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Tóth J., Zoltán¹

**The post-abolition era in Hungary:
Endeavours and political intentions to reintroduce capital punishment**

Introduction

In Hungary, capital punishment was abolished not by the Parliament but (in a way unique in the history of law at that time) by the Constitutional Court, just a few months after its formation, as one of its first decisions. However, this did not meet the agreement of the majority of Hungarian citizens or the will of politicians. Numerous polls have shown that the majority of people disagreed with the abolition of the death penalty, which has led to several referendum initiatives to restore it.

As Hungary has meanwhile become a party to two international conventions prohibiting capital punishment, restoration was not legally possible; nevertheless, the topic has come up in public debates from time to time. Politicians also heard their voices on this issue on a regular basis; a common feature of most of these manifestations is that they took place after murders that outraged the public and were born essentially for political gain. Thus, one of the favorite, recurring themes of political populism was the demand for the reinstatement of this legal institution, although it seemed clear to everyone that reinstatement was not possible due to international legal obligations, nor was justified in light of declining number of homicides.

In fact, *since the beginning of the 2000s, the number of homicides has been gradually decreasing, and today only half as many homicides are committed each year in Hungary as in the 1980s* when regulations concerning the penalty of death were still in force in Hungary. Following the presentation of the constitutional reasons for the abolition, the events of the referendum initiative to restore the death penalty, and the major former Hungarian opinion polls, the present paper basically undertakes to review and analyze the manifestations of political populism related to the issue of capital punishment. In this connection, it goes through which politicians spoke out about the death penalty, and when and under what circumstances.

Overall, the study concludes that in the vast majority of cases the topic did not come up in a professional context, but *purely as part of political rhetoric*, often in the context of statements *whose content was contrary to the statistical facts*. This, however, did not serve either a fair professional debate on the death penalty or the purpose of informing people with authentic data.

I. The abolition of capital punishment in Hungary²

In Hungary, the idea of abolition of capital punishment emerged in the 1980s,³ when a debate regarding the adequateness of the death penalty commenced. Eventually, the abolition of capital punishment took place in 1990, right after the end of the political transformation, that is, the transition from state of socialism to democracy. This abolition was performed in a special

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² For the history of abolition of capital punishment in Hungary and the debates over this issue, see in detail: Zoltan J. Toth: *Changing Attitudes Towards the Death Penalty: Hungary's Renewed Support for Capital Punishment*. (DOI 10.1007/978-3-030-47557-4). Palgrave Macmillan, Cham, Switzerland, 2020, p. VI, 212.

³ See: Zoltan J. Toth: *The Last Three Decades of Capital Punishment in Hungary: The Process of Abolition between 1961 – 1990*. *Journal on European History of Law*, Vol. 10, 2019, No. 1, pp. 134-148.

and unique way: for the first time in the legal history, it was implemented not by an act or through the text of the state's constitution,⁴ but following a decision by the Constitutional Court declaring this legal institution to be contrary to the regulations of the Constitution. Later, however, some states followed this example, namely, in the Republic of South Africa,⁵ in Lithuania,⁶ in Ukraine⁷ and partly in Moldova⁸ the death penalty was also abolished by their Constitutional Courts instead of legislative acts.

Due to a widely spread misunderstanding, some believe that in the USA the Furman decision in 1972 also declared capital punishment unconstitutional, though, in fact, this was not the case. In *Furman v. Georgia*⁹ the Supreme Court of the United States declared the death penalty, as then administered, and not *per se*, unconstitutional across the USA, because, on the one hand, it was in breach of the Eighth Amendment's ban on cruel and unusual punishment, since imposing of the death penalty was 'arbitrary and capricious', and, on the other hand, it violated the Fourteenth Amendment's equal protection clause, as well.) Nevertheless, this Supreme Court decision did not prevent state courts from imposing capital punishments on those found guilty of capital offenses, and what is more, state legislatures began creating new laws that complied with the requirements of the Furman decision. Especially the three pro-death penalty pioneers, Florida, Texas and Georgia, were particularly keen on enacting new death penalty statutes, which would fulfil the demands prescribed by the Supreme Court of the United States in *Furman*.¹⁰ In 1976 a new era has started when in *Gregg v. Georgia*¹¹ the Supreme Court ruled that those death penalty statutes which let the jury a discretionary power to decide whether a guilty defendant has to be sentenced to death or not (the so-called 'guided discretion death penalty statutes') could be constitutional. This latter decision restored the applicability of the death penalty, however, from these it follows that the Furman decision had never declared the death penalty as such unconstitutional in the United States.¹²

As indicated above, the Hungarian Constitutional Court declared capital punishment

⁴ As was the case in most countries which has abolished the death penalty. See, e.g.: Zoltán J. Tóth: The Abolition of Capital Punishment in the major Countries of Europe. Journal on European History of Law, Vol. 8, 2017, No. 2. (ISSN 2042-6402), pp. 77-86.

⁵ In South Africa, the Supreme Court (which is an ordinary court with the right to review the constitutionality of laws) declared the death penalty unconstitutional on June 6, 1995. (Cf.: The State versus T. Makwanyane and M. Mchunu, S. v. Makwanyane and Another (CCT3/94), 1995. ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391, 1996, 2 CHRLD 164; 1995 (2) SACR 1 (6 June 1995).) Although it formally did not erase the regulations on capital punishment from the South African laws, it made practically impossible for state authorities to impose and execute capital punishment. Ultimately, in 1997, the Criminal Law Amendment Act formally abolished the unconstitutional stipulations regarding the death penalty.

⁶ In Lithuania, the Constitutional Court also ruled it unconstitutional on December 9, 1998 followed by a legislative corroboration in the same month, which formally modified the Lithuanian criminal code and another bill was passed which turned death sentences into life imprisonments.

⁷ In Ukraine, the Constitutional Court declared the death penalty unconstitutional on December 29, 1999. However, in order for this decision to be effective even formally, it had to be strengthened by the Ukrainian Parliament as well. It was done on February 22, 2000. Cf.: Wohlwend, R.: The Role of the Council of Europe's Parliamentary Assembly, p. 74.; Hood, R. (ed.): The Death Penalty – Beyond Abolition. Council of Europe Publishing, 2004, Strasbourg, pp. 65–85.

⁸ In Moldova the legislative body removed this sanction from the statutes in 1995 (this act entered into force in 1996), abolishing the death penalty. In 2005, the Constitutional Court of Moldova approved an amendment to the Moldovan Constitution, which declared capital punishment unconstitutional. Consequently, from that time it cannot be revived in a statutory level (which was not true between 1996 and 2005).

⁹ *Furman v. Georgia* (408 U.S. 238). This case consists of virtually three different cases (*Furman v. Georgia*, *Jackson v. Georgia*, and *Branch v. Texas*) known jointly as *Furman v. Georgia*.

¹⁰ See in detail: Most Death Penalties Are Unconstitutional: *Furman v. Georgia* (1972). Bedau, H. A. (ed.): The Death Penalty in America. Oxford University Press, 1982, pp. 253–270.

¹¹ *Gregg v. Georgia*, 428 U.S. 153 (1976).

¹² See in detail: The Death Penalty Is Not Per Se Unconstitutional: *Gregg v. Georgia* (1976). In: Bedau, H. A. (ed.). The Death Penalty in America. Oxford University Press, 1982, pp. 271–288.

unconstitutional immediately after the transition to democracy, by the Constitutional Court Decision No. 23 of 1990 (October 31) on an 8 to 1 vote.¹³ In making this decision, the Court completely disregarded empirical, criminological, and other professional arguments and made only a fundamental rights consideration.¹⁴ The primary and formal cause of it was that it, according to the majority of the court, violated the right to life and human dignity of every person.¹⁵ Due to Article 54 para. (1) of the then Constitution, in the Republic of Hungary every human being had the inherent right to life and human dignity, of which no one should be arbitrarily deprived. The court deemed that the legal regulations concerning capital punishment were in conflict with this constitutional provision and, therefore, had to be ruled unconstitutional. The curiosity of the reasoning of the decision was that the court stated that the right to life and the right to human dignity constitute an independent substantive right which differs from both the right to life and the right to dignity. According to this reasoning, “[h]uman life and human dignity form an inseparable unity and have a greater value than anything else. The rights to human life and human dignity form an indivisible and unrestrainable fundamental right which is the source of and the condition for several additional fundamental rights. ... The rights to human life and dignity as an absolute value create a limitation upon the criminal jurisdiction of the State.”¹⁶

However, the stipulation of Article 54 allowed, in theory, taking someone’s life on a non-arbitrary basis, but the court interpreted it in the light of the Article 8 para. (2), which regulated that the basic meaning and content of the inviolable and inalienable fundamental human rights may not be restricted by law. For Article 54 contained such a special right, the limitation of the right to life and human dignity was prohibited by the Constitution. And since permitting and regulating capital punishment in the statutes not only imposed a limitation upon the essential meaning of the fundamental right to life and human dignity, but also allowed for the entire and irreparable elimination of life and human dignity or of the right ensuring these, therefore the Constitutional Court established the unconstitutionality of these provisions and declared them null and void.¹⁷

The one and only dissenting opinion was that of Justice *Péter Schmidt*. Nevertheless, even he agreed with the uselessness and inhumanity of the death penalty, but deemed that the

¹³ For a detailed case analysis, see: Zoltán Tóth J.: Decision 23/1990 (X. 31.) AB – Death Penalty. In: Fruzsina Gárdos-Orosz – Kinga Zakariás (eds.): The main lines of the jurisprudence of the Hungarian Constitutional Court. 30 case studies from the 30 years of the Constitutional Court (1990 to 2020). Nomos Verlag, Baden-Baden, Germany, 2022, pp. 45-60.

¹⁴ For arguments about the applicability, correctness, or unnecessary nature of the death penalty in Hungarian jurisprudence, see in detail: Toth J., Zoltan: The Capital Punishment Controversy in Hungary: Fragments on the Issues of Deterrent Effect and Wrongful Convictions. *European Journal of Crime, Criminal Law and Criminal Justice*, Volume 21, Issue 1, 2013, pp. 37-58.; Toth J., Zoltan: The Contemporary Debate on Capital Punishment – with Special Regard to that in Hungary. „Krytyka Prawa” („The Critique of Law”), tom 10, nr 3/2018, s. (pp.) 136–158. Internet: https://journals.kozminski.edu.pl/system/files/Toth_3_2018_EN.pdf For the theory of deterrent effect and its (non-)realization in Hungary, see: Zoltán J. Tóth: The Alleged Deterrent Effect of Capital Punishment for Murders: Myth or Reality? In: Eva Brucknerová – David Čep – Katarína Kandová – Jiří Valdhans (eds.): *Dny Práva 2019 / Days Of Law 2019. Část III. Juristické, Kriminologické a Kriminalistické Aspekty Trestných Činů Proti Životu a Zdraví. Sborník z konference. Acta Universitatis Brunensis Iuridica Editio Scientia. Masarykova Univerzita, Brno 2020*, pp. 392-404. Internet: <http://dnyprava.law.muni.cz/dokumenty/53440>

¹⁵ See in detail: Toth J., Zoltan: The Right to Life and Human Dignity in Hungary Concerning the Issue of Capital Punishment. In: *Constitutional Values in Contemporary Legal Space I. (Collection of Research Papers in Conjunction with the 6th International Scientific Conference of the Faculty of Law of the University of Latvia, 16–17 November, 2016)*. University of Latvia Press, University of Latvia (Latvijas Universitate), Riga, 2016 (ISBN 978-9934-18-185-6), pp. 520–531. Internet: https://dSPACE.lu.lv/dspace/bitstream/handle/7/34934/Juridiskas_fakultates_6konf_1d_2016.pdf?sequence=1&isAllowed=y

¹⁶ CC decision 23/1990. (X. 31.) AB [ABH 1990, 89, 93.]

¹⁷ CC decision 23/1990. (X. 31.) AB [ABH 1990, 89, 92.]

Constitutional Court had no power to dissolve a collision between contradictory constitutional rules, since it was the Parliament's exclusive right and obligation. As he wrote: “[w]hile the interpretation of the Constitution falls within the competence of the Constitutional Court, it is the right and obligation of the Parliament, the body empowered to frame or to change the Constitution, to resolve the conflict between the provisions of the Constitution. Such powers may not be assumed by the Constitutional Court. Therefore, in my opinion, the Constitutional Court should state that it lacks such a power, and should call the Parliament's attention to the necessity of eliminating the conflict. This would not exclude the possibility for the Constitutional Court to list all the current arguments against capital punishment.”¹⁸

Evaluating the Constitutional Court ruling as a whole, with this decision and its reasoning the Constitutional Court, in considering the constitutionality of the death penalty, avoided having to adopt an opinion in the legal-political debates, yet its decision is questionable from other aspects. The inseparability thesis stems from the monistic concept of man, that is, the unity of body and soul (as, according to the Constitutional Court, there is no life without dignity and there is no dignity without life), which (the monistic concept of man) is contrary to the principle of ideological neutrality of the State. The dualistic concept of man (life is expendable in order to preserve dignity), as opposed to the monistic approach, would be in accordance with the ideological neutrality of the State, because the dualistic constitutional approach does not preclude any individual from living his or her life according to the monistic concept of man as a guiding principle, but the monistic constitutional approach excludes the individual decision to live life according to the dualistic approach.¹⁹ The inherent shortcomings of the monistic concept of man, however, arises not primarily in the assessment of the death penalty, but instead in a situation when a possibility of choosing euthanasia emerges. The ideologically neutral dualistic concept of man let anybody choose both life over death and death over life, but the ideologically biased (typically religious) monistic concept (that is, that body and soul, or life and dignity are inseparable from each other) does not let people make this choice and thus force the former one for them, whether or not they want it. For example, in the practice of the German Constitutional Court (*Bundesverfassungsgericht*) the dualistic approach prevails and the right to life is not considered as an absolute and unrestrictable value; the only absolute value is human dignity, conceptionally separated from the value of and right to human life.²⁰

The problem with the reasoning of the CC Decision No. 23 of 1990 is that it is consciously based on questionable moral ethics (and these problems were also revealed in the reasoning of the CC Decision No. 22 of 2003 on euthanasia), albeit it would have been an obvious solution for the Constitutional Court to declare the death penalty unconstitutional on the basis of that it was in breach of Article 54 para. (2) of the Constitution, which stated that “[n]o one shall be subjected to torture, to cruel, inhuman or degrading treatment or punishment”. Considering that the death penalty is undoubtedly a cruel and degrading punishment, a reasoning based on this consideration would have been sounder and less debatable.²¹

¹⁸ CC decision 23/1990. (X. 31.) AB [ABH 1990, 89, 94–95.]

¹⁹ For gains and problems of the so-called “inseparability thesis of the right to life and human dignity” see, e.g.: Uitz, Renáta: Lessons from the Abolition of Capital Punishment in Hungary: A Fortuitous Constellation Amidst and Beyond Democratic Transition. *Acta Juridica Hungarica*, 45 Nos 1–2, pp. 67–99 (2004).

²⁰ See, e.g.: BVerfGE 39, 41 (1975).

²¹ For a criticism of the Constitutional Court's monistic concept of man, see: Toth J. Z. The Past and Future of the Inseparability Thesis in the Light of the old Constitution and the new Fundamental Law [Az oszthatatlansági doktrína múltja a régi Alkotmány, és jövője az új Alaptörvény fényében]. Drinóczi, Tímea – Jakab, András. (eds.): *Alkotmányozás Magyarországon [Constitutionalization in Hungary]*. Vol. 1. Pázmány Press, Budapest–Pécs, 2013, pp. 275–304.

II. Public opinion on the death penalty in Hungary²²

The Hungarian people did not agree at all with the abolition of the death penalty in Hungary as a result of the Constitutional Court's decision. After the abolition of capital punishment several nation-wide representative surveys were conducted in Hungary about the opinion of the population regarding this legal sanction. The first one was made by Szonda Ipsos right after the publication of the Constitutional Court's judgment in 1991. It concluded that 77.2% of adult Hungarian population opposed the abolition of capital punishment, which means that more than three-quarters of people supported capital punishment. Only 20.4% supported abolition (which means that only one-fifth of Hungarians opposed capital punishment), and 2.4% did not answer.²³

In 2001 the TÁRKI Institute made another survey about this issue; according to the results in the first year of the third millennium 68% of the Hungarian population would agree with the application of capital punishment. (This data was collected within the *Central European Opinion Research Group* – CEORG and the same question was asked at the same time in the Czech Republic, Poland and Lithuania, which allowed the comparison of the results. Based on this it may be concluded that the Hungarian attitude about capital punishment is general in the region, because even though only 58% of the Czech agreed with the possible restoration of capital punishment, 76% of Lithuanians and 72% of Polish supported it.)²⁴ This survey also concluded that there is a reverse proportionality between the support of capital punishment and satisfaction with public safety and work of the police, which means that the safer one feels, the less they support the maintenance or restoration of capital punishment.

The third survey was made in March 2005 when Medián Public Opinion and Market Research Institute measured the opinion of the population about capital punishment on a representative sample of 1,200 people. According to this two-thirds of Hungarians definitely supported capital punishment: 63% would consider it acceptable even in peace, while 7% would not allow it in peace, only in wartime. Only 28% said that they would not accept it at all, and 2% could not or did not want to answer. The next representative survey was also made by Medián upon the request of HVG, a popular weekly, between 3-7 December 2010 on a sample of 1,200 people. To the question „Would you rather support or rather oppose the application of capital punishment in serious crimes?” 69% said „rather yes”, 27% said „rather no”, while 4% could not answer.²⁵

In December 2015, Szonda-Ipsos again conducted a large-scale survey in Hungary on a representative sample of 1,000 people. *István H. Szilágyi* and *György Gajdusчек* re-analyzed the data of this survey in 2017 in order to determine the attitude towards crime in Hungary.²⁶

²² For a more detailed analysis, see: Zoltan J. Toth: The Public Opinion about the Death Penalty in Hungary and Worldwide: What Do Polls on Capital Punishment Show? (DOI: 10.7206/kp.2080-1084.404) *Krytyka Prawa* (The Critique of Law. Independent Legal Studies), tom 12, nr 3/2020, pp. 214–232. Internet: https://journals.kozminski.edu.pl/system/files/Krytyka%20Prawa%203_2020_e-book_r14.pdf

²³ Cf.: Firon, András: Káinbélyeg. [Mark of Cain.] Panoráma Kiadó, Budapest, 1991, pp. 128-129.

²⁴ Cf.: Társadalomkutatási Intézet Rt.: Közép-európai közvélemény: Lakossági vélemények a közbiztonságról és a halálbüntetésről a közép-kelet-európai országokban. [Central European public opinion: Public opinion on public safety and the death penalty in Central and Eastern European countries] In: <http://www.tarki.hu/adatbank-h/kutjel/pdf/a556.pdf/>

²⁵ Cf.: Hann, Endre – Lakatos, Zsuzsa: Nem kényszer, hanem... Felmérés az alkotmányozásról [Not a compulsion, but ... A constitutional survey]. In: HVG, 2010, 51-52, (December 25 2010), pp. 14-16.

²⁶ Cf.: H. Szilágyi, István – Gajdusчек, György: Nevelés és büntetés. A büntetési igény alakulása a magyar lakosság jogtudatában az újabb hazai empirikus kutatások fényében, különös tekintettel a nevelési elvek hatására. [Education and punishment. Evolution of the need for punishment in the legal consciousness of the Hungarian population in the light of recent Hungarian empirical research, with special regard to the effect of educational principles.] MTA Law Working Papers, MTA/Hungarian Academy of Sciences, 2017/7, jog.tk.mta.hu/uploads/files/2017_07_HSzilagy_i_Gajdusчек.pdf

H. Szilágyi and Gajduscek asked a four-item question regarding capital punishment in this questionnaire. Two of them were in support of the death penalty, and two of them were in opposition thereto, asking also the basic reasons of people's opinion. This allowed respondents to choose why they support the death penalty, or why they oppose it and, in both cases, for what reason. There are two reasons for this: utilitarian or moral. Based on this, respondents had to choose one assertion from the following statements that they considered most appropriate and closest to their views. 1) The death penalty is meaningless because it has no deterrent effect. 2) The death penalty is unacceptable because the state has no right to kill anyone. 3) The death penalty should be reinstated as this would be the fairest punishment for the most serious crimes. 4) The death penalty should be reinstated, as it would protect society from incurable criminals.²⁷ 13.2% of respondents opted for the first statement, while 26.7% opted for the second, which is approximately 40% (39.9% to be exact) in favor of the abolitionist position. Compared to this, 31.5% of the respondents voted in favor of the third assertion and 23.8% voted in favor of the fourth, meaning that about 55% in total (55.3% to be exact) proved to be proponents of capital punishment. (48 persons, ie 4.8% of respondents were unable or unwilling to answer.)²⁸

Interestingly, looking at the reasons for the answers it can be seen that 37% formed their opinions in a pragmatic-utilitarian, and 58% in a deontological-ethical ground (either pro or con). That is, in terms of the attitude towards the death penalty in Hungary, there is a slight majority of respondents who express their views on a theoretical, moral basis, and a minority of those who form their views on a utilitarian ground. H. Szilágyi and Gajduscek also found that neither gender nor age plays a role in what one thinks of the death penalty (which is somewhat surprising according to a large number of US surveys to the contrary), but that income (and, we might add, presumably the school education which might correlate with the level of income) already has an explanatory role: the higher one's income (and most likely his or her educational background) is, the less likely he or she is to support the death penalty.²⁹

The last survey was conducted specifically for scientific research, led by *László Kelemen*; this was done in November and December 2018, also on a representative sample of one thousand people.³⁰ The results of this survey are very similar to those of H. Szilágyi and Gajduscek. Kelemen used the same items as H. Szilágyi and Gajduscek. 18% chose the death penalty as meaningless because it has no deterrent effect. 22% thought the death penalty was unacceptable because the state has no right to kill someone. 30% believed that the death penalty should be reinstated because this would be the fairest punishment for the most serious crimes; and 24% thought that the death penalty should be reinstated because it would protect society from incurable criminals. Overall, 40% of those surveyed were abolitionists and 54% were in favor of the death penalty. (6% of respondents did not answer.)³¹

There was a significant difference between the respondents in terms of gender and highest level of education. While 58% of the men who substantively responded to the answer said the death penalty should be reinstated, only 50% of women thought so. The difference is even more spectacular in terms of educational attainment: of those who have not completed elementary school, of those who have completed it but have not completed their profession or their baccalaureate, and of those who have completed high school (but not college or university), 57, 55 and 56 percent, respectively, supported capital punishment. This proportion, however, was only 42% among college graduates and only 38% among university graduates.³²

²⁷ Cf.: op. cit., p. 3.

²⁸ Ibid.

²⁹ Cf.: op. cit., p. 6.

³⁰ Cf: H. Szilágyi, István – Kelemen, László: Miként vélekedünk a jogról? [How do we feel about the law?] HVG-ORAC, Budapest, 2019

³¹ Cf.: op. cit., p. 146.

³² Cf.: op. cit., p. 155.

It may be seen from all these figures that the Hungarian public has always been in favor of the most severe criminal sanction, even though the rate of support has been slowly but steadily declining since the early nineties, and today just over half of the Hungarian people advocate the reinstatement of capital punishment.

III. Attempts to reintroduce the death penalty by referendum

There was quite a long period when the death penalty has not been a key issue of politics in Hungary. As mentioned earlier, it was not the politicians who incurred the odium of the abolition of the death penalty after the regime change; had the Constitutional Court of Hungary not declared death penalty unconstitutional, probably none of the political parties would have taken any actions for long years (at least until Hungary's accession to the European Convention on Human Rights), due to the fear of losing votes. In the '90s, Tamás Tóth, the mayor of a settlement in Hungary (Sárszentmihály) was the only person who directed public opinion to the death penalty: he collected signatures for a referendum on whether the death penalty should be reintroduced in Hungary or not.

After his son was murdered in 1992, *Tamás Tóth* became the most determined devotee of the reintroduction of the death penalty in Hungary. In 1997, he commenced the collection of signatures so that the National Assembly would order a referendum on the question of the reintroduction of the capital punishment. For the first time on 26 November 1997, and later on several occasions, Tóth submitted the collected signatures, but the National Election Commission – the body certifying the questions for referenda (and thereby giving permission to holding them) – did not examine the signatures. On 6 October 1998, Tamás Tóth submitted a new set of signatures to the NEC, and asked for the examination thereof. The request was rejected by the NEC in its resolution 88/1998. (XI. 20.) based on two formal grounds.

The first ground was that the initiator had not submitted the sample signature sheet and the question thereon preliminarily (i.e., prior to commencing the collection of signatures) in order to get it verified (thus, a formulated question that could be asked in a referendum did not even exist in practice), which verification would have been a compulsory formal requirement pursuant to Act III of 1998 on national referenda and popular initiatives. The other ground was the expiry of the four-month period prescribed in the Constitution (Article 28/E in Act XX of 1949) for the initiation of a referendum. The said provision was enacted by Article 4 in Act XCVIII of 1997 with effect from 31 October 1997, and was applicable also in pending cases from that time, pursuant to Article 6 (3) in the same Act. Thus, the time available for the initiator expired on 28 February 1998, so the certification of the (actually not existing) “question” was not possible either due to the exceeding of the deadline.

On 22 December 1998, exploiting the experiences gained from the resolution's reasoning and not giving up his goals, Tamás Tóth requested the NEC to certify the following question initiating the temporary reintroduction of the death penalty: “I request the National Assembly to establish the legal conditions under which the death penalty can be reintroduced temporarily.” The NEC adjudged the motion at its session held on 14 January 1999 and, this time on substantial aspects, rejected it with its resolution 1/1999. (I. 14.). The first and most important substantive ground was that the Constitution prohibited the posing of that question, since “no national referendum may be held on any obligation arising from international treaties and on the content of the Acts on that obligations” pursuant to Article 28/C (5) b) therein. Since both treaties concerned – i.e. the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (European Convention on Human Rights, shortly Rome Convention) with the Protocol No. 6 concerning the abolition of the death penalty thereto, and the Second Optional Protocol to the International Covenant on

Civil and Political Rights, also prohibiting death penalty as a punishment in case of offences other than war crimes – were enacted by the National Assembly (Act XXXI of 1993 and Act II of 1995), a referendum on the question of the reintroduction of the death penalty would be unconstitutional.

As regards the second, less important substantive ground, the NEC pointed out that the clarity requirements were not met. According to NEC, the actual intention of the majority of the people cannot be determined only on the basis of ‘yes’ or ‘no’ responses to the question, as the sentence indicated on the signature sheet contains no information on what the National Assembly’s obligation would be after the referendum. Pursuant to the resolution: “When a referendum on the question of the reintroduction of the death penalty could be held and the answer to the question on the signature sheets was ‘yes’, the National Assembly could decide either to denounce effective international treaties, or to reintroduce the death penalty only in the limited scope provided by such treaties. In both cases, however, there is a possibility of a decision that is contradictory to the true will of the citizens, which will is actually not expressible in the referendum.”

Finally, the third, also substantive, ground of the rejection was that, on the basis of its content, the sentence indicated on the signature sheet qualified as a request and not as a question, thus, it might serve as basis for a so-called popular initiative, but not for a referendum. (Popular initiatives do not oblige the National Assembly to make a positive decision on the concerned question but only to examine and discuss it).

The applicant tried to modify his motion on the basis of the NEC’s resolution 1/1999. (I. 14.) considering the facts specified therein and submitted it to the National Election Committee for certification once again. This time, he attached six various sample signature sheets, indicating six questions with the same content but with different wording. The questions aimed at the National Assembly to establish the legal conditions under which the death penalty could be temporarily reintroduced in case of serious crimes against life. This motion was adjudged and, again, rejected by the NEC with the resolution 8/1999. (III. 29.). As ground for rejection, the NEC concluded again that the questions were contrary to the prohibition stipulated in Article 28/C (5) b) in the Constitution. The aforesaid international treaties, which had become part of Hungary’s legal system, prohibited the application of the death penalty for offences against life other than war crimes, i.e., the very offences the initiator proposed the temporarily reintroduction of the death penalty for. These treaties tolerate the application of the death penalty only in case of the most serious crimes committed during wartime, but the request did not seek to establish the possibility of application of the death penalty for this type of crimes. The other, less important failure (as it could be easily eliminated) that served as basis of rejection was that Tamás Tóth requested not only one question to be certified but submitted more potential questions to the NEC, so that it would sort out the one to certify. The NEC concluded that it was not entitled to such a procedure; it was the duty of the initiator to word the specific question being proposed for referendum and the NEC was only entitled to judge whether it was lawful and could be asked in a referendum.

Finally, the decision 11/1999. (V. 7.) AB of the Constitutional Court of Hungary clearly stated that, due to the undertaken international law obligations, the reintroduction of the death penalty was not possible in Hungary, which decision affirmed the NEC’s prior reasoning according to which the reintroduction of the death penalty was contrary to effective international treaties, thus, no referendum could be held on that issue. Therefore, it has been unquestionably established that the death penalty cannot be applied in Hungary in any form or extent under the current circumstances.

It remains so to this day, despite the fact that neither the previous Constitution (effective until 31 December 2011) nor the new Fundamental Law (effective from 1 January 2012) included a so-called death penalty clause. Although the Fundamental Law has no specific

provision on the death penalty, other constitutional provisions currently exclude the reintroduction thereof. Pursuant to Article II therein, “every human being shall have the right to life and human dignity”. Article III (1) provides that “no one shall be subject to torture, inhuman or degrading treatment or punishment”. Pursuant to Article Q) (2), “in order to comply with its obligations under international law, Hungary shall ensure that Hungarian law is in conformity with international law”, which can be achieved only through adapting the Hungarian law to international law and not in reverse. A further implicit prohibition regarding the death penalty can be found in Article XIV (3) in the Fundamental Law: “no one shall be expelled or extradited to a State where there is a risk that he or she would be sentenced to death, tortured or subjected to other inhuman treatment or punishment.” Thus, following the logic of the principle of *argumentum a minori ad maius*, if the less, namely the extradition, is prohibited (due to the *risk*, the mere *possibility*), a larger or a more serious act obviously has to be also prohibited, i.e. neither imposing nor execution of death penalty is allowed in Hungary. Holding a referendum on death penalty is forbidden by Article 8 (3) d) in the Fundamental Law saying that “no national referendum may be held on any obligation arising from international treaties”.

IV. Politics entering into a professional field

Despite all the aforesaid, in the 2000s, there were several politicians making statements on that the reintroduction of death penalty would be necessary in order to tackle crimes against life. Most of these expressions followed serious offences, murders causing public outcry, and the obvious aim thereof was to get political gain, formulating opinions which are “likable” for voters. These expressions are the results of political populism, since, these politicians know exactly that, due to the aforesaid constitutional provisions and international law obligations, the reintroduction of the death penalty is currently not possible in Hungary. Far-right politicians and parties may be the only exceptions, since they do not wish to achieve only the reintroduction of the death penalty, but they also aim at other radical goals (such as possible termination of Hungary’s European Union membership and withdrawal from other international organizations).

Such far-right politicians raise the matter of reintroduction of the death penalty relatively regularly but mostly with slight response. For the sake of curiosity, here are a few examples.

After the elections of 2002, the national radical party *Jobbik* [Movement for a Better Hungary] established a working group on public safety, the leader of which, Gábor Vona – who later became also the leader of the party – formulated the opinion that it would be important to discuss the question of the death penalty. At the same time, *Ervin Nagy*, the then leader of *Jobbik*, told the magazine titled *Kapu* [Gate] that an important goal of the party was to initiate a public debate on the death penalty. Nagy said: “We know well that the European Union’s regulation and the Constitutional Court of Hungary do not allow the reintroduction of the death penalty. But we are saying that, looking at the senseless brutality of the crimes recently committed in Hungary, if the Hungarian people’s need arises to discuss the righteousness of the death penalty, then we should discuss it. We live in democracy – let the question be decided on the basis of the majority rule.”³³ In February 2006, Tamás Molnár, deputy leader of the party *Jobbik*, said in Debrecen at a campaign event (held together with *MIÉP* [Hungarian Justice and Life Party], the other far-right party and with *FKgP* [Independent Smallholders and Civic Party]) that the death penalty had to be reintroduced.³⁴ A few weeks later, the deputy leader of

³³ Gábor Szabó: “Öltöztessük nemzeti színekbe a világot!” Interjú Nagy Ervinnel, a JOBBIK elnökével. [“Let us dress the world in national colours.” Interview with Ervin Nagy, the leader of the party *Jobbik*] *Kapu*, 15 (2002:6-7): 21.

³⁴ *Magyar Nemzet*, 13 February 2006, p. 3.

the FKgP (the party allied with Jobbik) said the same.³⁵

In the course of preparing for the municipal elections held in autumn of 2006, repeating the point he made earlier, *Tamás Molnár* linked the death penalty to the phenomenon he had already referred to before as “gypsy crime.” He intended to strengthen public safety with a criminal policy that is rigorous in all aspects, since, in his opinion, the death penalty was the only mean against violent crimes. “According to Jobbik, only the harshest possible penalisation could lead to results against criminals, including gypsy offenders...”³⁶ In the rhetoric of Jobbik, the issue of death penalty arose again in October 2006, following a brutal lynching (*Lajos Szögi*, a 44-year-old teacher was murdered in a small village, Olaszliszka, after a local little girl ran across his car. The girl was not hurt, but the villagers, her relatives gathered around and beat Lajos Szögi to death after he got out of the car to help).³⁷ Inter alia, similar statements were made by *József Biber*, the then deputy leader of Jobbik (which later became a parliamentary party) in December 2007,³⁸ *Gábor Vona* (as party leader by that time) in December 2008³⁹ and *Levente Murányi*, deputy leader of Jobbik, in October 2009 (the latter talked about changing prisons into labour camps, too).⁴⁰

As a parliamentary party by that time, Jobbik (which won 17% of the votes cast in the parliamentary elections of 2010) proposed the reintroduction of the death penalty in the Parliament in 2011, but the pro-government majority voted against the discussion of the issue (neither the other proposals made therewith, such as the removal of the immunity and the recall of the MPs, were discussed). Afterwards, *Gábor Staudt* MP urged the reintroduction of the death penalty at different times,⁴¹ and, on behalf of Jobbik, *Ádám Mirkóczki* MP made a new proposal for resolution, stating that there is a need for a public debate on the question of the death penalty. (It is interesting that in his answer given to this parliamentary speech, Viktor Orbán, who previously (as discussed below) also brought up the reconsideration of the issue of the death penalty, said to Mirkóczki that “I can hardly imagine any rigorous legislation that could guarantee that no serious crimes will be committed”. He also added that whilst he agreed with the MP of Jobbik as regards several philosophical approaches, with accession to the European Union after the referendum thereon, Hungary accepted that the Member States are not allowed to introduce the death penalty).⁴²

During the campaign of 2014, the candidates of the party Jobbik went on with campaigning with the reintroduction of the death penalty and with advocating rigorous criminal policy in general (including e.g. the castration of offenders committing sexual offences).⁴³ In spring of 2015, after the murder of a young woman working in a tobacco-shop in Kaposvár, Jobbik initiated a parliamentary debate once again, but the centre-right majority voted against it (albeit several members of the governing party would have agreed with the suggestion personally).⁴⁴

Concurrently with moving away from the far-right and approaching the centre-right (the result of which was an election cooperation with the left-wing parties in the parliamentary elections of 2018 and municipal elections of 2019 in order to replace the governing conservative

³⁵ Vas Népe, 18 March 2006, p. 3.

³⁶ Vasárnapi Hírek, 9 July 2006, p. 4.

³⁷ At the commemoration of the tragedy, Csanád Szegedi, one of the prominent members of the party argued that the death penalty has to be reintroduced (Vasárnapi Napló, 29 October 2006, p. 2).

³⁸ Háromszék, 10 December 2007, p. 2.

³⁹ Népszabadság, 9 December 2008, p. 4.

⁴⁰ Népszabadság, 17 October 2009, p. 2.

⁴¹ Vas Népe, 13 August 2011, p. 2; Napló, 24 March 2012, p. 2.

⁴² Magyar Hírlap, 6 November 2012, p. 2.

⁴³ E.g., Lóránt Budai (cf.: Népszabadság, 8 January 2014, p. 2); János Árgyelán, leader of the party’s Fejér county Article (Fejér Megyei Hírlap, 21 January 2014, p. 2); Lajos Kepli (Napló, 5 April 2014, p. 5).

⁴⁴ Magyar Nemzet, 2 May 2015, p. 1.

parties, i.e., the *Fidesz-KDNP* [Fidesz-Hungarian Civic Alliance and Christian Democratic People's Party]), Jobbik gradually left the radical tone and withdrew the question of the death penalty from the public issues. These issues were made part of the public discourse once again by the *Mi Hazánk Mozgalom* [Our Homeland Movement], a body founded by the radical members excluded from or having quitted the Jobbik, which, from its foundation in 2018, wished to reach the radical right-wing voters who were left without political representation because of the Jobbik's efforts to become a people's party. Even before its official registration as a party, the *Mi Hazánk Mozgalom* made a stand that the death penalty had to be reintroduced. In addition, *László Toroczkai* – the leader of the movement and the later leader of the party –, beside suggesting a referendum on death penalty⁴⁵, raised the possibility of the detention of prisoners in foreign prisons⁴⁶ (later he specified it as “detention of prisoners in Siberian prisons” under a treaty to be concluded with Russia,⁴⁷ and he said that if the Jobbik would come to power in 2022, this institute would be used in case of “anti-fascists and right defenders”⁴⁸ as well). In January 2020, Toroczkai said that “the *Mi Hazánk Mozgalom* [Our Country Movement] initiates again the application of the death penalty, the preventive effect of which has been proved by research, in case of crimes committed with particular cruelty against the life of defenceless individuals, such as children and elderly people.”⁴⁹

Besides Jobbik, MIÉP was the other far-right party represented in the Parliament after the regime change. At the finish of the campaign before the elections of 2006, *István Csurka*, the then president of MIÉP (which was a parliamentary party at that time), made a statement on death penalty in response to a question concerning the issue in the popular morning television magazine titled *Nap-kelte*. In Csurka's opinion, the death penalty was abolished when it became clear that the regime would change and “the dirty villains who ordered and executed the shootings [in the course of the reprisal following the revolution of 1956] themselves escaped to this situation” (i.e., according to Csurka, the abolition of the death penalty was the creation of the communist nomenclature, in order to avoid the execution). To the question whether these people should have been hanged or not, he answered: “Damn sure, yes!”⁵⁰

Yet, death penalty was supported not only by far-right parties (still active ones with demonstrable backing from the society and old ones which no longer operate in effect), but (more or less) also by politicians of moderate parties.

Péter Boross, former right-wing prime minister (the second Hungarian prime minister after the regime change acting between 1993 and 1994, i.e. resigned just before the concerned statements) was one of the most illustrious persons who, in March 1995, in several fora, consistently represented the standpoint that the possibility of the reintroduction of the death penalty should be considered. He explained to the daily paper titled *Magyar Nemzet* that all of this was necessary having regard to the steadily deteriorating public safety (which indeed was reduced at that time), the increase in the number of crimes and the “general mood” resulting from these situations.⁵¹ His statement was not quoted word-for-word as an interview but the summary of its content was published, thus, the *Magyar Nemzet* interpreted his words as follows. According to the article, Boross explained that “he is aware that his statement will incense certain people. He also knows that the death penalty is contrary to the development of law in Europe, certain provisions of the UN and the decision of the Constitutional Court of Hungary, but he does not believe that this question cannot be discussed on the merits, having

⁴⁵ *Népszava*, 14 August 2018, p. 3.

⁴⁶ Cf. e.g.: *Napló*, 27 July 2018, p. 2.

⁴⁷ *Magyar Hírlap*, 8 January 2020.

⁴⁸ *Magyar Hang*, 21 May 2019.

⁴⁹ *Magyar Hírlap*, 8 January 2020.

⁵⁰ *Népszabadság*, 24 March 2006, p. 2.

⁵¹ *Magyar Nemzet*, 6 March 1995, p. 4.

regard to the present situations of the European law and the public safety. He stressed that he neither believes that the shock caused in the entire society by each horrible crime could be ignored. Boross also mentioned that according to surveys of the Ministry of Interior, 80% of the surveyed individuals would agree with the reintroduction of the death penalty which, according to him, could be applied in case of perpetrators of crimes against life. In his opinion, in the present situation, we cannot merely recite the dogma of what norms the death penalty is contrary to. Even if it is true, it cannot restrain decision makers from reconsidering the present legal practice, especially in cases of crimes like contract killings, child murders or killing a policeman during performing his duties, which crimes are serious and cause large panic”.⁵² In those days, he also explained in a television interview that “it is not about death harvesting from the judge’s bench. But it is about that ... crimes like contract killings or child murders or ... killing a policeman during performing his duties should be adjudged more rigorously.” (*Pál Vastagh*, the then [left-wing] minister of justice responded that reintroduction of the death penalty would entail the denunciation of international conventions which, regarding the rule of law, are more important than the death penalty, and, moreover, the death penalty is not the proper mean to prevent serious crimes.⁵³ In addition, he made a promise to review, later that year, the applicable imprisonment terms and to introduce a considerably longer [e.g. 50 years long] imprisonment term or whole life sentence in case of crimes against life. The latter was not realized during the ruling of the socialist-liberal government, since the whole life sentence was introduced in 1999 by the Orbán government.)

On 9 June 1996, *Gyula Horn*, the then left-wing (socialist) prime minister said at a party event on a weekend that a referendum was necessary on the question of the reintroduction of the death penalty and that he himself would vote for the reintroduction.⁵⁴ (However, it is also true that later *Pál Vastagh*, his minister of justice, added that in Hungary no referendum on the question of the death penalty could be held, unless Hungary exited the international conventions on human rights.)⁵⁵ Nevertheless, according to a report of *Népszava* – a newspaper close to socialist party – *Pál Filló*, a leader of the party representing the workers’ interest in MSZP [Hungarian Socialist Party] and *Ildikó Pécsi* MP (and also a famous actress) expressed their agreement with the opinion of Gyula Horn.⁵⁶ In the next few days, MSZP and the prime minister himself communicated that the statement was only the personal opinion of Gyula Horn, and that neither any governmental intention existed to hold such referendum, nor was it even possible. The situation had some further added features, since *Mihály Bihari*, MP of the party (later a judge and, between 2005 and 2008, the president of the Constitutional Court of Hungary) argued a few days earlier that the referendum on the death penalty might be considered because “it is better to previously address controversial issues, in order to relieve the final referendum on the Constitution”⁵⁷. (The mentioned new Constitution was not created). The same (i.e., holding a referendum on the death penalty) was suggested in her parliamentary speech by *Katalin Szili*, MP of the socialist party, later speaker of the National Assembly.⁵⁸

In April 1998, *József Torgyán* – leader of the party and the parliamentary group of then opposition FKgP (the coalition party of the winning Fidesz after the election) – proposed that the speaker of the National Assembly should convoke an extraordinary session, even before the elections, to discuss the Constitution’s amendment aiming at the reintroduction of the death penalty, to which motion 21 supporting signatures (from FKgP) were attached. After seeking

⁵² Ibid.

⁵³ Magyar Nemzet, 8 March 1995, p. 6.

⁵⁴ Új Magyarország, 11 June 1996.

⁵⁵ Népszabadság, 10 June 1996, p. 1.

⁵⁶ Népszava, 10 June 1996, p. 2.

⁵⁷ Magyar Nemzet, 7 June 1996, p. 5.

⁵⁸ Népszava, 6 June 1996, p. 2.

the opinion of the parliamentary groups, *Zoltán Gál*, the socialist speaker, rejected the motion as legally unfounded, since the ordinary session of the National Assembly was still ongoing and enough signatures (one fifth of the 386 MPs) were not attached. Otherwise, according to the speaker, the motion was an unserious campaign item, since during the few days remaining until the elections, it was impossible to discuss the question with the thoroughness appropriate to its importance.⁵⁹ On behalf of FKgP, *Zsolt Lányi* (who called himself a devotee of death penalty) reacted to the accusation of using campaign items and he rejected Gál's assertion, saying that his party had been continually calling for the reintroduction of the death penalty for more than one year then.⁶⁰

However, the most well-known statements made by politicians, which had wide (domestic and foreign) resonance, were related to the events of the recent years and to the leaders of the right-wing Fidesz, mainly to *Viktor Orbán* who is now (in 2022) already in his fifth term of office as prime minister. While both Fidesz as a party and its leaders used to speak moderately about the death penalty and mostly expressed their rejection regarding the issue, in May 2002, following a brutal bank robbery in which eight persons were murdered in a bank branch, their attitude has changed.

The bank robbery itself was committed on 9 May 2002, when unknown offenders (according to the witnesses, there were two or three offenders – the actual number is still unknown) burst into the local branch of a bank in the Hungarian town, Mór and killed all the employees and clients present. It is curious that the investigation that was led to identify the offenders got astray twice; it soon became apparent that the two suspects of the first days, *Róbert Farkas* and *Szilárd Horváth*, who both had criminal records, had nothing to do with the brutal murders. Two months later, in July 2002, another two suspects, *Ede Kaiser* and *László Hajdú*, were taken into custody; both of them had committed armed robbery before, even an attempt of homicide in one case. They were both convicted based on the – not entirely clear – evidence collected against them: Kaiser was sentenced to life imprisonment to be served in a maximum-security prison, and Hajdú was sentenced (as an aider) to 15 years' imprisonment (even though the court found that the trigger was pulled, i.e., the murders were actually committed by a third, unknown person). As it turned out later, that was the most serious mistake made in the history of Hungarian criminalistics. In 2007, the murder weapons were found in the apartment of one *László Nagy* (regarding whom the investigation was originally carried out due to another homicide, the murder of a postman from Veszprém, which was most probably also committed by him). Finally, the investigation revealed that *László Nagy* was indeed one of the perpetrators in the Mór murder case (he admitted the participation at the bank robbery but claimed to have only been the driver), and that the other perpetrator was *Róbert Weiszdorn*, Nagy's coactor. *László Nagy* committed suicide in prison before the hearing, and *Róbert Weiszdorn* was convicted: he was sentenced to life imprisonment at first instance, where the earliest date of release on parole was after 30 years' imprisonment; the court of second instance rendered a more severe judgement against Weiszdorn, modifying the date of the earliest possible parole to after 40 years' imprisonment. The court found (in accordance with Weiszdorn's testimony) that there was no third coactor; the security guard of the bank was shot by Weiszdorn, while the other seven people were murdered by Nagy. (Since Ede Kaiser committed other crimes, he was not released from prison; thus, he was eventually sentenced to 18 years' imprisonment to be served in a maximum-security prison at the retrial, but was finally acquitted of all charges in connection with the Mór case. It is very likely [considering the criminal proceedings of cases that were punishable by death penalty in the eighties' Hungary] that if death penalty had been applicable in Hungary at the time of the Mór case, Kaiser [and

⁵⁹ *Napló*, 16 April 1998, p. 2.

⁶⁰ *Népszava*, 16 April 1998, p. 2.

possibly also Hajdú] would not have only been sentenced to death, but also executed by the time the actual perpetrators were found.)

On 22 May 2002, shortly after the Mór bank robbery and the parliamentary elections of 2002, *Viktor Orbán* (who has only been the caretaker prime minister by then) said the following in a radio interview: “Hungary needs to seriously consider the introduction of death penalty.” He also said that he used to think that death penalty was an undue legal institution, but his opinion changed when he met the relatives of the victims of the Mór bank robbery in person. He also made it clear that he was aware of the fact that the reintroduction of death penalty is not possible due to international conventions, but, according to him, this might change in the future, for example, due to the fight against terrorism. He stated being aware of that Hungary was not going to be able to accede to the European Union if it reintroduced the death penalty, but, according to him, the EU was changing. He expressed his view as follows: “I believe that – after what happened here, in Hungary – the place of us, Hungarians is among the countries who argue that the issue of death penalty should be replaced into the legislative powers of the states in Europe.” The prime minister’s party, Fidesz has not then commented the issue, the right-wing politicians have not yet repeatedly supported Orbán with their comments. On the contrary, e.g., *Mihály Varga*, deputy leader of Fidesz tried to mitigate Orbán’s words by stating that those were not said by Orbán as a prime minister, but as a private individual.

In May 2012, *István Boldog*, MP of Fidesz, said the following in his parliamentary speech: “I am well aware that I am not the only one in the Parliament, or even in the parliamentary group of Fidesz, who supports the introduction of death penalty against the most brutal criminals. Many of us think that criminals who committed the most serious crimes should not be fed and well-kept by the state, spending the money of working, tax-paying citizens, but they should be treated with the utmost rigour.” Shortly thereafter, on 4 June 2012, *Antal Rogán*, the leader of the parliamentary group of Fidesz acknowledged that there were some members of Fidesz who – during the debate on the Fundamental Law or the new Criminal Code – mentioned the possibility of laying down the death penalty in the Fundamental Law or in the Criminal Code, but he also made it clear that the parliamentary group of Fidesz itself does not support any such suggestions.

On 18 June 2012, the aforesaid was confirmed by *Róbert Répássy*, state secretary of the Ministry of Justice, who – in his answer given to the interpellation of *István Apáti*, MP of Jobbik – clearly and consistently rejected the death penalty (for the first time in years) as the statement of a responsible government officer, indicating several arguments that suggested the appropriateness of the present regulatory situation. In his said interpellation, the far-right politician Apáti demanded the reintroduction of death penalty, the applicability of whole life sentence from the age of 18, instead of 20, and the introduction of a provision based on which the killing of one’s offender – regardless of the place and time of committing the offence, as well as of the number of offenders, i.e., in a general manner – in case of any unlawful offense against a person would qualify as justifiable defence. *Róbert Répássy* started his detailed answer by listing the provisions of the Fundamental Law based on which reintroduction of death penalty is not possible. In such regard, Répássy said the following: “Pursuant to Article II of the Fundamental Law, human dignity shall be inviolable; every human being shall have the right to life and human dignity. Pursuant to Article I (3) therein, a fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of such fundamental right.” As a summary, he added: “*The Fundamental Law is on the side of life, protecting life against the death penalty.*” Thereafter, he addressed the international situation, not only in the light of law: “Furthermore, it is indeed a fact that Hungary is obliged by several international treaties. (...) There is no death penalty in all 47 Member States of the Council of Europe. In Europe, death penalty exists only in

Belarus, which is the only European country not being a member of the Council of Europe. It would be unfortunate if Hungary stood out of such unity of understanding of the European Council.” Finally, he addressed pragmatic aspects as well: “My next argument is related to judicial mistakes. I hereby remind you that in the so-called Mór case, the court – unfortunately – could have rendered such an irreversible and unalterable decision, where the mistake made by the court would have been revealed later in vain, since the life of a person, the life of an offender executed innocently cannot be restored.”

The next public debate, having been also the biggest since the regime change in Hungary, flared up due to two murders, committed not more than a few months apart in 2012: the violent death of a young police psychologist, *Kata Bándy*, and, later, of a child. In the early morning of 8 July 2012 in Pécs, a 25-year-old woman was raped and murdered. Her body was found only on 11 July, three days after she went missing. The perpetrator, 26-year-old *László Péntek* was captured on 15 July. Before the murder, despite his young age, Péntek had been convicted several times; he spent most of the ten-year period before his arrest in prison. The main reasons why the murder of Kata Bándy – apart from the relatively rare, therefore unusual and shocking sexual motive – differed from the other homicide cases were that the victim was a young woman, who was well known in her home town, active in social media and (as all media stressed out) definitely pretty, with a job of high reputation.

Even though there have been several rape and murder cases prior to 2012, none of those triggered such flame war as the murder of Kata Bándy. After her body was found, a Facebook group of tens of thousands of members was formed in order to demand the reintroduction of death penalty, many politicians, public figures and celebrities commented the case, hundreds of articles were written on debating pros and cons as regards the manner of punishment. All in all, the issue of death penalty, since its abolishment in 1990, has never received such public and media attention. An inner group of the governing party Fidesz – which used to form the independent party of united smallholders – made it clear that they wish to reintroduce death penalty as a punishment of murder; *Béla Turi-Kovács*, leader of the smallholders’ group (*Kisgazda Polgári Szövetségpárt* [Smallholders’ Civic Union Party]), MP of Fidesz said the following: “The events of the past years, more so of the past days, demonstrate that the protection of society requires the reintroduction of death penalty.” He asked a question as well: if the Criminal Code ensures the individual’s right to self-defence, then why does not the state have the entitlement necessary to “apply death penalty against criminals who left their humanity behind?”⁶¹

„Naturally”, the party Jobbik also made a comment after the murder of Kata Bándy, as always before in similar cases: *Ádám Mirkóczki*, spokesperson of Jobbik said that as regards extremely serious crimes committed against life, death penalty may be the only actually preventive instrument. *Tamás Gaudi-Nagy*, MP of Jobbik even said that public executions would bear the ultimate preventive force. However, regarding such suggestions, *Tibor Navracsics*, minister of justice in the Orbán government explicitly stated that – due to international obligations of the country and ethical aspects – the reintroduction of the death penalty is not possible; according to Péter Paczolay, president of the Constitutional Court of Hungary, the reintroduction thereof is also impossible due to the new constitution, i.e. the Fundamental Law of Hungary which was drafted by Fidesz and enacted by the Parliament with the majority of the MPs of Fidesz.⁶²

However, the overheated public mood was not pacified even by the fact that Kata Bándy’s family did not want the reintroduction of the death penalty; the victim’s mother posted the following statement on Facebook: “I express also the request of our family when I ask the civil society and political organisations not to use either the name or the personal tragedy of our

⁶¹ Népszava, 20 July 2012, p. 3.

⁶² Ibid.

daughter as an excuse for incitement, rancour or the reintroduction of the death penalty. Thank you.”

The other homicide case with significant effect was the premeditated, brutal murder of an 11-year-old boy, *Bence Szita* from the vicinity of the town of Kaposvár. The little boy’s stepmother, *Erika Polcz* reported on 29 October 2012 that Bence went missing, and that he was last seen on a playground; as it was later proven, that was the time when he was taken away and murdered not too far away. His body was found on 3 November and the perpetrators were captured soon thereafter. Bence Szita was raised by his mother’s ex-husband as a foster father; when Erika Polcz and the foster father moved in together, she soon got jealous and blamed Bence for the deteriorated relationship of the couple. Thus, she hired two homeless men, *József Bogdán* and *József Kertész* to beat the child to death, paying a total sum of HUF 192,200 (approx. EUR 600) for the brutal act. The woman and the men took Bence Szita from the playground in a car to a wooded area, and the men, called upon by the woman, beat the boy nearly to death with a shovel, also stabbing him with a knife repeatedly. Despite all that, the child was still alive when they pushed him into a previously dug hole and threw soil on his body, basically burying him alive. According to the forensic expert, the little boy’s death was not caused by the assault but by soil penetrating into his lungs; basically, he suffocated under the ground. The abettor stepmother, who ordered the murder, as well as the two men who executed it were convicted by a whole life sentence, both by the court of first instance and the court rendering the final judgement. It is curious (and many people in Hungary tended to comprehend it as justice done by fate) that all perpetrators – even though none of them were old, in fact, they were in their forties or fifties – died within a few years due to natural causes, illness: Erika Polcz died in 2017, while József Bogdán and József Kertész both died in 2019, only a few months apart.

As a response to a suggestion of the parliamentary group of the – persistently – far-right party Jobbik, namely to a question put forward by Ádám Mirkóczki, Prime Minister *Viktor Orbán* explained that even though he agreed “on a philosophical basis” with Jobbik as regards many issues of their view on the death penalty, but – revealing a pragmatist approach – he added that such suggestion is ill-timed⁶³ due to the environment of international law and to the prohibitions of EU law.⁶⁴ Furthermore, the prime minister expressed the following: “I can hardly imagine any rigorous legislation that could guarantee that no serious crimes will be committed.”⁶⁵ Nevertheless, the extent of the public debate was almost as large as after the murder of Kata Bándy, with numerous internet op-ed pieces, impromptu amateur polls and with the – almost inevitable – Facebook groups, among which one of the most popular – with approximately thirty thousand followers – offered a choice to the followers from among 67 cruel ways for Szita Bence’s murderers to die.

The next occasion when public attention was directed in a way to support death penalty took place in 2014 when *János Lázár* – the then leader of the prime minister’s cabinet, who soon thereafter, in June 2014, became the minister of the Prime Minister’s Office –, who was practically Viktor Orbán’s deputy and the second most influential member of Fidesz, made a pro-death-penalty statement in an interview. The particular occasion was a debate on the whole life sentence, due to the fact that the Szeged Regional Court of Appeal suspended the criminal procedure pending against a person charged with multiple murders (who, according to the charges, premeditatedly murdered three people on two different occasions, for financial gain, with particular cruelty), due to that, in the court’s view, the whole life sentence applicable against the accused constituted a violation of the European Convention on Human Rights,

⁶³ “We can debate on whether we need the death penalty or not, or on whether it is right or not. But I would rather say that such debate is ill-timed at the moment.” (Népszava, 6 November 2012, p. 3.)

⁶⁴ *Napló*, 6 November 2012, p. 2.

⁶⁵ *Magyar Hírlap*, 6 November 2012, p. 2.

specifically, of the prohibition of inhuman punishment, and referred the case to the Constitutional Court of Hungary, requesting the establishment of whether the provision in the Criminal Code prescribing the whole life sentence violates any international treaty. Following that, on 3 April 2014, János Lázár strongly criticised the courts on a community meeting; he said that judges have no idea about reality, and that they merely implement the law, instead of serving justice. He expressed his view on that not only whole life sentence is justified, but even application of the death penalty could be. He said that the majority of the Hungarian population supports the death penalty, and wishes to reintroduce it as regards the most serious crimes. He made it clear that, personally, he also shares such view and “he feels sorry for that it is not possible”, because “he considers it would be the righteous penalty” in the cases where children or old people are murdered.⁶⁶ Soon after Lázár’s statement, in May 2014, *Viktor Orbán* himself made a comment on the case in his regular weekly radio interview, stating that in his opinion – despite all contrary statement – the death penalty does bear preventive force. In his view, it is a huge dilemma that a life is taken when the death penalty is applied, but – due to the preventive force thereof – it can also save a few lives. He also said that he was aware that the death penalty was prohibited by the European Union, but, as he put it, “this would also be worth a mass”.⁶⁷

Finally, the most recent event that sparked a debate on death penalty, both in society and in politics, has been the murder of a young shop assistant. In the late afternoon on 21 April 2015, a young female tobacco-shop assistant was murdered in the town of Kaposvár; the robber and murderer took all of the day’s revenue, following which, even though she gave him the money voluntarily, he stabbed her on the neck, managed to take her keys, lock the door behind himself and walk away, while remaining undetected. On 28 April, Prime Minister *Viktor Orbán* said, in Pécs, that the issue of death penalty should be kept on the agenda because the application of the “three strikes” and whole life sentence – even though it seemed to be a sufficient tool in the fight against crime before – is not enough in itself. “Thus, in my opinion, the issue of the death penalty should be kept on the agenda in Hungary, it needs to be addressed, and it needs to be made clear for criminals that Hungary will stop at nothing when it comes to saving our own citizens.”⁶⁸ The prime minister’s speech was reaffirmed on the same day in a statement made by *Antal Rogán*, leader of the parliamentary group of Fidesz, where he said that he found the debate on the death penalty legitimate, since “the Hungarian society did not have a chance to make a decision thereon”, since it was not abolished by the Parliament or by a referendum, but by the Constitutional Court of Hungary.⁶⁹ Naturally, the opposition parties (with the exception of Jobbik) did reject the suggestion immediately, pointing out that it is unrealistic due to legal causes; they expressed their opinion that reheating the topic was merely an attempt to gain political benefits, nothing more than mere populism. András Schiffer, co-leader of the opposition party *Lehet Más a Politika* (LMP [Politics Can Be Different]) summarized his view by saying that the prime minister “lost his marbles”.

Nonetheless, the heated debate continued in the following days. *Antal Rogán* stated: if a 20-year-old girl is murdered in the town where, just a few years before, her stepmother had Bence Szita murdered, one starts wondering if such perpetrators would deserve the death penalty. In his opinion, despite the prohibition of the EU law, if the citizens of a Member State want to reintroduce the death penalty, the issue should be raised on EU level.⁷⁰ However, other MPs of Fidesz did not support the suggestion and openly turned against the prime minister’s communication. *Lajos Kósa*, who was to become the leader of the parliamentary group of Fidesz a few months later – stated the following: “I am pro-life, so to speak. In my opinion,

⁶⁶ Cf. e.g.: Magyar Nemzet, 4 April 2014, pp 1 and 5.

⁶⁷ Népszava, 29 April 2015, p. 3.

⁶⁸ Magyar Nemzet, 29 April 2015, p. 3.

⁶⁹ Ibid.

⁷⁰ Magyar Nemzet, 30 April 2015, p. 3.

what you cannot give, you shall not take away.”⁷¹ *Bence Rétvári*, a member of KDNP, the smaller governing party beside Fidesz, and of KDNP’s parliamentary group, reaffirmed his view expressed in a statement made in 2012, where he said that stressing pro-death-penalty arguments “mean a clear break-up with Christian values”, and that “no politician who is a devout Christian can support the death penalty without contradicting the Church teaching”.⁷² *György Schöpflin*, MEP of Fidesz, interviewed by the journal *Népszabadság*, said that he rejects the death penalty, since it violates human dignity and the principal that God created man in his own image.⁷³

However, the debate exceeded Hungarian domestic politics and was elevated to an international level. *Martin Schulz*, President of the European Parliament, initiated a phone call with Viktor Orbán as regards his statements on the death penalty (which, by his own admission, was welcome by the Hungarian prime minister, since he would be happy to continue a consultation on the topic on a European level). The phone call followed a question put forward by *Jörg Leichtfried*, MEP of the Socialist Group on 29 April, i.e. the day before, asking Schulz’s opinion on Orbán’s suggestion regarding the reintroduction of the death penalty, which, in Leichtfried’s view would be an infringement of the EU law and „would be barbaric”.⁷⁴ At the same session, *Guy Verhofstadt*, chair of the liberal group in the European Parliament, former Belgian prime minister also spoke, expressing his opinion that “under Orbán’s policies, Hungary would no longer qualify for admission to the EU if it applied to join now. Orbán’s statements go against the fundamental values that Europe represents. If the European People’s Party take their own manifesto seriously, it is high time that the leadership stands up to Orbán.”⁷⁵ (Nevertheless, *Manfred Weber*, chair of EPP, responded in an evasive way, and did not comment the words of the Hungarian prime minister. He only said, addressing his words to the chair of the Liberal Group in the European Parliament that “fortunately, death penalty belongs to the past in Europe, and it is no issue of debate.”)⁷⁶ Orbán’s words were also condemned by Christian Wigand, spokesperson of the European Commission. But the Hungarian prime minister’s statements not only received a reaction in the European Union, but also in the Council of Europe, the organisation created to protect human rights by the democratic states of Europe. *Nils Muiznieks*, Commissioner for Human Rights in the Council of Europe said the following: „The idea of reintroducing the death penalty, raised by Prime Minister Orbán, is incompatible with Hungary’s obligations under the European Convention on Human Rights and runs contrary to the values that Europe stands for.”

On 30 April, at his regular Thursday governmental press conference called *Kormányinfó* [Government Info], *János Lázár*, minister of the Prime Minister’s Office said the following as regards the phone call between Viktor Orbán and Martin Schulz: “The Prime Minister wishes to inform you that he spoke to Martin Schulz at half past 2 (...) and informed him that there is an ongoing debate regarding death penalty in Hungary, as well as that the Prime Minister does not intend to introduce death penalty. The fact that an ongoing debate exists does not mean that a plan exists to introduce death penalty.” On 2 May, *Viktor Orbán* gave a lengthy interview on Echo TV, where – refining his earlier words – he said the following: “I consider answering the question on whether or not we should introduce death penalty premature. However, I find the discussion thereon important.” Then, on 8 May, at his regular Friday radio interview that took place after the debate held by the European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE) on Viktor Orbán’s comments on death penalty (where the MEPs who

⁷¹ Ibid.

⁷² Ibid.

⁷³ *Népszabadság*, 30 April 2015, p. 1.

⁷⁴ *Népszava*, 30 April 2015, p. 13.

⁷⁵ Ibid.

⁷⁶ Ibid.

spoke during the debate reaffirmed their commitment to death penalty-free Europe), the Hungarian prime minister made the following statement: “I am on the side of life, therefore, my approach is to consider what is necessary to protect innocent, law-abiding people. If we can protect them without introducing death penalty, then we should protect them in such a way; however, if there is no other way, then we should introduce it.” He also said the following: “We want to develop a European public opinion which tends to reinstate the issue of introduction or non-introduction of death penalty into the jurisdiction of Member States. This was taken away from the Member States and became a centrally controlled one. Prohibiting the death penalty even was put in the most important legal documents, but I think every Member State should decide this on their own; there’s no reason for all countries to think the same way about this issue.” (In the radio interview, the prime minister did not address his ideas about non-European obligations, i.e., about international treaties which Hungary joined voluntarily; with such treaties, Hungary obliged itself not to reintroduce death penalty.) It is apparent from the statements made by the prime minister that he is not against the death penalty on theoretical grounds, and he is basically not concerned about international treaties on human rights or even the Charter of Fundamental Rights of the European Union, since, in his view, the latter could be modified if a debate conducted with the participation of the people showed that the citizens of the Member States find the death penalty necessary, or more precisely, in such case it should be modified in accordance with the people’s opinion.

V. Concluding remarks

It can be seen that a really sharp debate in politics about the death penalty unfolded in Hungary between 2002 and 2015, while all actors knew that for legal-constitutional it could not actually be restored. Many have also expressed a desire to have a “policy debate”, but this is difficult to be understood by (current or potential future) policy makers. Certainly, in most cases, the purpose of raising the issue of capital punishment was not to lay the foundations for a future decision (at least there is no indication of that), but to ride the social discontent and obtaining political benefit based on it, advocating (legitimate) anger over murders that shocked people. Certainly, the aim was not to discuss the arguments about the death penalty in a professional manner, because such arguments (beyond the usual slogans) were not made at all – except for the parliamentary answer of *Róbert Répássy*, which was described in detail earlier. It does not seem fortunate to discuss such a cardinal issue with such (almost complete) disregard for arguments and counter-arguments, or real professional considerations, even if the actions of political actors are driven primarily not by the legal criteria but by the dichotomous logic of politics. This is particularly unfortunate (either from a pro-government or an opposition position) if political actors know exactly that their proposition is not feasible in the 21st century European and Hungarian legal-political arena. In any case, the fact that the topic has been removed from the political agenda after 2015 can be somewhat reassuring; not because it would be desirable to omit the debate at any time, but because a debate without professional considerations does not offer adequate solutions, nor is it suitable for informing the insufficiently informed public or convincing them of the falsehood of popular misconceptions.