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### *Ukraine - The Death Penalty*

- According to the most recent official statistics released by the Ukrainian Ministry of Justice, 203 people were executed between 1 November 1995 and 11 March 1997 in Ukraine. Of these, 194 were executed in 1996 and 9 in 1997. However, according to former Minister of Justice, Serhiy Holovaty, in 1997 there were 13 executions. Moreover, there are unconfirmed reports that there was one execution in June 1997, that is, after Ukraine's signature of Protocol No.6 on 5 May 1997.
- There were more reported executions in Ukraine in 1996 than in any other country in the world except China, according to the information available to Amnesty International. Amnesty International received reports of 3,500 executions in China, 140 executions in the Russian Federation and 110 in Iran in 1996.
- There are currently at least 260 prisoners on death row in Ukraine.
- The death penalty may be imposed for the following five peacetime offences under the Ukrainian Criminal Code:

Article 58	"attempt on the life of a state official"
Article 59	"attempt on the life of a representative of a foreign state"
Article 60	"sabotage"
Article 93	"premeditated, aggravated murder"
Article 190-1	"attempt on the life of a militiaman"

A death sentence may not be passed on anyone under 18 at the time of the offence or when sentence is passed, or on a pregnant woman. In the case of a woman who is pregnant when due for execution, the death sentence must be commuted. The death penalty may not be imposed on anyone ruled to have been insane when the crime was committed or when judgement was passed.

**Judicial process:** Capital cases are tried by a bench of three judges, of whom only one is professionally trained. A defence lawyer must assist in capital cases. Prisoners can appeal against the verdict or sentence to the next highest court within seven days of receiving a written copy of the judgement. As their cases are heard at a higher level at the first instance, however, prisoners under sentence of death have fewer opportunities to appeal than many other prisoners.

Death sentences may also be reduced by a judicial review. Under this procedure a higher court re-examines the case after it has received a protest against the judgement of the court of first instance or the court of appeal.

If these remedies fail, prisoners under sentence of death can petition for clemency, which may be granted by the President. These are examined first by the Presidential Clemency Commission which considers all cases in which a death sentence has been passed, even if the prisoner has not submitted, or has refused to submit, such a petition on his or her own behalf. The recommendations of the Clemency Commission are passed to the President of Ukraine, who makes the final decision.

**Method:** Shooting. The family are informed that the sentence has been carried out, but are not told the exact date and place of the execution, or of the burial. They are not entitled to claim the body.

**International commitments:** Ukraine, which along with Belarus (formerly the Belorussian SSR) had separate membership from the USSR at the United Nations (UN), was co-sponsor in 1989 of the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), which entered into force on 11 July 1991 and is the first treaty of worldwide scope aimed at abolition of the death penalty. However Ukraine itself has yet to ratify the Second Optional Protocol.

Ukraine acceded to the Council of Europe on 9 November 1995, thereby committing itself to institute an immediate moratorium on executions and to signing Protocol No.6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms within one year of accession. Protocol 6 provides for the abolition of the death penalty in law and practice within three years. Ukraine signed Protocol 6 on 5 May 1997.

After accession, Amnesty International received alarming reports that executions were continuing in Ukraine, reports which were subsequently confirmed by the Ministry of Justice statistics given above for 1996 and 1997.

On 29 January 1997, a resolution passed by the Parliamentary Assembly of the Council of Europe strongly condemned the continuing executions in Ukraine. Point 6 of the Resolution warns the Ukrainian Government of the consequences (including possible expulsion from the assembly) should they continue to violate their obligations to the Council of Europe in the matter of the death penalty.

However on 28 August 1997 the Ukrainian Ministry of Justice confirmed in writing that 13 executions had taken place in Ukraine in 1997, and that 73 people had been sentenced to death in the first six months of 1997. In October 1997, President Kuchma stated to the press that the last execution in Ukraine had been on 11 March that year. On 8 October 1997 the former Ukrainian Minister of Justice Serhiy Holovaty stated to the press that 13 executions had been carried out in the first half of 1997, and accused Kiev of lying to the Council of Europe. He said

*"Even the justice minister cannot get all the information [on the use of the death penalty], neither the names nor the exact dates of the executions. We are the only member of the Council of Europe which still considers such matters as a state secret."*

An unofficial moratorium on executions has been in place from March 1997, resulting from the fact that cases are no longer being brought to the President, leaving prisoners sentenced to death in an uncertain limbo. According to the information available to Amnesty International, no order has been sent by the Ministry of the Interior to regional prison administrations to inform them of the existence of a moratorium, and so the mechanism for executions remains in place.

**Conditions on death row:** Following a Council of Europe fact-finding mission to Ukraine in November 1997, the Rapporteur of the Committee on Legal Affairs and Human Rights of the Council of Europe issued a report criticizing the conditions in pre-trial detention centres where prisoners under sentence of death were held, citing, in particular, lights being left on continuously, the lack of daylight

in prisoners' cells, and prisoners not being able to leave their cells except to have a shower once every five to 10 days.