

# DEATH PENALTY NEWS

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

## RUSSIA, UKRAINE: COUNCIL OF EUROPE DEMANDS CESSATION OF EXECUTIONS

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In a strongly worded resolution, the Parliamentary Assembly of the Council of Europe has condemned the continuation of executions in Ukraine and demanded that executions cease there and in Russia.

The action came after **AI** had written to the Council of Europe conveying information that executions were continuing in the two countries and calling for action in view of the two countries' pledge to institute an immediate moratorium on executions on joining the Council of Europe.

Russia joined the Council of Europe on 28 February (see **DP News** March). One month later, Lev Razgon, a member of the Presidential Clemency Commission, said that the authorities were "executing as many people as possible" and had not put a moratorium into effect. Professor Sergei Vitsin, also a member of the Clemency Commission, has reportedly stated that there is still no decision on imposing a moratorium on executions. Anatoly Pristavkin, Chairman of the Clemency Commission, earlier stated that false figures on executions had been supplied to the Council of Europe to facilitate Russia's request for membership and ease the process of accession.

Sources in Russia have informed **AI** that a draft Presidential decree is currently being circulated within the Presidential administration aiming at a reorganization of the Clemency Commission whereby its present members, who are well-known public figures, would be replaced by officials from governmental institutions dealing with the administration of the death penalty.

Ukraine joined the Council of Europe on 9 November 1995 (see **DPNews** December 1995). **AI** learned on 14 May 1996 that an official in the General Procurator's Office had told the father of a prisoner under sentence of death that the procedures relating to condemned prisoners were continuing in the same way as before and that he had not been informed that a moratorium on executions was in place. The prisoner had been sentenced to death in Sevastapol in September 1995. "We will be executing him", the official said.

Following an appeal from **AI**, the Parliamentary Assembly of the Council of Europe decided on 24 June to hold an emergency debate on the matter. At the debate, held on 28 June, the Assembly adopted resolution 1097 (1996) in which the Assembly "condemns Ukraine for apparently violating its commitments to introduce a moratorium on executions of the death penalty upon its accession to the

Council of Europe." The resolution states further that the Assembly "demands that Russia honour its commitment and carry out no executions. It makes particular reference to the forty-six prisoners on death row whose requests for pardon have reportedly been rejected by the President of the Russian Federation this year." The Assembly "calls upon Russia, Ukraine and Latvia to honour their commitments regarding the introduction of a moratorium on executions and the abolition of capital punishment immediately. It warns these countries that further violation of their commitments, especially the carrying-out of executions, will have consequences under Order No.508 (1995)".

Another important feature of resolution 1097 (1996) is its statement that "the Assembly reminds applicant states to the Council of Europe that the willingness to sign and ratify Protocol No. 6 of the European Convention on Human Rights and to introduce a moratorium upon accession has become a prerequisite for membership of the Council of Europe on the part of the Assembly".

It also "calls upon those Council of Europe member states who retain the death penalty on their statute books without taking recourse to it (Albania, Bulgaria, Cyprus, Estonia, Malta, Poland, Turkey, United Kingdom) to abolish it *de jure* as soon as possible", and invites "all member states of the Council of Europe who have not yet done so, to sign and ratify Protocol No. of the European Convention on Human Rights".

The Parliamentary Assembly also adopted on 28 June a recommendation, No.1302 (1996), urging the Committee of Ministers to speed up its consideration of recommendation 1246 (1994) calling for the creation of a new protocol to the European Convention on Human Rights for the total abolition of the death penalty, and an order, No.525 (1996), instructing its Committee on Legal Affairs and Human Rights to organize seminars on the abolition of the death penalty in Europe.

## AI CALLS ON CHINA TO STOP MASS EXECUTIONS

**AI** has called on the Chinese authorities to stop the mass executions carried out in China since the start of a nationwide anti-crime campaign on 28 April. It has also called on the international community to intervene to stop the executions, many of which are believed to be carried out after summary trials. By the end of June, 1000 people had been executed under the crackdown, code-named "Strike Hard", for crimes ranging from murder, rape, robbery and kidnapping to publishing pornography.

Using legislation from 1983 which provides for summary trials and quick approvals of death sentences for offenders who "seriously endanger public security", the Chinese authorities have executed some prisoners within days of the crimes they allegedly committed. In Jilin province, according to an official newspaper report, three men were executed on 31 May for robbing a car on 21 May.

There are currently 68 crimes punishable by death in China. Yet despite the harshness of China's death penalty laws, condemning thousands of people to death each year, crimes such as rape, murder and major theft had increased by 10 per cent in the first three months of this year, according to Ministry of Public Security spokesman Zou Chuanji speaking in a recent television interview.

In a report released on 13 March at the launch of its worldwide campaign against human rights violations in China, **AI** specifically denounced the extensive use of the death penalty in the country. Entitled China: No One is Safe: Political Repression and the Abuse of Power in the 1990s, the 121-page report covers aspects of the death penalty including the ill-treatment of prisoners, the use of organs from executed prisoners for transplants, and the practice of imposing death sentences with a two-year reprieve. This can lead in some cases to the execution of people who were under 18 years old at the time of the offence, which is contrary to international human rights standards. Under this procedure, executions are suspended while the prisoner carries out "reform through labour" during the period of reprieve.

Such human rights violations have taken place against a backdrop of economic reforms which have opened China up to foreign investment. Despite sporadic international protest over human rights violations, foreign governments have failed to consistently condemn the abuse of basic rights for fear of jeopardising investment opportunities.

## USA: NEW LAW RESTRICTS DEATH PENALTY APPEALS

The Anti-Terrorism and Effective Death Penalty Act of 1996, which President Clinton signed into law on 24 April, has significantly adverse implications for people sentenced to death in the United States. Along with other provisions, the legislation limits recourse to the remedy of habeas corpus in federal (national) courts - these courts have historically provided a shield against unfair state trials. It imposes new standards, fixed time limits and rigid restrictions on appeals.

Under the new bill, federal courts can overturn state court judgments in only three instances: if the state court's decision is "contrary to clearly established" federal law as determined by the Supreme Court; if it involves an "unreasonable application" of clearly established law or if the state court's factual determination is "unreasonable".

Previous federal law had set no time limit on when death row inmates might file a habeas corpus petition; the new law imposes a limit of six months from their final state court proceedings, provided the state supplies the prisoner with lawyers for the federal appeals. Subsequent petitions, provided they are approved by a panel of circuit judges, can only be on a claim raised for the first time provided the claim rests on a "new" rule of constitutional law that the Supreme Court has made "retroactive to cases on collateral review", or if there is convincing evidence of innocence which could not have been reasonably discovered when the first petition was filed.

Stays of execution are affected by the new legislation in that the filing of a petition to the federal court is no longer considered an automatic stay; only if the prisoner can make a "substantial showing of the denial of a federal right" can it be so considered.

Federal courts are required to decide on habeas corpus petitions in capital cases within six months.

The measure, which was designed by its sponsors to speed up death row appeals from an average of eight years to two years, has been opposed by the American Civil Liberties Union and other civil rights organisations which claim it will inevitably lead to the execution of innocent people and the prolonged imprisonment of others. At stake also is whether the Supreme Court will allow Congress to strip it of jurisdiction over an entire category of cases.

In a related development, the Supreme Court moved with rare haste to resolve some of the major constitutional questions posed by the law before the end of the Court's term at the end of June by agreeing to an unscheduled review of a challenge to the law from a Georgia prisoner facing imminent execution. Ellis Wayne Felker, sentenced to death in 1982 for rape and murder, is challenging the part of the law requiring a three-judge appeals court panel to give state inmates permission to file a second federal appeal. His challenge is based on the constitutionality of the judge's instructions to the jury which convicted him, arguing that a 1990 Supreme Court opinion in another case made his jury's instructions unconstitutional.

Four Supreme Court justices voted against granting the speeded-up review on the grounds that it was "both unnecessary and profoundly unwise" to resolve a case with such complex constitutional implications on an accelerated timetable.

"Even the most vile murderer does not release the state from its obligation to respect dignity, for the state does not honour the victim by emulating his murderer. Capital punishment's fatal flaw is that it treats people as objects to be toyed with and discarded."

William J. Brennan Jr, former Justice of the US Supreme Court - *New York Times* 28/4/96

## **SOUTH AFRICAN CONSTITUTION UPHOLDS DEATH PENALTY BAN**

On 8 May the South African Constitutional Assembly adopted, by an overwhelming majority, a final constitution which retains the wording of the country's interim constitution guaranteeing a right to life. The likely effect of the decision is that the June 1995 Constitutional Court ruling, holding that the death penalty is contrary to the interim constitution, will remain valid under the new constitution (see **DP News** June 1995).

Before the constitution can finally be promulgated, the Constitutional Court must rule whether the constitution as adopted is consistent with the "Constitutional Principles" embodied in the interim

constitution and agreed by South Africa's all-party negotiators which preceded the April 1994 nationwide democratic elections. A special session of the Constitutional Court will begin hearing arguments in public on 1 July on whether the constitution complies with these principles.

The National Party, which has now left the Government of National Unity, continues to state publicly its opposition to abolition.

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## NEWS IN BRIEF

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**Albania** - Three former senior communist officials were sentenced to death by a court on 24 May on charges of crimes against humanity and political persecution while they held power. The sentences were passed despite Albania's commitment of 29 June 1995 to a moratorium on executions in its bid to join the Council of Europe. Former Supreme Court Chairman, Aranit Cela, former Prosecutor-General Rrapi Mino and former Deputy Interior Minister Zylyftar Ramizi, who was also head of the secret police, were sentenced to death by Judge Luan Daci for sending dissidents and their families into internal exile. The three men have appealed against their sentences.

**Bahamas** - The first execution since 1984 was carried out on 13 March when Thomas Reckley was hanged, despite having spent more than five years under sentence of death. Thomas Reckley had been convicted of murder in November 1990. The execution was contrary to the 1993 ruling of the Judicial Committee of the Privy Council (JCPC) in London which states that "in any case in which execution is to take place more than five years after sentence there will be strong grounds for believing that the delay is such as to constitute "inhuman or degrading punishment or other treatment".

A further execution followed on 28 March when Dwayne McKinney, convicted of murder in April 1992, was hanged.

**Belgium** - On 13 June a bill abolishing the death penalty for all crimes was passed by the Belgian Chamber of Representatives, one of two houses of the federal parliament, by 129 votes to 13. At the time of writing, the bill had not yet become law as it was still liable to possible further consideration by the Senate.

**Guyana** - Rockcliffe Ross, convicted in 1992 of murder, was hanged on 4 June, despite having an application on his case pending before the UN Human Rights Committee. The government had acceded to the first Optional Protocol to the International Covenant on Civil and Political Rights which gives individuals the right to submit applications to the Human Rights Committee. The Committee had requested the government not to carry out the death sentence while the case was under its review. The execution, the second since executions were resumed in February after a gap of more than five years, contravened the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council (ECOSOC) in 1984 and endorsed by the UN General Assembly the same year. Safeguard 8 of the ECOSOC Safeguards states: "Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence."

**Libya** - At the June session of the General People's Congress, Libya's highest legislative body, the death penalty was approved for the smuggling of drugs and alcohol and for illegal trade in foreign currencies,

according to Reuters news service. Debates on the measure were broadcast live on television. According to the Congress Speaker, Zannati Mohammad al-Zannati, the expansion of the death penalty reflected the wishes of the country's ruler, Col. Mu'ammarr al-Gaddafi.

**Sudan** - Six men have been sentenced to hang and three to be hanged and then crucified after death for armed robbery, according to a statement by the official news agency SUNA on 30 May.

**USA - New York** - Opponents of the death penalty in the United States now have another device thanks to the ingenuity of Sister Camille of the Sisters of Mercy Brooklyn Regional Community. "The Declaration of Life" document which she devised is similar to a living will, and states "Should I die as a result of a violent crime, I request that the person found guilty...not be subject to or put in jeopardy of the death penalty...no matter how much I may have suffered". The declaration, widely distributed by her group, has so far been signed by 2,400 people including former Governor Mario Cuomo and actor Martin Sheen. Counsel to the Bronx District Attorney's office, Anthony Girese, said it was difficult to determine what power it might have in a courtroom but considered a jury "would be very disinclined to give the death penalty" in a case where the victim of a homicide had signed the declaration.

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## **Constitutional Prohibitions of the Death Penalty**

Out of the 57 countries in the world which have to date abolished the death penalty for all crimes, 24 have gone on to prohibit the death penalty in their constitutions, according to a new **AI** study. Five other countries have constitutional provisions which limit the crimes for which the death penalty can be imposed.

The study sets forth the texts of the relevant constitutional provisions. In many of the constitutions the prohibition or limitation of the death penalty is linked to human rights, and specifically to the right to life or the right to security of person.

In some legal systems, the study points out, the constitution is the supreme law of the land; other laws must not conflict with it, and it is harder to amend than other laws. Enshrining the abolition of the death penalty in such a constitution is a way of solidifying abolition by establishing an additional legal basis which can serve as an impediment to any hasty attempt to bring the punishment back.

Often a constitution can be seen as the legal embodiment of a country's highest values, extending human rights guarantees to everyone in the country's jurisdiction. By enshrining abolition in its constitution, a country shows the importance it attaches to the decision it has taken to abolish the death penalty.

The 24 countries whose constitutions prohibit the death penalty are Austria, Cape Verde, Colombia, Dominican Republic, Ecuador, Germany, Haiti, Honduras, Iceland, Italy, Marshall Islands, Federated States of Micronesia, Monaco, Mozambique, Namibia, Netherlands, Nicaragua, Panama, Portugal, Sao Tomé and Príncipe, Spain, Sweden, Uruguay and Venezuela. The latest addition to the list is Iceland, which amended its constitution in 1995 to include the prohibition of the death penalty. Brazil, El Salvador, Luxembourg, Mexico and Peru have constitutions which limit the scope of the death penalty.

("Constitutional Prohibitions of the Death Penalty", AI Index: ACT 50/06/96, June 1996)

### **NEW BOOKS**

Rituals of Retribution - Capital Punishment in Germany 1600-1987 by Richard J Evans, Oxford University Press, Oxford, England, price £55. This 1,000-page history of execution in Germany, published in June, has been described as the first serious attempt to trace the evolution of a nation through its response to capital crime.

Un errore capitale - Il dibattito sulla pena di morte by Antonio Marchesi, Amnesty International Italian Section, Italy, 1995, price 13,000 lire. The latest in a series of books on the death penalty which has

appeared in Italy in recent years, this new work includes chapters on the death penalty in the United States, under international law and in opinion polls, as well as a short account of the debates leading to its total abolition from Italy's Penal Code in 1994. The author is a former president of **AI**'s Italian Section.

<p><b>Andorra</b> - Andorra ratified Protocol No 6 to the European Convention on Human Rights concerning the abolition of the death penalty on 21 January 1996, bringing the total number of states parties to the Protocol to 24.</p>