

THE BALTIC STATES

Time to abolish the death penalty

Introduction

In September 1991 the State Council of the Soviet Union recognized the independence of Estonia, Latvia and Lithuania. In the same month all three Baltic states were admitted to the United Nations. The three countries had, however, begun the process of restoring their independence much earlier, and already by the Spring of 1990 the respective parliaments in each of the three republics had proclaimed the supremacy of their own laws over those of the Union of Soviet Socialist Republics.

All three countries have retained the death penalty in their respective criminal codes, although the number of crimes punishable by death has been reduced from 18 under the old Soviet legislation to seven in Latvia, three in Estonia, and one in Lithuania. All the executions that have taken place in recent years have been for the crime of aggravated murder. (The remaining offences which carry the death penalty in Latvia are: banditry, actions disrupting the work of correctional labour institutions, counterfeiting under aggravating circumstances, attempted murder of an official of the police or of the home guard under aggravating circumstances, rape under particularly aggravating circumstances, the hijacking of an aeroplane under particularly aggravating circumstances. In Estonia acts of terrorism and assassination are also capital offences.)

Amnesty International considers that the death penalty violates the right to life, and that it is the ultimate form of cruel, inhuman and degrading punishment as prohibited by Article 5 of the Universal Declaration of Human Rights and other international human rights standards, including Article 7 of the International Covenant on Civil and Political Rights. In the organization's view the death penalty is inherently unjust and arbitrary, however heinous the crime for which it is provided and however scrupulous the procedures by which it is enforced. The risk of error in applying the death penalty is inescapable, yet the penalty is irrevocable. The overwhelming conclusion from studies on the issue is that there is no reliable evidence that the death penalty deters more effectively than other punishments.

Abolition of the death penalty in the Baltic states would be consistent with the worldwide trend towards abolition. Nearly half the countries in the world have abolished the death penalty in law or practice for all but the most exceptional crimes, such as serious crimes committed during a state of war. In countries belonging to the Council of Europe (to which Estonia, Latvia and Lithuania applied for membership in 1991) the death penalty has virtually been abandoned for common crimes. In those Council of Europe countries which still retain the death penalty in law there have been no executions since 1984, when two prisoners were put to death in Turkey.

Death penalty statistics

Estonia

Since July 1988 five death sentences have been passed. Two people have been granted clemency (one - Oleg Pyatnicky - as recently as December 1992), one person - Rein Oruste - has been executed, and in two other cases, those of Mihail Talyschanov and Vladimir Botchko, executions are pending.

Latvia

Since the beginning of 1989, 18 executions have been carried out (eight in 1989, four in 1990, four in 1991 and two in 1992). The most recent execution to take place was that of Aleksey Volkov in May 1992. Aleksey Volkov had been sentenced to death on 11 September 1991 for the murder of a man and the subsequent rape of the victim's wife. A total of five death sentences were passed in 1992, four of which have been commuted.

Lithuania

Five death sentences have been passed since March 1990. Two people had their sentences commuted following the submission of a petition for clemency (see below under **Judicial procedures**); one person committed suicide; one death sentence was overturned. The fifth case was that of Aleksandras Novadkis, convicted of the murder of a young girl. He was executed on 8 August 1992, following the rejection of his petition for pardon on 2 May 1992.

Legislative reform

Estonia

In June 1992 a newly revised criminal code entered into force. This new code represents only the first step in a long process which is intended to lead eventually lead to the thorough overhaul of criminal legislation. In July 1992 the then Prime Minister of the Republic of Estonia informed Amnesty International that given "*the complexity of criminal circumstances at present...[the Estonian parliament] did not think it possible to abolish [the] death penalty during the first stage of the reform of [the] criminal code. During the second stage when the new criminal law code of the Republic of Estonia will be adopted it is planned to abolish the death penalty*". However, this second stage could last several years.

Latvia

A committee of eight people is currently preparing a new draft of the criminal code. This work could, however, take up to another five years. The committee also has the task of amending and improving the current code which dates from 1961. Chair of the drafting group is Aivars Niedre, Chairman of the Presidium of the Latvian College of Advocates.

Lithuania

A working committee has been charged with drafting a new criminal code. It is unclear what its conclusions on the death penalty might be or when its work will be complete. In August 1992 the Chairman of the Parliamentary Committee for Civil Rights and Nationalities' Affairs informed Amnesty International that "*we intend to organize an opinion poll and [to] try to achieve that the people of Lithuania thoroughly discuss all the aspects of [the death penalty]*".

Judicial procedures

The judicial systems in all three Baltic states are currently in a state of flux, with reforms either currently in progress or, according to the authorities, due to be introduced in the near future. These reforms will affect the way in which capital crimes are dealt with by the judicial system.

Trial and appeal

In Latvia and Lithuania it is the highest court in the land - the Supreme Court - which continues to act as the court of first instance in capital cases¹. Until very recently this was also the case in Estonia; however, according to a newspaper report in the Baltic Independent (8-14 January 1993) a county court recently passed a sentence of death on a 34-year-old man (see below under **Current cases**.) This is the first death sentence to be passed by a lower level court since Estonian independence was restored. (The new constitution of the Republic of Estonia, adopted in July 1992, provides for three levels of courts: rural and city courts, district courts and the National Court. However, the new judicial system is not yet fully in place; it is known, for example, that the National (or State) Court is not expected to replace the Supreme Court until March 1993.)

International law, including article 14 (5) of the International Covenant on Civil and Political Rights (ICCPR), guarantees everyone convicted of a crime, including those accused of capital offences the right to appeal against their conviction and sentence to a court of higher jurisdiction¹. It is not clear whether this right is currently guaranteed in Latvia and Lithuania, where the Supreme Court acts as the court of both first instance and appeal, or how the appeals procedure will function in the newly reformed judicial system of Estonia.

¹ The Supreme Court is composed of three tiers: the Supreme Court Plenum as the highest judicial authority, the Supreme Court Presidium and the Collegium of Criminal (or Civil) Cases. Capital cases are tried in the first instance before the Collegium of Criminal Cases.

¹ Estonia acceded to the ICCPR in October 1991, Lithuania in November 1991 and Latvia in April 1992.

Judicial review

In all three countries death sentences may also be reduced by judicial review. Under this procedure a higher court re-examines the case after it has received a protest against the judgment of the lower court². A protest can be brought by the Chairman of the Supreme Court (or, in Latvia and Lithuania his deputy or deputies) or the Procurator General (or in Lithuania his deputy).

Petitioning for clemency

The submission of a petition for clemency by the condemned person is the final stage in the judicial process in death penalty cases in all three Baltic states.

In Estonia the right to grant clemency was transferred to the President of the Republic of Estonia in October 1992. The President receives recommendations on whether the death sentence should be commuted from the Clemency Commission, composed of four members of the Estonian Parliament, the Chairman of the Supreme Court, the Procurator General and the Minister of Justice. In exercising his right to commute the death sentence in the case of Oleg Pyatnicky, the Estonian President commented recently that he shared the view that the death penalty *"is a violation of the universally accepted human right not to be subjected to inhuman punishment, as proclaimed in the Universal Declaration of Human Rights"*.

In Latvia a petition for clemency is submitted to the Presidium of the Supreme Council (the Latvian parliament) which consults the Human Rights Commission of the Supreme Council, the Procurator General and the Chairman of the Supreme Court.

In Lithuania since October 1992 clemency petitions have been considered by the President of the Republic of Lithuania on the recommendation of the Clemency Commission, composed of the Ministers of Justice and of the Interior, the Chairman of the Supreme Court and the Procurator General.

Procedures for executions

Execution in all three countries is by shooting. However, the procedures governing executions are secret, and it was only recently that Amnesty International was able to learn something about them. During a visit to the Baltic states in October 1992, the organization was informed that in Estonia a person condemned to death only learns whether his petition for clemency has

² In Latvia and Lithuania the judicial review is carried out at the next highest level within the Supreme Court. Thus a protest against the judgment of the Presidium of the Supreme Court will be heard by the Plenum of the Supreme Court (see footnote on previous page).

been rejected when he is taken from his cell to be executed. He is therefore denied the opportunity of a final visit from, for example, a close relative. Amnesty International considers that these procedures amount to cruel, inhuman or degrading treatment or punishment. The organization has called upon the Estonian authorities to conduct a review of the procedures for executions and to make them public.

In Latvia executions are usually carried out within 24 hours after a petition for clemency has been rejected. The condemned person is called out from his cell during the night and is shot by a single marksman (not by a firing squad as had previously been believed). Amnesty International has no information concerning execution procedures in Lithuania.

Current cases

Estonia

Mihail Talyschanov was sentenced to death on 7 June 1991 for the murder of a military cadet and a taxi driver on 5 August 1990. His petition for clemency, which has already been rejected once, was resubmitted for consideration by the President of Estonia in October 1992.

Vladimir Botchko was sentenced to death at the Harju county court on 16 December 1992. He was convicted of the rape and murder of a five-year-old girl in the town of Paldiski.

Amnesty International has appealed to the Estonian authorities for commutation of the death sentences passed on Mihail Talyschanov and on Vladimir Botchko.

The organization has also repeatedly pressed the Estonian authorities for further information regarding the execution of Rein Oruste. According to reports received by Amnesty International, Rein Oruste was shot by prison officials in retaliation for an earlier altercation with prison guards. In July 1992 the Deputy Minister for Foreign Affairs informed the organization that Rein Oruste was convicted of 18 crimes by the Supreme Court on 14 June 1990, including one count of premeditated murder under aggravating circumstances. His appeal for clemency was rejected and his execution by firing squad was carried out on 11 September 1991. In December 1992 Amnesty International wrote to the newly-appointed Minister of the Interior and called for an inquiry into the circumstances surrounding the execution of Rein Oruste.

Latvia

One person is currently under sentence of death. Andres Sergunts was sentenced to death on 6 July 1992 on two counts of premeditated murder under aggravating circumstances. His appeal was rejected by the Supreme Court and no judicial review of the sentence was ordered. Andres

Sergunts has submitted petitions for clemency. Amnesty International has appealed to the Latvian authorities for commutation of the death sentence.

Lithuania

Amnesty International knows of no prisoners currently under sentence of death.

New opportunities for abolition

Presently 31 European countries have abolished the death penalty in either law or practice. Since 1989 eight European countries have abolished the death penalty for all offences - Andorra, Croatia, Czech and Slovak Federal Republic¹, Hungary, Ireland, Romania, Switzerland and Slovenia. European countries account for nearly half of the countries worldwide that have abolished the death penalty for all offences.

There have been moves towards abolition in other European countries where the death penalty is still retained in law. In Belgium a bill to abolish the death penalty for peacetime offences is presently awaiting parliamentary approval. The Grand National Assembly of Bulgaria introduced a moratorium on executions in July 1990. Amnesty International has received no reports of executions in Poland since 1988.

On 28 April 1983 the Sixth Protocol to the European Convention on Human Rights was opened for signature by member states of the Council of Europe. Under its terms any country which becomes party to the Sixth Protocol is required to abolish the death penalty, the only exception being for offences committed in time of war or imminent threat of war. This protocol is the first international treaty developed to prohibit the death penalty. Nineteen countries in Europe have now ratified the protocol as follows: Austria, Czech and Slovak Federal Republic, Denmark, Federal Republic of Germany, Finland, France, Hungary, Iceland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, San Marino, Spain, Sweden and Switzerland. A further two countries, Belgium and Greece, have signed but not yet ratified the Protocol.

The restoration of independence in Estonia, Latvia and Lithuania and the process of legislative and judicial reform under way in all three countries provide a unique opportunity for the Baltic states to debate the fundamental issues surrounding the death penalty and to join the long list of European countries that have moved or are moving towards complete abolition of the death penalty. It is an opportunity they cannot and must not waste.

¹ Since 1 January 1993 the Czech Republic and Slovakia