

EXTERNAL

AI Index: EUR 38/03/97

UA 144/97

Legal Concern / Death Penalty

15 May 1997

**PORTUGAL Proposed constitutional change could put extradited prisoners at risk of death penalty**

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The Portuguese Parliament is to consider imminently an amendment to the Constitution which could place people at risk of the death penalty.

The Portuguese authorities are seeking to amend the clause in the present Constitution which forbids the extradition of any person for crimes which carry the death penalty under the law of the requesting state. ("*Não há extradição por crimes a que corresponde pena de morte segundo o direito do Estado requisitante.*").

According to the proposed amendment to Article 33(3) of the Constitution, extradition to requesting states would be allowed in certain exceptional cases if the Portuguese Government was persuaded that it had received "satisfactory assurances" (*garantías consideradas suficientes*) that the death penalty would be commuted and substituted by another penalty of limited duration.

Amnesty International is concerned that the Portuguese authorities have not defined the nature or the applicability of such assurances and how they would assess their reliability. In certain states where the death penalty is used, the requesting authorities are not legally entitled to give such assurances. Until such problems are resolved the risk remains that an extradited prisoner could face imposition or execution of the death penalty.

Although Parliament suspended discussion of Article 33 on 24 April 1997, pending further talks with a number of government organizations, a decision on the amendment is expected to take place between 10-15 June.

Amnesty International opposes the death penalty in all cases. While its foremost concern is to ensure that prisoners sentenced to death are not executed, it also believes that the very experience of being under sentence of death is inherently cruel, inhuman and degrading. The organization is convinced that, if passed, the amendment would be seen by other countries as a retrograde step and a weakening of resolve by Portugal in the worldwide fight against both imposition and execution of the death penalty.

Recommendation 1246(1994), adopted by the Parliamentary Assembly of the Council of Europe on 4 October 1994, states that "the death penalty has no legitimate place in the penal systems of modern civilised societies, and ... its application may well be compared with torture and be seen as inhuman and degrading punishment within the meaning of Article 3 of the European Convention on Human Rights."

Amnesty International's Portuguese Section has carried out a lobbying action opposing the amendment, but the organization now believes that it is imperative that international action be mobilized as well to prevent the amendment being passed.

**BACKGROUND INFORMATION**

Portugal abolished the death penalty for political offences in 1852 and for common criminal offences in 1867. The death penalty was abolished for all offences in a new Constitution approved by the Constituent Assembly in 1976. The Assembly voted unanimously in favour of Article 25 of the Constitution which states, "1. Human life is inviolable. 2. In no case will there be the penalty of death."

On 7 March 1997 the two major Portuguese political parties, the ruling Socialist Party (PS) and the Social Democratic Party (PSD) signed an agreement to revise the Portuguese Constitution. The inter-party agreement to amend Article 33(3) to allow for the possibility of extradition of prisoners for crimes which carry the death penalty under the law of the requesting state is reportedly part of the Portuguese authorities' attempt to strengthen the combat against organized crime and terrorism on the one hand, and on the other to move towards harmonization of extradition policy within the European Union.

**RECOMMENDED ACTION: Please send telegrams/faxes/express/airmail letters in PORTUGUESE, ENGLISH or your own language:**

- opposing the proposed amendment to the Portuguese Constitution because it could result in an extradited prisoner being sentenced to death by a court in the requesting State;
- stating unconditional opposition to the death penalty as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment (you may quote from Recommendation 1246 (1994));
- stating that the amendment would be seen in other countries as a retrograde step, given Portugal's long history of abolition of the death penalty and the important role Portugal has played in seeking worldwide abolition.

**APPEALS TO:**

**1. President of the Assembly of the Republic**

Exmo Doutor António Almeida Santos  
 Presidente da Assembleia da República  
 Palácio de S. Bento  
 1200 LISBOA  
 Portugal

**Fax: +351.1.60 77 71**

**Telegrams: Presidente de Assembleia, Lisboa, Portugal**

**Salutation: Exmo D. Presidente / Dear President**

**2. President of the Republic**

Exmo Doutor Jorge Sampaio  
 Presidente da República  
 Palácio de Belém  
 Calçada da Ajuda  
 1300 LISBOA  
 Portugal

**Fax: +351.1.362 57 00**

**Telegrams: Presidente de Republica, Lisboa, Portugal**

**Salutation: Exmo D. Presidente / Dear President**

**COPIES TO:**

Amnistia Internacional  
Rua Fialho de Almeida  
Nº13, 1E, 1070 Lisbon  
Portugal  
**Fax: +351 1 386 1782**

and to diplomatic representatives of PORTUGAL accredited to your country.

**PLEASE SEND APPEALS IMMEDIATELY.** Check with the International Secretariat,  
or your section office, if sending appeals after 30 June 1997.