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Promotion by Council of Europe member states of an international moratorium on the death penalty

Opinion¹

Political Affairs Committee

Rapporteur for Opinion: Mrs Fátima ABURTO BASELGA, Spain, Socialist Group

I. Conclusions of the Committee

1. The Political Affairs Committee subscribes entirely to the report and the draft resolution drawn up by Mr Pietro Marcenaro, Rapporteur of the Legal Affairs and Human Rights Committee. In fact, this debate will give our Assembly, who represents the conscience of Europe, the opportunity to reiterate its strong and unequivocal call against the death penalty, with the unanimous adoption of a resolution in support of the Italian initiative for an international moratorium currently circulated within the UN General Assembly.

2. The final objective should be the total abolition of the death penalty; however, the introduction of a moratorium by countries which still retain it is an excellent intermediate step, also because it contributes to making it clear that in no way is the threat of incurring in such a punishment a deterrent against crime. As it was said already by Cesare Beccaria in *Dei Delitti e delle Pene*, and later confirmed by number of specialised studies, it is the certainty of incurring a penalty which is a deterrent and not the nature of the penalty itself.

3. Capital punishment has no place in civilised, democratic societies governed by the rule of law. The Council of Europe should continue to promote the abolishment of the death penalty, *de facto* and *de jure*, in all circumstances, in Europe as well as outside.

4. In doing so, the Council of Europe should closely cooperate with other international organisations, including the European Union. In this context, the Committee has been very pleased to hear of the initiative of establishing a European Day against the Death Penalty. Its inaugural Conference will be held on 9 October 2007 in Lisbon, under the EU Portuguese Presidency. The Council of Europe and the Assembly should strongly support and contribute to this event. In particular, the Assembly members should not spare their efforts to act as multipliers of this event and its message, by giving them maximum visibility in all Council of Europe member states.

¹ See doc. 11303 tabled by the Committee on Legal Affairs and Human Rights.

II. Amendments proposed by the Committee

Amendment to the draft resolution

Amendment A:

After paragraph 14, add a new paragraph

"The Assembly fully supports the Conference to establish a European Day against the Death Penalty, to be held in Lisbon on 9 October, and expects all member States of the Council of Europe also to show their unstinting support. Given its pioneering work on abolition of the death penalty in Europe and beyond, the Assembly must play a central role, including through involvement in the drafting of the Joint Declaration, which its President should co-sign at the inaugural conference. The Assembly would stand ready to contribute to publicity and promotion, including through coordination of supporting events in member states' national parliaments."

III. Explanatory memorandum, by Mrs Fátima ABURTO BASELGA, Rapporteur for opinion

a) The death penalty is an offence to human dignity and a violation of human rights

1. According to personal beliefs, human life can be considered sacred or not. But we all share the conviction that there is nothing more precious and that it should be preserved. This principle should apply to everyone, including those who have been found guilty by a court of law of the most serious crimes. Even more so when one considers that even in the most rigorous judicial proceedings there is always a margin of error and that there is no way to redress a miscarriage of justice after the death penalty has been carried out.

2. I consider the death penalty as an offence to human dignity. The situation of people on death row is comparable to psychological torture, for them and for their families, and there is no way in which this suffering can be alleviated or avoided. Even the jurisprudence of the European Court of Human Rights has found that the death row phenomenon may amount to inhuman and degrading treatment (Soering case, 1989)².

3. It is obvious that the convict's rights regarding life and dignity are being violated, which brings no benefit to society but does undermine the dignity of those who actually carry out the execution (the participation of qualified health professionals in the execution only heightens the dilemma as their usual task is completely opposite to that of imposing suffering on human beings), the witnesses of the execution and the society which supports this practice. All these people are subjected to moral degradation which is contrary to the respect of human rights.

4. Victims' dignity is also violated. There is no doubt that victims and their relatives experience feelings of revenge and they may believe that the death of the convicted criminal will relieve their pain. The execution of the death sentence either confirms these expectations or brings the realisation that nothing can compensate for the pain suffered, showing the pointlessness of the unjustified cruelty.

5. The right to life is the basic human right, codified by a number of international instruments including the 1948 Universal Declaration of Human Rights (Article 3). In the context of the Council of Europe, there has been a constant evolution over the years towards the full recognition that capital punishment is an infringement of human rights:

- in 1950 the European Convention on Human Rights (ECHR) recognised the right to life but did not outlaw capital executions (Article 2)³;
- in 1983, Protocol No. 6 to the (ECHR) concerning the abolition of the death penalty in time of peace was opened for signature;

² Soering v. United Kingdom, Application No. 14038/88, 7 July 1989, paragraphs 100-124.

³ Everyone's right to life shall be protected by law. 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 (paragraph 1).

- successively, the abolition of the death penalty was demanded by the Assembly in the context of new accessions;
- in 2002 a further additional protocol to the ECHR was opened for signature, providing for the abolition of the death penalty in all circumstances, including in time of war (Protocol 13).
- At present, the Council of Europe is *de facto* a death penalty-free area.

b) Some major concerns

- **The risk that in the context created by the fight against terrorism, the recourse to the death penalty is considered 'more acceptable'**

6. In his report Mr Marcenaro mentioned the barbaric execution of Saddam Hussein, which provoked statements of condemnation by many public figures and international organisations, including the Council of Europe.

7. This recalled, to my mind, the decision of a Russian court of law to condemn the only surviving attacker from the 2004 Beslan school massacre to capital punishment, despite the Russian Federation being a Council of Europe member state.

8. It is true that the Russian Federation - the only Council of Europe member state not to have ratified Protocol 6 to the ECHR - has imposed a moratorium on capital executions and therefore the penalty will not be carried out. But still, the Beslan case confirms that there is a large part of public opinion, as well as some courts of law, that consider it 'acceptable' to condemn those who have committed particularly hideous crimes to capital punishment.

9. Surveys show that the proportion of those who are in favour of capital punishment is decreasing. However, I am afraid that there is a real risk that in our times, in the context of the fight against terrorism, our societies loses sight of their principles and values and take steps backwards, driven by fear.

10. The fact that society is not prepared to relinquish the death penalty is often invoked as an argument against its abolishment, and it is true that in this matter there is often a gap between the electorate on the one hand, and parliaments and governments on the other.

11. I believe that politicians should play a greater role in public campaigning against the death penalty and spurring an open debate on this issue. They should also take the lead, as has already happened in the past for other fundamental social issues such as divorce and abortion, to promote positive changes, even if going against the feelings of part of the population. Above all, politicians should refrain from exploiting anti-abolitionist tendencies among public opinion for political purposes.

- **Outside the Council of Europe**

12. Without wanting to undermine the principle that capital punishment should be abolished altogether, I would like to mention some other issues of concern which, by now apply only to non-Council of Europe member states. This should be seen in the context of the external policy of the Council of Europe, which goes in the direction of promoting human rights beyond the borders of Europe, with particular attention to countries located in its immediate neighbourhood. They include:

- the urgent need to abolish the death penalty for some categories of individuals, including minors and the mentally-disabled/ill;
- the issue of covert capital executions, by which the death penalty is executed in secrecy, without any transparency and without providing information to the public and to the family concerned (this is a problem especially in China);
- the re-introduction of the death penalty in a number of countries: as Mr Marcenaro rightly recalls in his report, a growing number of countries have abolished the death penalty and less sentences of this kind are being issued; on the other hand, it should be said that some countries/entities have recently reintroduced the death penalty, including Afghanistan, India, Iraq, the Palestinian territories and Sri Lanka.

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