



Georgetown, Oct. 2010

1. I am here today not because of my activist work against death penalty, but because I am representing a NGO that aggregates over eight thousand judges and prosecutors from all over Europe, from Germany to Turkey, from France and Belgium, to Italy, Spain and Portugal, from Czech Republic to Poland, Cyprus, Serbia and Romania.

This NGO called MEDEL, meaning in French, "Magistrats Européens pour la Démocratie et les Libertés", is a part of the World Coalition against the Death Penalty and has been recognised by the European Council and by the European Union, and it is usually consulted about Justice and Fundamental Rights issues.

I am the deputy-chairman of this NGO and, in my own country, I am one of the Stand-In magistrates for the Portuguese General Attorney Office before the Supreme Court.

It has not been an accident for me to have been selected to represent MEDEL.

I have been chosen by my colleagues because my country – Portugal – was the first of the major old states in Europe to abolish the death penalty and to incorporate the abolition into its Constitution.

In fact, the death penalty was abolished in Portugal by a legislative Act passed on the first July 1864.

However, even earlier, since April 1846, nobody had been executed in Portugal, the last execution of a woman having taken place on the first July 1772.

For military crimes, the death penalty would be later abolished on the sixteenth March 1916.

Even under the right wing dictatorship regime ruling Portugal from 1926 to 1974, governments never tried, officially, to reintroduce the death penalty.

So, as a Portuguese citizen, I am proud to say that I represent here the oldest European tradition of the more active radical humanitarian politics.

I also represent those prosecutors and judges that never, in their professional life, would even imagine to ask for or to condemn someone to the death penalty.

2. As a prosecutor I have taken part in many court trials of murder crimes.

Our legal system offers many guarantees to those that have been accused. I can even say that it is easier for someone who committed a crime, to be acquitted than for an innocent person to be condemned by a crime that he or she did not commit.

However, once in my life, I felt strong doubts about the justice of the sentence that I had demanded against a man accused of a murder.

Obliging to a defence strategy, the accused decided to remain silent throughout the trial.

I had no doubts whatsoever that he had taken an active part in a conspiracy to kill a man, a strategy that led to someone being murdered.

I had no doubts, also, that he had committed some acts to achieve the result of having the targeted man killed.

I was sure he belonged to a Ndrageta «commando» that was sent on a mission to kill another criminal that was a refugee in Portugal, after he had betrayed his criminal organisation.

So, my doubts were only about whether he had actually been the killer, the one that had directly shot at the victim.

Of course, according to our law, the penalty sentence might be different whether he was the murderer or just an accomplice.

He was convicted as having been the man who fired the gun.

That night I could not sleep.

Yes, I knew he was a dangerous criminal, but I was not completely sure about his specific action and participation in the crime.

His total silence during the trial could mean that he was trying to hide someone else. That frequently happens to those that belong to this kind of criminal organisations.

And what might have happened if the death penalty had been the sentence instead of the actual twenty-five years in prison that he got?!

3. If the problem of making mistakes during the trials is the most important and evident argument against the death penalty, however, we must not forget other significant and perhaps essential objections.

First of all, we must put into question the right of the State to decide to kill a person, even if the death penalty is written into the law. In fact, the death penalty is as cruel as murder crime. Why can we give the State the right to do something that we think it is wrong?

Besides, we all know how the law can be unfair and also used without justification to achieve the worst political purposes.

Second, nobody can assure that the death penalty can contribute to reduce the number of most horrible crimes: in Portugal we have, without the death penalty, one of the lower statistics of violent crimes.

Third, the death penalty does not allow for reconciliation and pacification of society. On the contrary, it encourages revenge feelings.

Fourth, the death penalty does not allow for rehabilitation of the criminal soul and personality under the civilized values of society.

Who, as a professional of legal matters, does not know someone who having committed a crime and met a prison sentence, has, later, been re-

educated, therefore changing his mind and behaviour according to the values of our society and to become a good and law abiding citizen?

3. The circumstances of a crime are, sometimes, more relevant than the crime itself. I can remember here the political atmosphere in Portugal after the democratic revolution of 1974 that had led to some political violence and organized terrorism that even had led some people to commit political murders. After some years in prison, Parliament approved a general amnesty, because it was thought to be politically important and the right moment to bring Portuguese society to full peaceful and democratic normality.

I can assure you that all those involved are now completely integrated in our society and many of them have an entirely normal life. Some of them have publicly admitted to their crimes, and more important, the complete mistake of their actions.

The testimony of those men and women was much more effective to dissuade their potential followers, than if they had been sentenced to death. Had they been death sentenced, arguably, they could have become martyrs and a symbol for political heroism; possibly, terrorism would continue, but I can assure you, that in my country, as consequence of those kinds of extremely radical ideas, it's completely finished.

It was the capability and sensibility of the Portuguese authorities to think and to act in a different way that has allowed us to establish, until today, the political settlement of our society.

That is the most important aim of criminal law policies.

Spain and Italy, for instance, have been dealing with terrorism for the last few decades without falling into the temptation to reintroduce the death penalty. Only the moral superiority of democratic and humanitarian criminal law can defeat terrorism.

4. Those courageous countries' example of criminal law policies against terrorism made it possible, that, nowadays, all the international courts statutes do not consider the possibility of including the death penalty.

The abolition of the death penalty seen in those treaties has happened even for crimes that, before, nobody, in many signatory countries, thought possible to punish without such extreme penalty.

So, we can say that the feeling of the international law community is changing and this change can contribute also to changing the policies in those countries that, until now, have not made this humanitarian step forward.

Is not by chance that the European Union has inscribed as a particular aim for the coming years on the European Instrument for Democracy and Human Rights – a plan to develop human rights, democracy and the rule of law around the world – the end of the death penalty in every country.

Indeed, the very first human right is the right to live.

To have the capacity to ensure the right to live as a fundamental right for each individual, even for those who did commit serious crimes, is the key to change people's mentality on war, terrorism and violence.

So let me finish quoting from French writer Victor Hugo when he wrote on knowing about the abolition of the death penalty in Portugal:

"The death penalty has been abolished in that noble Portugal, small country with a great history (...) I send my congratulations to your nation. Portugal sets the example to Europe. (...) Death to Death. War to War. Long live life! Hatred to hatred. Freedom is a huge city where we are, all of us, fellow citizens".

A. Cluny

