

“The Question of the death penalty”

Submission to the report of the Secretary-General on the Question of the Death Penalty pursuant to resolution 36/17, adopted by the Human Rights Council on 27 September 2017.

(April 2019)

The Portuguese Ombudsman, in its capacity of National Human Rights institution fully in line with the Paris Principles and accredited with “A” status since 1999, hereby replies to the call for input received from the Office of the High Commissioner for Human Rights on “The Question of the death penalty”. The current mandate holder is Maria Lúcia Amaral.

1. Death Penalty Abolition in Portugal

The Death Penalty for political crimes was abolished in Portugal in the year of 1852, by an additional Act to the Constitutional Charter of 1826.

It was then abolished for common crimes in 1867, by the Charter of Law of 1th July 1867, although the last execution had taken place in 1834. In 1870, the abolition was extended to the overseas territories.

In 1911, the death penalty was abolished for all crimes. However, due to the participation in the World War I, it was established “only when indispensable and only in war theatre”.

The Portuguese Constitution of 1976 abolished the death penalty for all crimes. The current Article 24 reads as follows: “*(Right to life) 1. Human life is inviolable. 2. In no case shall there be the death penalty*”. Despite several revisions to the Constitutional text,

the prohibition of death penalty is still one of the cornerstones of our Constitution and, in general, it corresponds to the public's sentiment.

Portugal was thus, one of the first countries in the world abolishing the death penalty and this abolition had a major impact throughout all Europe at the time. For this reason, the mentioned Charter of 1867 received the title of “*European Heritage Label*” in 2015. This initiative aims at promoting the values and elements of European history and cultural heritage.

In 2017, to signal the 150 years of the abolition, a series of commemorations took place in Portugal.

2. Non-Extradition

Besides the prohibition of death penalty, the Portuguese Constitution also forbids, in Article 33 no. 6. the extradition or handing over of a person for crimes which are punishable under the applicant State's law by death or by any other sentence that results in irreversible damage to physical integrity.

In several cases where the requesting State presented political guarantees of non-execution of the death penalty, the Constitutional Court held that the Constitution *peremptorily prohibits* extradition in every case where there is a *legal possibility* of application of death penalty. Thus, extradition shall be permitted only where, *according to the domestic law of the requesting State, the penalty which may in particular be applied or already applied in the case is not the death penalty.*