

DEATH PENALTY NEWS DECEMBER 1996

A SUMMARY OF EVENTS ON THE DEATH PENALTY AND MOVES TOWARDS WORLDWIDE ABOLITION

EXECUTIONS CONTINUE IN UKRAINE AND RUSSIA

As the **Death Penalty News** went to press in late January 1997, an urgent debate was due to be held at the Parliamentary Assembly of the Council of Europe in Strasbourg following disclosures of continuing executions in Ukraine and Russia in defiance of the commitments made by the two states when they joined the Council of Europe in November 1995 and February 1996 respectively.

The disclosure of executions in Ukraine came at a news conference on 29 November in Kyiv, Ukraine at the end of an international seminar on the death penalty organized by the Council of Europe (see related story on page 4). Zsolt Nemeth, Council of Europe rapporteur on the honouring of obligations and commitments by Ukraine, told journalists he had just received the "shocking" information that over 100 prisoners had been executed since the beginning of the year. He said that the executions could only be characterized as "barbarism" and called into question the credibility of Ukraine.

Following the disclosure by Zsolt Nemeth, Ukrainian Minister of Justice Serhiy Holovaty confirmed that 89 prisoners had been executed in the first six months of 1996. He told the news conference he believed Ukraine must honour its commitment to stop executions.

In Russia, Anatoly Pristavkin, chairman of the Presidential Clemency Commission, stated publicly in November that 140 prisoners had been executed in 1996, 103 of them after the country joined the Council of Europe. Anatoly Pristavkin told **AI** in October that there were 455 people under sentence of death awaiting consideration of their petitions for clemency.

There is strong evidence to suggest that the prisoners executed include people who were innocent of the crimes for which they were convicted. Amnesty International has documented cases from both countries casting serious doubt on the convictions of prisoners sentenced to death. At a press conference in September in Russia, Valery Borshev, representative of a public consultative body on human rights, said that according to research carried out in the country, judicial errors were made in 30 per cent of death penalty cases.

On 28 June the Parliamentary Assembly of the Council of Europe adopted a resolution calling on Russia and Ukraine to honour their commitments to stop executions and warning them that further executions could lead to sanctions under a 1995 Parliamentary Assembly order governing the implementation of commitments made by states joining the Council of Europe (see **DP News** June 1996).

In December the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe decided to request that the Parliamentary Assembly hold an urgent debate at its next session, due to take place from 27 to 31 January 1997. If the request is accepted by the Parliamentary Assembly, the debate will be the first step in a procedure which could lead to expulsion from the Council of Europe if the two countries continue to disregard their commitments to stop executions.

AFGHANISTAN: Prisoner publicly executed by victim's husband

The Taleban armed political group, which took control of the Afghan capital Kabul in September, carried out its first judicial public execution in the city on 18 December. In accordance with Islamic law, Ghulam Mohammed, convicted of murdering a pregnant woman and her three small children, was shot by the victim's husband before a crowd of about 3,000 men. Ghulam Mohammed had been tried and sentenced to

death under the administration of former President Burnahuddin Rabbani, along with another man who had also taken part in the burglary attempt. Both had escaped from jail when the Taleban took Kabul, but only Ghulam Mohammed had been recaptured.

SOUTH KOREA: Constitutional court rules death penalty a "necessary evil"

The South Korean Constitutional Court ruled on 29 November that the death penalty is constitutional and a "necessary evil" to deter crimes of a heinous nature. The ruling came in a seven-to-two decision by the court on a petition by Jung Seok-Bom, a 25-year-old man who had been sentenced to death for the killing of a 10-year-old girl in 1994. Although his sentence had been commuted to life imprisonment, Jung has continued to plead his innocence claiming his conviction was based on a mistrial. In their summation the judges said the death penalty should be applied only in exceptional cases where it is necessary to protect another life, or is in the public interest. It stated that the debate on the necessity of the death penalty should continue and if the penalty is no longer needed as a criminal deterrent, it should be abolished.

Capital punishment, which is provided in law for a wide range of crimes including habitual theft and drug trafficking, has increasingly been challenged by civil rights organizations in South Korea since the democratically elected government of President Kim Young-sam came to power in 1993. The death penalty debate intensified when former President Chun Doo-Hwan, who took power in 1979 in a military coup and ruled the country for nine years, was sentenced to death in August 1996 for mutiny, treason and corruption. Chun Doo-Hwan's sentence was commuted to life imprisonment in December.

TRINIDAD AND TOBAGO -Move to overturn Pratt and Morgan ruling

AI has written to the government urging it not to enact the proposed Constitutional (Amendment) Bill 1996 which, if passed into law, would remove some of the rights currently available to people sentenced to death in Trinidad and Tobago.

The Bill seeks to overturn the 1993 ruling of the Judicial Committee of the Privy Council in England (JCPC), in the case of *Pratt and Morgan v. Jamaica*. The ruling stated that the execution of prisoners who have been under sentence of death for more than five years constitutes inhuman and degrading treatment. The JCPC recommended that such prisoners should have their sentences commuted to life imprisonment.

If enacted the Bill could substantially increase the number of executions in the country, **AI** believes.

USA - GEORGIA: Prisoner executed after courts refuse to consider new evidence

Ellis Wayne Felker, sentenced to death for murder in 1983, was electrocuted on 15 November at the state prison in Jackson despite doubts of his guilt.

Four boxes of previously undisclosed evidence, including a signed confession from another suspect in the crime and forensic samples from the murder victim's body which might have proven Ellis Felker's innocence, were discovered in September 1996 in the offices of the district attorney and sheriff responsible for the case, but the Georgia Supreme Court refused to consider the new evidence, claiming it was the responsibility of the defence attorneys to have found it.

Ellis Felker had lodged an appeal on the grounds that his previous lawyers had not passed on an offer, as defence attorneys are required to do, from the prosecution of life imprisonment following the discovery it had withheld evidence. In November 1996 the Georgia Supreme Court denied the appeal despite a strongly worded condemnation by Justice Norman Fletcher, the court's presiding judge. In his dissenting opinion Justice Fletcher stated that the failure to disclose the evidence raised "serious questions about whether the State afforded Felker due process [of law]...In post-conviction proceedings, the State

repeatedly misrepresented its entire file." According to Justice Fletcher, the District Attorney in charge of the case had even denied under oath that the new evidence existed. He said that "the State's repeated failure to comply with well-settled constitutional principles deprived Felker of a fair trial".

During his 13 years under sentence of death Ellis Felker received four stays of execution. The last was issued by the US Supreme Court on 14 November only minutes before the execution was scheduled to take place and after his leg and head had been shaved for the electrodes. Later the same day, the Supreme Court unanimously denied the appeal and Ellis Felker was executed within a few hours of that decision.

USA - VIRGINIA: Reprieve in O'Dell case

Joseph ODell, who was convicted of rape and murder in 1986, and was scheduled to die on 18 December, has gained a reprieve from the US Supreme Court. The case had gained international media coverage, especially in Italy, and had prompted a personal appeal by Pope John Paul II for clemency on Joseph O'Dell's behalf. The Supreme Court granted a stay of execution on 17 December on the basis of a legal technicality that during his trial the jury were not told that he could have been sentenced to life in prison without parole as an alternative to the death sentence, but the Court has refused to consider new evidence from recent DNA testing which O'Dell claims proves his innocence. A ruling will be issued by the end of June 1997.

NEWS IN BRIEF

Barbados

Two men scheduled to be executed on 10 September had their sentences commuted to life imprisonment on 13 November by the Supreme Court. The judge ruled that to execute the men more than five years after their conviction would constitute inhuman or degrading punishment in contravention of the Barbados constitution.

El Salvador

A constitutional amendment to reintroduce the death penalty for kidnapping, aggravated homicide and rape, proposed by the ruling party, the *Alianza Republicana Nacionalista* (ARENA), Nationalist Republican Alliance, was adopted by the Legislative Assembly in October. Before it can become law it will require a two-thirds majority vote by a new parliament following elections scheduled to take place in March 1997. Should the amendment be approved, El Salvador would violate its international commitments as a party to the American Convention on Human Rights which states in Article 4(3): "The death penalty shall not be re-established in states that have abolished it". The death penalty was abolished in 1983 under the constitution for all but certain offences under the military code committed during an international war.

Jamaica

According to information received by **AI**, Jamaica is shortly expected to resume executions after a gap of eight years. The Minister of National Security and Justice, K. D. Knight, told the Jamaican parliament on 29 October that a new crime-fighting plan would be implemented due to the high level of crime and violence in the country. He also said that a limit of nine months will be placed on appeals in capital cases to be made to the Judicial Committee of the Privy Council in England (JCPC) and to the UN Human Rights Committee. The last execution in the country was in 1988.

In another development, in a meeting held on the island of St Kitts in October, Jamaica, Barbados and Guyana agreed to the abolition of appeals to the JCPC and the establishment of a Caribbean Court of Criminal Appeals.

DEATH PENALTY DISCUSSED AT COUNCIL OF EUROPE SEMINARS

The Council of Europe held two seminars in November dealing with human rights and the death penalty. In Taormina, Italy, officials and members of parliament from different parts of Europe met from 14 to 16 November with experts in the fields of criminology, penal policy, media communications and human rights

to discuss "Serious Crime and the Requirement of Respect for Human Rights in European Democracies".

The second seminar, held in Kyiv, Ukraine from 28 to 29 November, was on the death penalty and brought together ministers of justice, other officials and members of parliament from European countries. Professor Roger Hood, Director of the Centre for Criminological Research at Oxford University in the United Kingdom and author of the 1988 UN study on the death penalty (see **DP News** September 1996 for a review of the updated study), told the Kyiv seminar that no conclusive evidence that the death penalty reduces the rate of murder has been forthcoming and "none is likely to be forthcoming. Looked at this way, the balance of the evidence definitely favours the abolitionist position."

Other experts presenting papers in Kyiv were Peter Hodgkinson, Director of the Centre for Capital Punishment Studies at the School of Law of the University of Westminster in London and Eric Prokosch, Theme Research Coordinator at the **AI** International Secretariat.

Various participants in the two seminars called on governments to take the lead in educating public opinion about the death penalty and the unlikelihood of its having a unique deterrent effect. Contrary to the view that abolition must be delayed because the public is not ready for it, members of parliament from several countries said they thought the public would accept abolition if governments took the lead in bringing it about.

ACP-EU RESOLUTION

The ACP-EU Joint Assembly, a forum of members of the European Parliament and representatives of the African, Caribbean and Pacific states which are parties to the Lomé Convention, adopted a resolution on the abolition of the death penalty at their meeting in Luxembourg from 23 to 26 September 1996. Among other things, the resolution requests member states in which the death penalty is still in force to introduce a three-year moratorium on executions as the first step towards abolitionist legislation, and invites members to support the proposal for a universal moratorium on capital punishment to be adopted by the UN.

UN SPECIAL RAPPORTEUR CALLS FOR ABOLITION

In an October report to the UN General Assembly (UN document No. A/51/457), the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Bacre Waly Ndiaye, emphasized that "the abolition of capital punishment is most desirable in order fully to respect the right to life". The Special Rapporteur urged governments of countries where the death penalty is still enforced to deploy every effort that could lead to its abolition and requested the General Assembly "to adopt a resolution calling for the abolition of the death penalty."

The Special Rapporteur's remarks were criticized by several countries. Their displeasure was reflected in the resolution adopted by the General Assembly which merely notes the Special Rapporteur's report instead of welcoming it.

Yoshio Tsujimoto

The **Death Penalty News** notes with sadness the death of Professor Yoshio Tsujimoto in Japan on 27 November 1996.

Yoshio Tsujimoto was a criminologist and professor of law at Waseda University in Tokyo, and a passionate opponent of the death penalty. His book *Historical Perspective on the Abolition of the Death Penalty in Japan* (1983) traced abolitionist developments from the time of the Meiji era (from 1868).

Professor Tsujimoto supported **AI**'s abolitionist efforts. He translated the **AI** report *When the State Kills...*, the **DP News** and many other **AI** documents into Japanese. He was also a leading member of the Japan Council on Crime and Delinquency.

RATIFICATIONS OF INTERNATIONAL TREATIES ON THE DEATH PENALTY (1 January 1997)

The number of countries joining international treaties on the death penalty continues to grow. One country [Andorra ratified Protocol No. 6 on 22 January 1996.] in 1996 became a party to Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) concerning the abolition of the death penalty and three other countries signed the Protocol [Moldova signed Protocol No. 6 on 2 May 1996, Macedonia on 14 June 1996, and Croatia on 6 November 1996.]. Four countries were parties to the Protocol to the American Convention on Human Rights to Abolish the Death Penalty [Brazil became a state party on 13 August 1996.].

The following table shows states parties and signatories to the three anti-death penalty treaties.

INTERNATIONAL TREATY		
STATES WHICH HAVE SIGNED BUT NOT YET RATIFIED STATES PARTIES		
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	Belgium, Costa Rica, Honduras, Nicaragua (Total: 4)	Australia, Austria, Croatia, Denmark, Ecuador, Finland, Germany, Hungary, Iceland, Ireland, Italy, Luxembourg, Macedonia, Malta, Mozambique, Namibia, Netherlands, New Zealand, Norway, Panama, Portugal, Romania, Seychelles, Slovenia, Spain, Sweden, Switzerland, Uruguay, Venezuela (Total: 29)
Protocol No. 6 to the European Convention on Human Rights concerning the abolition of the death penalty	Belgium, Croatia, Estonia, Greece, Macedonia, Moldova (Total: 6)	Andorra, Austria, Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, Romania, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Switzerland (Total: 24)
Protocol to the American Convention on Human	Costa Rica, Ecuador, Nicaragua	Brazil, Panama, Venezuela, Uruguay

Rights to Abolish the Death Penalty	(Total: 3)	(Total: 4)