



**RIGA  
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LAW**

# The death penalty across borders: Analysis of regional approaches and international human rights perspectives

## BACHELOR THESIS

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**DECLARATION OF HONOUR:**

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed) .....

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## **ABSTRACT**

The focus of the thesis is the global practice of the death penalty, in particular the regional approaches and its contradiction with the international human rights law. One of the goals is to determine the reasons behind the European human rights system's success in nearly completely abolishing the death penalty, thus consequently addressing the persisting challenges in the Inter-American and African systems regarding the matter. It was found that the main reason is the mandatory ratification of Protocol 13 to the European Convention on Human Rights, which requires a country to abolish the death penalty to become a member to the Council of Europe. Another aim is to identify the legal obligations of an abolitionist state upon an extradition request from a retentionist state. Accordingly, the main obligation is to abstain from assisting in the implementation of the death penalty, including not extraditing a person to a country where they might face the punishment.

**Keywords:** death penalty, extradition, regional human rights systems, obligation to abstain, capital punishment.

## SUMMARY

The death penalty has been used as a punishment since ancient times and many great thinkers such as Hobbes and Locke, supported it. However, during the 19<sup>th</sup> century, the world started to move towards the abolishment of the death penalty and after the World War II it gained even more topicality. The main reason for that was the adoption of international instruments, endorsing the fundamental rights and freedoms, such as the right to life. The most crucial was the Universal Declaration of Human Rights, because even though it was not a legally binding document, it serves as a basis for all the following human rights treaties. Although the abolitionist movement has gained a lot of support, international law does not prohibit the use of the death penalty instead it provides limitations on its implementations, which is not beneficial to global abolishment. For instance, Article 6 of the International Covenant on Civil and Political Rights states that the death penalty may only be imposed for the most serious crimes but fails to provide a list of these crimes. Moreover, capital punishment cannot be imposed on minors nor carried out on pregnant women.

According to the United Nations, countries fall into four categories based on their death penalty practice, namely abolitionists, abolitionists for ordinary crimes, *de facto* abolitionists and retentionists. Although more than half of the countries in the world have abolished the death penalty, thus being abolitionists, some countries, such as the United States and China, still implement and carry out the capital punishment. To justify their actions, they argue that the death penalty helps to deter future crime and it is more humane than to keep a person in prison for life. Nevertheless, all the supporting arguments have been overturned. For instance, there is no evidence to indicate that the death penalty works as a deterrence instead it has been stated that it might have an opposite effect. Moreover, the death penalty is not more humane due to the methods of executions, all of which are brutal and painful ways to die, and the death row phenomenon, consisting of the inhuman conditions and long waiting periods on the death row. On that note, it has been argued that life in prison is a better alternative, since it increases the risk of wrongful executions and improves the possibility of a conviction at all.

All the non-governmental human rights organisations condemn the use of the death penalty and advocate for its abolishment collectively as well as individually. World Coalition Against the Death Penalty is an organisation consisting of over one hundred members, most of which are NGOs. One of the most well-known organisations is Amnesty International, which has been advocating for the abolishment of the death penalty for decades and it has been very influential in that regard. For example, it organised the Stockholm Conference which led to the adoption of the Stockholm Declaration, stating that the death penalty violates right to life and it needs to be prohibited under international law. Moreover, the comments and information provided by the AI in the landmark case of *Soering v the United Kingdom* in the European Court of Human Rights, helped the Court to conclude that the death row constitutes as inhuman and degrading treatment, thus breaching prohibition of torture.

One of the aims of the thesis is to determine the reasons why the European human rights system has been far more successful in abolishing the death penalty regionally, than the Inter-American and African systems. For these purposes the relevant legislation, opinions, and actions of the three systems were compared. It was determined that the main reason for the Europe's success is the fact that in order to become a member of the Council of Europe, which is seen as a fundamental part of being a European country, the ratification of the European Convention on Human Rights and consequently its Protocol 13, abolishing the death penalty in

all circumstances, is mandatory. Additionally, the European region is the only one consisting of two organisations, namely the Council of Europe and the European Union, which actively advocate for the global abolishment. They do it either individually or collectively, since all the member states of the EU are also members to the Council. Nevertheless, the Inter-American and African systems have also taken important steps towards the abolishment, however the issues still persist. Regarding the Inter-American region, the United States poses the biggest challenge, because it has not ratified the American Convention on Human Rights nor the Protocol abolishing the death penalty. Moreover, it does not comply with the recommendations given by the Inter-American Commission on Human Rights and has violated the American Declaration on the Rights and Duties of Man numerous times. The African system is the least successful one out of the three, because even though it has adopted the African Charter on Human and Peoples' Rights, it does not have a legally binding document abolishing the death penalty. That being said, in the recent years it has adopted a Draft Protocol regarding the matter, indicating the African Union's commitment to abolish the death penalty and respect human rights.

Another aim is to identify the legal obligations of an abolitionist state upon an extradition request from a retentionist state when the death penalty is a possible punishment. On that note, the thesis firstly addresses the human rights violations that are caused by the death penalty, during both the execution and on the death row. Execution itself violates the right to life, since the whole idea is to take a person's life. Nevertheless, due to international law not prohibiting the punishment, numerous countries have made it an exception under the right to life, but even then, they need to apply it in a manner that is not arbitrary. More specifically, the punishment needs to be prescribed by law, imposed by a competent court and comply with due process. One could also argue that the execution violates the prohibition of torture due to the brutal execution methods, however the ECtHR concluded in their case of *Soering v. the United Kingdom*, that the inhuman conditions on the death row, constituting as the death row phenomenon, breach Article 3 of ECHR, 'Prohibition of torture'. Moreover, the Court decided that a country can be held responsible for violating Article 3 if it would extradite a person to another country where they can be sentenced to death. Due to these reasons, it is landmark case in the death penalty debate.

Turning back to the legal obligations arising from the extradition process between abolitionist and retentionist state, there are three essential aspects. Firstly, both countries need to make sure that the extradition request is based on a valid bilateral extradition treaty, which complies with domestic and international laws. The fundamental part is the double criminality principle, meaning that the extraditable offence must be punishable under the domestic laws of both countries concerned. Secondly, since an abolitionist country has abolished the death penalty domestically, it has an obligation to abstain from assisting in the implementation of the punishment elsewhere. This involves not extraditing a person to a country where the death penalty is a possible punishment. And lastly, an abolitionist country has an obligation to uphold international human rights standards, therefore it must ensure that, upon extradition, the person's human rights are protected.

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## INTRODUCTION

During the last decades the human rights protection has been one the rise as the world ingrained with human rights thinking, however the centuries old punishment, with the core idea of ending a person's life through criminal legal system, is still persisting. By now most of the countries have abolished the death penalty, however some countries still impose and carry out the capital punishment, and international law does not explicitly prohibit it. Moreover, retentionist states justify their actions with various arguments, such as it helps to deter future crime. Out of the three human rights systems – European, Inter-American and African, the European system has been the most successful in abolishing the death penalty regionally. Namely, all the countries but one, Belarus, have prohibited the implementation of capital punishment under national law. The most crucial argument against the death penalty, is its contradiction with human rights which occurs during both, the execution and on the death row, due to the inhuman conditions. Because of that, the extradition process between abolitionist and retentionist countries is complicated. Consequently, it negatively impacts the international relations and cooperation as well as tarnishes the image of retentionist countries.

The legal problem of the research is the fact that although the death penalty is considered a violation of human rights, numerous countries still impose and carry out the punishment. Since international law does not prohibit the use of the death penalty, instead it provides limitation and suggests countries to abolish it, states are not explicitly breaching international rules in that regard. Nevertheless, some countries are not complying with these limitations, thus highlighting the lack of power international law holds over states.

That being said, the primarily applied methodology in this thesis is the doctrinal legal research. In particular, the analytical approach is used to interpret the international human rights law, such as the International Covenant on Civil and Political Rights, as well as the regional legislations concerning the use of the death penalty. The evolution of legal norms is assessed through the historical approach, for instance, the protocols added to the European Convention on Human Rights to abolish the death penalty. There are also aspects of the non-doctrinal historical approach used in the thesis, such as the changed interpretation of the Universal Declaration of Human Rights over time to be in favour of the abolishment. And lastly, the comparative approach is applied in what follows to compare the practice of the death penalty in the three human rights systems. For these purposes, in addition to relevant books and articles, various international and regional legislative acts as well as caselaw from regional human rights courts will be analysed.

Based on the legal problem stated, two research questions are established:

1. Why has the death penalty been almost completely abolished in the European region and what are the reasons for the Inter-American and African regions for not being able to do that?
2. What are the legal obligations of an abolitionist country upon the extradition request from a retentionist country in a case where the death penalty is a possible punishment?

In summary, the aim of the thesis is to determine the reasons why the European human rights system has been more successful than the other two systems, in abolishing the death penalty regionally, and to identify the legal obligations of abolitionist countries upon an extradition request from a retentionist country. In order to achieve that, the author will compare

the European, Inter-American and African human rights systems based on the legislation regarding the death penalty, their views on the punishment and actions taken to abolish it. Moreover, to identify the legal obligations, the author will analyse laws concerning the extradition process between countries and discuss relevant caselaw. On that note, the biggest limitation for the thesis is the limited word count, since there is a lot of information regarding the topic. Moreover, the majority of the available sources are against the use of the death penalty, thus making it more difficult to find arguments that support the punishment in order to make the research unbiased.

The thesis consists of three chapters. The first chapter is titled “The international movement towards the abolishment of the death penalty” and consequently discusses how the practice of the death penalty and attitude towards it has changed over time. The chapter is divided into three subchapters, first of which provides arguments for and against the death penalty, highlighting the diverging opinions on the matter. The second gives an overview of the relevant international legislation adopted by the United Nations, which does not explicitly prohibit the death penalty but instead provides limitations for its use. And the third subchapter focuses on the work of the international non-governmental organisations in abolishing the death penalty globally. In particular, the work as well as impact of Amnesty International will be discussed.

The second chapter is titled “The death penalty practice in regional human rights systems” and it is also divided into three subchapters, each of which focuses on a specific human rights system, namely the European, Inter-American and African. The premise of this chapter is to compare the three systems based on their legislation and views regarding the death penalty as well as the actions taken to globally abolish the punishment. The second chapter will also provide an answer to the first research question.

The title of the last chapter is “The death penalty in connection to human rights and extradition” and it has two subchapters. The first discusses which human rights are breached when the death penalty is imposed by considering both the execution and time spent on the death row. For these purposes a landmark case of the European Court of Human Rights, *Soering v. the United Kingdom*, will be discussed. In addition to the violation of human rights, the judgement also addresses the aspect of extradition between abolitionist and retentionist states, namely can a state be held responsible for breaching human rights law if it extradites a person to another country, where they are subjected to inhuman punishment. This is the focus of the second subchapter, while also highlighting the arising moral and legal complications of the extradition process. Moreover, the third chapter will address the second research question.

## CHAPTER 1: THE INTERNATIONAL MOVEMENT TOWARDS THE ABOLISHMENT OF THE DEATH PENALTY

The death penalty has existed since the ancient times, believed to have appeared at the earliest in the Code of Hammurabi in 1750 BC<sup>1</sup> for various crimes, such as theft and perjury<sup>2</sup>. Many great thinkers in history have been supporting the use of the death penalty. For instance, Thomas Hobbes and John Locke found it justifiable, while Jean-Jacque Rousseau and Montesquieu had some reservations, thus limiting the imposition of capital punishment to murder or attempted murder.<sup>3</sup>

During the 19<sup>th</sup> century the world moved towards the abolishment of the death penalty, with Michigan being the first jurisdiction to prohibit the imposition of the punishment permanently in 1846. Nearly two decades later, Portugal and Venezuela abolished the punishment, followed by numerous other countries. However, in the first half of the 20<sup>th</sup> century, the abolitionist movement experienced a setback for two main reasons. Firstly because of influential doctrines stating that “the death penalty was scientifically necessary as a social measure”<sup>4</sup> and secondly because after the First World War, totalitarianism was on the rise in Europe and Hitler, who was a supporter of the death penalty, wrote about executing approximately 10 000 people in his book “Mein Kampf”. Nevertheless, in the second half of the century, after the Second World War, the abolition movement regained topicality since international instruments enumerating fundamental rights and freedoms, including the right to life, were adopted. The first such instrument was the Universal Declaration of Human Rights<sup>5</sup>, which was adopted in 1948, and it was followed by the American Declaration on the Rights and Duties of Man<sup>6</sup>, the International Covenant on Civil and Political Rights<sup>7</sup>, the European Convention on Human Rights<sup>8</sup> and the American Convention on Human Rights<sup>9</sup>.<sup>10</sup>

Today the United Nations (hereinafter: the UN) has classified countries into four categories based on their practice regarding the death penalty. Firstly, there are abolitionist countries, which have abolished the death penalty for all crimes under their national legislation. According to the statistics provided by Amnesty International in 2022, 112 countries, which is

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<sup>1</sup> William A. Schabas, *The Abolition of the Death Penalty in International Law*, (Cambridge University Press, 2002), p. 3, accessed April 12, 2024, <https://ebookcentral.proquest.com/lib/lulv/detail.action?docID=218009>.

<sup>2</sup> FindLaw. “History of Death Penalty Laws” by John Mascolo, available on: <https://www.findlaw.com/criminal/criminal-procedure/history-of-death-penalty-laws.html#:~:text=The%20Hammurabi%20Code%2C%20which%20was,more%20lightly%20in%20most%20countries>. Accessed April 17, 2024.

<sup>3</sup> Schabas, *supra* note 1, p. 4.

<sup>4</sup> *Ibid.*, p. 6.

<sup>5</sup> United Nations. Universal Declaration of Human Rights (10 December 1948). Available on: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. Accessed April 24, 2024.

<sup>6</sup> Inter-American Commission on Human Rights. American Declaration of the Rights and Duties of Man. Entry into force 10 June 1948. Available on: <https://www.oas.org/en/iachr/mandate/Basics/american-declaration-rights-duties-of-man.pdf>. Accessed April 24, 2024.

<sup>7</sup> United Nations. International Covenant on Civil and Political Rights (16 December 1966). Entry into force 23 March 1976. Available on: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>. Accessed April 24, 2024.

<sup>8</sup> Council of Europe. European Convention on Human Rights (ETS No. 005). Entry into force 3 September 1953. Available on: <https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c>. Accessed April 24, 2024.

<sup>9</sup> Organization of American States. American Convention on Human Rights “Pact of San Jose, Costa Rica” (B-32). Entry into force 18 July 1978. Available on: [https://www.oas.org/dil/treaties\\_b-32\\_american\\_convention\\_on\\_human\\_rights.pdf](https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.pdf). Accessed April 24, 2024.

<sup>10</sup> Schabas, *supra* note 1, pp. 5-7.



more than a half a world, are *de jure* abolitionists.<sup>11</sup> The second category is abolitionists for ordinary crimes, meaning that “the death penalty is retained only for exceptional circumstances”<sup>12</sup>, for instance “in time of war for military offences, or for crimes against the State, such as treason or armed insurrection”<sup>13</sup>. In 2022 there were nine such countries.<sup>14</sup> The third category is *de facto* abolitionists, referring to countries which have not executed anyone in at least ten years, despite keeping the death penalty in their legislation. The issue with these states is that at any time they can resume the executions, however then they will be referred to as retentionists.<sup>15</sup> Based on the Amnesty International statistics, there are 23 *de facto* abolitionist countries. And lastly, 55 countries are retentionists, indicating that in the last ten years they have imposed and/or carried out the death penalty.<sup>16</sup> As a result, even though more than half a world has abolished the death penalty, the number of executions is still high. In 2022 at least 883 executions took place, which is approximately 300 executions more than in 2021, despite the fact that in 2022 more countries had become abolitionists. Most of the executions happened in China, followed by Iran, Saudi Arabia, Egypt and the U.S. however the actual number of executions in China is unknown since this information is considered to be a state secret.<sup>17</sup>

Methods of execution have changed over time, the earliest being “crucifixion, drowning, beating to death, burning to death and impalement”<sup>18</sup>. Later on, they also began using burning at stake, boiling and gas chamber, amongst other methods, to execute criminals.<sup>19</sup> Although, the methods of execution are still inhuman, they have become less brutal. Nowadays, the five most commonly used methods, all of which could result in a slow death, are electrocution (only used in the United States), hanging, lethal injection, beheading (only carried out in Saudi Arabia), and shooting. Hanging and beheading, in addition to being painful ways to die, are sometimes also carried out in public, adding another layer to an already degrading treatment.<sup>20</sup> In addition, recently the State of Alabama in the United States carried out an execution using nitrogen gas, making the country first in the world to be using this type of method.<sup>21</sup> The authorities of Alabama claimed it to be “an effective and humane method of execution”<sup>22</sup>, however the United Nations declared it to be cruel, since according to a witness,

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<sup>11</sup> Amnesty International. Death Penalty: The global view: death sentences and executions 2008-2022, available on: <https://www.amnesty.org/en/what-we-do/death-penalty/>. Accessed April 12, 2024.

<sup>12</sup> United Nations: Economic and Social Council. Report of the Secretary-General: Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (2001), para. 12 (b), available on: [https://www.unodc.org/pdf/crime/10\\_commission/10e.pdf](https://www.unodc.org/pdf/crime/10_commission/10e.pdf). Accessed April 17, 2024.

<sup>13</sup> *Ibid.*

<sup>14</sup> AI, Death Penalty: The global, *supra* note 11.

<sup>15</sup> UN, Economic and Social, *supra* note 12, para. 12(c).

<sup>16</sup> AI, Death Penalty: The global, *supra* note 11.

<sup>17</sup> *Ibid.*

<sup>18</sup> Lilian Chenwi, *Towards the Abolition of the Death Penalty in Africa: A Human Rights Perspective* (Pretoria: Pretoria University Press, 2007), p. 17, accessed April 12, 2024, <https://directory.doabooks.org/handle/20.500.12854/61061>.

<sup>19</sup> *Ibid.*

<sup>20</sup> Amnesty International. Death penalty in 2020: Facts and figures, available on: <https://www.amnesty.org/en/latest/press-release/2021/04/death-penalty-in-2020-facts-and-figures/>. Accessed March 30, 2024.

<sup>21</sup> The main reason why Alabama and two other states have been exploring alternative methods to carry out the death penalty, is because of the increased difficulty in finding the drugs for lethal injections.

BBC. Kenneth Eugene Smith: Alabama carries out first nitrogen gas execution (2024), available on: <https://www.bbc.com/news/world-us-canada-68085513>. Accessed April 17, 2024.

<sup>22</sup> *Ibid.*

the execution lasted approximately half an hour and the prisoner “thrashed violently on the gurney”<sup>23</sup>.

## 1.1. Arguments for and against the death penalty

Although the use of the death penalty is globally condemned, there are still supporting arguments made by people who view the death penalty as a lawful and proportionate punishment. This subchapter discusses some of these arguments and provides corresponding counterarguments.

The most common argument supporting the death penalty is the deterrence of future crime, “because people fear death more than anything else”<sup>24</sup>. There are two concepts related to deterrence. Firstly, there is a correlation “between the risk of execution [...] and the rate of capital offending”<sup>25</sup>, meaning that a person who is about to commit an offence punishable by death will think twice, because of the chance of being executed. And secondly, there is a long-term deterrence, where the possibility of the death penalty makes the crime seem more serious and if the punishment would be abolished, the severity of that crime would lower and thus the crime would occur more often.<sup>26</sup> However, on these grounds as an argument against the death penalty is that there is no evidence to show that the punishment is more effective than life sentence and some experts have even argued that the death sentence has an opposite effect, namely it will increase the likelihood of murder. On that note, there is a brutalisation hypothesis, according to which certain people might even use the controversy around the death penalty to gain notoriety or use the punishment as a substitute for suicide.<sup>27</sup> Taking the example of the United States, analysis has shown that in States where the death penalty is being applied, the number of murders is higher than in States without the death sentence.<sup>28</sup> Same could also be said when comparing the U.S. with other countries, for instance in Europe. It is common that murders are carried out in a state of anger or under the influence of substance, thus these criminals are not thinking about the consequences of their actions and do not consider the possibility of being executed.<sup>29</sup> Furthermore, the society’s safety can also be guaranteed without the capital punishment, since the criminals could get the life sentence without the possibility of parole.<sup>30</sup> In many instances not having the possibility of the death sentence, has proved to be a more effective means of convicting a person charged with murder, because then the judges or the jury are not obligated to make life or death decisions.<sup>31</sup>

The second argument is retribution, meaning that the punishment has to fit the crime in order to restore the balance. This argument has religious roots and is based on the concept of

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<sup>23</sup> *Ibid.*

<sup>24</sup> Death Penalty Information Center. Arguments for and against the death penalty: Deterrence – Agree, available on: <https://deathpenaltyinfo.org/curriculum/high-school/about-the-death-penalty/arguments-for-and-against-the-death-penalty>. Accessed March 30, 2024.

<sup>25</sup> Roger Hood and Caroline Hoyle, “The question of deterrence,” in *The Death Penalty: A Worldwide Perspective* (Oxford: Oxford University Press, 2012), p. 321, accessed April 12, 2024, <https://doi.org/10.1093/acprof:oso/9780199228478.001.0001>.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*, p. 322.

<sup>28</sup> Death Penalty Information Center. Murder Rate of Death Penalty States Compared to Non-Death Penalty States, available on: <https://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-death-penalty-states-compared-to-non-death-penalty-states>. Accessed March 30, 2024.

<sup>29</sup> Death Penalty. Arguments, *supra* note 24, Deterrence – Disagree.

<sup>30</sup> *Ibid.*

<sup>31</sup> Hood and Hoyle, *supra* note 25, p. 320.

“eye for an eye”. It is argued that if a person takes the life of another person, especially if this act has been done in a gruesome way, why should this murderer get to live a good life in prison, where they can get “three meals a day, clean sheets, cable TV, family visits and endless appeals”<sup>32</sup>. Nevertheless, as a counterargument, retribution, or in other words revenge, is not a sufficient justification for the death penalty. The punishment is rather disproportionate, since many countries impose the capital punishment not only for murder, but also for drug offences or economic crimes and even in the case of murder, not all offenders face the death penalty.<sup>33</sup>

Thirdly, it is argued that the death penalty is applied fairly and does not discriminate. This argument can only be brought if the mandatory death penalty<sup>34</sup> does not exist in a country, because then the circumstances of each case are taken into account.<sup>35</sup> As a counterargument, the death penalty is arbitrary and often times discriminatory. Majority of the people facing the death penalty are signed a public defender, because they cannot afford the lawyer on their own. Unfortunately, many of these public defenders lack experience and are underpaid, thus they are more prone to make errors and not investigate the case properly, which then leads to a conviction. Moreover, based on the example of the U.S., the death penalty is more likely to be imposed for a murder of a white person than of a black person, indicating the racial disparity.<sup>36</sup>

The fourth argument is that the execution of innocent people is rare. Moreover, even if a conviction is overturned and the person is released from the death row, usually it is due to legal technicalities and it does not necessarily mean that this individual is innocent.<sup>37</sup> To counter that argument, innocent people on the death row are not a rare occurrence. Since 1973 at least 197 death row inmates in the U.S. alone have been exonerated<sup>38</sup> and 21 of them were due to DNA evidence<sup>39</sup>, indicating that there is a high possibility that numerous innocent people were executed before this practice emerged. And finally, it is argued that the death penalty is more humane and cheaper, than to sentence a person to a life in prison.<sup>40</sup> This argument is twofold, where both parts have been overturned. Firstly, it states that execution is cheaper, however it is actually more expensive to carry out the death penalty than to keep the criminal in prison for life. For instance, taking examples from the studies conducted in the U.S., in Maryland, the cost of non-death penalty case is one million dollars, while for the death penalty case its three million dollars.<sup>41</sup> And secondly, executing a person is not more humane than keeping them in prison,

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<sup>32</sup> Death Penalty. Arguments, *supra* note 24, Retribution – Agree.

<sup>33</sup> *Ibid.*, Retribution – Disagree.

<sup>34</sup> Mandatory death penalty means that under the domestic law the death penalty is automatically imposed for certain crimes without taking into account the details of a specific case.

Amnesty International, “International Standards on the Death Penalty” (2006): p. 12, available on: <https://www.amnesty.org/en/documents/act50/001/2006/en/>, accessed May 2, 2024.

<sup>35</sup> Death Penalty. Arguments, *supra* note 24, Arbitrariness and Discrimination – Disagree.

<sup>36</sup> *Ibid.*, Arbitrariness and Discrimination – Agree.

<sup>37</sup> *Ibid.*, Innocence – Disagree.

<sup>38</sup> Death Penalty Information Center. Innocence, available on: <https://deathpenaltyinfo.org/policy-issues/innocence>. Accessed March 30, 2024.

<sup>39</sup> Innocence Project. DNA Exonerations in the United States (1989 – 2020), available on: <https://innocenceproject.org/dna-exonerations-in-the-united-states/>. Accessed March 30, 2024.

<sup>40</sup> Justin Healey ed, *Death Penalty Debate* (The Spinney Press, 2016), p. 28, accessed April 12, 2024, <https://ebookcentral.proquest.com/lib/lulv/detail.action?docID=4414641>.

<sup>41</sup> Most of the added cost comes from the adjudication process, “due to a longer pre-trial period, a longer and more intensive voir dire process, longer trials, more time spent by more attorneys preparing cases, and an expensive penalty phase trial that does not occur at all in non-death penalty cases.”

John Roman, Aaron Chalfin, Aaron Sundquist, Carly Knight and Askar Darmenov, “The Cost of the Death Penalty in Maryland,” Urban Institute (2008): p. 2, available on: <https://dpic-cdn.org/production/legacy/CostsDPMaryland.pdf>, accessed May 9, 2024.

because of the methods of executions, which have been discussed previously.<sup>42</sup> Moreover, being on the death row for numerous years, sometimes even decades, causes inmates to have psychological problems, due to the fact that they are not aware of their date of execution and are held in solitary confinement.<sup>43</sup>

There are numerous supporting arguments for the death penalty, nevertheless these have been proved to be false. The most common argument is that the death penalty serves as a deterrence against future crime, because fear of death exceeds all other fears. However, there is no actual evidence to uphold this argument, instead it has been claimed that the death sentence may have an opposite effect. Moreover, execution is an irreversible punishment and if an innocent person is sentenced to death and executed, there is no going back. A life sentence is a better alternative to the death penalty, since it decreases the risk of wrongful executions and increases a chance of conviction.

## 1.2. International legislation against the death penalty

On an international level the death penalty has not been universally abolished, although legally binding legislations regarding the matter has been adopted. This subchapter discusses the relevant human rights instruments adopted by the United Nations and analyses their connection to the death penalty.

The Universal Declaration of Human Rights<sup>44</sup> (hereinafter: the UDHR) was adopted in 1948 by the United Nations General Assembly and although it is not a legally binding instrument, it is considered to be the foundation of all other human rights' treaties.<sup>45</sup> Article 3 of the UDHR states that "everyone has a right to life, liberty and security of a person"<sup>46</sup>, but it does not mention the death penalty, not even as an exception to right to life. Nevertheless, based on various resolutions from the General Assembly and Economic and Social Council, Article 3 does favour the abolition of the death penalty and its goal was to eventually abolish it.<sup>47</sup> It could be said that the goal has almost been reached, since more than half the countries in the world have prohibited the use of the death penalty and legally binding instruments regarding the matter have been adopted.<sup>48</sup>

One of these instruments is the International Covenant on Civil and Political Rights (hereinafter: the Covenant or ICCPR), which was adopted in 1966 by the United Nations General Assembly. 173 states have ratified the Covenant while only six have signed.<sup>49</sup> Under Article 6, the ICCPR provides limitations to the circumstances when the capital punishment may be imposed. According to paragraph 2 of the Article,

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<sup>42</sup> Healey, *supra* note 40, p. 10.

<sup>43</sup> Death Penalty Information Center. Time on death row, available on: <https://deathpenaltyinfo.org/death-row/death-row-time-on-death-row>. Accessed March 32, 2024.

<sup>44</sup> UDHR, *supra* note 5.

<sup>45</sup> Schabas, *supra* note 1, p. 23.

<sup>46</sup> UDHR, *supra* note 5, Article 3.

<sup>47</sup> United Nations. General Assembly Resolution 2393 (XXIII). Available on: <https://digitallibrary.un.org/record/202667?ln=en&v=pdf>. Accessed April 24, 2024.

United Nations. General Assembly Resolution 2857 (XXVI). Available on: <https://digitallibrary.un.org/record/192151?ln=en&v=pdf>. Accessed April 24, 2024.

United Nations. Economic and Social Council Resolution 1745 (LIV). Available on: [https://www.unodc.org/documents/legal-tools/ECOSOC\\_1745.pdf](https://www.unodc.org/documents/legal-tools/ECOSOC_1745.pdf). Accessed April 24, 2024.

<sup>48</sup> Schabas, *supra* note 1, pp. 23-25 and 39-43.

<sup>49</sup> United Nations Human Rights Office of the High Commissioner. Status of Ratification: International Covenant on Civil and Political Rights, available on: <https://indicators.ohchr.org/>. Accessed March 30, 2024.

sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>50</sup>

In other words, there are three limitations. Firstly, the death penalty can only be imposed for the most serious crimes, which unfortunately are not defined in the Covenant. However, the UN Human Rights Committee has elaborated on the matter, namely it has stated that the crime must involve intentional killing and crimes, such as attempted murder, sexual and drug offences and armed robbery, can never be subjected to the capital punishment<sup>51</sup>, but not all retentionist countries are respecting that statement. Secondly, the principle of retroactivity has to be respected, meaning that there needs to be a law in place prohibiting the action at the time of its execution. And lastly, the death penalty must be applied in a manner that is not conflicting with the Covenant nor the Genocide Convention. This paragraph leaves a lot of room for interpretation by states, since laws in countries are different and what constitutes as the most serious crime in one, may not be the same in another. For example, in the United States crimes punishable by the death penalty are murder, treason and large-scale drug trafficking, while in China the death penalty may be imposed for “crimes against national symbols and treasures”<sup>52</sup> or for homosexuality and burglary, amongst others, in Iran.<sup>53</sup> Large number of crimes punishable by the death penalty are not proportionate, however they do not necessarily breach Article 6 paragraph 2, because under national legislation they are considered the most serious crimes.

Paragraph 5 of Article 6 continues with the limitations by stating that the death penalty cannot be imposed on minors, meaning the persons under the age of 18, and cannot “be carried out on pregnant women”<sup>54</sup>. Although being a state party to the Covenant, the United States was sentencing minors to death until the year 2005, when the Supreme Court in *Roper v. Simmons* declared that unconstitutional.<sup>55</sup> This example illustrates the limited powers of international law, since countries are able make reservations even to a provision which has been recognized as a peremptory norm of customary international law.<sup>56</sup>

In 1989, almost 30 years after the adoption of the ICCPR, the Second Optional Protocol (hereinafter: the Second Optional Protocol) to the Covenant, which was “the first universal treaty abolishing the death penalty”<sup>57</sup>, was adopted and the aim of this instrument was to move towards the international abolition of the death penalty. Since it is not mandatory to sign international treaties, only 90 countries have ratified the Protocol, indicating that the majority of states have taken no action, including powerful states such as the United States, China and

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<sup>50</sup> ICCPR, *supra* note 7, Article 6(2).

<sup>51</sup>United Nations Human Rights. Office of the High Commissioner for Human Rights. Document A/HRC/42/28 (2019): para. 8, available on: [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/42/28](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/42/28). Accessed March 30, 2024.

<sup>52</sup> Lucy Zhang, “Do Countries with Death Penalty have Decreased Crime Rates?”, (2021), available on: <https://storymaps.arcgis.com/stories/c2bb4789e9dd4deca5d69a1f2f748aab>. Accessed March 30, 2024.

<sup>53</sup>*Ibid.*

<sup>54</sup> ICCPR, *supra* note 7, Article 6 (5).

<sup>55</sup> Death Penalty Information Center. The Juvenile Death Penalty Prior to *Roper v. Simmons*, available on: <https://deathpenaltyinfo.org/policy-issues/juveniles/prior-to-roper-v-simmons>. Accessed March 30, 2024.

<sup>56</sup> In 2002, the Inter-American Commission on Human Rights stated that the prohibition of executing minors has been a norm of customary international law, which now constitutes as a norm of *jus cogens*.

Amnesty International, “Children and the death penalty under general international law,” ACT 50/004/2003 (2003): p. 1, available on: <https://www.amnesty.org/en/wp-content/uploads/2021/06/act500042003en.pdf>, accessed May 9, 2024.

<sup>57</sup> Schabas, *supra* note 1, p. 174.

Russia. On the other hand, all European Countries, with the exception of Belarus, have ratified it.<sup>58</sup> The Protocol is rather short, consisting only of 11 articles. Article 1 prohibits State Parties from executing anyone within their jurisdiction and obliges them to take measures necessary in order to abolish the death penalty.<sup>59</sup> Compared to the draft of the Protocol, there has been some changes, namely the sentence prohibiting the reestablishment of the death penalty in countries which have already abolished it, was removed. The reason for the exclusion was the common understanding that a country, which is a party to the Protocol, cannot reestablish capital punishment since it “would be contrary to the very object and purpose of the second optional protocol”<sup>60</sup>. Article 2 of the Protocol states that

no reservation is admissible [...], except for a reservation made [...] in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.<sup>61</sup>

In the draft document there were no reservations allowed, but it was believed that this exception would attract more states to become parties, especially since many countries previously had adopted the Protocol 6 to the European Convention on Human Rights, which included the same exception. Nevertheless, the reservations can only be made during the ratification or accession process and the states need to notify the UN Secretary-General about national laws which are relevant during wartime.<sup>62</sup>

The mention of the death penalty can also be found in other international legislations. For example, Article 37 of the Convention on the Rights of the Child prohibits the implementation of the death penalty on persons who at the time of committing a crime, were under the age of 18.<sup>63</sup> Additionally, Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states that

1. [e]ach State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.<sup>64</sup>

An argument could be made, that this Article also includes the death penalty since it is considered to be an inhuman punishment and it is committed by and with the consent of a public official. And lastly international humanitarian law, in particular the Geneva Conventions and its Additional Protocols, also mention the death penalty but with the focus on providing necessary safeguards during the time of war. The Third Convention provides guidelines on the

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<sup>58</sup> United Nations. Human Rights Office of the High Commissioner. Status of Ratification: Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, available on: <https://indicators.ohchr.org/>. Accessed March 30, 2024.

<sup>59</sup> United Nations. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (15 December 1989): Article 1. Entry into force 11 July 1991. Available on: <https://www.ohchr.org/en/instruments-mechanisms/instruments/second-optional-protocol-international-covenant-civil-and>. Accessed April 17, 2024.

<sup>60</sup> Schabas, *supra* note 1, p. 183.

<sup>61</sup> Second Optional Protocol, *supra* note 59, Article 2.

<sup>62</sup> Schabas, *supra* note 1, pp. 182-187.

<sup>63</sup> United Nations. Convention on the Rights of the Child (20 November 1989): Article 37. Entry into force 2 September 1990. Available on: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>. Accessed April 17, 2024.

<sup>64</sup> United Nations. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1984): Article 16. Entry into force 26 June 1987. Available on: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>. Accessed April 17, 2024.

use of the death penalty for the prisoners of the war<sup>65</sup>, while the Fourth Convention deals with the civilians in wartime<sup>66</sup>. Furthermore, both Additional Protocols to the Geneva Conventions, prohibit the implementation of capital punishment on the persons under the age of 18, mothers of young children and pregnant women.<sup>67</sup>

Although there have been numerous international efforts made towards the abolishment of the death penalty, the challenges still exist. There is a complicated relation between state sovereignty and human rights obligations which illustrates the limitations of international law and complexities of abolishing the death penalty globally. For example, Article 6 of ICCPR provides that the death penalty may only be imposed for the most serious crimes, but fails to provide a definition of such crimes, thus leaving it up for interpretation by states. Moreover, the Article prohibits the implementation of capital punishment on minors, which is considered to be a peremptory norm of customary international law. This limitation was ignored by the U.S. until 2005, illustrating the power that states have in regard to making reservation to international law.

### **1.3. Work of the non-governmental organisations regarding the abolishment of the death penalty**

Majority of the non-governmental organisations (hereinafter: the NGOs), especially those with a focus on the protection of human rights, share the same opinion as the international organisations, namely that the death penalty is a violation of human rights and needs to be abolished globally. In 2002, an alliance was created by the NGOs who support the abolishment of the death penalty. It was called World Coalition Against the Death Penalty (hereinafter: the World Coalition) and it consists of “more than 160 NGOs, bar associations, local authorities and unions”<sup>68</sup>, which all work together to universally abolish the capital punishment. To achieve this, the World Coalition supports its members and coordinates “the international advocacy towards worldwide abolition”<sup>69</sup>. One important part of this advocacy is the creation of the World Day Against the Death Penalty in 2003 which takes place on October 10 of each year.<sup>70</sup> The day is meant to raise awareness and gain support for the universal abolition of the death penalty.<sup>71</sup>

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<sup>65</sup> Geneva Convention relative to the treatment of prisoners of war: Article 100. Entry into force 21 October 1950. Available on: <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-100?activeTab=undefined>. Accessed April 17, 2024.

<sup>66</sup> Geneva Convention relative to the protection of civilian persons in time of war: Articles 68 and 75. Entry into force 21 October 1950. Available on: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949>. Accessed April 17, 2024.

<sup>67</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I): Articles 76 and 77. Entry into force 7 December 1979. Available on: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977>. Accessed April 17, 2024.

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II): Article 6. Entry into force 7 December 1978. Available on: <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977?activeTab=undefined>. Accessed April 17, 2024.

<sup>68</sup> World Coalition Against the Death Penalty. Presentation and History, available on: <https://worldcoalition.org/who-we-are/presentation-history/>. Accessed April 18, 2024.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> The Death Penalty Project. 2023: 21st World Day Against the Death Penalty, available on: <https://deathpenaltyproject.org/2023-21st-world-day-against-the-death-penalty/#:~:text=%23WorldDayAgainstTheDeathPenalty%20unifies%20the%20global%20abolitionist,universal%20abolition%20of%20capital%20punishment>. Accessed April 18, 2024.

One of the most well-known non-governmental organisations, which is also a member of the World Coalition, advocating for the abolishment of the death penalty is Amnesty International (hereinafter: AI). It was established in 1961 by a British lawyer Peter Benenson after he launched a worldwide campaign called “Appeal for Amnesty 1961” in order to free two students from Portugal who were imprisoned because they raised a toast to freedom.<sup>72</sup> The goal of AI is to create a world where every individual is able to enjoy “all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments”<sup>73</sup>. In order to achieve this goal, the members of the organisation conduct research and take action focused on preventing and ending the violations of these rights. “Amnesty International is comprised of national offices, international members and the International Secretariat”<sup>74</sup>. It has offices in five continents<sup>75</sup> and more than seven million members globally.<sup>76</sup>

During the next few years after founding the AI, the organisation’s headquarters was established in London and the UN, and the Council of Europe (hereinafter: the CoE), amongst other international organisations, gave AI a consultative status. In 1966 the first milestone was reached, namely AI had helped to release 1000 prisoners who were detained because of their beliefs, ethnic origin, gender, or any other reason which is not a criminal offence. In 1972 AI introduced a campaign against torture, which was also its first global campaign, and after which the UN adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In the 1970s the organisation received two awards, namely a Nobel Peace Prize and the UN Human Rights prize, because of its contributions in securing freedom, justice and peace in the world, and for its achievements in the human rights field. Moreover, due to the organisation’s various campaigns, the UN established the High Commissioner on Human Rights in 1993 and the Rome Statute for the International Criminal Court was adopted in 1998.<sup>77</sup> Although, this is only a small part of the Amnesty International accomplishments, these illustrate the strong effect that the organisation has had on the international arena regarding the protection of human rights.

Amnesty International first showed its opposition against the death penalty in 1965, when it sponsored the UN’s resolution to stop and eventually abolish capital punishment during peacetime for political offences. In 1977 AI organised an international conference “Abolition of the Death Penalty” in Stockholm, which led to the adoption of the Stockholm Declaration regarding the death penalty. The Declaration states that “[t]he death penalty is the ultimate cruel, inhuman and degrading punishment and violates the right to life”<sup>78</sup>. Moreover, it condemns all executions, calls upon governments to abolish the punishment and the UN to declare it to be in

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<sup>72</sup> Amnesty International. 60 years of humanity in action, available on: <https://www.amnesty.org/en/latest/news/2021/05/60-years-of-humanity-in-action/>. Accessed April 18, 2024.

<sup>73</sup> Amnesty International, Statute of Amnesty International: As amended by the 2019 Global Assembly Meeting in Johannesburg, South Africa, available on: <https://www.amnesty.org/en/documents/pol20/1045/2019/en/>, accessed April 18, 2024.

<sup>74</sup> Amnesty International. Freedom, justice, equality. Let’s get to work, available on: <https://www.amnesty.org/en/careers/>. Accessed April 18, 2024.

<sup>75</sup> *Ibid.*

<sup>76</sup> Amnesty International. Join Amnesty. Protect human rights, available on: <https://www.amnesty.org/en/get-involved/join/>. Accessed April 18, 2024.

<sup>77</sup> Amnesty International, The Amnesty International Timeline, available on: <https://www.amnesty.org/en/wp-content/uploads/2021/06/act300182011en.pdf>, accessed April 18, 2024.

<sup>78</sup> Amnesty International, Declaration of Stockholm, Conference on the Abolition of the Death Penalty (December 11, 1977), available on: <https://www.amnesty.org/en/documents/act50/001/1977/en/>, accessed April 18, 2024.



contradiction with international law.<sup>79</sup> Three years after the Stockholm Conference, Amnesty International launched its first campaign for the abolishment of the death penalty. It has stated to being opposed to

the death penalty in all cases without exception – regardless of who is accused, the nature or circumstances of the crime, guilt or innocence or method of execution.<sup>80</sup>

The reason for that is because the death penalty violates right to life, which is the most important right a person has. Moreover, it is discriminatory, since it is often used against the minorities in the society, irreversible and an inhuman punishment.<sup>81</sup> To abolish the death penalty, AI monitors the implementation of capital punishment all around the world and based on that publishes annual reports, which include figures and trends regarding each country.<sup>82</sup> Amnesty International also works closely with international organisations, for example with the Council of Europe. In 1989 AI was able to intervene with the case of *Soering v. the United Kingdom* before the European Court of Human Rights (hereinafter: the ECtHR), which is a landmark case regarding human rights violations in relation to the death penalty. The comments and information provided by the organisation

helped the European Court of Human Rights [...] conclude that exposure to the death penalty is contrary to the ECHR,<sup>83</sup>

specifically to Article 3 which prohibits torture, inhuman and degrading treatment. This example illustrates the influential role of AI in shaping a court's judgment in regard to the death penalty, particularly concerning the domestic laws and extradition practises between abolitionist and retentionist states.<sup>84</sup> In addition to that, Amnesty International also conducts strategic litigation “at the national, regional and international levels, through courts, tribunals, committees and other international bodies”<sup>85</sup> with the aim of providing support to the victims of human rights violations and advocates for the human rights.<sup>86</sup>

Human rights NGOs oppose the use of the death penalty and are actively advocating for its global abolishment. They are doing that either individually or collectively, as could be seen from the establishment of the World Coalition against the Death Penalty, which consist of more than 160 members. One of the most well-known human rights NGO is Amnesty International which has been operating for more than 60 years. Regarding the death penalty, the organisation is strongly against executing criminals without any exceptions and it has been very influential when advocating for its abolishment, because of its close relations with numerous international organisations, such as the UN and the CoE. One example of the AI's influence is the adoption of the Stockholm Declaration, which states that the death penalty violates right to life and calls upon governments to abolish it. Additionally, the organisation intervened with the ECtHR's landmark case, *Soering v. the United Kingdom*, where the comments and information provided

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<sup>79</sup> *Ibid.*

<sup>80</sup> Amnesty International. Death Penalty, available on: <https://www.amnesty.org/en/what-we-do/death-penalty/#wheredomostexecutionstakeplace>. Accessed April 18, 2024.

<sup>81</sup> Amnesty International. The Death Penalty – Your Questions Answered, available on: <https://www.amnesty.org/en/what-we-do/death-penalty/the-death-penalty-your-questions-answered/>. Accessed April 18, 2024.

<sup>82</sup> AI, Death Penalty, *supra* note 80.

<sup>83</sup> Kundai Sithole, “NGO-IGO Relations: Amnesty International, Council of Europe, and Abolition of the Death Penalty,” *Global Governance* 22 (2016): p. 79, accessed April 18, 2024, <http://www.jstor.org/stable/44861182>.

<sup>84</sup> *Ibid.*, p. 91.

<sup>85</sup> Amnesty International. Strategic litigation, available on: <https://www.amnesty.org/en/strategic-litigation/>. Accessed April 18, 2024.

<sup>86</sup> *Ibid.*

by the AI assisted the Court to conclude that implementation of capital punishment is contrary to the European Convention on Human Rights.

## CHAPTER 2: THE DEATH PENALTY PRACTICE IN REGIONAL HUMAN RIGHTS SYSTEMS

There are three regional human rights systems – European, Inter-American and African, and all three of them are committed to protecting and respecting human rights in all circumstances. As touched upon in Chapter 1, the death penalty is a violation of human rights, therefore, to provide sufficient protection, the death penalty should be abolished. Although, all regional systems have taken important steps towards abolition, only one of them has been successful in making the abolishment of the death penalty mandatory for its member states. The following subchapters will discuss in more detail the relevant legislation in these systems, the necessary steps taken and challenges that regional organisations are facing in that regard.

### 2.1. The European Human Rights System

It is necessary to start by discussing the European human rights system, namely the Council of Europe, because out of the three regional systems in the context of the death penalty situation, this system is considered the most effective, since the CoE is the only one having abolished the death penalty as a form of punishment in all its member states. The CoE was established in 1949 after the World War II by ten countries,<sup>87</sup> with the aim of creating a better unity between the countries through various matters, such as economic, social and legal but later on also regarding human rights and fundamental freedoms. During the next decades more countries joined, concluding in 47 member states by 2007.<sup>88</sup> However, due to the Russia's invasion to Ukraine, Russia was expelled from the organisation in 2022, leaving the member state count to 46.<sup>89</sup> In addition to official members, the CoE also has five observer countries, including the United States, Japan and Holy See.<sup>90</sup> This status gives the non-European countries an opportunity to cooperate with the Council and adopt its guiding principles on different matters, such as democracy, human rights and rule of law.<sup>91</sup>

In 1950 the CoE adopted the European Convention on Human Rights (hereinafter: the ECHR or the European Convention), which was later on used as a model for other human rights instruments, namely the ICCPR and the American Convention on Human Rights (hereinafter: the ACHR or the American Convention), which adopted numerous concepts into their own

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<sup>87</sup> The ten founding countries were Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, and the United Kingdom.

Sangmin Bae, "Friends Do Not Let Friends Execute: The Council of Europe and the International Campaign to Abolish the Death Penalty," *International Politics* 45 (2008): p. 130, accessed April 18, 2024, [https://www.academia.edu/15398440/Friends\\_Do\\_Not\\_Let\\_Friends\\_Execute\\_The\\_Council\\_of\\_Europe\\_and\\_the\\_International\\_Campaign\\_to\\_Abolish\\_the\\_Death\\_Penalty](https://www.academia.edu/15398440/Friends_Do_Not_Let_Friends_Execute_The_Council_of_Europe_and_the_International_Campaign_to_Abolish_the_Death_Penalty).

<sup>88</sup> *Ibid.*, p. 131.

<sup>89</sup> Council of Europe: Newsroom. The Russian Federation is excluded from the Council of Europe, available on: <https://www.coe.int/en/web/portal/-/the-russian-federation-is-excluded-from-the-council-of-europe>. Accessed March 30, 2024.

<sup>90</sup> Council of Europe Portal. Our member States, available on: <https://www.coe.int/en/web/about-us/our-member-states>. Accessed March 30, 2024.

<sup>91</sup> Council of Europe. United States, available on: <https://www.coe.int/en/web/portal/united-states>. Accessed March 30, 2024.

text.<sup>92</sup> The ECHR also established the regional human rights court, namely the European Court of Human Rights, where individuals can bring claim against a member state regarding human rights violations, after all other judicial means have been exhausted.<sup>93</sup> In 1983 the Protocol 6 to the European Convention was adopted, which prohibited the execution of the death penalty during the time of peace. Furthermore, in 2002 the organisation abolished the death penalty in all circumstances, when it adopted the Protocol 13 to the European Convention, and prohibited states from making any reservations regarding the matter.<sup>94</sup> Ratifying the ECHR and consequently the Protocol 13 became a prerequisite for a country to join the CoE<sup>95</sup>, which is the main reason why Europe is the only region, where almost all countries, excluding Belarus, have collectively abolished the capital punishment. As of 2024, Azerbaijan is the only country which has signed but not ratified Protocol 13 to the Convention.<sup>96</sup>

Under the European system, it is also important to discuss the European Union's (hereinafter: the EU) stance on the death penalty, because of its close ties with the Council of Europe. It is worth mentioning that all member states of the EU are also members of the CoE, and no country has joined the EU before first being a member of the CoE.<sup>97</sup> This indicates that both organisations share the same values and views on various matters, including the death penalty. Although the EU does not have a specific legislation regarding the abolishment of the death penalty, Article 2 of the Charter of Fundamental Rights of the European Union prohibits the imposition of the death penalty as well as execution.<sup>98</sup> Moreover, Article 19 prohibits the extradition of a person to a state where they might be subjected to the capital punishment.<sup>99</sup>

Both the Council of Europe and the European Union strongly condemn the use of the death penalty. According to the EU, “[c]apital punishment violates the inalienable right to life and is incompatible with human dignity”<sup>100</sup>. Moreover, it “does not serve as an effective deterrent to crime and makes any miscarriage of justice irreversible”<sup>101</sup>. The same idea is also set forth by the CoE, which believes that the use of the death penalty “further [legitimises] coldblooded killing as justice”<sup>102</sup> and abolition is necessary in order to unite people in Europe.<sup>103</sup> To get this message across, in 2007 the CoE declared October 10<sup>th</sup> the European Day Against Death Penalty coinciding with the World Day Against the Death Penalty, which aim is

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<sup>92</sup> Schabas, *supra* note 1, pp. 259-260.

<sup>93</sup> Council of Europe Portal. The European Convention on Human Rights, available on: <https://www.coe.int/en/web/human-rights-convention>. Accessed March 30, 2024.

<sup>94</sup> Council of Europe. Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances (ETS No. 187): Article 3. Entry into force 1 July 2003. Available on: <https://rm.coe.int/1680081563>. Accessed March 30, 2024.

<sup>95</sup> Council of Europe Portal, *supra* note 89.

<sup>96</sup> Council of Europe Portal. Chart of signatures and ratifications of Treaty 187, available on: <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=187>. Accessed March 30, 2024.

<sup>97</sup> Council of Europe Portal. The Council of Europe in brief, available on: <https://www.coe.int/en/web/about-us/did-you-know>. Accessed March 30, 2024.

<sup>98</sup> Charter of Fundamental Rights of the European Union, *OJ C* 364/1, 18.12.2000: Article 2. Available on: [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf). Accessed March 30, 2024.

<sup>99</sup> *Ibid.*, Article 19.

<sup>100</sup> European Union External Action. EU Statement on the death penalty: para. 1, available on: [https://www.eeas.europa.eu/eeas/eu-statement-death-penalty\\_en](https://www.eeas.europa.eu/eeas/eu-statement-death-penalty_en). Accessed March 30, 2024.

<sup>101</sup> *Ibid.*

<sup>102</sup> Council of Europe. Brochure “Death is not justice” (2015): p. 9. Accessed March 30, 2024. Available on: <https://rm.coe.int/death-is-not-justice-en/1680a86a39>.

<sup>103</sup> *Ibid.*

to advocate for the abolition of the capital punishment.<sup>104</sup> Although, the Council started the campaign, it has become a joint effort together with the EU as could be read from their joint statement, declaring that they “will continue to forcefully advocate against the death penalty”<sup>105</sup> and “strengthen partnerships with the aim of achieving this goal in law and in practice”<sup>106</sup>.

The CoE as well as the EU are taking various steps to advocate for and consequently abolish the death penalty globally. In every six months the CoE’s Committee of Ministers discusses and reviews the death penalty situation, which will continue until Europe becomes legally a death penalty-free region. The Parliamentary Assembly of the Council constantly presses countries to abolish the death penalty by asking them to pause the executions and set up temporary bans.<sup>107</sup> Additionally, the Council supports its member states to move towards a more restorative justice rather than punitive one, while taking into account the rights of the victims as well as the perpetrators’ rights to be released and reintegrated into society.<sup>108</sup> In cooperation with the European Union, the Council has made efforts to regulate the trade of goods “used for torture or other cruel, inhuman or degrading treatment or punishment and the death penalty”<sup>109</sup>. The Recommendation regarding the matter was adopted in 2021 by the Committee of Ministers, inviting all the member states to regulate and if needed restrict the trade of such items.<sup>110</sup> The EU is allocating funds to various countries to raise awareness about the death penalty and the need for its abolishment. For instance, in Indonesia the funding was used to support public opinion regarding the punishment, when in Japan it was used for an advocacy project to gather support for the abolition.<sup>111</sup> Furthermore, the EU is very vocal regarding the abolition in regional and international organisations and the EU Special Representative for Human Rights raises the issue whenever possible. Moreover, the EU is actively promoting the United Nations General Assembly Resolution<sup>112</sup> on the Moratorium on the use of the death penalty.<sup>113</sup> In countries where the capital punishment is still carried out, the

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<sup>104</sup> Council of Europe Portal. World and European Day against the Death Penalty, available on: <https://www.coe.int/en/web/human-rights-rule-of-law/abolition>. Accessed March 30, 2024.

<sup>105</sup> Council of Europe. Joint statement by Council of Europe Secretary General and the High Representative, on behalf of the European Union, available on: <https://www.coe.int/en/web/portal/10-october-against-death-penalty>. Accessed March 30, 2024.

<sup>106</sup> *Ibid.*

<sup>107</sup> Council of Europe, Human Dimension Implementation Meeting 2014, “Exchange of views on the question of abolition of capital punishment”, available on: <https://www.osce.org/files/f/documents/d/0/124116.pdf>, accessed March 30, 2024.

<sup>108</sup> Council of Europe, “Contribution to OHCHR on the question of the death penalty pursuant to decision 18/117 and resolution 22/11 of the human rights council”, available on: <https://www.ohchr.org/sites/default/files/Documents/Issues/DeathPenalty/call-a-hrc-45-20/council-of-europe.docx>, accessed March 30, 2024.

<sup>109</sup> *Ibid.*, p. 2.

<sup>110</sup> Council of Europe: Newsroom. Measures against the trade in goods used for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment, available on: <https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/-/measures-against-the-trade-in-goods-used-for-the-death-penalty-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment>. Accessed March 30, 2024.

<sup>111</sup> United Nations Human Rights Office of the High Commissioner. “Contribution of the European Union to the report on the question of death penalty pursuant to resolution 42/24 adopted by the Human Rights Council on 27 September 2019”: p. 2, available on: <https://www.ohchr.org/sites/default/files/2022-06/DP-HRC51-EU.docx>. Accessed March 30, 2024.

<sup>112</sup> United Nations. Moratorium on the use of the death penalty: resolution / adopted by the General Assembly (2020). Available on: <https://digitallibrary.un.org/record/3896434?ln=en>. Accessed March 30, 2024.

<sup>113</sup> UN, “Contribution of the European Union”, *supra* note 111.

EU will promote for the establishment of temporary prohibition on the punishment and urges the countries to limit its use.<sup>114</sup>

For the Council of Europe, and also consequently for the European Union, there are two important goals. Firstly, for Belarus to abolish or at least temporarily ban the use of the death penalty. Both organisations are criticising Belarus for still imposing and carrying out the capital punishment and also for being the last country in Europe to do that. For example, “in 2019, three men were executed”<sup>115</sup>, while four were on the death row.<sup>116</sup> The CoE has been offering its support to Belarus to tackle these issues and in 2023, the Council together with the Representatives of Belarusian democratic forces and civil society published an action plan to help make Belarus a free and democratic country. Amongst others, the list of actions included advocating for the abolition of the death penalty, through awareness-raising campaigns which would influence the society to support the abolition.<sup>117</sup> The results of these actions are yet to be seen. And secondly, the CoE has been focusing on non-European countries, specifically its observer states, such as the United States and Japan, because these countries should share the same values as the Council, however they are still carrying out the capital punishment. The Parliamentary Assembly has adopted numerous resolutions condemning the U.S. and Japan for violating their obligation to protect human rights. For instance, in 2023 24 people were executed in the U.S.<sup>118</sup>, while Japan carried out none, although there are 106 people on the death row.<sup>119</sup> Moreover, the Council has intervened in individual death penalty cases with the intent of highlighting the need for national authorities to respect human rights.<sup>120</sup> As it was with Belarus, the Council urges the U.S to implement a temporary prohibition on the punishment as a first step towards complete abolition.<sup>121</sup>

Out of the three human rights systems, the European one, which comprises of the Council of Europe and the European Union, has made the most important improvements regarding the abolition of the death penalty. The CoE has made the abolishment as a prerequisite for becoming a member of the organisation, thus all 46 countries have prohibited the use of the capital punishment. Since both organisations are advocating for the abolishment globally, the European practice sets a precedent for the Inter-American and African systems, encouraging them to uphold their commitment to protecting human rights.

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<sup>114</sup>European External Action Service, “EU guidelines of the death penalty,”: p. 5, available on: [https://www.eeas.europa.eu/sites/default/files/08\\_hr\\_guidelines\\_death\\_penalty\\_en.pdf](https://www.eeas.europa.eu/sites/default/files/08_hr_guidelines_death_penalty_en.pdf), accessed March 30, 2024.

<sup>115</sup>European Union External Action, *supra* note 100, para. 4.

<sup>116</sup>*Ibid.*

<sup>117</sup>List of Council of Europe activities planned for 2023: Promotion of the abolition of the death penalty in Belarus among Belarusian society, including diaspora, available on: <https://rm.coe.int/list-of-council-of-europe-activities-planned-for-2023-annex-2761-4703-/1680aa0737>, accessed April 10, 2024.

<sup>118</sup>Death Penalty Information Center, The Death Penalty in 2023: Year End Report, available on: <https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-year-end-reports/the-death-penalty-in-2023-year-end-report>, accessed April 10, 2024.

<sup>119</sup>Death Penalty Information Center. Japan Performed No Executions in 2023, Making U.S. the Only G7 Country to Use Capital Punishment Last Year, available on: <https://deathpenaltyinfo.org/news/japan-performed-no-executions-in-2023-making-u-s-the-only-g7-country-to-use-capital-punishment-last-year>. Accessed April 10, 2024.

<sup>120</sup>CoE, Human Dimension, *supra* note 107.

<sup>121</sup>Council of Europe: Newsroom. Declaration by the Committee of Ministers on the death penalty in the United States of America, available on: <https://www.coe.int/en/web/portal/-/declaration-by-the-committee-of-ministers-on-the-death-penalty-in-the-united-states-of-america>. Accessed April 10, 2024.

## 2.2. The Inter-American Human Rights System

In the centre of the Inter-American system is the Organisation of American States (hereinafter: the OAS), which comprises of 35 member states and 71 permanent observers<sup>122</sup>, including numerous European countries as well as the European Union itself.<sup>123</sup> The OAS was established in 1890 with the aim of strengthening “peace and security”<sup>124</sup> in the region. In 1948 the Charter of the Organisation of the American States (hereinafter: the Charter of the OAS) was adopted, and it established several bodies within the OAS. For the purposes of this thesis, the most important organs of the Inter-American human rights system are the Inter-American Commission on Human Rights (hereinafter: the IACHR or the Inter-American Commission) and the Inter-American Court of Human Rights (hereinafter: the I/A Court H.R. or the Inter-American Court), because both of their goals is to promote and protect human rights in the region.<sup>125</sup> The IACHR has two main tasks. Firstly, to examine individual claims and secondly to monitor the human rights situation in the member states. Since 1961, the Commission has been conducting state visits to oversee the situation in countries or to inspect particular issues. Additionally, they publish country reports based on these visits.<sup>126</sup> While the Commission has a more preventive function, the Court’s duty “is to interpret and apply the American Convention”.<sup>127</sup>

The first human rights instrument in the Inter-American system was the American Declaration of the Rights and Duties of Man (hereinafter: the American Declaration), which was adopted in 1948. At first it was not a binding instrument however both the Court and the Commission have recognised that the American Declaration is “a source of international obligations for the OAS member States”<sup>128</sup>. In the context of the death penalty, Article 1 is of high relevance, because it concerns the right to life. During the drafting process, it was debated whether the death penalty should be mentioned as an exception under the Article. In the final draft, however, the aspect of the death penalty was not included in order to make the text clearer and more understandable. Additionally, the Inter-American Juridical Committee wanted to highlight that they are staying impartial regarding the death penalty and take into account “the fact that there is a diversity of legislation in this respect”<sup>129</sup>. Despite the capital punishment not being mentioned, the Inter-American Commission has found in numerous cases, that an execution of a person is a violation of Article 1 of the American Declaration. Most of these cases have come from the United States, which does not recognise the Declaration as a binding instrument and has only signed, not ratified, the American Convention on Human Rights<sup>130</sup>. For

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<sup>122</sup>U.S. Mission to the Organization of American States. About the OAS, available on: <https://usoas.usmission.gov/our-relationship/about-oas/#:~:text=Members%3A%2035%E2%80%9494Antigua%20and%20Barbuda,Kitts%20and%20Nevis%2C%20Saint%20Lucia%2C>. Accessed April 10, 2024.

<sup>123</sup> OAS. Permanent Observers, available on: [https://www.oas.org/en/ser/dia/perm\\_observers/countries.asp](https://www.oas.org/en/ser/dia/perm_observers/countries.asp). Accessed April 10, 2024

<sup>124</sup>U.S. Mission, *supra* note 122.

<sup>125</sup> Inter-American Court of Human Rights. What is the I/A Court H.R.?, available on: [https://www.corteidh.or.cr/que\\_es\\_la\\_corte.cfm?lang=en#collapse1-8](https://www.corteidh.or.cr/que_es_la_corte.cfm?lang=en#collapse1-8). Accessed April 10, 2024.

<sup>126</sup> Inter-American Commission on Human Rights. What is the IACHR?, available on: <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/what.asp>. Accessed April 10, 2024.

<sup>127</sup> Inter-American Court, *supra* note 125.

<sup>128</sup> Inter-American Court of Human Rights, Basic documents pertaining to human rights in the Inter-American system (2003): p. 7, available on: <https://www.corteidh.or.cr/docs/libros/basingl01.pdf>, accessed April 25, 2024.

<sup>129</sup> Schabas, *supra* note 1, p. 314.

<sup>130</sup> United Nations Treaty Collection, American Convention on Human Rights "Pact of San José, Costa Rica", available on: <https://treaties.un.org/pages/showdetails.aspx?objid=08000002800f10e1>, accessed April 10, 2024.

their own benefit, the U.S. uses the subjective interpretation method to explain Article 1, namely they asserted that the reason why the American Declaration does not mention the death penalty, is because the drafters intended to give the member states “the discretion to legislate on the subject as they saw fit”<sup>131</sup>. Moreover, the representatives of the U.S. do not believe that the American Declaration, being adopted in 1948, could have a different meaning decades later prohibiting the United States from implementing the death penalty.<sup>132</sup>

With the aim of improving the protection of human rights in the Inter-American region, the American Convention on Human Rights was adopted in 1969, which consequently established the Inter-American Court. Moreover, the ACHR sets forth the functions and procedure of the Inter-American Commission and the Court.<sup>133</sup> The wording of the American Convention is similar to the ICCPR, especially Article 4 ‘Right to life’, which is the only article mentioning the death penalty. Similarly to Article 6 of ICCPR, the ACHR states that the death penalty “may be imposed only for the most serious crimes”<sup>134</sup> in accordance with the law and it cannot be applied to persons under the age of 18 or over 70 nor for pregnant women.<sup>135</sup> Furthermore, the Article prohibits the reestablishment of the death penalty if a country has already abolished it and implementing the capital punishment for “political offenses or related common crimes”<sup>136</sup>. As it was with the ICCPR Article 6, the main issue is the lack of specification, especially regarding the terms “most serious crimes” and “political offences”, since the American Convention nor the Inter-American Court has not provided a list of crimes. Nevertheless, in the case of *Raxcaco Reyes v. Guatemala* the Court did define loosely the notion of the most serious crimes, namely these are crimes

that affect most severely the most important individual and social rights and therefore merit the most vigorous censure and the most severe punishment.<sup>137</sup>

However, this definition begs the question, what are the “most important individual and social rights”. One answer could be right to life, because this is the fundamental right of a person and also according to the United Nations Human Rights Committee “crimes that do not result in loss of life may not be punished by the death penalty”<sup>138</sup>, indicating that taking a persons’ life is the most serious crime, thus the death penalty can be applied. That being said, the Inter-American Court in the case of *Raxcaco Reyes* elaborates that even if a situation, in this case kidnapping, ends with the victim’s death, the death penalty cannot automatically be implied, but the specific conditions and circumstances of this case need to be considered.<sup>139</sup> Therefore, it could be said that even regarding the most serious crimes under the law, such as murder, it is still up to the court’s interpretation whether the death penalty can be imposed.

Similarly to the European system, the Organisation of American States has adopted a protocol to the American Convention abolishing the death penalty, however it has not been nearly as successful as the Council of Europe’s, based on the fact that only 13 member states out of 35 have ratified the protocol and thus abolished the death penalty.<sup>140</sup> The Protocol to the

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<sup>131</sup> Schabas, *supra* note 1, p. 317.

<sup>132</sup> *Ibid.*, pp. 313-317.

<sup>133</sup> Inter-American Commission, *supra* note 126.

<sup>134</sup> ACHR, *supra* note 9, Article 4.

<sup>135</sup> *Ibid.*

<sup>136</sup> *Ibid.*

<sup>137</sup> I/A Court H.R., *Raxcaco-Reyes v. Guatemala* (C-133), judgement of September 15, 2005: para. 70.

<sup>138</sup> *Ibid.*, para. 69.

<sup>139</sup> *Ibid.*, para. 71.

<sup>140</sup> OAS. Signatories and Ratifications, A-53: Protocol to the American Convention on Human Rights to Abolish the Death Penalty, available on: <https://www.oas.org/juridico/english/signs/a-53.html>. Accessed April 10, 2014.

American Convention of Human Rights to Abolish the Death Penalty (hereinafter: the American Protocol) was adopted in 1990, consisting only of four articles. Similarly to the UN Second Optional Protocol, a state cannot make any reservations, nevertheless they can maintain their right to impose the death penalty in regard to war crimes in accordance with international law.<sup>141</sup> Although, the American Protocol is quite similar to its UN and European counterparts, it has one major difference. Unlike the UN and the CoE instruments which require the abolishment of the capital punishment, the American Protocol never explicitly uses the word ‘abolish’ regarding the death penalty. Instead, Article 1 declares that

[t]he States Parties to this Protocol shall not apply the death penalty in their territory to any person subject to their jurisdiction.<sup>142</sup>

Even though the Protocol does not mention the abolishment of the punishment, the adoption of the Protocol still indicates that the OAS is opposed to the capital punishment and tries to prevent its member states from implementing it.

The main reason why the Inter-American Commission criticises the death penalty, is due to its contradiction with right to life, which is a necessary condition for enjoyment of other rights. The second reason is the inhuman conditions on the death row, such as “insufficient food, water and sanitation”<sup>143</sup>. Moreover, the prisoners on death row are put into solitary confinement for an extended period of time, without being able to leave their cells. And the last reason brought up by the Commission is the violation of precautionary and provisional measures, namely in many instances states have implemented the execution although there was a pending petition in front of the Commission. The IACHR has provided numerous recommendations to the member states for them to comply with their international human rights obligations. For instance, states should enforce moratorium on executions as a step towards abolition and ratify the Protocol to the ACHR abolishing the capital punishment.<sup>144</sup> The biggest challenge for the Inter-American human rights system is the United States, which has not ratified the Protocol nor the American Convention. The U.S. has a history of not complying with the Commission’s recommendations and has violated the American Declaration continuously. For instance, in 2001 they carried out an execution although previously the Commission stated that it would be a violation of the American Declaration.<sup>145</sup> Another issue arises from the fact that the United States has duality of jurisdiction, meaning that crimes as well as punishments on federal and state level differ.<sup>146</sup> Therefore, even though 23 states have

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<sup>141</sup> Organization of American States. Protocol to the American Convention on Human Rights to Abolish the Death Penalty: Article 2. Adopted June 8, 1990. Available on: <https://www.oas.org/en/iachr/mandate/Basics/american-convention-abolish-death-penalty.pdf>. Accessed April 10, 2024.

<sup>142</sup> *Ibid.*, Article 1.

<sup>143</sup> Inter-American Commission on Human Rights, “The Death Penalty in the Inter-American human rights system: from restrictions to abolition” (2011): para. 45, available on: <https://www.oas.org/en/iachr/docs/pdf/deathpenalty.pdf>, accessed April 10, 2024.

<sup>144</sup> *Ibid.*, paras. 40, 45, 47 and 50.

<sup>145</sup> Schabas, *supra* note 1, p. 316.

<sup>146</sup> Hager & Schwartz. Federal Crimes vs. State Crimes, available on: <https://www.defendyourcase.com/criminal-defense-blog/2023/september/federal-crimes-vs-state-crimes/>. Accessed April 10, 2024.



prohibited the death penalty<sup>147</sup>, it can still be imposed under federal jurisdiction, which supersedes the states' laws.<sup>148</sup>

The Organisation of American States plays a central role in the Inter-American human rights system with the Inter-American Commission and the Court having an important function of promoting and protecting human rights in the region, thus also advocating for the abolishment of the death penalty. In that regard, the OAS has adopted the American Convention on Human Rights as well as the Protocol to the Convention abolishing the death penalty. The Convention limits the implementation of the death penalty only for the most serious crimes and excludes political offences and related common crimes. Moreover, it does not allow minors or persons over the age of 70 nor pregnant women to be sentenced to death. Similarly to the ICCPR, the ACHR fails to define the terms 'most serious crimes' and 'political offences', however the Inter-American Court did loosely define the first one. Namely it stated that the most serious crimes are the ones affecting the fundamental individual and social rights, nonetheless the Court did not provide a list of these rights. Although the adoption of the Protocol indicates the OAS's opposition towards the death penalty, the Protocol does not explicitly require states to abolish the punishment, rather not to apply it in their territory. In addition to the difficulties imposed by the legislations, the region's development towards the abolition of the death penalty is also challenged by the United States, as it has not ratified either the American Convention or the Protocol abolishing the death penalty and because of its noncompliance with the Commission's recommendations.

### **2.3. The African Human Rights System**

The African Union (hereinafter: the AU) was established in 2002 as a replacement to the Organisation of African Unity with the aim of, amongst others, promoting peace and security, democratic principles and protecting human rights in accordance with relevant human rights instruments.<sup>149</sup> The African Union also includes the African Commission on Human and Peoples' Rights (hereinafter: the ACHPR or the African Commission) and the African Court on Human and Peoples' Rights (hereinafter: the AfCHPR or the African Court). The African Commission was established by the African Charter on Human and Peoples' Rights (hereinafter: the African Charter), with the duties to protect and promote human rights and to interpret the provisions of the Charter. The African Court, on the other hand, was established with an additional Protocol to the Charter in 1998 by the member states of the Organisation of African Unity. Since 34 member states have ratified the Protocol and only eight of them have accepted its competences to review claims submitted by the non-governmental organisations and individuals, the African Court has quite limited authority.<sup>150</sup>

The African Charter is the regional human rights instrument, which was adopted in 1981 and which has been ratified by all the AU member states except Morocco.<sup>151</sup> Unlike, the

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<sup>147</sup> Pew Research Center. 10 facts about the death penalty in the U.S., available on: <https://www.pewresearch.org/short-reads/2021/07/19/10-facts-about-the-death-penalty-in-the-u-s/>. Accessed April 10, 2024.

<sup>148</sup> Death Penalty Information Center. Background on the Federal Death Penalty, available on: <https://deathpenaltyinfo.org/state-and-federal-info/federal-death-penalty/background-on-the-federal-death-penalty>. Accessed April 10, 2024.

<sup>149</sup> African Union. About the African Union, available on: <https://au.int/en/overview>. Accessed April 10, 2024.

<sup>150</sup> African Court on Human and Peoples' Rights. About Us, available on: <https://www.african-court.org/wpafc/>. Accessed April 10, 2024.

<sup>151</sup> African Union. African Charter on Human and Peoples' Rights, available on: <https://au.int/en/treaties/african-charter-human-and-peoples-rights>. Accessed April 10, 2024.

European and Inter-American instruments, the ACHPR does not mention the death penalty at all. However, it still includes the right to life and prohibits the arbitrary deprivation of this right under Article 4 and prohibits inhuman and degrading treatment under Article 5.<sup>152</sup> In several cases the African Court and the African Commission have found that the method of execution, in particular hanging, constitutes as inhuman and degrading treatment, thus violating the Article 5 of the African Charter.<sup>153</sup> For example in the case of *Ally Rajabu and Others v. United Republic of Tanzania* the Court stated that many methods of execution could potentially be cruel, inhuman and degrading and hanging is one of them.<sup>154</sup> The reason for not incorporating the death penalty clause, is because at the time of drafting, the capital punishment was acknowledged as an acceptable form of punishment which was included in the laws of the African countries. They viewed the death penalty as “the answer to certain types of crime and to rising criminality”<sup>155</sup> and the question of abolition was not discussed. There is also possibility, that had the drafters included the clause regarding the death penalty, most of the states would not have become party to the African Charter and the human rights system would not have gained enough support. Over time this perception of the death penalty changed, and the rate of executions decreased, mostly due to two reasons. Firstly, the prosecutors did not ask for the capital punishment and the courts avoided implementing it. And secondly, the prison workers on the death row started to voice the stress and trauma they experienced when they needed to confront the death row inmates.<sup>156</sup> As of 2022, majority of the African countries have abolished the death penalty, consisting of 25 abolitionist and 16 *de facto* abolitionist countries.<sup>157</sup> It is important to keep in mind that abolitionists in practice can become retentionists, like it was the case with numerous African countries. For example, Burundi did not have any executions for 12 years, but after the Tutsi massacres in 1993, the carrying out of executions was resumed. Another example can be brought from Libya, where after 23 years without any executions, they were reinstated for political offences. Nonetheless, even the *de jure* abolitionist African countries are able to reintroduce death sentences, because no legally binding document, unlike the American Convention, prohibits the reestablishment of the death penalty.<sup>158</sup>

In addition to the African Charter, the AU has adopted the African Charter on the Rights and Welfare of the Child (hereinafter: the ACRWC) in 1999 and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa in 2003 and majority of the member states have ratified the documents.<sup>159</sup> Both of these instruments impose certain

<sup>152</sup>Organization of African Unity. African Charter on Human and Peoples’ Rights: Article 4. Entry into force 21 October 1986. Available on: [https://au.int/sites/default/files/treaties/36390-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf). Accessed April 10, 2024.

<sup>153</sup> ACHPR. *Interights and Ditshwanelo v Botswana* (Comm. No. 319/06), decision on November 18, 2015. AfCHPR. *Amini Juma v Tanzania* (24/16), judgement of June 3, 2016.

<sup>154</sup> AfCHPR. *Ally Rajabu and Others v United Republic of Tanzania* (007/2015), judgement of November 28, 2019, paras. 118-120.

<sup>155</sup> ACHPR, Report of the African Commission on Human and Peoples’ Rights Working Group on the death penalty in Africa (2012), available on: <https://achpr.au.int/en/intersession-activity-reports/working-group-death-penalty-extra-judicial-summary-or-arbitrary-11>, accessed April 10, 2024.

<sup>156</sup> *Ibid.*

<sup>157</sup>FIACAT. Abolition of the Death Penalty in Sub-Saharan Africa, available on: <https://www.fiacat.org/en/our-actions/project-for-the-abolition-of-the-death-penalty-in-sub-saharan-africa#:~:text=Rwanda%20abolished%20the%20death%20penalty,Guinea%20and%20Zambia%20in%202022>. Accessed April 10, 2024.

<sup>158</sup> Chenwi, *supra* note 18, pp. 32 and 35.

<sup>159</sup> The African Charter on the Rights and Welfare of the Child has been ratified by 50 member states. ACERWC, Overview Of The African Charter On The Rights And Welfare Of The Child, available on: <https://www.acerwc.africa/en/page/about-the-charter#:~:text=Of%20The%20Child->

limitations to the use of the death penalty. In accordance with the first one, the death sentence cannot be imposed to persons under the age of 18 nor to pregnant women or mothers with young children<sup>160</sup> and the latter one states that the death penalty cannot be carried out on women who are pregnant or nursing,<sup>161</sup> indicating that it can still be imposed, which is conflicting with the wording of the ACRWC. Additionally, under Article 7 of the African Charter, the death penalty cannot be imposed retroactively, however numerous African states have violated that obligation.<sup>162</sup> Another limitation is regarding the applicable crimes for which the death penalty can be imposed. First of all, the ICCPR, as mentioned previously, allows the implementation of the death penalty only for the most serious crimes, therefore all the African states that have ratified the ICCPR are obligated to comply. Additionally, the same statement is included in the African Commission's 1999 Resolution and similarly to the ICCPR, there is no specific crimes mentioned. Nevertheless, there is a list of crimes which are incompatible with the death penalty, such as apostasy, economic crimes and "committing a homosexual act for the third time"<sup>163</sup>, however many African countries still impose death sentences for these offences. And secondly, the capital punishment cannot be imposed for "grave international crimes" under the tribunals which have been sponsored by the United Nations, such as the Special Court for Sierra Leone in 2002.<sup>164</sup>

Out of the three human rights systems, the African system is the only one which does not have a legally binding document abolishing the death penalty, nevertheless, in 2015 the African Commission adopted the Draft Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa (hereinafter: the African Draft Protocol), which, according to Article 6, will enter into force "once 15 African Union Member States have ratified or signed it"<sup>165</sup>. Due to the fact that the draft has been inactive since 2015, the World Coalition Against the Death Penalty and the International Federation of ACATs<sup>166</sup>, held a meeting in 2023 in Ethiopia to discuss the advancements of the draft and to gather support for it. The goal of the African Union is to start negotiations in 2024.<sup>167</sup> Before the adoption of the

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[The%20African%20Charter%20on%20the%20Rights%20and%20Welfare%20of%20the%20force%20on%2029%20November%201999](#). Accessed April 10, 2024.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa has been ratified by 44 member states.

African Union. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, available on: [https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA.pdf](https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLES%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf). Accessed April 10, 2024.

<sup>160</sup> African Union. The African Charter on the Rights and Welfare of the Child: Articles 5 and 30. Entry into force November 29, 1999. Available on: [https://au.int/sites/default/files/treaties/36804-treaty-african\\_charter\\_on\\_rights\\_welfare\\_of\\_the\\_child.pdf](https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf). Accessed April 10, 2024.

<sup>161</sup> African Union. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: Article 4, para. 2 (j). Entry into force 25 November 2005. Available on: [https://au.int/sites/default/files/treaties/37077-treaty-charter\\_on\\_rights\\_of\\_women\\_in\\_africa.pdf](https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf). Accessed April 10, 2024.

<sup>162</sup> Chenwi, *supra* note 18, pp. 38-39.

<sup>163</sup> *Ibid.*, p. 37.

<sup>164</sup> *Ibid.*, pp. 36-38.

<sup>165</sup> African Union, The Draft Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa, available on: [https://worldcoalition.org/wp-content/uploads/2020/09/AfricanProtocol\\_leaflet-EN-1.pdf](https://worldcoalition.org/wp-content/uploads/2020/09/AfricanProtocol_leaflet-EN-1.pdf), accessed April 10, 2024.

<sup>166</sup> International Federation of Action by Christians for the Abolition of Torture.

<sup>167</sup> World Coalition Against the Death Penalty. Advocating for the Adoption of the Draft Protocol by the African Union: A Step in the Right Direction for Abolition in Africa, available on: <https://worldcoalition.org/2023/12/15/advocating-for-the-adoption-of-the-draft-protocol-by-the-african-union-a-step-in-the-right-direction-for-abolition-in-africa/>. Accessed April 10, 2024.

African Draft Protocol, the African Commission had taken various steps towards the abolition of the death penalty, since they have recognised its contradiction with human rights, especially right to life. For instance, it has adopted resolutions with the aim of urging the states to put a moratorium on the death penalty and has been advocating for the abolishment. One of the most important steps was the establishment of the Working Group on Death Penalty in 2005, which was given the following tasks:

to further elaborate the draft document on the issue of death penalty in Africa and propose ways and means of tackling the question of the death penalty in Africa; develop a Strategic Plan(s), including a practical and legal framework on the abolition of the Death Penalty; collect information and continue to monitor the situation of the application of the Death Penalty in African States.<sup>168</sup>

In the recent years, the African region has come a long way regarding the abolishment of the death penalty, however they still experience numerous challenges. Firstly, as already mentioned, the abolitionist countries can reestablish the death penalty after abolishing it and the African Court lacks authority since only eight countries have accepted its competences. Additionally, there is limited information regarding the death penalty practices of the African countries since they are not reporting this information to the UN and lastly, for the complete abolishment of the death penalty, it is crucial to prohibit the application of the mandatory death sentences in retentionist states.<sup>169</sup>

#### **2.4. Interim conclusions. Death penalty in the regional human rights systems**

As mentioned in the introduction, the first research question for the thesis is “Why has the death penalty been almost completely abolished in the European region and what are the reasons for the Inter-American and African regions for not being able to do that?”. The question consists of two aspects. Firstly, regarding the Europe’s achievement in abolishing the death penalty in all countries, except in Belarus, which the CoE and the EU are actively working on. The reason for being successful in abolishing the death penalty, is due to the fact that in order to become a member of CoE, a state is required to ratify the ECHR together with Protocol 13, which abolishes the death penalty in all circumstances. Moreover, the CoE and the EU are closely linked, since all member states of the EU are also members of the CoE, and being a member of the Council is to some extent a fundamental part of being considered a European country. Both organisations are individually as well as collectively advocating for a universal abolishment.

The second aspect of the question focuses on the reasons why the Inter-American and African regions have not been as successful as Europe in abolishing the death penalty. The main reason for the Inter-American region is the fact that the U.S., which is the most powerful and influential country in the region, has not ratified the American Convention on Human Rights nor the Protocol to the Convention abolishing the death penalty. Moreover, the U.S. often does not comply with the Inter-American Commission’s recommendations, and it has violated the American Declaration numerous times. Additionally, the American Protocol abolishing the death penalty has not been very successful, since less than a half of the OAS’s member states have ratified it. Furthermore, the Protocol does not require the states to abolish the death penalty, instead it prohibits its application within the states’ jurisdiction. When discussing the challenges of the African region, two most prominent can be brought out. Namely, Africa does

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<sup>168</sup> ACHPR, Report of the African Commission, *supra* note 155.

<sup>169</sup> Chenwi, *supra* note 18, pp. 32 and 52.

not have a legally binding document prohibiting the use of the death penalty, like the other regions do, however it has created a Draft Protocol, thus taking important steps to fill that void. In addition to that, the abolitionist countries in Africa are able to reestablish the capital punishment, and in fact some states have already done that, since no legal document is prohibiting such action.

### **CHAPTER 3: THE DEATH PENALTY IN CONNECTION TO HUMAN RIGHTS AND EXTRADITION**

As stated throughout the thesis, the use of the death penalty is a violation of a person's human rights. In particular, there is a breach of right to life, which is evident since the whole purpose of the death penalty is to end a person's life, and of the prohibition of torture, inhuman and degrading treatment, however it has been argued that the punishment also violates the right to fair trial and the prohibition of discrimination. The following will show how these violations occur both during the execution and while the person is on the death row. Due to these breaches, the extradition process between an abolitionist and a retentionist country is complicated, since the states that have abolished the death penalty consequently have an obligation to abstain from assisting in the implementation of the death penalty in another country.

#### **3.1. The death penalty as a violation of human rights**

Right to life is the most crucial and it has supremacy over all other rights, because without an effective enforcement of this right, the others would be void. According to the UN Human Rights Committee, right to life is the highest right and it cannot be subject to derogation in any circumstances, not "even in times of public emergency that threaten the life of a nation"<sup>170</sup>. Under law everyone has an equally valuable life, meaning that race, gender, social status or other defining characteristics should not play any role. This also indicates that a criminal's life, in particular a murderer's, is not less valuable than of a regular person's and their human rights need to be respected accordingly. Therefore, the abolition of the death penalty is necessary to completely uphold the right to life.<sup>171</sup>

In countries where the death penalty is not abolished, it has to be applied in a manner that is not arbitrary in order to not contradict with the right to life. In that regard, an extensive international human rights caselaw has been established, providing the criteria which needs to be followed when assessing the arbitrariness of the death penalty. For example, in the case of *Ally Rajabu and Others v. the United Republic of Tanzania*, the African Court stated that for deprivation of life to be legal, it needs to follow a three-step criterion. Firstly, the death penalty must be imposed in accordance with the law. In the case of Tanzania, mandatory death penalty is prescribed under the national legislation, thus it is legal.<sup>172</sup> On that note, on an international level, mandatory death penalty is considered to be an arbitrary deprivation of life, because in this matter the circumstances of a particular case and of the offender are not taken into account. The UN Special Rapporteur has stated that mandatory death penalty constitutes as inhuman treatment or punishment and in 2005 the UN Commission on Human Rights adopted a

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<sup>170</sup> *Ibid.*, p. 57.

<sup>171</sup> *Ibid.*

<sup>172</sup> AfCHPR. *Ally Rajabu*, *supra* note 154, paras. 99 and 105.

resolution<sup>173</sup> calling all the retentionist states to remove the death penalty as a mandatory sentence.<sup>174</sup> This once again highlights the complicated relations between state sovereignty and international norms. The other two aspects of the criteria are that the punishment “must be imposed by a competent court”<sup>175</sup> and it has to comply with due process. In the case of *Ally Rajabu and Others v the United Republic of Tanzania* the Court found that imposing the death penalty as a mandatory sentence is in contraction with due process, because the defendant was not allowed to submit mitigating evidence. Consequently, the Court concluded that the imposed death penalty was a violation of right to life under Article 4 of African Charter.<sup>176</sup>

When the violation of right to life is somewhat self-explanatory, the breach of the other rights needs more explaining. Starting with the prohibition of torture, inhuman and degrading treatment, its violation occurs most often during the death row period. On that note, it is necessary to discuss the case of *Soering v the United Kingdom*, which is a landmark case of the European Court of Human Rights. The applicant in this case was a German national, who had murdered two people in the United States, Virginia in 1985 and then fled to the United Kingdom, where he was arrested in connection to a cheque fraud. In 1986, the U.S. requested the extradition of the applicant based on the Extradition Treaty of 1972 between the U.S. and the U.K. Due to the fact that, at that time, the death penalty was abolished in the U.K., they requested assurance from the authorities of the U.S. that in case the applicant is sentenced to death, the punishment will not be carried out and it was granted. Nevertheless, Mr. Soering lodged an application to the European Commission on Human Rights, stating that despite the assurance provided by the U.S., there was still a high possibility that he could be executed. He based his argument on Article 3 of the ECHR, ‘Prohibition of torture’, due to his belief that he would be exposed to the death row phenomenon, which could be considered as inhuman or degrading treatment.<sup>177</sup>

Before continuing with the violation of prohibition of torture, it is important to explain the notion of the death row phenomenon. This term is “defined as prolonged delay under the harsh conditions of death row”<sup>178</sup>, thus consisting of both, the long waiting period and the inhuman conditions experienced by the prisoners. Over time the delay on the death row has increased, for instance, taking an example from the U.S., in 1977 a person on death row had to wait, on average, four years for his or her execution<sup>179</sup>, however in 2022 the average waiting period was 18 years<sup>180</sup>. There are three main reasons for the delay. Firstly, since the support for the death penalty is weakening, the authorities take more cautious approaches when executing an individual and they often submit the case for a further review, which in turn halts the execution. Secondly, there has been an “increase in laws which protect a prisoner’s rights” and it has become more common to appeal the case to human rights tribunals. Although both of

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<sup>173</sup> UN Commission on Human Rights, Human Rights Resolution 2005/59: The Question of the Death Penalty, E/CN.4/RES/2005/59 (20 April 2005), available on: <https://www.refworld.org/legal/resolution/unchr/2005/en/38882>, accessed May 5, 2024.

<sup>174</sup> AI, “International Standards”, *supra* note 34.

<sup>175</sup> AfCHPR. *Ally Rajabu*, *supra* note 154, para. 104.

<sup>176</sup> *Ibid.*, paras. 104, 109, 111 and 112.

<sup>177</sup> ECtHR. *Soering v. the United Kingdom*, (App. No. 14038/88), judgement of 7 July 1989: paras. 11-20 and 63-64.

<sup>178</sup> Patric Hudson, “Does the death row phenomenon violate a prisoner's human rights under international law?,” *European Journal of International Law* 11 (2000): p. 836, accessed April 19, 2024, <https://doi.org/10.1093/ejil/11.4.833>.

<sup>179</sup> *Ibid.*, p. 834.

<sup>180</sup> Death Penalty Information Center. Time on Death Row, available on: <https://deathpenaltyinfo.org/death-row/death-row-time-on-death-row>. Accessed April 18, 2024.

these factors represent improvements in the human rights aspect, they also contribute to prolonged waiting period on the death row. And lastly, the prisoners are accepting and even encouraging the delays, since they rather experience the inhuman conditions than be executed.<sup>181</sup> Although the conditions in every prison are different, there are some common features, for instance prisoners are held in solitary confinement in small cells for almost a whole day. This aspect was also brought up in the case of *Soering v the United Kingdom*, where the applicant stated that the prisoners had approximately six to seven hours in a week of recreational time, based on the season, which would constitute maximum one hour per day for inmates to spend outside of their cells.<sup>182</sup> Additionally, the prisoners are also subject to physical violence, lack of drinking water and food and medical care.<sup>183</sup> Moreover, often times prisoners are not aware of their execution date and might find that out days or even hours before. For example, in Belarus, the inmate is first taken to a room where an official will notify him of the execution.

The prisoner would then be taken to a neighbouring room where they were blindfolded, handcuffed, forced to their knees and shot in the back of the head.<sup>184</sup>

These executions are usually done in secret, without even notifying the family or legal representatives of the prisoner and afterwards, under the Belarusian law, the authorities are not obligated to return the bodies to the family nor reveal where they are buried.<sup>185</sup> All of these factors cause the inmates to suffer from physical as well as mental issues.

Coming back to the ECtHR judgement in the case of *Soering v the United Kingdom*, the Court analysed two aspects. Firstly, the aspect of extradition, which will be discussed more in detail in the following subchapter regarding the extradition between abolitionist and retentionist states, and secondly the violation of Article 3 of ECHR in relation to the death penalty. According to the Court, Article 3 of the Convention does not explicitly prohibit the death penalty, however the specific circumstances of a case might constitute as inhuman or degrading treatment, thus invoking Article 3. The considered circumstances were the following:

[t]he manner in which [the punishment] is imposed or executed, the personal circumstances of the condemned person and a disproportionality to the gravity of the crime committed, as well as the conditions of detention awaiting execution [...].<sup>186</sup>

In accordance with the judgement, the conditions of detention awaiting execution, or in other words the death row phenomenon, was the reason why Article 3 was applicable in this case. Additionally, the Court also considered the current attitude of the Contracting States towards the death penalty, in order to determine “whether the acceptable threshold of suffering or degradation [had] been exceeded”<sup>187</sup>. The Court concluded, while taking into consideration

the very long period of time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty, and [...]

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<sup>181</sup> Hudson, *supra* note 178, p. 835.

<sup>182</sup> ECtHR, *Soering*, *supra* note 177, para. 63.

<sup>183</sup> World Coalition Against the Death Penalty, “Living conditions on death row: Detailed factsheet” (2018): pp. 3-5, available on: [https://worldcoalition.org/wp-content/uploads/2020/09/EN\\_FactSheet\\_WD2018-1.pdf](https://worldcoalition.org/wp-content/uploads/2020/09/EN_FactSheet_WD2018-1.pdf), accessed April 19, 2024.

<sup>184</sup> Amnesty International. Death penalty cruelty – a stain on governments, available on: <https://www.amnesty.org/en/latest/campaigns/2018/10/death-penalty-cruelty-a-stain-on-governments/>. Accessed April 19, 2024.

<sup>185</sup> *Ibid.*

<sup>186</sup> ECtHR, *Soering*, *supra* note 177, para. 104.

<sup>187</sup> *Ibid.*

the personal circumstances of the applicant, especially his age and mental state at the time of the offence,<sup>188</sup>

that the extradition of Mr. Soering to the U.S. would be considered a violation of Article 3 of the ECHR.<sup>189</sup> *Soering v the United Kingdom* is a landmark case of the ECtHR, because it established that the imposition of the death penalty due to the conditions on the death row constitute as torture, inhuman or degrading treatment, thus violating Article 3 of the ECHR. Additionally, it showed that a country can be held liable for violating human rights by extraditing an individual to a country where his or her rights might be infringed upon, thus setting a precedent for European countries to carefully consider the human rights implication before extraditing criminals.

The ECtHR in the *Soering* case also discussed the Article 6 of the Convention, ‘Right to fair trial’, however the Court found no violation, because they did not have any jurisdiction in that matter. Nevertheless, according to the Amnesty International many prisoners are sentenced to death after trials which do not meet the criteria for the fair trial. Right to fair trial is one of the fundamental human rights, which includes having access to legal assistance, sufficient time to prepare for a defence, and to be heard by an independent court within a reasonable time.<sup>190</sup> The right is enshrined in numerous international human rights treaties, such as Article 6 of the ECHR, Article 10 of the UDHR<sup>191</sup> and Article 14 of the ICCPR<sup>192</sup>. Based on the AI’s findings, defendants facing the death penalty are often times represented by inexperienced public defenders, since they are not able to afford a lawyer, thus the state has to appoint one for free, or at times they have no lawyer at all. Moreover, the interpretations of the court documents can often be inadequate, which leads the defendant not understanding their charges or the evidence against them. After being convicted, some prisoners have been unable to appeal the judgement and ask the government for clemency or get their death sentence replaced by a less severe punishment, such as life sentence.<sup>193</sup> Additionally, it has been argued that the death penalty is discriminatory and thus violates the prohibition of discrimination, which is established under Article 14 of ECHR<sup>194</sup>, Article 2 of UDHR<sup>195</sup> and Article 2 of ICCPR<sup>196</sup>. The essence of the principle is that everyone, despite their race, gender, religion or any other defining characteristics, is equal before the law and can enjoy the rights and freedoms set forth in human rights treaties. However, minority groups in various countries are sentenced to death more often than the general population.<sup>197</sup> Firstly, taking for example the racial disparity aspect in the United States, there is a higher possibility that a person is convicted for the murder of a white person, although about half of the victims are black.<sup>198</sup> Secondly,

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<sup>188</sup> *Ibid.*, para. 111.

<sup>189</sup> Richard B. Lillich, “The *Soering* Case,” *The American Journal of International Law* 85 (1991): pp. 139-141, accessed April 24, 2024, <http://www.jstor.org/stable/2203565>.

<sup>190</sup> ECHR, *supra* note 8, Article 6.

<sup>191</sup> UDHR, *supra* note 5, Article 10.

<sup>192</sup> ICCPR, *supra* note 7, Article 14.

<sup>193</sup> Eric Prokosch, “Human Rights v. the Death Penalty: Abolition and Restriction in Law and Practice,” *Amnesty International ACT* 50/13/98 (1998): pp. 2-3, accessed April 24, 2024, <https://www.amnesty.org/en/wp-content/uploads/2021/06/act500131998en.pdf>.

<sup>194</sup> ECHR, *supra* note 8, Article 14.

<sup>195</sup> UDHR, *supra* note 5, Article 2.

<sup>196</sup> ICCPR, *supra* note 7, Article 2.

<sup>197</sup> Penal Reform International, “Strengthening death penalty standards” (2015): p. 22, available on: [https://cdn.penalreform.org/wp-content/uploads/2015/02/PRI\\_Strengthening\\_death\\_penalty\\_standards\\_WEB.pdf](https://cdn.penalreform.org/wp-content/uploads/2015/02/PRI_Strengthening_death_penalty_standards_WEB.pdf), accessed April 24, 2024.

<sup>198</sup> Death Penalty Information Center. Race, available on: <https://deathpenaltyinfo.org/policy-issues/race>. Accessed April 24, 2024.



discriminatory aspect is also closely linked with the right to fair trial, since people from lower-socio economic groups are more likely to be sentenced to death than rich people, indicating an economic discrimination.<sup>199</sup> And lastly, there is evidence of gender discrimination, since most prisons are male-focused, meaning that specific needs of women are neglected, for instance prisons “fail to provide women with female-specific healthcare and deprive them of necessary hygienic products”<sup>200</sup>.

The death penalty also has an impact on other people, not only the criminal, in particular the prisoners’ family members, lawyers and the staff working on the death row. Family members often face obstacles when they are visiting their loved ones in prison. For instance, they are not allowed to have physical contact and may even be separated by a glass. Moreover, the visits often lack privacy since the guards are able to hear the conversations. The lawyers have a very important role in the death penalty cases, because losing the case means losing the client’s life. In some instances, lawyers are not able to represent their client properly, due to the lack of privacy and confidentiality in prisons. And lastly, prison guards often form some type of a relationship with the inmates, because they spend a lot of time together, causing them to feel empathetic when the execution is eventually carried out.<sup>201</sup> This illustrates that being sentenced to death, is not only difficult for the convicted person, but also people around them.

In numerous countries the death penalty is still imposed, and it is considered to be an exception to the right to life. For the punishment to not infringe the right, it needs to be applied in a manner that is not arbitrary, meaning it must be prescribed by law, imposed by a competent court and comply with due process. In addition to the right to life, the death penalty also violates the prohibition of torture, right to fair trial and prohibition of discrimination. When right to life is evidently breached during the execution part of the punishment, the other fundamental rights are infringed with during the death row period. The inhuman conditions and the long waiting time on death row is regarded as a death row phenomenon, which in accordance with the ECHR jurisprudence constitutes as inhuman and degrading treatment, thus violating prohibition of torture. The aspects of the right to fair trial and prohibition of discrimination are interrelated. For example, there is an economic discrimination, meaning that poor people are not able to afford as good a lawyer as rich people, thus they have to deal with an inexperienced one, which then negatively impacts their defense and breaches their right to fair trial.

### **3.2. Extradition process between abolitionist and retentionist states**

Given the implicit human rights violations of the death penalty, the extradition of prisoners between abolitionist and retentionist states is a complicated process, due to the moral and legal obligations of the abolitionist country. Extradition is conducted usually based on bilateral extradition treaties between countries, since there is no international legislation in that matter.

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<sup>199</sup> United Nations Human Rights Office of the High Commissioner. Death penalty disproportionately affects the poor, UN rights experts warn (Press Release 2017), available on: <https://www.ohchr.org/en/press-releases/2017/10/death-penalty-disproportionately-affects-poor-un-rights-experts-warn>. Accessed May 5, 2024.

<sup>200</sup> World Coalition Against the Death Penalty, “Response to the OHCHR Call for input on the imposition of the death penalty and its impact”: para. 5, available on: <https://www.ohchr.org/sites/default/files/2022-06/wcadp-reply-dp.docx>, accessed April 24, 2024.

<sup>201</sup> *Ibid.*, paras. 6 and 11-12.

### 3.2.1. Relevant legislation regarding extradition

In 1990 the United Nations General Assembly adopted a document called “Model Treaty on Extradition”<sup>202</sup> (hereinafter: Model Treaty), which serves as a basis for extradition treaties between countries and sets forth necessary guidelines for international cooperation in criminal matters. Article 1 of the Model Treaty imposes an obligation to extradite, however, the terms used, such as ‘urges’, ‘encourages’ and ‘invites’ states to do something, indicate that the Treaty itself has no obligatory characteristics.<sup>203</sup> On that note, the document is considered to be a guide for extradition process and a template to conduct bilateral treaties, which do impose obligations to signing parties. In 2004 the UN Office on Drugs and Crime published the “Model Law on Extradition”<sup>204</sup> (hereinafter: Model Law), which was based on the Model Treaty provisions, however the purpose was to assist countries in establishing their national legislation regarding extradition. According to the Model Law, the definition of extradition is the following:

“[e]xtradition” means the surrender of any person who is sought by the requesting State for criminal prosecution for an extraditable offence or for the imposition or enforcement of a sentence in respect of such an offence.<sup>205</sup>

To put it more simply, extradition is a process where one state, the requesting state, requests the transfer of a person from the other state, the requested state, with the purpose of trying the individual or having the person carry out their sentence in the requesting state. In accordance with the definition, extradition can only be carried for ‘an extraditable offence’. which under Article 2 of the Model Treaty is described as an offence which is punishable in both states by a deprivation of liberty “for a maximum period of at least [one/two] year(s), or by a more severe penalty”<sup>206</sup>. Additionally, the Model Treaty states that the extradition can only take place in accordance with relevant domestic law or valid extradition treaty between the requesting and requested state.

Unlike on international level, the European system has binding legislations regarding the extradition process. In 1957 the Council of Europe adopted the European Convention on Extradition<sup>207</sup>, which is binding on all the member states of the Council. The wording of the Convention is very similar to the Model Treaty of Extradition, including the same grounds for refusal and imposing a binding obligation to its parties to extradite persons if another member state requests that.<sup>208</sup> Moreover, in 2004<sup>209</sup> the European Union established the European Arrest Warrant<sup>210</sup>, replacing the complex extradition procedures between member states and aiming to enhance judicial cooperation in criminal matters between them. Once again, the content of the European Arrest Warrant is similar to the two documents previously mentioned, although there

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<sup>202</sup> United Nations General Assembly, Model Treaty on Extradition (A/RES/45/116), available on: [https://www.unodc.org/pdf/model\\_treaty\\_extradition.pdf](https://www.unodc.org/pdf/model_treaty_extradition.pdf), accessed April 24, 2024.

<sup>203</sup> *Ibid.*, pp. 125-128.

<sup>204</sup> United Nations Office on Drugs and Crime, Model Law on Extradition (2004), available on: [https://www.unodc.org/pdf/model\\_law\\_extradition.pdf](https://www.unodc.org/pdf/model_law_extradition.pdf), accessed April 24, 2024.

<sup>205</sup> *Ibid.*, p. 8.

<sup>206</sup> Model Treaty, *supra* note 202, Article 2(1).

<sup>207</sup> Council of Europe. European Convention on Extradition (ETS No. 24). Entry into force 13 December 1957. Available on: <https://rm.coe.int/1680064587>. Accessed April 24, 2024

<sup>208</sup> *Ibid.*, Articles 3-11.

<sup>209</sup> European Commission. European arrest warrant, available on: [https://commission.europa.eu/law/cross-border-cases/judicial-cooperation/types-judicial-cooperation/european-arrest-warrant\\_en](https://commission.europa.eu/law/cross-border-cases/judicial-cooperation/types-judicial-cooperation/european-arrest-warrant_en). Accessed April 24, 2024.

<sup>210</sup> 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision, OJ L 190, 18.7.2002, p. 1-20. Available on: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32002F0584>. Accessed April 24, 2024.

are two main differences. Firstly, the punishment for the extraditable offence is “a maximum period of at least 12 months”<sup>211</sup>, instead of one or two years, and secondly, there is a list of crimes where double criminality principle, which is one of the fundamental principles of extradition, is not mandatory, such as terrorism, human trafficking and rape.<sup>212</sup>

There are numerous important principles of extradition that also serve as grounds for refusal. As already mentioned, the fundamental one is the principle of double or dual criminality, meaning that the offence for which the extradition is requested, must constitute as an offence under the domestic law of both, the requesting and requested state.<sup>213</sup> Moreover, there is a ‘principle of double jeopardy’<sup>214</sup>, which means that a person has already been tried in the requesting state, thus the extradition for that crime cannot be requested. Other important principles include the ‘non-extradition of nationals’<sup>215</sup>, indicating that a country is not obligated to extradite their own citizens, and a person can only be prosecuted for the crime that he or she was extradited for, which is based on the ‘rule of speciality’<sup>216</sup>. Additionally, Articles 3 and 4 of the Model Treaty provide more reasons under which extradition can be refused. For example, in case of a non-violent political offence, if there is a risk of persecution or discrimination in the requesting state or if the offence is only a violation of military law, such as desertion. It is also important to mention that Article 4 of the Model Treaty as well as Article 11 of the European Convention on Extradition and the European Arrest Warrant, include the death penalty as the grounds for refusal, stating that the requesting country must give assurance that the capital punishment will not be imposed nor carried out.<sup>217</sup>

### **3.2.2. Obligation to abstain from assisting in the implementation of the death penalty**

States that have agreed to abolish the death penalty have a twofold obligation. Firstly, they are obligated “to refrain from subjecting any individual within its jurisdiction to such a penalty”<sup>218</sup> and secondly abstain from assisting the implementation of the death penalty elsewhere. There are four aspects to the latter obligation. Firstly, the abolitionist states must refrain from extraditing anyone to a state where they might be sentenced to death. Secondly, the abolitionist states need to help their nationals abroad who are facing the death penalty. Thirdly, the abolitionist states should only assist in investigations if there is assurance provided that the death penalty would not be imposed and lastly, these countries should control that the materials they have exported are not being used to carry out executions. Although the last two aspects do not arise from legal obligations, states still have a moral obligation to refrain from assisting in the implementation of the capital punishment, especially when a state is actively and publicly promoting the abolishment of the death penalty.<sup>219</sup>

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<sup>211</sup> *Ibid.*, Article 2(1).

<sup>212</sup> *Ibid.*, Article 2(2).

<sup>213</sup> United Nations Office on Drugs and Crime. Extradition, available on: <https://www.unodc.org/e4j/zh/organized-crime/module-11/key-issues/extradition.html>. Accessed May 5, 2024.

<sup>214</sup> *Ibid.*

<sup>215</sup> *Ibid.*

<sup>216</sup> *Ibid.*

<sup>217</sup> United Nations Office on Drugs and Crime, Revised Manuals on the Model Treaty on Extradition and on the Model Treaty on Mutual Assistance in Criminal Matters (2004): pp. 13-29, available on: [https://www.unodc.org/pdf/model\\_treaty\\_extradition\\_revised\\_manual.pdf](https://www.unodc.org/pdf/model_treaty_extradition_revised_manual.pdf), accessed April 24, 2024.

<sup>218</sup> Bharat Malkani, “THE OBLIGATION TO REFRAIN FROM ASSISTING THE USE OF THE DEATH PENALTY”, *The International and Comparative Law Quarterly* 62 (2013): p. 523, accessed February 24, 2024, <https://www.jstor.org/stable/43301578>.

<sup>219</sup> *Ibid.*, pp. 524-525.

The obligation first became evident within caselaw in the case of *Soering v the United Kingdom*, where the ECtHR analysed whether a state would be responsible under Article 3 of ECHR when extraditing a person to another country where they might face torture, inhuman or degrading treatment.<sup>220</sup> As mentioned previously, Article 3 does not explicitly prohibit the death penalty nor the extradition to a country where the person may be subject to inhuman treatment, however, the latter is prohibited under Article 3(1) of the Convention against Torture, providing that

[n]o State Party shall [...] extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.<sup>221</sup>

The Court stated that although this obligation is not explicitly mentioned under the ECHR, it is still a fundamental aspect of Article 3, because otherwise it would be conflicting with the values of the Convention.<sup>222</sup> Therefore, the Court concluded that the Contracting State, which extradites a person to another state where there is a real risk of torture or inhuman treatment, can be held responsible for violating Article 3 of ECHR.<sup>223</sup>

In addition to the legal aspect of extradition, there is also a political aspect, since it serves as a foreign policy tool and helps to enhance cooperation between countries. It is important for states to have good diplomatic relations, because then they are more likely to conclude bilateral extradition treaties or even extradite individuals upon such request without a treaty. Therefore, refusing to extradite can have a negative impact since this decision could be seen as failure to cooperate. On the other hand, refusing to extradite for various reasons could send a political message to the international community and could influence relations with other countries with similar values. For example, the requested state stands behind its values to protect human rights if they refuse to extradite because of the possible implementation of the death penalty in the requesting country.<sup>224</sup> When specifically looking at the relations between abolitionist and retentionist states, an example of the United States can be brought, because it is one of the most powerful countries in the world which is still implementing and carrying out capital punishment. The decision to be a retentionist state, has created several issues to its foreign relations. Firstly, since the majority of countries have abolished the death penalty, the U.S. has become diplomatically isolated, meaning it will not receive as much cooperation from abolitionist states as it would want and there is a higher possibility that request to extradite is refused. Secondly, there is diplomatic friction between the U.S. and its allies. For instance, in 2001 the CoE challenged the observer status of the U.S. because of its death penalty practice. And lastly, imposing the capital punishment has damaged the country's foreign policy interests, namely the promotion of human rights and democracy, since carrying out the death penalty is in contradiction with both.<sup>225</sup>

Extradition is a process where a person is transferred from one country to another with the purpose of being tried or serving a sentence for an extraditable offence they have committed.

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<sup>220</sup> ECtHR, *Soering*, *supra* note 177, para. 88.

<sup>221</sup> Convention Against Torture, *supra* note 64, Article 3(1).

<sup>222</sup> ECtHR, *Soering*, *supra* note 177, para. 88.

<sup>223</sup> *Ibid.*, para. 91.

<sup>224</sup> Ilja Djatschkow, "Another Reason to Maintain Friendly Relations", *Völkerrechtsblog* (2024), available on: <https://voelkerrechtsblog.org/another-reason-to-maintain-friendly-relations/#:~:text=Good%20diplomatic%20relations%20normally%20lead,than%20to%20make%20it%20difficult>, accessed April 30, 2024.

<sup>225</sup> Amnesty International, "United States of America: No return to execution – The US death penalty as a barrier to extradition" (2001): p. 1, available on: <https://www.amnesty.org/en/wp-content/uploads/2021/06/amr511712001en.pdf>, accessed April 30, 2024.

The most important principle of extradition is double criminality, indicating that the offence for which extradition is sought, is punishable under the domestic law of both countries involved. State cooperation is a crucial part of extradition, but when a retentionist state requests extradition from an abolitionist state for a crime which can be punished by death, complications arise. The main reason for that is the obligation to abstain from assisting in the implementation of the death penalty, which surfaces once a country has abolished the capital punishment. The obligation includes abstaining from extraditing individuals to countries where they might face the death sentence as well as not exporting materials which can be used for executions. In accordance with the ECtHR judgement, a country can be held responsible for violating the prohibition of torture, if they extradite a person to another state where they will be sentenced to death. There is no international legislation regulating the extradition process, instead countries conclude bilateral extradition treaties based on international guidelines. Nevertheless, the CoE and the EU have adopted laws regarding extradition to make the process easier for their member states. The international guidelines as well as the European legislation consider the possibility of the death penalty to be valid grounds for refusing to extradite. In this case the requesting country needs to give assurance that, if imposed, the death penalty will not be carried out.

### **3.3. Interim conclusions. Legal obligations of an abolitionist state during the extradition process**

Besides the research question already answered, the thesis presents another question, namely “What are the legal obligations of an abolitionist country upon the extradition request from a retentionist country in a case where the death penalty is a possible punishment?”. Abolitionist states have legal as well as moral obligations when deciding whether to extradite an individual to a retentionist country, where they might face the death penalty for their crimes. Firstly, a country needs to make sure that the extradition is in compliance with the bilateral extradition treaty while taking into account the domestic as well as international laws. The principle of double criminality is crucial here, since for extradition to be valid the extraditable offence must be punishable under the domestic laws of both, the requesting and requested country. Secondly, after abolishing the death penalty domestically, a country has an obligation to abstain from assisting in the implementation of the death penalty, which includes refraining from extraditing a person to a country where it is a possible punishment. In accordance with international guidelines and the European legislations, the requested country is allowed to refuse the extradition on these grounds. And lastly, abolitionist states must uphold international human rights standards, in particular right to life and prohibition of torture. This includes not extraditing an individual to a country where they might be subjected to these violations, because in that case the requested country can be held liable for violating a person’s human rights. On that note, an abolitionist country has a moral obligation to act in line with their commitments, in particular protecting human rights, in order to maintain a good international image and establish diplomatic relations with countries sharing the same values.

## CONCLUSION

The focus of this thesis has been the global practice of the death penalty, more specifically, the approaches of the three human rights systems and the international human rights perspectives. Two key issues were addressed in the thesis. Firstly, the European system being the only one out of the three, which has been able to abolish the death penalty regionally and consequently the challenges that the Inter-American and African systems face, preventing them from successfully abolishing the punishment. The second issue focused on in this thesis has been the extradition process between abolitionist and retentionist states when the death penalty is a possible punishment, namely what are the legal obligations of the abolitionist country in that situation. To address these issues the author compared the three human rights systems, analysed the human rights violations occurring with the death penalty and discussed the process of extradition based on international guidelines and European legislation.

The first chapter of the thesis provided background information regarding the global death penalty practice, discussing of the punishment and trend towards its abolishment. It was discovered that more than half of the world, that being 112 countries, are *de jure* abolitionists, meaning they have abolished the death penalty under their domestic law. Nevertheless, many countries still impose and carry out the capital punishment, providing numerous justifications for doing that, such as deterrence. On that note, all other supporting arguments for the death penalty have been overturned and it has been found that a life sentence is a better alternative, because it lessens the risk of wrongful executions and improves the possibility of conviction. Although the death penalty is condemned globally, international laws do not prohibit its implementation rather they provide limitations, for example Article 6 of ICCPR allows the capital punishment only for the most serious crimes and prohibits its implementation on minors or pregnant women. Despite that, some countries do not comply with these limitations, thus highlighting the complicated relationship between maintaining state sovereignty and complying with international law. The final part of the first chapter, discussed the work of the international NGOs, in particular Amnesty International, which has been advocating for the abolishment of the death penalty since 1965. AI's work against the death penalty has been very influential, mostly due to its close relations with the CoE and the UN. For example, the organisation's contribution to the ECtHR case, *Soering v. the United Kingdom*, helped the Court to conclude that the death penalty, specifically the time spent on the death row, contradicts with ECHR. Moreover, AI organised an international conference in Stockholm regarding the global abolishment of the death penalty, resulting in the adoption of the Stockholm Declaration, which calls upon states to abolish the punishment, due to its contradiction with right to life.

The second chapter compared the three human rights systems, namely European, Inter-American and African, providing an answer to the first research question, "Why has the death penalty been almost completely abolished in the European region and what are the reasons for the Inter-American and African regions for not being able to do that?". Although all three regions have condemned the use of capital punishment and have taken necessary measures to prohibit it, only the European system has been successful in abolishing the death penalty almost completely. The system comprises of the CoE and the EU, which share close relations and actively advocate for the global abolishment. All members of the EU are also members of the CoE, which is seen as an essential part of being a European country. Belarus, which is not a member of either organisation but is considered a part of the European region, is the last country still carrying out the death penalty. The main reason for Europe's success, is the requirement for countries wanting to become a member of the CoE to ratify the ECHR and consequently its

Protocol 13, prohibiting the use of the death penalty. On the contrary, other two regions do not have such an obligation. Nevertheless, the OAS from the Inter-American system has adopted a specific protocol abolishing the punishment, however it has not been nearly as successful as Protocol 13, primarily because the U.S. has not ratified the ACHR nor the additional Protocol abolishing the death penalty. Additionally, the U.S. is known for not following the Inter-American Commission's recommendations and violating the American Declaration numerous times. Another reason for being unsuccessful is the challenges posed by the relevant legislation. For instance, the American Protocol has been ratified by less than half of the OAS's member states and it does not explicitly abolish the death penalty instead it prohibits states from implementing it within their jurisdiction. The African system is the least developed in terms of abolishing the death penalty, because unlike the other systems, the African Union has not adopted a legally binding protocol abolishing the punishment, however in the recent years they have developed a Draft Protocol, thus taking crucial steps towards abolition. African region also experiences some other challenges, such as, countries, after abolishing the death penalty, can reestablish it, because there is no law prohibiting such action.

The third chapter discussed the human rights violations caused by the death penalty and the extradition process between abolitionist and retentionist states, thus consequently answering the second research question, "What are the legal obligations of an abolitionist country upon the extradition request from a retentionist country in a case where the death penalty is a possible punishment?". Although more than half of the world has abolished the death penalty, numerous countries still carry it out, making it an exception under the right to life. However, to not infringe with that right, countries need to make sure that the punishment is not applied in an arbitrary manner, indicating that it must be lawful, imposed by a competent court and follow due process. When right to life is breached with execution, the time spent on the death row violates the prohibition of torture, right to fair trial and prohibition of discrimination. In accordance with the ECtHR judgement in the case of *Soering v. the United Kingdom*, the Court determined that the inhuman conditions and the long waiting period, which constitute as the 'death row phenomenon', breach Article 3 of the ECHR, 'Prohibition of torture'. Regarding the extradition, the Court stated that, if a country were to extradite a person to another country with a possibility of being subjected to inhuman and degrading treatment or punishment, that country can be held liable for violating human rights. This highlights one of the legal obligations of an abolitionist state when extraditing a person to a retentionist state, namely it must respect and protect a person's human rights as well as uphold international human rights standards. Secondly, abolitionist country is obligated to abstain from assisting in the implementation of the death penalty, including, amongst others, not extraditing a person to a country where they can be sentenced to death. Extradition is conducted based on bilateral treaties between states or, regarding Europe, based on treaties adopted by the CoE and the EU. The essential part of extradition is the principle of double criminality, indicating that the extraditable offence needs to be punishable under the domestic laws of both states involved. Thus, the last legal obligation for a country is to make sure that the extradition is done in accordance with the bilateral treaty, adhering to both, domestic and international laws.

Further research of the topic could help to better understand the complicated relationship between state sovereignty and international law in terms of abolishing the death penalty, namely, how to globally abolish the punishment while still respecting the state sovereignty. Additionally, it could deeper investigate the reasons behind Inter-American and African systems for being unsuccessful in abolishing the capital punishment regionally and provide solutions how to change that.

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