

**THE DEATH PENALTY AS A PUNISHMENT IN NORWAY
IN THE XVIII-IXTH CENTURIES**

Movsisian H. M.

*Taurida National V. I. Vernadsky University
Simferopol, Ukraine*

This article describes the application of the death penalty in Norway in the XVII-XIX centuries. By studying of the articles of the Christian V's Norwegian Code and law clauses of the Norwegian Criminal Code 1842, which sanctions prescribed the death penalty as a punishment, were identified the crimes, that represented the greatest degree of public danger in those days. In addition, the paper describes the main methods of implementing the capital punishment in the XVII-XIX centuries.

Key words: death penalty, punishment, crime, Norway.

The aim of this study is to examine historical and legal aspects of the death penalty application in Norway in the XVII-XIX centuries, the analysis of the criminal acts which were operated at that time and regulated this type of punishment and methods to implement the death penalty. By studying of the sources of Norwegian criminal law – the Norwegian Code given by Christian V of (Denmark and) Norway in 1687 and the Norwegian Criminal Code of 1842, and based on the use of the most severe punishment – the death penalty – it is possible to identify the most serious crimes in the XVII-XIX centuries, which represented the greatest degree of public danger in those days.

The complexity of the review of this problem is the limited number of national publications and scientific works of Russian scientists, among which are Gurevich A.J., Petrova T.L., Noskov A.M. Actual research of foreign scholars can be found in scientific writings of June Starr, Jane Fishburne Collier, Carl Ludwig Von Bar, Torgrim Sørnes.

In Norway, as elsewhere in the world the death penalty was one of the most ancient forms of punishment, which was originally implemented by the custom of blood revenge. Gradually it gave way to the payment of a fine to the victim or a blood relative of the killed person, which was deemed not only reparation for the physical damage, but also satisfaction for the impeached honor [1, p. 120].

The death penalty in Norway had existed in the period of primitive society, the society of Vikings, in early feudal state, in the heyday of the Norwegian monarchy in the XIII century, during the existence of the Danish-Norwegian absolute monarchy and the Personal union with Sweden, in fact, up until the third quarter of the XX century.

At the beginning of XIX century the main legal basis for the administration of criminal justice was the Norwegian Code of 1687 (Norske Lov 1687), and a royal decree of 1789 on theft [2, p. 68].

The death penalty in the Norwegian Code of Christian V was prescribed as punishment for 49 different crimes. These misdemeanors were listed in the Sixth book of Norwegian Code, which was called «On the iniquity» and consisted of 22 chapters.

In the first chapter, which provided crimes against religion, the death penalty was used for the commission of such offenses as: catholicism, oral and written blasphemy, satanism, escape of the sorcerer. Legislative consolidation of these misdemeanors was the logical consequence of the holding the Lutheran Reformation by Danes in the XVI century. The most important results of this process were the secularization of the possessions of Catholic Bishops, as well as lands of closed monasteries; the increasing power of the Danish king and nobles, whom the king appointed as superintendents – Protestant bishops; mass eviction of Catholic people accompanied by confiscation of property [3]. According to the article 6-1-3 «Catholic, the monks, the Jesuits and the other members of the Catholic clergy could not stay in the kingdom. If anyone had provided a dwelling or a place for the Catholic rites to such persons, he was punished with the utmost rigor of the law» [4].

During the period of strengthening and prosperity of the absolute monarchy in Denmark, as well as after holding numerous wars in the XVII century, crimes against the external security of the state and royal power were regarded as particularly serious. Such criminal offences – an insult to the royal majesty, conspiracy, rebellion, disobedience to the king, to the enemy, unauthorized recruitment, the opposition, the attack on members of the political elite, to the judges and lawyers – have been enshrined in the fourth chapter of Norwegian Code 1687 [5].

The capital punishment was prescribed for committing the felonies against person's life: murder with malice aforethought, murder in order to steal money or other valuables of the victim, infanticide, poisoning, causing the death of a person by arson.

The Sixth book of the Norwegian Code 1687 contained provisions on the offences that infringed on the property relations. It was regulated by 9, 16, and 17 chapters. Imposition of the death penalty was applied for burglary of the King's property, counterfeiting, theft of church property, robbery of a shipwrecked person, robbery on the road. Robberies on the roads of Norway in XVIII-XIX centuries were not uncommon, so the perpetrators of latrocinium were punished with all severity of law. First, the offender had to be beheaded, his head was seated on a stake, and the body was attached to the wagon wheel. The execution of the road robbers was made directly on the pathway, so other subjects of the kingdom had observed their headless bodies on the wagon wheels for some time.

Chapter 13, «On lasciviousness» of the Christian V's Norwegian Code established the capital punishment for offences in the sphere of family relations and sexual crimes such as: incest, rape, bigamy, adultery, etc.

The Article 1 of the Second chapter in the first codification of the criminal law in Norway – Norwegian Criminal Code of 1842 – also legislated the death penalty as a measure of criminal responsibility, as well as other 8 types of penalties: b) perpetual servitude for life, a), d), e), f), g) five categories of the term hard labor; h) imprisonment and i) fine [6, p. 3]. This codification included twenty criminal acts, the commission of which entailed the death penalty.

The ninth chapter «On the betrayal, the attack on the state, treason and other crimes against state security and dignity» contained nine offenses with the death penalty as a

punishment. Such severe penalty was prescribed for willful subordination of Norway and Sweden under the authority of another state, the separation of part of the territory or possession of the state, illegal change of the Constitution of the Norwegian state, or an Association between Sweden and Norway, murder of the Crown Prince or elimination of persons who, in the order of succession rules were or could be contenders for the throne, the committing of rebellion. The sanction of Article 9-1 was an alternative. Having made one of the above mentioned actions, the guilty could be sentenced to a hard labor of the first degree, perpetual servitude for life or to the capital punishment.

The crimes against the external security of the Norwegian and Swedish states included: implementation by a Norwegian or Swedish mignons of foreign policy of levying war against the United Kingdoms of Sweden and Norway, or if it was in a state of war, the implementation of foreign policy directed against the Allied powers to weaken the force and military power of own state and to help the enemy power, the conduct of hostilities against any of the kingdom or state union. In addition, the criminal liability was prescribed for a person who in time of war was a spy. As a punishment for such persons Norwegian Code enacted an alternative sanction: penal servitude for life or death.

The same punishment awaited Norwegian or Swedish mignon, who during the war conveyed soldiers to the enemy, handed over the state border line, the state fortress or a different point of defense, arsenal, warehouses of military supplies and food provisions, the vessel or other property owned by one of the United Kingdoms of Sweden and Norway or ally, misled employees of the State Department and the soldiers of the United Kingdoms or the soldiers of the Allied Powers with a purpose to go over to the enemy, or uprising.

The legislator separately in the ninth chapter had provided criminal liability for personal injury to the king, for killing and wounding members of the royal family, which included: the Queen, the Queen Mother, royal princesses or princes. Penal servitude for life or the capital punishment were to be punished a person who committed the murder with malice aforethought of the above mentioned persons and who caused the injuries that caused the death of one of the members of the royal family.

Implementation of violence against public authorities – the Storting, or one of its branches, the Privy Council, the Supreme Court or Arbitration, namely the prevention or breach of assembly, freedom of discussion on their decisions and judgments, was punished by penal servitude for life or hard labor of the first degree, but for these actions, accompanied by murder, the offender was punished by penal servitude for life or death.

Chapter Fourteen of Norwegian Criminal Code 1842 included the death penalty as a punishment for felonies against person's life. According to the Article 14-1 the penal servitude for life or the death penalty could be applied to those who committed a premeditated murder [7, p. 50].

The legislator separately in Article 14-5 defined the range of victims for bodily injury resulting in death and willful murder of who, the criminal had been punished with a death penalty: it was one of the couple, who lived together with the offender; relative in the direct ascending line, the host or hostess. The same fate was awaiting a prisoner who killed the jailer, guard.

Means of committing the crime has had an important criminal legal significance. It was a mandatory feature of the offense contained in Article 14-2, which established the capital

punishment for the intentional poisoning of a person with poison or other similar toxic substance, regardless of whether it caused the victim's death or just injury to his health.

Since the adoption of the Norwegian Criminal Code in 1842 and until 1876, after which the death penalty has not been applied in Norway up to World War II times, four persons were executed for murder by poisoning. Thus, in 1849 Maren Johanne Jektvik was executed for the arsenic poisoning of her husband out of jealousy. In 1862 were conducted two more executions of murderers Ole Anton Sivertsen Moland, who poisoned his wife with strychnine through jealousy, and Peder Pedersen Marken for strychnine poisoning of his mother. In 1876, Sophie Johannesdatter was sentenced to death by beheading. She had poisoned 3 people with arsenic in order to conceal shoplifting.

Among the offences against person's life Norwegian legislator in the Criminal Code 1842 classified the premeditated murder by the mother during or within a day after accouchement of her illegitimate child, or attempt to cause death of the baby during of pregnancy. The punishment for the committing of these crimes was a hard labor for the second or first degree. However, in case of repeated commission of this crime a woman had to be subjected to capital punishment.

In addition, if a convicted person for a perpetual servitude for life committed murder, murder of spouse (wife) or other blood relative in the direct ascending line, reckless homicide, intentional infliction of bodily harm resulting in death of the victim, the subsequent punishment for it was the death penalty.

During the period of time under review the crimes against property in Norway – theft, robbery, armed assaults were quite frequent. Therefore, Norwegian Criminal Code 1842 regulated these criminal relations in three chapters: Chapter 19 «On theft,» Chapter 20 «On the robbery,» Chapter 21 «On the fraud». For criminal acts that encroached on the property of other citizens, the legislator had used such punishments as: term hard labor, imprisonment, fine. For committing theft of another's property, coupled with the violence, which was reflected in significant harm to the health of the victim or in the use of torture, the perpetrator was punished by perpetual servitude for life. If exposed to violence man died, the person who committed an armed assault, resulting in the death of the victim, was punished by death penalty. If a person sentenced to perform hard labor for life, was found guilty of committing the crime again, a penal servitude for life could no longer be applied to him, only the capital punishment could be applied.

Throughout the history of Norway, there were various methods of implementation of the death penalty. Thus, according to Christian V's Norwegian Code, capital punishment could be realized by hanging, beheading with a sword or an ax, breaking on the wheel, burning, and dismemberment, drowning and jamming with red-hot pincers.

Such types of the capital punishment, as burning at the stake, drowning and breaking on the wheel were formally valid until the introduction of the new system of penalties by the Norwegian Criminal Code 1842 (since early years 1700th it also has been not used).

Enforcement of the death penalty by hanging in the big cities and at the military bases was held in specially installed gallows and in the villages the pine was often used for this purpose. Thus appeared the statement «sentenced to the gallows and pine» («dømt til Galge og Green») [8]. Such method of execution as hanging was used for the commission of desertion, theft, burglary, larceny and theft of a horse after jailbreak.

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This method of death penalty was abolished by the Royal Decree of 20.02.1789 as a sanction for committing civil crimes in Norway and Denmark. The last hanged person in Norway was Anders Larsen in Kristiansand in 1765 – he had committed a burglary.

Another common way to implement the death penalty was beheading with a sword or an ax. Beheading with a sword was considered a noble and honorable. According to the Royal Decree of 9 August 1737 beheading of criminals with the sword meant that the body of an executed person would be buried in the cemetery. In practice, this method of capital punishment was used to persons who had committed the murder without aggravating circumstances or rape. However, gradually this type of penalty has been abolished. May 1, 1741 the Governor of Finnmark County issued a decree which established that the death penalty should continue to be carried out by beheading with an ax. Later in 1775 beheading with a sword as a method of death penalty was declined in Nordland, and eventually throughout the country. The last Norwegian, who was executed by the sword, was Trond Fins Teiehøyden who was punished in 1791 in Numedalen for committing a rape.

Concerning to the beheading with an ax, this method of capital punishment was used in the second half of the XIX century, as the only way to implement this type of punishment. Norwegian Code 1687 established that persons who had committed manslaughter and counterfeiters should be beheaded with an ax. As a rule, after the execution, the body of the dead was buried on the spot of the penalty, and since 1845 – in the cemetery. The last person who was punished with the death penalty in Norway in this way was 72-year-old Christopher Nielsen Svartbakken in 1876 for committing murder in selfish gain.

Very often the use of the above method of capital punishment was accompanied by breaking on the wheel or the imposition of a head on a stake. The decapitated body of a criminal was attached to the wagon wheel, which was installed on a pole. The body of an executed offender has been hanging for all to see until it fell from the wheel. However, in the cities of the bodies removed from the place of execution after a few days. In this way, was executed Ole Berg Jacobsen, who was sentenced to death for mail robbery in 1838.

In the period from 1815 – 1902 years 44 people were executed in Norway. Forty Norwegians were put to death for committing intentional homicide, which were caused by desire of gain, family quarrels and conflicts, disputes about property, inheritance, the desire to save money (murders of children and grandchildren committed by mothers or grandmothers), revenge, religious fanaticism and concealment previously committed criminal acts. In addition, the death penalty by beheading with an ax was applied to two men who had committed mail robberies and one counterfeiter.

Finally, the death penalty in Norway was abolished in 1979. Its new Criminal Code 1902, in force from 1905, abolished capital punishment in peacetime, so it did not provide the application of this type of punishment for civil crimes (Sivil dødsstraff). Military capital punishment was abolished in 1979. The last executions in the Norwegian kingdom were carried out in 1948 to persons convicted for treason and war crimes during the Second World War.

Thus, the Christian V's Norwegian Code provided the death penalty for committing by nationals and other people offences that represented the greatest danger to society: crimes against religion, offences against the external security of the state and the monarchy, felonies against the person's life and against property, sexual crimes and misdeeds in the sphere of

family relations. Passed in 1842 Norwegian Criminal Code did not set such punishment as the death penalty for religious offenses and crimes in the field of family relations. In the second half of the XIX century the highest degree of public danger was characterized for such violent crimes as: offences against the external security of the state, against the monarchy and the royal family and against man's life. However, on practice the death penalty in Norway was applied mainly to the perpetrators in the murder.

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В статье рассмотрен вопрос о применении смертной казни в Норвегии в XVII-XIX стст. Посредством изучения статей Норвежского кодекса Кристиана V 1687 г. и Норвежского уголовного кодекса 1842 г., санкции которых содержали смертную казнь в качестве наказания, были выявлены преступления, которые представляли наибольшую степень общественной опасности в те времена. Кроме того, в работе описаны основные способы реализации высшей меры наказания в XVII-XIX вв.

Ключевые слова: смертная казнь, наказание, преступление, Норвегия.

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У статті розглянуто питання про застосування смертної кари в Норвегії у XVII-XIX стст. Шляхом вивчення статей Норвезького кодексу Крістіана V 1687 р. і Норвезького кримінального кодексу 1842 р., санкції яких містили смертну кару в якості покарання, було виявлено злочини, які становили найбільшу ступінь суспільної небезпеки в ті часи. Крім того, в роботі описані основні способи реалізації вищої міри покарання в XVII-XIX стст.

Ключові слова: смертна кара, покарання, злочин, Норвегія.