections. It is also supported by the *Catechism of the Catholic Church* revised after the publication of *Evangelium Vitae*.

*Summarised by Krzysztof Mikołajczuk*

**Key words:** death penalty; abolitionists; retentionists; the Catholic Church and the death penalty.

### INTRODUCTION

In the introduction to his publication, J. Świdziński aptly describes the problem in question: “We live in the times when the democratically elected parliaments deny the law of God and natural law and by a majority of votes decide that innocent unborn children may be killed by doctors at their parents’ request. Similarly, the elderly, infirm or those who suffer badly are increasingly offered the ‘good-natured’ and ‘compassionate’ right to be painlessly removed from this world, instead of experiencing love and closeness of another man. The situation is completely different when it comes to

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removing criminals from society. In fact, punishing murderers with death is believed to be a kind of low behaviour that is incompatible with the contemporary social culture, a culture which prides itself on its exceptional humanitarianism as never before. It is emphasised that even the most cruel offenders are still human beings and eliminating them from society serves no purpose. After all, murderers also want to live and their right to life comes from the inherent dignity of every human being. Therefore, they cannot be handed over to the executioner; instead, they need to be rehabilitated and restored to society at all costs.”<sup>1</sup>

Today, the arguments advanced by opponents of the death penalty, which are deeply rooted in the Enlightenment, have gained a wide support of numerous international organizations, including the United Nations and the Council of Europe. In Poland, especially in the academic and intellectual circles, there has been a long-held belief that the so-called capital punishment is an unjustified evil, it is like swimming against the tide of culture, and as such is totally unacceptable. This is accompanied with discrediting those who hold different views, by claiming that their attitude is devoid of scientific or any other reflection. In view of this, it must be stated that the death penalty issue is extremely complex and difficult to solve, both from a legal, ethical or theological point of view.<sup>2</sup>

The debate over the death penalty cannot ignore important issues connected with the offender’s guilt, freedom and responsibility, or proper punishment that would fit the crime. Such debate cannot focus only on the murderer, leaving out moral reasons related to social understanding of justice and public order. Sometimes, we can get an impression that opponents of the death penalty are so much concerned about the murderer’s right to life that they forget that their victims possessed the same fundamental right and also wanted to live. These were often people of unblemished reputation, who were unjustifiably “sentenced” and executed by an executioner/murderer. Similarly, “erasing” these traumatic experiences from the memories of victims’ families does not seem to be morally justified. Not only are they left with a sense of pain after losing their loved ones, but also with a sense of injustice in which they “actively participate.” This feeling gets stronger when they see abolitionists fighting for the right to life for the murderer that had earlier shown utter contempt for others’ lives.<sup>3</sup>

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<sup>1</sup> Jerzy Adam ŚWIDZIŃSKI, *Kara śmierci. W obronie życia ludzkiego* (Kraków: Petrus, 2009), 7.

<sup>2</sup> *Ibid.*, 8.

<sup>3</sup> *Ibid.*, 8–9.

It should not be surprising, therefore, that the death penalty has always been an emotionally charged topic. It has been in place since time immemorial, but attitudes towards it have changed over time just like attitudes towards punishment in general. It seems that it is no longer considered to be a “natural” element of the world order, at least in European culture.<sup>4</sup>

### MORAL ASPECT OF THE DEATH PENALTY

For clarity's sake, it is worth giving here some essential information concerning the death penalty. According to Ireneusz Mroczkowski, it is “the harshest and one of the oldest criminal punishments that is legitimately imposed for serious offences, pursuant to the court verdict; it is a contentious issue in morality and the penal law; death penalty opponents (abolitionists) stress mainly the dignity and rights (human rights) of a perpetrator (the human being), whereas supporters (retentionists) focus on the state obligation to protect society against the aggression of criminals.”<sup>5</sup>

Death penalty advocates assert that it has been used in almost all societies and cultures as a way of administering justice. They believe that the state authorities are entitled to resort to capital punishment in order to maintain a safe and stable social order. Referring to rational premises, proponents of the death penalty contend that the legitimate authority obliged by its very nature to protect social order and ensure security of all citizens is entitled to use capital punishment under certain circumstances. This penalty is an effective means to eliminate the criminal behaviour and criminal acts of potential offenders, and proves the inviolability of fundamental justice principles.<sup>6</sup> In fact, it is the offenders that deprive themselves of the right to life, and so the punishment they suffer restores a shaken moral and legal order and serves as an act of objective redress and penance.<sup>7</sup>

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<sup>4</sup> Cf. Monika MITERA, Marek ZUBIK, *Kara śmierci w świetle doświadczeń współczesnych systemów prawnych* (Warszawa: Helsinki Foundation for Human Rights, 1998), 5.

<sup>5</sup> This part of article is based on: Ireneusz MROCZKOWSKI, “Kara śmierci. Aspekt moralny,” in *Encyklopedia Katolicka*, Vol. 8 (Lublin: TN KUL, 2000). I. MROCZKOWSKI, “Kara śmierci,” col. 771. The Polish Penal Code of 1969 provided for the death penalty as punishment of an exceptional character to be used for most serious offences. Cf. Marek BOJARSKI, “Kara śmierci,” in *Mała Encyklopedia Prawa*, ed. Urszula Kalina-Prasznic (Warszawa: C.H. Beck, 2005), 184. An interesting discourse “Podważenie abolicjonizmu w 13 minut” can be found in: Piotr BARTUŁA, *Kara śmierci powracający dylemat* (Kraków: Znak, 2007).

<sup>6</sup> Cf. Tadeusz ŚLIPKO, *Kara śmierci za czy przeciw* (Kraków: Petrus, 2010), 137.

<sup>7</sup> Cf. I. MROCZKOWSKI, “Kara śmierci,” col. 771.

Undoubtedly, St. Thomas Aquinas exerted an important influence on the development of philosophical and theological arguments in favour of the death penalty. He claimed that the common good justified the death penalty, pointing out that it was permissible in relation to individuals who had lost their human dignity by committing a crime<sup>8</sup>. Later on, St. Thomas' followers modified his arguments, relying more on the grounds of personalism. Supporters of the death penalty who refer to the biblical evidence point out to the Old Testament rule, which says: "Whoever takes the life of any human being shall be put to death" (Lev. 24:21; Exodus 21:12-32).<sup>9</sup> They also indicate that it was used for other law violations: idolatry (Exodus 22:19), blasphemy (Lev. 24:16), desecrating the Sabbath (Exodus 31:14-15), sorcery (Lev. 20:27), and for such sexual offences as adultery (Lev. 20:10), homosexuality (Lev. 20:13), and bestiality (Exodus 22:18).<sup>10</sup>

In contrast, opponents of the death penalty insist that arguments about the fairness and permissibility of capital punishment, are insufficient in today's social and political situation. They invoke rational, ethical, philosophical, biblical and theological reasons to prove that this penalty should be delegitimised, and reject the view that it is an extremely effective means to protect society from criminals. To prove their point, they add that the public security is not threatened by the mere existence of a given person, but by their criminal acts. They argue that many other methods are available today to effectively deter criminals, instead of depriving them of their lives, and that the primary responsibility of every community is to eliminate crime causes, and not criminals. They consider the rehabilitation and education of offenders to be a much better solution, and point out that reducing a criminal

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<sup>8</sup> Cf. Bronisław BARTUSIAK, *Kara śmierci w świetle sporu o racjonalizację kary* (Warszawa: C.H. Beck, 2011), 24–30.

<sup>9</sup> For a more complete picture from the Old Testament, this is a longer excerpt from the Book of Leviticus "Tell the Israelites: Anyone who curses his God shall bear the penalty of his sin; whoever blasphemes the name of the LORD shall be put to death. The whole community shall stone him; alien and native alike must be put to death for blaspheming the LORD'S name. Whoever takes the life of any human being shall be put to death; whoever takes the life of an animal shall make restitution of another animal. A life for a life! Anyone who inflicts an injury on his neighbor shall receive the same in return. Limb for limb, eye for eye, tooth for tooth! The same injury that a man gives another shall be inflicted on him in return. Whoever slays an animal shall make restitution, but whoever slays a man shall be put to death. You shall have but one rule, for alien and native alike. I, the LORD, am your God." When Moses told this to the Israelites, they took the blasphemer outside the camp and stoned him; they carried out the command that the LORD had given Moses." (Lev. 24:15–23). *The New American Bible*, [http://www.vatican.va/archive/ENG0839/\\_index.htm](http://www.vatican.va/archive/ENG0839/_index.htm) [accessed: 03.02.2016]

<sup>10</sup> Cf. I. MROCZKOWSKI, "Kara śmierci," cols. 771–772.

to some means that would enable to achieve specific social goals, is very risky, as it is an obvious sign of human degradation.<sup>11</sup>

Abolitionists point out that moral order acts as a guardian of every human life, life which is a value in itself, even if the use of capital punishment would have some positive effects for the whole community. Also, they question a deterrent and corrective character of the death penalty; after all, potential offenders do not presume to be caught and much less convicted for their acts. Moreover, abolitionists argue that studies by criminologists demonstrate that the use of the death penalty has no influence on the number of committed crimes, this number does not decrease in countries with the death penalty, nor does it increase in those where it has been abolished. They also dismiss arguments that it is retribution for the harm of murder, believing such arguments to be a mere manifestation of a “sick logic” of retaliation, rather than of a desire to restore disturbed social order.<sup>12</sup>

The rule of “a death for a death” is incompatible with humanism, because another death, this time that of a murderer cannot be a remedy for murder. They try to convince their opponents that violence will not stop violence and the expiatory function of the death penalty would make it necessary for criminals to voluntarily accept this inhumane punishment in order to atone for their serious offences. Still another argument against the death penalty is that no justice system is able to determine the exact fault of a perpetrator, whose behaviour is often conditioned by many external factors. So criminal proceedings are not free of mistakes and sometimes also of abuses committed for political reasons. Furthermore, courts lack instruments that would enable to objectively conclude that an offender is incapable of rehabilitation. Opponents of the death penalty also question the philosophical and ethical arguments put forward by some authors who distinguish between life as an ontological good synonymous with being, and life as a moral good. Moreover, they disagree with the view that a person committing a criminal act loses his dignity, in this way depriving himself of the right to life. It is obvious that even the gravest crime does not shatter the human dignity, as life constitutes the essential component of this dignity. From the Christian standpoint, the readiness and power to forgive, which has its legitimacy in Jesus Christ’s sacrifice is unceasing, so even the gravest human sin cannot overcome or restrict it.<sup>13</sup>

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<sup>11</sup> *Ibid.*, col. 772. Tomasz TABASZEWSKI, *Kara śmierci. Problem etycznej dopuszczalności sankcji głównej za morderstwo* (Warszawa: C.H. Beck, 2012), 108–121.

<sup>12</sup> Cf. I. MROCZKOWSKI, “Kara śmierci,” col. 772.

<sup>13</sup> *Ibid.*, cols. 772–773.

References to the Old Testament texts made by retentionists to validate the death penalty, are also unjustified. The whole Bible proclaims the inalienable dignity and sanctity of human life, which comes from the fact that God created man in his image and likeness (Gen 1:27). God as the only Lord of life demands the inviolability of human life. The death penalty described in the Bible was closely related to the specific mission of a chosen people and all punishments enumerated there served only to prevent Israelites from leaving the one and true God, and to stop many immoral behaviours like those of the heathen nations. Imbued with a sense of deep bond with God, the chosen people were convinced that the presence of those who sin hard against God among them was desecrating, and so such people should be eliminated. God revealing himself successively to Israelites intended for the New Covenant, obliged them to live according to a new more demanding morality. Jesus Christ, who is the full revelation of God, perfected the morality of the “old man” and pronounced radical ethical standards. He rejected the law of “an eye for an eye, a tooth for a tooth” and demanded from his followers justice that is much more perfect than that of the scribes and Pharisees, pointing to the new guiding principle, which is the forgiving love.<sup>14</sup>

#### LEGAL ASPECT OF THE DEATH PENALTY

It is crucial for our reflections on the death penalty to consider its legal aspect,<sup>15</sup> or to place capital punishment within a historical and contemporary legal context. Penal law reforms conducted under the influence of the Enlightenment resulted in the successive restrictions of the death penalty,

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<sup>14</sup> *Ibid.*, col. 773. “You have heard that it was said, ‘An eye for an eye and a tooth for a tooth. But I say to you, offer no resistance to one who is evil. When someone strikes you on (your) right cheek, turn the other one to him as well. If anyone wants to go to law with you over your tunic, hand him your cloak as well. Should anyone press you into service for one mile, go with him for two miles. Give to the one who asks of you, and do not turn your back on one who wants to borrow. You have heard that it was said, ‘You shall love your neighbour and hate your enemy.’ But I say to you, love your enemies, and pray for those who persecute you, that you may be children of your heavenly Father, for he makes his sun rise on the bad and the good, and causes rain to fall on the just and the unjust. For if you love those who love you, what recompense will you have? Do not the tax collectors do the same? And if you greet your brothers only, what is unusual about that? Do not the pagans do the same? So be perfect, just as your heavenly Father is perfect. (Mt 5:38-48). *The New American Bible* [http://www.vatican.va/archive/ENG0839/\\_index.htm](http://www.vatican.va/archive/ENG0839/_index.htm) [accessed: 03.02.2016].

<sup>15</sup> Information in this part is largely based on: Alicja GRZEŚKOWIAK, “Kara śmierci. Aspekt prawny,” in *Encyklopedia Katolicka*, Vol. 8 (Lublin: TN KUL, 2000), col. 775–779.

which was a common punishment in ancient and medieval times, and elimination of the defined methods in which it was administered. The struggle against the death penalty started in 1764 by Cesare Beccaria<sup>16</sup> in his monograph *Dei Delitti e delie pene* [On Crimes and Punishments]<sup>17</sup>, seems to have led to the first abolitions, short term as they were. However, with the penal law becoming more repressive later on, the abolition movement grew weaker and the death penalty was reintroduced to the penal codes of countries that had previously abolished it. Since mid-19<sup>th</sup> century, the idea of abolishing the death penalty was taken up on a larger scale, mainly by the following jurists: Francesco Carrara, Joachim Wilhelm Holtzendorff, Vincenzo Lanza, Pasquale Stanislao Mancini, Karl Joseph Anton Mittermaier, Enrico Pessina, Jean Joseph Thonissen, Gian Paolo Tolomei, and Giuseppe Zanardelli. The abolition movement was again hampered by the positivist school of criminal law and the strengthening ideology of the totalitarian fascist and communist regimes, which often used capital punishment especially for political offences.<sup>18</sup>

Another increase in the number of death sentences was recorded after the end of World War II, this being with no doubt a “justified” response to the genocide crimes committed by fascists. After the war was over and the international community started to take more interest in human rights, actions to abolish the death penalty were undertaken mostly by the United Nations, the Council of Europe, and other international organizations. Yet, international human rights acts that recognize the right to life as inborn and subject to legal protection, made a concession allowing the death penalty under specific circumstances. The necessity to abolish the death penalty was recognized by the Council of Europe in 1983 and the Organization of American States in 1991. Three years later, in 1994 the Parliamentary Assembly of the Council of Europe recognized the death penalty as completely unjustified in legal and civilisation systems. The recommendations adopted by the majority of European countries called for developing an additional protocol that would dispense with the death penalty also in time of war and prohibit those countries that had already abolished it from re-establishing it. Other states

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<sup>16</sup> Cesare Beccaria, properly Cesare Bonesana, marquis, born on 15 March 1738 in Milan, an Italian jurist, economist and political writer, representative of legal humanitarianism, author of *On Crimes and Punishments* (1764). *Encyklopedia powszechna PWN*, Vol. 1 (Warszawa: PWN, 1973), 231.

<sup>17</sup> Cesare BECCARIA, *Dei delitti e delie pene* (Milano: Giuffrè, 1973); published in Polish: Cesare BECCARIA, *O przestępstwach i karach*, transl. Emil Stanisław Rappaport (Warszawa: Wydawnictwo Prawnicze, 1959).

<sup>18</sup> Cf. A. GRZEŚKOWIAK, “Kara śmierci,” col. 775.

admitted successively to the Council of Europe committed themselves to abolishing the death penalty by implementing a moratorium on executions, among others. However, the majority of public opinion today favours the wide use or re-establishment of the death penalty, which can be explained with an increase in crime rates, particularly in organized and violent crimes. Despite this, the death penalty is systematically abolished, especially in European countries.<sup>19</sup>

The court imposes the penalty of legitimate and deliberate annihilation of a perpetrator in the judgement delivered on behalf of the state. It is imposed in a special judicial procedure and the accused is provided with more safeguards guaranteeing protection of the right to defence. The death penalty sentence is followed by the examination of grounds for appeals, and pardon or commutation proceedings. Execution details are defined in special legal provisions specifying the execution method, preparation and corpse handling. Currently, the most commonly used methods of execution include: firing squad, hanging, the electric chair, gassing, lethal injection, beheading, and stoning. In line with international human rights standards, the death penalty is a cruel, inhuman and degrading punishment. The execution itself, the so-called death row syndrome as well as waiting for execution, which sometimes lasts many years, all point to its “murky” character. For these reasons, the death penalty contradicts the European Convention on Human Rights (formally, the Convention for the Protection of Human Rights and Fundamental Freedoms), which prohibits the use of such punishments, as well as inhuman and degrading treatment.<sup>20</sup>

The death penalty in today’s penal law systems is mainly provided for serious offences, the list of which is long and diverse. Its administration in those countries where it is allowed depends on each country’s conditions, needs and legal culture. The death penalty is applied most widely (sometimes exclusively) for political offences or offences against state security. Crimes punishable by death often include crimes against life, particularly murder, but these are also violent crimes or acts of terrorism, aircraft hijacking, non-violent crimes against property, counterfeiting, drug production and

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<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*, cols. 775–776. More information can be found in, among others: Marek Antoni NOWICKI, *Wokół Konwencji Europejskiej. Krótki komentarz do Europejskiej konwencji praw człowieka* (Kraków: Zakamycze, 2003); Philip LEACH, *Taking a case to the European Court of Human Rights* (Oxford: Oxford University Press, 2005); and the websites of: the European Court of Human Rights: <http://www.echr.coe.int/Pages/home.aspx?p=home> and the Council of Europe: <http://www.coe.int/en/web/portal/home> [accessed: 29.01.2016].



trafficking, as well as adultery or apostasy. The death penalty is also used for violation of military discipline or for crimes committed during mobilization and war. In practice, it is an alternative sanction alongside imprisonment or life imprisonment. The penal law in some countries places the death penalty on a list of sanctions precisely determined as the only punishment for an offence. In many countries where it is in place, the law puts some restrictions on who may be subject to this punishment. These restrictions apply mainly to women, the mentally or physically ill, the elderly, pregnant women and minors. Following the “International Covenant on Civil and Political Rights”, state laws take 18 years as the minimum age at which the death penalty can be imposed.<sup>21</sup>

In Poland<sup>22</sup>, the Penal Code of 1969 that was previously in force, provided the death penalty for the most serious crimes and political offences such as: high treason, espionage, terrorist attack, sabotage, and subversion. This list was expanded to include: homicide, armed robbery with the use of a firearm or other dangerous instrument, and failure to follow a military order during combat. Capital punishment could also be imposed for participating in the crime of genocide committed by the Nazi war criminals and for offences related to the duty to defend the state committed in times of mobilization or war. In the “Decree on Martial Law” of 12 December 1981<sup>23</sup> the number of crimes punishable by death increased to 86, including petty offences. Instead of the death penalty, the court could always impose the penalty of 25 years imprisonment or life imprisonment and deprivation of civil rights. Persons who were under 18 at the time they had committed a crime and pregnant women were not sentenced to death. The Polish penal law provided for special trial requirements in cases of crimes punishable by death. The hearing took place in front of the extended panel of judges and pardon proceedings were mandatory. The death penalty was carried out by hanging and in the case of soldiers, by shooting. Since the mid 1989, Poland has seen many posthumous rehabilitation trials of people sentenced to death by the Polish People’s Republic communist authorities in trumped-up and

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<sup>21</sup> Cf. A. GRZEŚKOWIAK, “Kara śmierci,” col. 776.

<sup>22</sup> For equally interesting issues included in the Polish Penal Code from the beginning of the 20th century, see: *Kodeks karny z 1932 roku*, ed. Alicja Grześkowiak, Krzysztof Wiak, Małgorzata Gałązka, Radosław G. Hałas, Sławomir Hypś, Damian Szeleszczuk (Lublin: Wydawnictwo KUL, 2015); B. BARTUSIAK, *Kara śmierci w świetle*, 161–180.

<sup>23</sup> *Dekret o stanie wojennym z dnia 12 grudnia 1981 roku*, in: <http://ipn.gov.pl/buiad/archiwalia-ipn/buiad-centrala/dekret-o-wprowadzeniu-stanu-wojennego-z-12-grudnia-1981-r>. [accessed: 30.01.2016].

show political trials carried out mostly against the Home Army soldiers and the political opposition members. The Act of 12 July 1995 introduced a 5-year moratorium on the death penalty. Unfortunately, the death penalty was not prohibited in the Polish Constitution of 1997. The new Penal Code enacted on April 20, 1997 no longer provides for the death penalty. However, the abolition of the death penalty in Poland, which ended a long anti-death penalty struggle carried out especially by legal circles, was met with opposition from a large part of Polish society. Consequently, bills to reinstate the death penalty were drafted, and some political parties made it an element of their election platform. Article 3 of the Polish Penal Code currently in force with changes resulting from the Act of 20 February 2015 reads: “Penalties and other measures provided for in this code are applied with humanitarian principles in mind, particularly with respect for human dignity.”<sup>24</sup>

Hence, it is not surprising, as already mentioned, that the death penalty raises many legal, ethical, theological, philosophical, political and sociological problems and is one of the most contentious issues in the penal law. This may also explain why its opponents believe that their arguments for its inadmissibility in the modern legal systems are irrefutable. According to them, it is incompatible with moral standards, human rights, as well as with contemporary views on the nature of criminal punishment. The death penalty cannot be considered fair, because it is contrary to the essence of criminal punishment. Today, justice as the criterion for punishment does not call for killing an offender in retaliation for his actions and can be satisfied with other available measures. The death penalty is not a proportional punishment to a crime committed, both quantitatively and qualitatively. As A. Grześkowiak points out, killing a man as “punishment” is connected with taking revenge and this cannot be the mechanism of penal law.<sup>25</sup>

Another issue is the gravity of the offences which are to be punishable by this most severe penalty. This criterion, relative and variable—dependent on circumstances and political and social conditions, cannot be reconciled with the punishment of irreversible consequences. After all, human life is always the greatest value superseding all others protected by the law. Moreover, the definitive nature of the penalty rules out the possibility of correcting a

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<sup>24</sup> Act of 6 June 1997—The Penal Code (Journal of Laws of 1997, No 88 item 553 as amended). More on this subject can be found in: *Kodeks karny. Komentarz. 3 wydanie*, ed. Alicja Grześkowiak and Krzysztof Wiak (Warszawa: C.H. Beck, 2015). Cf. A. GRZEŚKOWIAK, “Kara śmierci,” cols. 776–777.

<sup>25</sup> Cf. A. GRZEŚKOWIAK, “Kara śmierci,” col. 777.

potential error. *Post mortem* rehabilitations of the innocently convicted will not bring them back to life, while the claim that “it is better for a person to die than to escape justice” (made by death penalty proponents), is unacceptable. Furthermore, since the value of each human life is the same, it is not possible to decide which crime is the gravest. Supporters of the death penalty seek its justification in the qualitative proportionality, based on “a life for a life” principle, derived from the ancient rule of *juris talionis*. Yet, the principle of “exact reciprocity”, which was a measure of punishment at the beginning of penal law, is not relevant in the existing penal law. So making an exception for the crimes of homicide would require imposing this punishment for any homicide. Critics of the death penalty argue that it does not implement political and criminal purposes of punishment, and its deterrent effect is minimal. Moreover, it is not socially useful. By authorising deprivation of life, it destroys the normative message about the value of human life. Neither does it educate the public to respect life and other values protected by the penal law.<sup>26</sup>

A statement can be risked that the death penalty does not humanize, but rather it brutalizes the human nature. It is also a great mistake to believe in its function of deterring potential offenders from committing crimes, as this makes it a punishment imposed to serve as an “example”, but not on the basis of the perpetrator’s guilt. It should also be pointed out that the death penalty definitely prevents the use of corrective ends in relation to offenders, not giving them any chance to rehabilitate or change their lives. Rehabilitation is the main objective of punishment in the contemporary penal law, inspired by the ideology of humanism and human rights. Furthermore, the use of the death penalty cannot be justified with the so-called public interest, which, especially in democratic countries, based on human rights is not more important than man.<sup>27</sup>

The state can fight crime, maintain security and public order using methods other than killing as “punishment.” The same state has an absolute duty to protect every human life from conception until natural death, and cannot legitimize attacks on the lives of its citizens. Furthermore, as anti-death penalty advocates claim, it violates the intrinsic human right to life. It is hard to accept the proposition that a criminal deprives himself of this right by his act, because the right to life is inalienable; neither can it be taken away from man nor man himself can waive this right. By abolishing the

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<sup>26</sup> *Ibid.*, cols. 777–778.

<sup>27</sup> *Ibid.*, col. 778.

death penalty, the international community shows that penal law cannot impose punishment that deprives man of the right which is the source of all his rights, so it must respect the dignity of the victim and of the offender.<sup>28</sup>

#### DEATH PENALTY IN THE CATECHISM OF THE CATHOLIC CHURCH

In the analysis of the above issue, it is worthwhile to reflect on Piotr Mazurkiewicz's words. In his deliberations, he clearly points out that: "The death penalty is one of the subjects that occasionally provoke disputes also in Catholic circles. These disputes are not just about an individual preference (being 'for' or 'against'), but also about a subjective belief that this particular preference is the only option acceptable by the Church and that anyone who thinks otherwise opposes the Church teaching."<sup>29</sup> The Church teaching on the subject in question can be found in the Catechism of the Catholic Church (No. 2267): "Assuming that the guilty party's identity and responsibility have been fully determined, the traditional teaching of the Church does not exclude recourse to the death penalty, if this is the only possible way of effectively defending human lives against the unjust aggressor. If, however, non-lethal means are sufficient to defend and protect people's safety from the aggressor, authority will limit itself to such means, as these are more in keeping with the concrete conditions of the common good and more in conformity to the dignity of the human person. Today, in fact, as a consequence of the possibilities which the state has for effectively preventing crime, by rendering one who has committed an offense incapable of doing harm – without definitely taking away from him the possibility of redeeming himself—the cases in which the execution of the offender is an absolute necessity 'are very rare, if not practically nonexistent'."<sup>30</sup>

To gain a deeper understanding of the quoted passage, it is worthwhile to consider its history. As shown by P. Mazurkiewicz, since the first Polish edition of the Catechism of the Catholic Church was published in 1994, the text of no. 2266 and no. 2267, which contained the Church teaching on the death

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<sup>28</sup> *Ibid.*

<sup>29</sup> Piotr MAZURKIEWICZ, "Kara śmierci w Katechizmie Kościoła Katolickiego," *Warszawskie Studia Teologiczne* 22 (2009), 1: 205. The analysis here is based largely on P. Mazurkiewicz's article.

<sup>30</sup> *Catechism of the Catholic Church*, No. 2267 [http://www.vatican.va/archive/ccc\\_css/archive/catechism/p3s2c2a5.htm](http://www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a5.htm) [accessed: 05.02.2016]

penalty, has undergone significant change<sup>31</sup>. The original sections read: “Preserving the common good of society requires rendering the aggressor unable to inflict harm. For this reason the traditional teaching of the Church has acknowledged as well-founded the right and duty of legitimate public authority to punish malefactors by means of penalties commensurate with the gravity of the crime, not excluding, in cases of extreme gravity, the death penalty.”<sup>32</sup> “If bloodless means are sufficient to defend human lives against an aggressor and to protect public order and the safety of persons, public authority should limit itself to such means, because they better correspond to the concrete conditions of the common good and are more in conformity to the dignity of the human person.”<sup>33</sup>

In 1998, Congregation for the Doctrine of the Faith issued *Corrigendum*, in which the above passage of the Catechism was revised and supplemented with a reference to § 56 of John Paul II’s encyclical *Evangelium Vitae*.<sup>34</sup> It reads: “This is the context in which to place the problem of the death penalty. On this matter there is a growing tendency, both in the Church and in civil society, to demand that it be applied in a very limited way or even that it be abolished completely. The problem must be viewed in the context of a system of penal justice ever more in line with human dignity and thus, in the end, with God’s plan for man and society. The primary purpose of the punishment which society inflicts is ‘to redress the disorder caused by the offence.’ Public authority must redress the violation of personal and social rights by imposing on the offender an adequate punishment for the crime, as a condition for the offender to regain the exercise of his or her freedom. In this way authority also fulfils the purpose of defending public order and ensuring people’s safety, while at the same time offering the offender an incentive and help to change his or her behaviour and be rehabilitated. It is clear that, for these purposes to be achieved, the nature and extent of the punishment must be carefully evaluated and decided upon, and ought not 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-

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<sup>31</sup> Cf. P. MAZURKIEWICZ, “Kara śmierci w Katechizmie. . .,” 205. In this paper, I intentionally refer to two Polish editions of the Catechism (Poznań: Pallottinum, 1994 and 2002).

<sup>32</sup> *Catechism of the Catholic Church*, No. 2266.

<sup>33</sup> *Ibid.*, No. 2267.

<sup>34</sup> JOHN PAUL II, *Evangelium Vitae*, No. 56, [http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf\\_jp-ii\\_enc\\_25031995\\_evangelium-vitae.html](http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.html) [accessed: 05.02.2016]

existent. In any event, the principle set forth in the new Catechism of the Catholic Church remains valid: ‘If bloodless means are sufficient to defend human lives against an aggressor and to protect public order and the safety of persons, public authority must limit itself to such means, because they better correspond to the concrete conditions of the common good and are more in conformity to the dignity of the human person’.<sup>35</sup>

The question may be asked: has the Church teaching on the death penalty contained in the Catechism of the Catholic Church changed? As P. Mazurkiewicz observes, both texts confirm that “the traditional teaching of the Church does not exclude recourse to the death penalty.” Thus, the change does not consist in stating that the death penalty is inadmissible. However, in line with the traditional teaching, the death penalty is an exceptional measure, admissible “in cases of extreme gravity”—as expressed in the original version of the Catechism. In other words, “if this is the only possible way of effectively defending human lives”—as we find in its new version. It seems that the older text of the Catechism emphasized the fact that the death penalty could be applied only by legitimate public authority. Incidentally, the said authority was to have not only the right but also the duty to use that penalty. The newer version preserves this content, but only in the context of the right and duty “to inflict punishment proportionate to the gravity of the offense,” without making a reference to the death penalty. What is more, it adds that the judges need to acquire absolute certainty as to the guilty party’s identity and responsibility. Therefore, the penalty ought not to be applied if there is a risk of miscarriage of justice.<sup>36</sup>

It may be stated that there has been a profound change in the way the admissibility of the death penalty even in those exceptional cases, is justified. The passage describing the purpose of punishment for the offender has remained unchanged. According to P. Mazurkiewicz, it “implicates the need for redressing the disorder caused by the offense, ensuring the safety of persons, and the remedial value of punishment providing the offender with an opportunity to atone for his crime, which however always depends on the convicted individual’s personal decision and cannot be forced on him.” This bears only slight relation to the death penalty, which results in the execution of the offender, making it impossible for him to rehabilitate after his own death. Today’s world does not treat the sentence of death as a chance of repentance for the culprit. From the perspective of faith in the soul’s im-

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<sup>35</sup> *Ibid.*, No. 56.

<sup>36</sup> Cf. P. MAZURKIEWICZ, “Kara śmierci w Katechizmie . . .,” 206.

mortality, as Jacek Filek points out, death is not the ultimate end but “the beginning of eternity.” Thus, the death penalty causes only “bodily death” so that one could continue to “live by the spirit.” The obligatory presence of a priest-confessor at the moment of “legitimate homicide” removed from the inflicted death a sense of its finality.<sup>37</sup> Nowadays, however, the argument that “killing serves salvation” is entirely beyond comprehension. Another point made by P. Mazurkiewicz is that the arguments presented in the original text of the Catechism stand for palpable protection of the common good by rendering the aggressor incapable of inflicting harm and administering punishment proportionate to the gravity of the offense. In the new version, the right to protect the common good was specified and narrowed down to the effective protection of human lives, while the argument concerning justice was removed.<sup>38</sup>

It is also worth noticing that although the statement on the death penalty in the original version of the Catechism might be open to question whether it does not invoke the right of vengeance (“a life for a life”), the newer text does not evoke such associations. One may wonder why the issue of just retribution disappeared from the Catechism, but there is no doubt that „its authors—acknowledging the fact that threatening somebody’s life is in itself unjust and necessarily deserves punishment—do not refer to the concept of justice in determining the appropriate level of this punishment, but only to the need to effectively punish the crime and render the aggressor incapable of doing harm.”<sup>39</sup>

In conclusion, it would be useful to quote some comments of selected “experts”, expressing their thoughts during a panel discussion on the death penalty in the context of the encyclical letter *Evangelium Vitae*. Zbigniew Cwiakalski—specialist in penal law: “It could be said that not only the death penalty itself, but the particularly drastic manner of its administration should be an even greater deterrent [...] Nobody has yet proved that the existence of the death penalty in a given penal code serves as an effective preventive measure [...] my attitude towards the death penalty is negative, which should be clear from my comment...” Łukasz Kamykowski—priest and theologian: “Even if a man forfeits the moral right to his own life, is there anybody on earth who will acquire the right to take this man’s life if only

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<sup>37</sup> Cf. Jacek FILEK, “Wołanie o śmierć. Etyka wobec problemu zabijania za karę,” in *Kara śmierci*, ed. Ewa Nowicka-Włodarczyk (Kraków: FMCRD, 1998), 43.

<sup>38</sup> Cf. P. MAZURKIEWICZ, “Kara śmierci w Katechizmie . . .,” 207.

<sup>39</sup> *Ibid.*

God is the Lord and Giver of life? . . .” Tadeusz Ślipko—priest and ethicist: “I would like to draw attention to one thing. The discussion continues, but we are not defining the principle subjects for this discussion. Voices diverge and only scratch the surface . . .”<sup>40</sup>

#### FINAL REMARKS

Undoubtedly, the complexity of the death penalty problem, in which moral, philosophical and legal issues entwine, does not make it an easy topic to consider. It is difficult to determine unequivocally which option—pro- or anti-death penalty—is more right. Today, the abolitionist stance is more prevalent. It stresses the incompatibility of capital punishment with modern societies’ sense of humanity, with the inalienable dignity of the human person, as well as with the liberal concepts of punishing criminals in Europe. Abolitionists focus on the murderer’s life, rehabilitation, and finally restoration to society. Certainly, not everyone agrees with such understanding of justice. Moderate moral repressionism, while still accepting the necessity to treat even the worst perpetrators with dignity, brings into focus in the first place murder victims, as well as the potential threat to an innocent person, who at any moment may be faced with murderous instincts of individuals deprived of their respect for other people’s lives. It must be borne in mind that everyone is responsible for the proper functioning of social life. This responsibility lies in individuals, the family, the Church and other public institutions; all of them are obliged to ensure the sound and proper education and upbringing of people of all social strata.

Everyone has the duty to oppose the crime of homicide. Every individual separately is responsible for his own actions and following the voice of his conscience, recognises the natural law mandating respect for another’s life. Similarly, the state authorities deriving their power from God, are entrusted with ensuring social order and protecting human dignity. However, at a time when society confronted with immense harm done by criminals and grave injustice, demands harsher penalties for the worst offenders, the state authorities in most European countries do not use the death penalty, while tolerating abortion or euthanasia, which are also inhuman, as they constitute

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<sup>40</sup> *Evangelium vitae. Dobra nowina o życiu ludzkim. Materiały na temat encykliki Jana Pawła II Evangelium vitae oraz dyskusja panelowa o karze śmierci*, ed. Jerzy Brusilo (Kraków: Wydawnictwo Naukowe Papieskiej Akademii Teologicznej, 1995), 119–129.



the ultimate denial of human dignity. Therefore, it seems that radical abolitionists should re-consider their extreme views and become more responsible for their postulates, which strongly influence the contemporary relative perception of justice. Penal justice must be inspired with love for the offender and understanding for his weakness, but it must also be harsh.

Certainly, this article will not contribute to changing the penal law that is currently in force in Europe or in Poland, but I hope that it will provoke further reflections on this issue.<sup>41</sup>

#### BIBLIOGRAPHY

- BARTULA, Piotr. *Kara śmierci powracający dylemat*. Kraków: Znak, 2007.
- BARTUSIAK, Bronisław. *Kara śmierci w świetle sporu o racjonalizację kary*. Warszawa: C.H. Beck, 2011.
- BECCARIA, Cesare. *Dei delitti e delle pene*. Milano: Giuffrè, 1973.
- BECCARIA, Cesare. *O przestępstwach i karach*, translated by Emil Stanisław Rappaport. Warszawa: Wydawnictwo Prawnicze, 1959.
- BOJARSKI, Marek, *Kara śmierci*, in *Mała Encyklopedia Prawa*, edited by Urszula Kalina-Prasznic. Warszawa: 2005.
- Catechism of the Catholic Church*, [http://www.vatican.va/archive/ccc\\_css/archive/catechism/p3s2c2a5.htm](http://www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a5.htm). [accessed: 05.02.2016]
- Evangelium vitae. Dobra nowina o życiu ludzkim. Materiały na temat encykliki Jana Pawła II Evangelium vitae oraz dyskusja panelowa o karze śmierci*, edited by Jerzy Brusilo. Kraków: Wydawnictwo Naukowe Papieskiej Akademii Teologicznej, 1995.
- FILEK, Jacek. "Wołanie o śmierć. Etyka wobec problemu zabijania za karę." In *Kara śmierci*, edited by Ewa Nowicka-Włodarczyk, 40–56. Kraków: FMCRD, 1998.
- GRZEŚKOWIAK, Alicja. "Kara śmierci. Aspekt prawny." In *Encyklopedia Katolicka*. Vol. 8, col. 775–779. Lublin: TN KUL, 2000.
- JOHN PAUL II, *Evangelium vitae* (56), [http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf\\_jp-ii\\_enc\\_25031995\\_evangelium-vitae.html](http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.html). [accessed: 05.02.2016]
- Kodeks karny z 1932 roku*, edited by Alicja Grześkowiak, Krzysztof Wiak, Małgorzata Gałązka, Radosław G. Hałas, Sławomir Hypś, Damian Szeleszczuk. Lublin: Wydawnictwo KUL, 2015.
- Kodeks karny. Komentarz. 3 wydanie*, edited by Alicja Grześkowiak and Krzysztof Wiak. Warszawa: C.H. Beck, 2015.
- LEACH, Philip. *Taking a case to the European Court of Human Rights*. Oxford: Oxford University Press, 2005.
- MAZURKIEWICZ, Piotr. "Kara śmierci w Katechizmie Kościoła Katolickiego." *Warszawskie Studia Teologiczne* 22 (2009) 1: 205–214.
- MITERA, Monika, Marek ZUBIK. *Kara śmierci w świetle doświadczeń współczesnych systemów prawnych*. Warszawa: Helsinki Foundation for Human Rights, 1998.

<sup>41</sup> Cf. J.A. ŚWIDZIŃSKI, "Kara śmierci," pp. 97–101.

- MROCZKOWSKI, Ireneusz. "Kara śmierci. Aspekt moralny." In *Encyklopedia Katolicka*. Vol. 8, col. 771–775. Lublin: TN KUL, 2000.
- NOWICKI, Marek Antoni. *Wokół Konwencji Europejskiej. Krótki komentarz do Europejskiej konwencji praw człowieka*. Kraków: Zakamycze, 2003.
- ŚLIPKO, Tadeusz. *Kara śmierci za czy przeciw*. Kraków: Petrus 2010.
- ŚWIDZIŃSKI, Jerzy Adam. *Kara śmierci. W obronie życia ludzkiego*. Kraków: Petrus 2009.
- TABASZEWSKI, Tomasz. *Kara śmierci. Problem etycznej dopuszczalności sankcji głównej za morderstwo*. Warszawa: C.H. Beck, 2012.

## DYLEMATY DOTYCZĄCE KARY ŚMIERCI

### WYBRANE ZAGADNIENIA

#### Streszczenie

Kara śmierci wzbudzała i wzbudza wiele emocji. Jakkolwiek istnieje od niepamiętnych czasów, przez kolejne stulecia podejście do niej zmieniało się, podobnie jak stosunek do karania w ogóle. Wydaje się, że przestano ją uważać, przynajmniej w europejskim kręgu kulturowym, za „naturalny” element porządku świata. Powinnością przeciwstawienia się zbrodni zabójstwa obciążony jest każdy człowiek. Każdy zaś z osobna odpowiedzialny jest za swoje własne czyny, dzięki głosowi sumienia poznaje prawo naturalne, nakazujące uszanowanie cudzego życia. Obowiązek ten spoczywa równocześnie na ustanowionej przez Boga władzy państwowej. To do niej należy zagwarantowanie spokoju życia społecznego i ochrona godności ludzkiej. W świetle tradycji Kościoła katolickiego kara śmierci jest dopuszczalna jako ostateczny środek obrony społeczeństwa przed przestępcami. Potwierdza to nauka Ojców Kościoła, wypowiedzi papieży, listy episkopatów katolickich oraz rozważania teologów. Podobnie problem ten ujmuje *Katechizm Kościoła Katolickiego*, którego orzeczenie zostało zrewidowane po opublikowaniu *Evangelium vitae*.

**Słowa kluczowe:** kara śmierci; abolicjoniści; retencjoniści; Kościół katolicki a kara śmierci.