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Abstract

'The Death Penalty in Poland and in Central and Eastern Europe'

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The death penalty was abolished in Poland and its Central and Eastern European counterparts as a consequence of European Union (EU) membership. With the ascent to power of populist political parties in the region, the death penalty continues to be a live topic. Calls for its reinstatement occur during times of domestic political crisis and as a stance against the EU. Historically, in Poland, lawyers and criminologists have opposed the death penalty, and the Catholic Church, which is hugely influential, is also now opposed to the death penalty. The chapter will approach the history and status of the death penalty from an interdisciplinary perspective that will focus on Poland, Hungary, and other states in the region, such as Belarus, where the death penalty is now imposed. It will identify the factors that underpin the drive for its reinstatement and explore the broader implications for public trust and the rule of law.

Key words: death penalty, Poland, Hungary, Belarus, Ukraine

Introduction

The death penalty continues to be a live topic in Central and Eastern Europe (CEE). Although it was abolished in CEE states that joined the Council of Europe and the European Union, with abolition in fact being a precondition of EU membership, calls for its reinstatement have been made in some of these states. Such calls reflect the power that the death penalty has in

political discourse and as a supposed means of controlling crime. Its existence as a reference point lends credence to the notion that the death penalty might have purchase on critical political issues and might obtain majority support. This chapter will consider to what extent the current call for the reinstatement of the death penalty in Poland and Hungary reflects wider societal attitudes. The discussion will show how the discourse serves to mask a countervailing trend and by the same token the cultural history of the death penalty. For historically the death penalty has often been deployed as a tool by political elites operating on conservative nationalist or right-wing populist platforms. This chapter will demonstrate the way the death penalty diverts attention from matters pertaining to the allocation of state power and in some instances the plight of offenders like political prisoners, with reference to Belarus and key developments in Ukraine.

Theoretical framework

In her writing about capital punishment Carol S. Steiker (2002, pp. 97-130) shows how the death penalty in the United States (US) had much in common with Europe before each went their separate ways as regards capital punishment, her argument being based on institutional factors, but also on sociological and political considerations. State control over punishment is an exercise of power. It does not matter if the death sentence is not exercised, it is more important that it is a possibility. This is different from deterrence. The significance of the death penalty as a punishment lies in its being an object of control within the framework of state sovereignty (be it a US state or other sovereign power) (Sarat, 1998). As we shall see, the issue of state sovereignty over an issue like punishment is very much at the heart of calls by some EU member states to break away from the EU, objecting as they do to its stance on capital punishment. Another lens through which to consider the death penalty is legal consciousness. The notion of legal consciousness has been defined as the process in which

legal categories and concepts are used by individuals to understand their experiences (Ewick and Silbey, 1998). This pertains even when they are not familiar with the content of law or the legal system. Benjamin Fleury-Steiner (2002) embraces the notion in order to argue that certain discourses, those relating to capital punishment among them, see law as a hegemonic narrative that may come to be mobilised and shape societal views on punishment. The control exercised by a government over its media outlets can exert just such an influence over a populace's views about punishment. Where a cultural approach is concerned, David Garland's (2001) work has considered the ways that crime control processes have been a response to socio-economic and cultural changes. Penal policy cannot be studied outside this context. Certainly in the case of Poland and Hungary, there are responses to opinion polls on punishment that attest to the complex nature of this topic and how those polled feel towards it, based on societal or cultural factors. In terms of developments in CEE, the road to the abolition of capital punishment was largely framed as a human rights question, as will be discussed below. All these important theoretical positions inform our understanding of the death penalty and show the need to pursue fresh lines of enquiry. Not doing so runs the risk of not properly appreciating the connection, or else the divide, between political elites and the wider society, and failing to recognise that the very foundation of democracy itself, i.e. the rule of law, is in jeopardy. This chapter will draw attention to a shift in law and politics in the case studies under investigation. In each the transition that ensued following the collapse of one regime (the collapse of a kingdom, an interwar period, the occupation of a country, or a communist dispensation) and the constructing of another (democracy) can be said to have laid the foundations for future grievances, a circumstance in which the death penalty plays a part. Being aware of the points that create the disconnect from what had been perceived as a stable democracy will offer a better understanding regarding the significance of the death penalty discourse in CEE.

Poland and Hungary: an overview

In this section I will focus on Poland and Hungary's historical response to the death penalty and provide an overview of key events. In many ways Poland has been at the forefront of abolition. Owing to the research that the present author has carried out in Poland, much of the discussion will be devoted to Polish developments.

After the restoration of statehood in 1918, Poland undertook the task of rebuilding its legal framework from five separate legal systems linked to different ruling partitions (Davies, 1984). Top Polish jurists who were involved in drafting criminal law were opposed to the death penalty. One of these, Emil Stanisław Rappaport, an eminent lawyer and one of the drafters of the new Polish criminal code, was fiercely opposed. His work as a defence lawyer in the Russian-controlled partition and his witnessing of the arbitrary sentences imposed and the treatment suffered by political prisoners at the hands of the Russian authorities served to shape his views on criminal law. He argued that the law should focus on the crime and not on the individual (Grzebyk, 2020, p. 98). In the end it was only by a slim margin that the death penalty was retained in the new laws relating to treason and murder, the procedural code providing judicial discretion, however, in sentencing. In fact, despite the growing number of capital crimes, judges rarely resorted to its imposition.

In the Austro-Hungarian kingdom, capital punishment had been used in cases of political crimes. There was a brief period with no executions before WW1 (Toth, 2020, p.76). During the short-lived Hungarian Soviet Republic, in 1919, the capital sentence was available to both revolutionary tribunals and ordinary courts. During the 1920s and 1930s, in addition to the introduction, extension, restriction, and abolition of martial law regulations, as well as the capital sentences imposed by martial and ordinary courts, legal provisions were made in relation to the 1930 Military Penal Code that added to the list of capital crimes (Toth,

2020, p. 84) Even then the imposition of the capital sentence in special courts was rare (Fijalkowski, 2001, p. 66).

After WW2 Poland and Hungary became communist satellite states. During the immediate aftermath of the war, the death penalty was applied in war crime cases as well as other instances of political crimes that were included under broad legal provisions based on the Allied Control Council Law No. 10 from 20 December 1945 that authorised every occupying power to apply its own legal system when trying war criminals before national courts. These broad decrees often targeted the political opposition. For example, in Poland the 1944 August Decree concerned the punishment of fascist-Hitlerite criminals guilty of the murder and ill-treatment of the civilian population and prisoners of war, and the punishment of traitors to the Polish Nation. The 1946 Decree concerning Crimes that Are Especially Threatening During the Period of Reconstruction of the State, also known as the Small Criminal Code, outlined 15 capital crimes (with life imprisonment as an alternative). Economic crimes would become capital crimes in the 1950s.

In Hungary a similar pattern emerged with most of the death sentences imposed being for war crimes or relating to political cases. Further to the 1945 Government Decree No. 81, the death penalty could be applied to those chiefly responsible for Hungary joining the war; to those who had prevented the country from entering into an armistice agreement; to those who had played a leading role in the Arrow Cross movement; to those who had maltreated, executed, or tortured without cause individuals in the occupied and reclaimed territories, as well as prisoners-of-war (Toth, 2020, pp. 96-97). In addition to war crimes, people's tribunals were empowered to hand down death sentences in show trials; the most infamous of these proceedings, before the Special Council of the People's Tribunal of Budapest, was the 1948 Rajk trial (Toth, 2020, p. 98).

Explaining the crime control in CEE that was set in motion during the Stalinist period (broadly 1944-1956) is the subject of an article by Stanisław Frankowski (1996, p. 217), which identifies three defining characteristics of the measures adopted at this time: (1) law is perceived as instrumental and is used instrumentally; (2) harsh punishments are viewed as effective; (3) the swifter the justice, the better the chances of controlling criminality. While the death penalty was used as an instrument of control, it was not always applied consistently. The unpredictable nature of its imposition served as a means of control. The focus of control was the class enemy (that is to say, the political opposition), and its implementation also served a didactic purpose. During this period harsh measures imposing the death penalty for political, military, and other capital crimes characterised CEE. Alongside this the death penalty was carried out in a quasi-judicial fashion: trial proceedings were conducted and punishment was meted out in secret. Not surprisingly, abolitionists who campaigned in post-1989 Poland would refer to this period and its indiscriminate application of the death penalty. Frankowski's second and third points reflect a successful propaganda campaign waged during the communist period, its guiding principles still holding sway even up to the present day. These claims therefore continue to be made today.

After Stalin's death in 1953 and the 20th Communist Party Congress, at which his personality cult and rule were denounced, a so-called 'thaw' ushered in a seemingly less oppressive state regime, and discussions about a new criminal code were initiated. Eventually, in Poland, as similarly elsewhere in CEE, the 1969 Criminal Code was promulgated. The Code stipulated the death penalty in cases that included sabotage, armed robbery, and large-sale speculation. While the number of capital offences was increased, the changes that were introduced limited the use of the death sentence.

In Hungary, the 1961 Criminal Code provided for the death penalty for 31 crimes: nine of these were crimes against the state, two were crimes against humanity, twelve were

military crimes, and eight were common crimes (Toth, 2020, p. 133). Those advocating such an increase in the number of capital crimes simply argued that, in terms of their own ideological framework, the conditions for abolition had not yet been met (Grzeskowiak and Sliwowski, 1977).

In Poland, the conditions governing the actual application of the penalty served to prevent its indiscriminate use; in the case of mentally incapacitated offenders the sentence could be deferred until they had recovered. Clemency could be granted by the Council of State. Between 1964 and 1969 there were 33 death sentences imposed; between 1970 and 1978 there were 78 . During the martial law period (1981-1984), however, the number fell. As noted above, in Poland key legal figures opposed the capital sentence. After WW2, with the founding of the Polish People's Republic in 1947 (following rigged elections), campaigns against the death penalty had been launched. After the 1956 thaw, the voices of academics became more prominent. One such voice was that of Maria Ossowska, a sociologist and psychologist, who taught ethics at the University of Warsaw and the Polish Academy of Sciences. Ossowska's sociology of morality saw no place for the death penalty, which she viewed as barbaric (1980). Her pupils would continue her work: similarly and from the point of view of psychiatry, Marian Cieślak devoted his research to demonstrating the adverse effects that severe punishments can have on defendants with mental health issues (Górnicka, 2019, pp. 474-483). The lawyer Alicja Grześkowiak published a book on the death penalty in 1982; as one reviewer shows, while seemingly a critique of it, Grześkowiak left a small loophole for its imposition in the case of the most heinous crimes (Frankowski, 1985). The abolitionist discourse was sustained by figures like Jerzy Jaśiński and with the onset of the 1980s discourses surrounding the Solidarity movement stimulated engagement with human rights. Jaśiński himself wrote a thoughtful essay on the arguments in favour of the death penalty, judging them to be philosophically and morally weak (Frankowski, 1996) . By the

end of Communist rule an indefinite moratorium had been implemented, taking effect in 1988. While Communist rule was characterised by harsh punishment, it was not the whole picture where the death penalty was concerned, since there had always been some criticism of it. Likewise, the harshness of Stalinist rule cannot be said to have engendered a more lenient approach to punishment subsequently. In the 1980s, Krzysztof Kieślowski, the Polish filmmaker, and Krzysztof Piesiewicz, a Polish screenwriter, worked very closely with Polish legal experts, philosophers, ethicists, and sociologists, when writing the script for ‘A Short Film about Killing’, a 1988 film about a young man who murders a taxi driver, seemingly without motive, and is sentenced to death. The film itself is a masterpiece, and while not being an anti-death penalty film, it provides a commentary on, inter alia, the ‘instrumental treatment of the legal system by the state’ (Ostrowska, p. 310).

In the immediate aftermath of the collapse of Communism, in 1989, Poland and Hungary moved to join the Council of Europe and the European Union. Both countries thereupon had to accept the key legislation, for example, signing the European Convention on Human Rights (ECHR). This was followed by the adoption of Protocols 6 and 13 to the ECHR, which abolished the death penalty in all instances. It is noteworthy that the 1997 Polish Constitution acknowledges the supremacy of international treaties over constitutional law. The Catholic Church, for its part, despite mixed signals in the country at large, has not opposed the move to life imprisonment. The Vatican itself has spoken out against the death penalty, a point we shall return to shortly.

The Polish Constitutional Tribunal has not ruled on the constitutionality of the death penalty although its Hungarian counterpart has. In its 23/1990 judgement, the Hungarian Constitutional Court declared the death penalty to be incompatible with the constitutional rights of life and dignity which, the Court argued, it eliminates

(<https://www.hunconcourt.hu/dontes/decision-23-1990-on-capital-punishment>, last accessed

24 March 2023). In recent years the ruling has been subjected to criticism on the part of various Hungarian political leaders, who have reacted to crimes of a heinous nature carried out in Hungary or to the role of the EU, seen by them as overly controlling.

In the end, the attempts made to reverse abolition in both countries and across the EU have been speculative in nature. The discussion then becomes largely political, reflecting the rhetoric of crime control and not being primarily concerned with capital punishment as a deterrent. In fact, most leaders in CEE have believed more in the symbolic importance of the death penalty, as the President of Czechoslovakia in the interwar period, Tomáš Masaryk, had done, than in its deterrent effect (Fijalkowski, 2001, p. 66).

Opinion polls

Poland has always had a strong tradition of empirical research into attitudes towards crime and deviance. Under Communism research units were supported by the state because crime and deviance loomed large in the main political ideological context (Krajewski, 2009, p. 106). Relevant data collection and analysis underpins published studies on the topic.

On the surface, international and national opinion polls suggest that Poles are dissatisfied with the criminal justice system, and, deeming it too lenient, favour the adoption of more punitive measures (Krajewski, 2009, p. 104). While this view has been consistent with worldwide trends, in 2009 one researcher, inspired by the ‘Marshall hypothesis’, tried to dig deeper into the Poles’ seeming preference for harsher punishment. Certainly, there is data on Polish public opinion from the past 44 years that points to general support for the death penalty (Krajewski 2009, p. 106). Yet, such support had been lower during Communism. For example, in 1964 50% of Poles were in favour whereas in 1989 support had increased slightly to 52%. By 2000 it soared to 77% whereas closer scrutiny indicates an average of support at 62% (Krajewski, 2009, pp. 107, 112).

It is noteworthy that since 1989 Poles have had a higher-than-average participation in the respected International Crime and Victims Survey (ICVS). The results of this survey on questions related to punishment seem to produce an unbalanced picture (Krajewski, 2009, p. 104). This is owing to the fact that while the surveys do show support for harsh punishment and cruel punishment, the terminology that was used was not clearly defined. In other words, the respondents might well have felt differently had other options been available. Moreover, any increase in support came from those respondents who had at first been undecided and then later opted for the death penalty. These surveys show that support mainly comes from respondents who identify as men and from respondents who live in rural communities, a finding that is in line with other countries. What is different is the support of those who are aligned with liberal or left political parties as opposed to conservative voters. Those in the former camp show an increased support for the death penalty as opposed to conservatives. This could of course be in line with the religious beliefs of most conservative party supporters in Poland, which reflect the Catholic Church's position (Krajewski, 2009, p. 108).

When the Polish politician Lech Kaczyński took up his post as Minister of Justice in 2000 he made it very plain that he backed harsher punishment. His political party, Law and Justice (*Prawo i Sprawiedliwość*, PiS), which he co-founded in 2001 with his twin brother Jarosław Kaczyński, who currently chairs the Party, campaigned across the country on a platform of, inter alia, punitive, repressive crime control policies that extended to reforms of sentencing. Lech Kaczyński claimed that he would call for harsher punishment even if he possessed evidence that such policies were ineffective and did not result in any reduction in crime. He based this on the claim that ““an elementary sense of justice dictates harsh punishment for offenders”” (Krajewski, 2009, p. 104). To keep in line with this thinking, Poland was the first country to veto European Day against the Death Penalty (Krajewski, 2009, p. 109, fn.1). Lech Kaczyński himself perished in 2010 in a tragic plane crash along

with most of the country's political elite (Politico, 2010, <https://www.politico.com/story/2010/04/polish-president-dies-in-plane-crash-035612>, last accessed 24 March 2023).

It has long been apparent to Polish researchers that the media has shaped attitudes to punishment. Indeed, a number of writers who have been working on crime and deviance under communism, when propaganda had a powerful impact, have come to precisely this conclusion (Krajewski, 2009, p. 117).

To find clarity with respect to the death penalty, however, questionnaires were tailored in such a way that respondents were presented with specific scenarios, in which the death penalty was one of several possible punishments, for example, for acts of terrorism (like that of 9/11), murder, domestic abuse and other violent crimes. The results showed that the more severe the crime, the harsher the punishment. Yet the findings demonstrated even more: underpinning these scenarios were the respondents' presumptions regarding the purposes of punishment. The respondents emphasised what they saw as the rationality of the perpetrator and paid little heed to their human rights, thus conforming to the dominant narratives on social media. There is evident here Nils Christie's 'inflation of punishment', such that harsh punishment is not viewed as anything unusual (Krajewski, 2009, p. 116). At the same time the responses did not betoken clear, overwhelming majority support for the death penalty. In these specific case scenarios alternatives to the death penalty were proposed.

The use of propaganda is a constant feature and characteristic of Communist rule and modern-day Poland alike. Yet the calls for minimum and maximum penalties do not necessarily reflect the societal views shown in the responses. Support for a punitive stance has fluctuated and at times has been higher than during Communism. This finding is not necessarily unique to Poland. It is worth noting that Poland has always had a civil society and

connections outside the country that allowed for knowledge exchange and important discourses, such as human rights, to circulate among the general populace. As noted earlier, however, this has not made Poles less punitive but possibly more open to the possibility of more lenient penalties (Krajewski, 2009, pp. 108-109).

As PiS has consolidated its grip on power, the dynamics of Polish civil society have changed. Indeed the political elite has sought to infiltrate civil society and create within it a counter-elite, thereby fomenting tension and boosting loyalty to the party (Ślaryński, 2022, pp. 131-154). But relations are strained, as was apparent in the recent flare-up on the border with Belarus in 2022, when ordinary Poles risked criminal sanctions to deliver assistance to migrants stranded there (Marczewski, 2022, <https://carnegieeurope.eu/2022/11/30/poland-s-civil-society-is-caught-between-russia-and-west-pub-88484>, last accessed 24 March 2023). In Hungary, the space afforded to civil society is ever shrinking. This diminution is effected by cutting the funding allocated to NGOs and spreading xenophobic and anti-Semitic rhetoric about the leadership of various funding bodies (Uitz, 2022, <https://verfassungsblog.de/from-shrinking-to-closing-civil-society-space-in-hungary/>, last accessed 24 March 2023).

Capital Punishment and Populist Politics in Poland

The uneven struggle against imposed rule is a key theme in this chapter's discussion. It is tied to Polish history and identity and it has been used by the political elite quite shamelessly. Krzysztof Borowski's work on analysing the ways that Polish film and television depict reality can advance our understanding of the shift to authoritarian-style government and the growing emphasis on the need for a strong leader (2022, pp. 1-15). The lens through which this is viewed is the arts, a viewpoint that will be revisited later in the discussion where, reminding us that these tactics and tendencies seem familiar, the notion of a Caesarean politics is applied. In other words, the domination that characterises the current regime is

rooted in a practice resorted to during Communist rule to exact compliance, now directed at those the regime would wish to see expelled. The framing of these events within this concept can go some way to explaining the success of the right-wing nationalist platforms. The concept itself relies on the interaction of a politics where a single ruler is in control, state capture, and an exclusionary identity politics (Sata and Karolewski, 2020, pp. 206-225). The peculiar road to power here is based on a preference for a ruler and the relevant network that achieves 'state capture' and allows the ruler to govern the state as he or she sees fit (Borowski, 2022, p. 6).

It is the third aspect of Caesarean politics that might explain the events surrounding the call for the reinstatement of the death penalty. The discourse is divisive and promotes the split between us and them. This binary construction allows for blaming and targeting international organisations like the EU. The economic instability following the political changes that have occurred had left people disenchanted with their leaders and their inability to tackle increasing social inequality. In these countries, both Polish and Hungarian leaders succeeded in constructing a system that has enabled personal rule. They have devised a network that protects them and, significantly, they have gained control over the media, a control 'essential to guarantee[ing] patron/party-friendly coverage or straight-out propaganda to ensure public support for the new regime' (Borowski, 2022, p. 210). It is not all plain sailing, however. Polish politics has been described as a domain of competing pyramid schemes, with different networks vying with each other, such as the Prime Minister Morawiecki and the Minister of Justice Zbigniew Ziobro (Sata and Karolewski, 2020, p. 211). In Hungary it is Orbán, who 'singlehandedly decides who can succeed and who is to fail' (Borowski, 2022, p. 211). At the same time the outsider is invariably depicted as the enemy. In Poland, the 'PiS has initiated similar discourses constructing internal and external enemies' (Sata and Karolewski, 2020, p. 218). Both PiS and Fidesz depict the EU (especially

the European Commission) as a threat and in opposition to ‘what the majority of Poles represent – tradition, historical consciousness, patriotism, belief in God and a normal family between a man and a woman’ (Sata and Karolewski, 2020, p. 219). Together Kaczyński and Orbán agreed that a “cultural counter-revolution” (Sata and Karolewski, 2020, p. 219) was needed to radically reform a post-Brexit EU. Hungary and Poland show that discourses predicated on fears regarding identity and serving to delineate enemies, traitors, and threats are central to justifying these political reforms (Sata and Karolewski, 2020, p. 219). As the political elites in Poland and Hungary succeed in shrinking the space afforded to civil society and eliminate the independence of the institutions critical to maintaining the separation of powers whereby transparency and accountability are achieved, their rule becomes consolidated, so that ‘[n]on-transparent procedures and the loss of liberties and rights make meaningless the democratic constraints of executive power or majority rule and everything becomes subordinated to conjured national interest – defined solely according to Caesar’s taste’ (Sata and Karolewski, 2020, p. 219), which will include the way that the death penalty is selectively used in political speeches, depending on the audience, as seen above. The description is not lost on Borowski in his discussion of the dystopian world of Poland as depicted in the television series ‘1983’ (on Netflix), where media and propaganda stretch the boundaries of truth.

The current view

Legal and religious traditions may have an influence upon whether the death penalty is or is not an accepted part of the criminal law (Sarat and Boulanger, 2005). Some writers consider what is at stake for democracy when imposing abolition at the cost of ignoring public opinion (Steiker 2002, p. 114-118). The fact that abolition was achieved against the majority opinion (Steiker, 2002, pp. 114-118) has been used by the political elite in CEE.

No sooner had the PiS come to power, in 2015, than it began to question the role of the EU in Polish affairs and Poland's place within it. This questioning was driven by rhetoric where doubt underpinned attacks mounted against the EU; claims were made that EU values were very much at odds with Polish values and traditions, as well as with institutions such as the judiciary. This last topic is beyond the scope of this chapter yet it is at the heart of debates about the country's membership of the EU (Łętowska, 2022, <https://verfassungsblog.de/defending-the-judiciary/>, last accessed 24 March 2023). Similar developments have occurred in Hungary. The EU is presented as imposed rule, emanating from Brussels, Strasbourg, or Luxembourg. This narrative is a well-known trope that taps into Poland's historical plight as a country divided by three powers and always at the mercy of its borders and neighbours (Borowski, 2022, p. 6). In the early 2000s, admittedly, there was '[a]nxiety about falling victim to imperial domination' where 'Polish EU membership [w]as a threat to the country's national identity and an exercise in 'enforced Westernization' (Stanley, 2017, p. 146).

Similarly, in Russia, the threat of the outsider is attached to the Council of Europe and the European Court of Human Rights. As Matthew Light and Nikolai Kovalev show, under tsarist rule, the death penalty never had the symbolic or practical significance evident in early modern and modern Western European states. Ceremonial executions were simply not staged under the Tsars. Under Communism, the USSR imposed harsh sentences that were 'implicit death sentences', such as penal servitude (2013, p. 9). In the post-Communist period Russia appeared to be adhering to Council of Europe values. However, widespread extrajudicial state killings are an enduring feature of the Russian state. Under President Vladimir Putin, the dominant message is that Russia is a great power that foreigners cannot coerce (Light and Kovalev, 2013, p. 20). Since the 2022 invasion of Ukraine, Russia has been expelled from the Council of Europe and calls to restore the death penalty have been made.

In Hungary, during the 2014 election campaign the candidates of the far-right party Movement for a Better Hungary (Jobbik) were once again advocating the reintroduction of the death penalty and with it a hard-line criminal policy in general (including, for example, the castration of offenders who had committed sexual offences) (Toth, 2022, p. 191). Alongside Jobbik was The Hungarian Justice and Life Party (MIÉP), the other far-right party represented in the Parliament after the regime change in 1989. In an interview in 2006, its then president, István Csurka, opined that the abolition of the death penalty had been due to the Communist Party elite's concern to avoid execution for their own heinous crimes (Toth, 2022, p. 192). Politicians like Péter Boross, who was the second Hungarian Prime Minister to hold office after the regime change, serving from 1993 to 1994, regularly claimed that the reintroduction of the death penalty should be considered, with a view to bringing crime under control (Toth, 2022, p. 192). In May 2002, following an especially violent bank robbery in which eight persons were murdered, Fidesz also expressed support for its reinstatement (Toth, 2022, p. 196). More recently, Prime Minister Viktor Orbán's statements since his ascent to power have elicited a reaction not only from the EU, but also from the Council of Europe - the organisation created to protect human rights that works within a successful regional, ie. European human rights framework. In his parliamentary speech in 2012 Orbán stated

We want to develop a European public opinion which tends to reinstate the issue of [the] introduction or non-introduction of the 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 (Toth, 2022, p. 197)

As Toth (2022, p. 197) correctly observes, Orbán's statement from 2012 suggests that he is not against the death penalty 'in theory', but also that he is not particularly concerned about international human rights treaties. In his view changes could be implemented if a debate showed that the citizens of the Member States find the death penalty necessary, public opinion in this perspective being paramount. Nils Muiznieks, former Commissioner for Human Rights in the Council of Europe responded to Orbán's view by noting that '[t]he 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' (Toth, 2022, p. 204). Recent speeches delivered by Orbán have resulted in several of his advisers stepping down (Verseck, 2022, <https://www.dw.com/en/orbans-pure-nazi-speech-triggers-political-earthquake/a-62619164>, last accessed 24 March 2023).

However, as commentators rightly point out, Poland's membership in the EU was a conscious decision. It is, moreover, a political project and vision that relies on mutual agreement and negotiation. These points do not support PiS's main assertions and its consideration of the issue. And, as the Polish and Hungarian political elite know full well, being a member of the EU brings a considerable number of benefits that the political elite itself has no wish to lose. To use Borowski's apt framing of the question, the EU is not 'an obvious [bad guy]', quoting one of the protagonists in Netflix's Polish series *1983* noted above (Borowski 2022: p. 7). In 2022, 92% of Poles support their country's membership of the EU. Importantly, over half of the population reckon that Poland is headed in a bad direction (CBOS, 2022, https://www.cbos.pl/EN/trends/trends.php?trend_parametr=stosunek_do_integracji_UE), last accessed 24 March 2023). In January 2023, Polish Prime Minister Mateusz Morawiecki made a public announcement in support of the death penalty, indicating that he disagrees with the

Catholic Church, and that its abolition had in his view been premature. The response on the part of several Polish MPs was to compare his rhetoric to that of a tyrant (The Independent, 2023, <https://www.independent.co.uk/news/world/europe/poland-death-penalty-catholic-mateusz-morawiecki-b2255203.html>, last accessed 24 March 2023).

Reference was made above to a text by Carol S. Steiker, in which she argues that while the consensus on populism is that in the US political structures and political culture of that kind result in support for the death penalty, such attitudes tend to translate more directly into public policy there than is the case in Europe (2002, p. 118-121). Populism becomes a motivation for retaining capital punishment rather than serving as a mechanism by which retention occurs. In other words, the in-built fragility and insecurity of the more populist versions of democracy create a demand for compelling symbols of strength and sovereignty. Prime Minister Morawiecki's view should be considered within the context of Austin Sarat's claim regarding:

our attachment to state killing [that] is paradoxically a result of our deep attachment to popular sovereignty. Where sovereignty is most fragile, as it always is where its locus is in the People, dramatic symbols of its presence, like capital punishment, may be most important. The maintenance of capital punishment is, one might argue, essential to the demonstration that sovereignty could reside in the people. If the sovereignty of the people is to be genuine, it has to mimic the sovereign power and [the] prerogatives of the monarchical forms it displaced and about whose sovereignty there could be few doubts (Sarat, quoted in Steiker, 2002, p. 117).

Steiker's intention here was to argue against exceptionalism, and since then, the states under discussion in this review would seem now to be validating the point she was making, because of the populism that has come to define their respective leaderships. In Poland, the

authorities have thus broken away from former official institutional positions close to the state, such as that of the Catholic Church. The gulf between the authorities and the populace is wide, and mass demonstrations about abortion and the threat to the independence of the judiciary have shown this. But both Poland and indeed Hungary enjoy the EU financial safeguards available to member states and have no wish to see them disappear (Zerofsky, 2003, <https://www.nytimes.com/2023/04/04/magazine/poland-eu-ukraine-war.html>, last accessed 29 August 2023).

Ukraine and Belarus

It is not possible to ignore relevant developments at the Polish borders. At the time of writing there is a war in the Ukraine, raging since February 2022 when Russia invaded the country (as it did also in 2014). Trials are being prepared in the Russian-controlled region of Donetsk, in eastern Ukraine, where five foreign nationals are charged as mercenaries who were attempting to seize power by force. Three of the five face the death penalty. The court is not internationally recognised. Behind the scenes the respective governments of the defendants are working for their release (Gijs, 2022, <https://www.politico.eu/article/donetsk-court-charge-foreigner-mercenary-ukraine-war/>, last accessed 24 March 2023). The Supreme Court of the Luhansk People's Republic, another area of Ukraine occupied by Russia, has sentenced a Ukrainian officer to 13 years' imprisonment. Ukraine itself abolished the death penalty in 2000 when it became a member of the Council of Europe (Lokshina and Gorbunova, 2023, <https://www.hrw.org/news/2023/03/10/russias-verdict-against-ukrainian-pow-cynical-farce>), last accessed 24 March 2023).

Belarus is another country bordering Poland. On 18 May 2023, Aleksander Lukashenka approved new legislation introducing the death penalty for attempted acts of terrorism. Lukashenka is not recognised by the West as a legitimate leader. This initiative is believed to

be a response to recent incidents of sabotage aimed at the country's railway network. The 2020-2021 protests in the country were against the government and the president. After the national election results were announced, the demonstrations intensified. After Lukashenka declared victory, opposition leader Sviatlana Tsikhanouskaya claimed that she had won 60-70% of the vote and that the election had been rigged. This was followed by the creation of a council that was open for applications to all who agreed that the official election had been falsified. In response the state media proclaimed Lukashenka's inauguration. The EU rejected the election results. The authorities intensified their repressive tactics. Widespread torture and ill-treatment of detainees was reported by human rights observers.

Belarus is not a member of the Council of Europe. Currently, the death penalty is usually applied in Belarus for aggravated murder (Kuznetsov, 2022, <https://www.politico.eu/article/alexander-lukashenko-kremlin-belarus-wants-to-bring-in-death-penalty-for-high-treason/>, last accessed 24 March 2023). Belarus has a civil society that must hide in order to survive. Demonstrations have been violently repressed. There are 1,444 political prisoners in Belarus and 2,350 people have been declared "extremist". Last year Lukashenka's regime imposed at least 1,200 political convictions on criminal charges. It is reported that 215 print media outlets have been shut down, and since 2020 more than 1,000 NGOs have been liquidated. 2023 will see numerous high-profile politically motivated trials, including that of the Nobel Peace Laureate Ales Bialiatski and two other members of human rights NGO Viasna who are being prosecuted on charges of smuggling and financially supporting groups whose actions breach public order. Images from the trial proceedings show defendants handcuffed and in a cage. When Sviatlana Tsikhanouskaya herself was forced to flee the country in 2020 she stated that in Belarus there are no impartial and independent trials. Independent journalists have been harassed. For example, the hugely popular Tut.by was the largest independent media group in Belarus until its former chief editor, Maryna

Zolatava, and director-general, Lyudmila Chekina, were arrested on charges including threatening the national security of Belarus. Most of those in detention are ordinary Belarusians who are being brutally punished for protesting against the fraudulent 2020 Presidential elections. Journalists, media actors, opposition figures, and human rights defenders have been sentenced for peacefully exercising their human rights and fundamental freedoms, and for expressing a collective commitment to freedom of expression and the freedom of peaceful assembly and association. Secrecy makes it all but impossible to gather statistics regarding executions in Belarus. There are initiatives, though, to try and counter this secrecy through artistic means and civil society.

Indeed, it is chiefly through artists and the work of civil society in Belarus that information about the death penalty can be shared (Fazal, 2023, <https://www.thesaturdaypaper.com.au/culture/theatre/2023/02/25/theatre-maker-natalia-kaliada#hrd>, last accessed 24 March 2023). The London-based Belarus Free Theatre is focused on bringing reality to its audiences; when it was still in Minsk performances could not be advertised widely and the venues had to be small spaces so as to avoid arrest. The theatre's founder went into exile after Lukashenka consolidated his grip upon the media and the arts in 2005. Civil society in Belarus was built by making connections with CEE neighbours, like Czechoslovakia. The co-founder of the Theatre Kaliada, Natalia Kaliada, was inspired by playwrights like Václav Havel, who did of course go on to become president of Czechoslovakia. The secrecy concerning the death penalty, she notes, inspired the theatre group to create an immersive performance that also served as a form of protest. Kaliada is especially concerned by the fact that the bodies of the executed are never returned to their families. '[F]amilies don't know where they're buried, when it's happened, where this has happened,' she says. 'Our ensemble, we would lie in body bags in main squares around the world' (Fazal, 2023,

<https://www.thesaturdaypaper.com.au/culture/theatre/2023/02/25/theatre-maker-natalia-kaliada#hrd> , last accessed 24 March 2023). “The death of critical thinking doesn’t just lead to the closing of NGOs,” says Kaliada. “It leads to murders, rapes and torture. We believe critical thinking will scare dictators. You just can hear that scream from the stage, even if it’s pronounced quietly, when somebody is trying to make you think” (Fazal, 2023, <https://www.thesaturdaypaper.com.au/culture/theatre/2023/02/25/theatre-maker-natalia-kaliada#hrd>, last accessed 24 March 2023).

A snapshot of death penalty discourses in selected countries in CEE shows how important it is to undertake studies of the subject. This discussion of a few chosen examples can show important patterns about the wider discourses elsewhere. It reveals commonalities with states that are led by populist governments or have right-wing tendencies. It also demonstrates how the discourse masks what is occurring with respect to punishment in states that have been carrying out extrajudicial state killings or imposing penalties so severe that they are implicit death sentences (Rainsford, 2023, <https://www.bbc.co.uk/news/world-europe-66384662>, last accessed 29 August 2023).

Conclusion

The death penalty was abolished in Poland and its Eastern European counterparts as a necessary consequence of membership in the EU. With the ascent to power of conservative nationalist parties in the region, the death penalty continues to be a live topic. This chapter has analysed the calls for its reinstatement that have occurred during domestic political crises and as a stance against the EU. Historically, in Poland, lawyers and criminologists have opposed the death penalty, while the Catholic Church, which is hugely influential, is itself also now opposed. The chapter has approached the history and status of the death penalty from an interdisciplinary perspective, concerning itself chiefly with Poland , but referring

also to Hungary, and to other states in the region, such as Ukraine and Belarus, where the death penalty has been imposed. Significantly, the war has reignited these debates and has led to scrutiny of Belarus and Russia, where extrajudicial killings continue. The chapter has identified the factors that underpin the drive for the reinstatement of the death penalty and has explored the broader, disturbing implications for public trust and the rule of law.

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