HDIM.IO/88/08
1 October 2008

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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Abolition of the death penalty

A violation of fundamental rights

Europe has been a *de facto* death penalty free zone since 1997. This situation has largely come about due to the Council of Europe which has been a pioneer in this process. Death as a punishment is now regarded as a violation of fundamental rights, the right to life and the right not to be subjected to cruel, inhuman or degrading treatment. De jure abolition of the death penalty in all its member States, and in all circumstances, remains a central political objective of the Council of Europe, and a core value of the Organisation. In 2007, the Committee of Ministers of the Council of Europe established the European Day against the Death Penalty. The first Day was held on 10 October 2007 to coïncide with the World Day against the Death Penalty. It is a joint initiative with the European Union.

The legal instruments outlawing the death penalty

When the European Convention on Human Rights opened for signature in 1950, it provided for the possibility of imposing the death penalty (Article 2 § 1: "No-one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law"). In the late 1960s, a consensus began to emerge in Europe that the death penalty seemed to serve no purpose in a civilised society governed by the rule of law and respect for human rights. In 1982 the Council of Europe adopted the first legally binding instrument providing for the unconditional abolition of the death penalty in peace time – Protocol No. 6 to the European Convention on Human Rights (ECHR). Article 2 provides that "A state may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war". This text is currently ratified by 46 of our 47 member States, the remaining one being committed to ratification.
The Council of Europe adopted, in 2002, Protocol No. 13 to the European Convention on Human Rights concerning the abolition of the death penalty in all circumstances, in other words also in time of war or of imminent threat of war. Reservations to and derogations from the Protocol are prohibited. The Protocol entered into force on 1 July 2003. It has, to date, been ratified by 39 member States and signed by a further 6.
This process within the Council of Europe is irreversible, thanks to the various legal and political mechanisms which have been put into effect. The Court of Human Rights has also recognised the considerable evolution with regard to the legal position of the death penalty. In the Grand Chamber judgment of 12 May 2005 in *Öcalan v. Turkey,* the Court noted that capital punishment in peacetime had come to be regarded as an unacceptable form of punishment which was no longer permissible under Article 2 of the Convention. The Court held that the imposition of the death sentence on the applicant following an unfair trial by a court whose independence and impartiality were open to doubt amounted to inhuman treatment in violation of Article 3 of the Convention.

In line with the principle laid down in the *Soering v. the United Kingdom* (1989) case, States must require firm assurances from the United States and other retentionist countries that persons to be extradited or expelled will not be sentenced to death. This principle has been followed by courts in numerous countries, also outside Europe, including Canada and South Africa and was also taken up in the *Guidelines on Human Rights and the Fight against Terrorism*, adopted by the Committee of Ministers on 11 July 2002. Guideline No. XIII, paragraph 2, provides that extradition of a person to a country where he or she risks being sentenced to the death penalty may not be granted unless certain guarantees have been obtained. A similar provision has been included in the Amending Protocol to the 1977 European Convention for the Suppression of Terrorism, which was opened for signature on 15 May 2003.

The road to abolition in Europe

The Parliamentary Assembly of the Council of Europe has been a driving force in the movement to abolish the death penalty. It was at the origin of Protocol No. 6 and has since adopted successive texts to outlaw the death penalty (see Resolution 1044 and Recommendation 1246, 1994; Resolution 1097 and Recommendation 1302, 1996). It has constantly exerted pressure in order to encourage abolition - and insist in the meantime on moratoria in individual countries, both in the context of examining candidatures for membership and in its procedures for monitoring the compliance of existing member States' commitments. All new member States are required to ratify Protocol No. 6 within a fixed time scale.

In May 1999 the Parliamentary Assembly adopted a Resolution on "Europe: a death penalty-free continent" (Resolution 1187, 1999) in which it states that the Parliamentary Assembly is unwilling to reconsider the commitments of member States with regard to the abolition of the death penalty, and that it will use all means at its disposal to ensure that commitments freely entered into are honoured.

Member States have repeatedly committed themselves to abolition. At their 2nd Summit in 1997, the Heads of State and Government of the Council of Europe called for universal abolition and insisted on the maintenance in the meantime of existing moratoria on executions in Europe. This thinking was carried further in May 1998 when the Foreign Ministers of member States stressed that priority should be given to obtaining and maintaining a moratorium on executions, to be consolidated as soon as possible by complete abolition of the death penalty. On 9 November 2000, at their 107th Session, the Committee of Ministers further adopted a Declaration "For a European Death Penalty-Free Area".

The Committee of Ministers has recognised the need to sensitise public opinion on the death penalty and provide assistance and advice to interested States, notably through educational and awareness-raising activities. A number of projects have consequently been conducted by the Council of Europe to raise awareness against recourse to the death penalty particularly among the media and the general public.

The Committee of Ministers also monitors the situation in member States to ensure compliance with their commitments. The subject continues to be considered regularly at meetings of the Ministers' Deputies "until Europe has become a de jure death penalty-free zone".

Universal abolition

There has been an inexorable trend towards universal abolition over the last years, reflected not only in the growing number of international and national legal instruments and norms, but also in a widening recognition by governments and politicians that the death penalty has no place in a modern democratic society.

The Council of Europe, for its part, has also turned its attention to non-European states, more particularly those with observer status with the Organisation, since they are deemed to share the same fundamental values and principles as the Council of Europe. In practice this concerns the USA and Japan, as the death penalty is not applied in the three other observer States – Canada, Mexico and the Holy See.

To this end, the Parliamentary Assembly has adopted a number of texts, most recently on 1 October 2003, Resolution 1349, in which it found Japan and the United States once more in violation of their fundamental obligation to respect human rights due to their continued application of the death penalty and requiring Japan and the United States to make more efforts to take the necessary steps to institute a moratorium on executions with a view to abolishing the death penalty. In reply to the Assembly's Recommendation 1627 (2003) on this issue, the Committee of Ministers requested its Chairman to transmit the above-mentioned Resolution 1349 (2003) of the Parliamentary Assembly to the authorities of the observer States which still retain the death penalty and in so doing, to reiterate the Committee's readiness to intensify dialogue with these States on this vital issue.

The Organisation has also intervened, through the Committee of Ministers or its Secretary General, in a number of individual death penalty cases with a view to drawing attention to the need to respect international human rights law, including relevant UN Human Rights Commission Resolutions. On two occasions in 2004, the Committee of Ministers decided to submit statements of interest in support of "*amicus curiae briefs*" prepared by the European Union for two significant cases in the United States. The first was for the case of Christopher Simmons (*Roper v. Simmons*), concerning the application of the death penalty in the United States against persons who were below 18 years of age at the time of the offence. The second was for the case of *Jose Medellin* and concerns the right of detained foreign nationals to be informed of the right to consular access (Article 36 of the Vienna Convention on Consular Relations).

Last updated September 2008

Further information

http://www.coe.int/T/E/Com/Files/Themes/Death-penalty/

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