

# £UKRAINE

## @The death penalty: an update

In July 1995 Amnesty International issued a report entitled *Ukraine: The death penalty: a cruel, inhuman and degrading punishment* (AI Index: EUR 50/07/95). The document reviewed issues surrounding the death penalty since Ukrainian independence, and highlighted Amnesty International's concerns about the scale and secrecy of this punishment. Several further developments have taken place since then, and are outlined in this brief update.

### Ukraine before the United Nations Human Rights Committee

Amnesty International's concerns about the use of the death penalty in Ukraine include the scale of its application - Ukraine is among the countries with the highest annual number of executions in the world - and the secrecy surrounding the process. There is great official reluctance to reveal statistical information on the death penalty, which is regarded as a state secret. This secrecy extends to relatives, who are not informed in advance of the date of a prisoner's execution and are not entitled to the body after execution; this is buried in an unmarked grave in a location not revealed to family.

These concerns were echoed in July by the United Nations Human Rights Committee (hereafter the Committee). Ukraine is party to a number of human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) which it ratified in 1973 (although forming part of the Soviet Union at that time, Ukraine had a separate seat at the United Nations). States parties to the ICCPR are required to submit information at regular intervals to the Human Rights Committee, the body of experts which monitors implementation of this covenant. On 11 and 12 July 1995 the Committee reviewed Ukraine's fourth periodic report on implementation, and the results of its consideration were published on 26 July<sup>1</sup>.

The Committee was sufficiently disturbed at aspects of the use of the death penalty in Ukraine to include this issue in its written comments within the section entitled *Principal subjects of concern*. It writes:

*The Committee expresses its deep concern about the current trend in Ukraine to impose and carry out an increasing number of death sentences, and about inhumane circumstances in which those sentences are carried out. It recalls that under article 6 of the Covenant<sup>2</sup>, a sentence of death may be imposed only for the most serious crimes.*

---

<sup>1</sup> United Nations Document number CCPR/C/79/Add.52

<sup>2</sup> Article 6 of the ICCPR states *inter alia* "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not

## Extension of the death penalty...

In their comments in the section on *Suggestions and Recommendations*, the Committee again referred specifically to the death penalty:

*The Committee recommends that Ukraine study measures to limit the categories of crimes punishable by death to the most serious offences, in conformity with article 6 of the Covenant, with a view to its prospective abolition and to make when appropriate more extensive use of the rights of commutation or pardon.*

In the month following the Committee's considerations, however, Ukraine increased by two the number of separate articles in the military section of the Criminal Code which carry a possible death sentence.

Although Ukraine has progressively reduced to five the number of offences carrying a possible death sentence in peacetime, there has been no corresponding reduction in the number of military offences which carry a possible death sentence in time of war or conflict. These now number 18 (listed in the Appendix to this document), after legal changes introduced in August 1995.

The changes were made in a law entitled "On the introduction of amendments and additions to several legislative acts of Ukraine on the responsibility of officials"<sup>3</sup>. This law amended several parts of the Ukrainian Criminal Code, including Article 254 in the section on military crimes. Prior to the changes Article 254 punished "Abuse of authority, exceeding authority or neglectful attitude toward duty" with a term of imprisonment ranging from five to 15 years, or death, if committed in time of war or a situation of combat. As a result of the amendment three separate articles have now been created from the former Article 254, as follows:

Article 254 - "Abuse of authority or official position by a military official"

Article 254-2 - "Exceeding authority or official position by a military official"

Article 254-3 - "Neglectful attitude towards duty by military authorities"

All now carry a sentence of from eight to 15 years' imprisonment, or death, if committed in time of war or a situation of combat. Amnesty International does not have the full text of the amended articles, and is concerned that the changes may have increased the number of separate offences, as well as separate articles, carrying a possible death sentence.

---

contrary to the provisions of the present Covenant..." The Human Rights Committee has explained elsewhere (in General Comment 6) that article 6 "refers generally to abolition in terms which strongly suggest...that abolition is desirable". It has concluded that "all measures of abolition [of the death penalty] should be considered as progress in the enjoyment of the right to life".

<sup>3</sup> Published on 11 August 1995 in the newspaper *Holos Ukrainy* (*Voice of Ukraine*), organ of the Ukrainian Supreme Council (parliament).

---

The United Nations (UN) General Assembly has stated that "the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment". Acting consistently with this objective, the UN Security Council in its Resolutions 825 of 25 May 1993 and 955 of 8 November 1994 establishing the International Criminal Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, respectively, excluded the death penalty as an appropriate punishment for the gravest possible crimes: crimes against humanity, including genocide, and violations of the laws of armed conflict. In addition, the UN Special Rapporteur on extrajudicial, summary and arbitrary executions has repeatedly emphasized that "the scope of the death penalty must never be extended" and has invited states that have done so to reconsider <sup>4</sup>.

### **...and moves to restrict it**

The amendments to Article 254 appear to have taken place in parallel with other proposals which would restrict the scope and application of the death penalty. These moves are taking place in the context of drawing up a new Criminal Code, to replace the current one which was inherited from the Soviet era.

According to Amnesty International's information a new draft Criminal Code of Ukraine has been drawn up and is at present being examined in committee stage by the Supreme Council (parliament), before being brought to a full council session. The draft is said to contain an article on the death penalty formulated as follows:

- 1. The death penalty by shooting may be imposed only for premeditated murder under aggravated circumstances.*
- 2. A special law may be envisaged for the carrying out of the death penalty for crimes committed against the established procedures for performing military service in time of war or in a situation of combat.*
- 3. The death penalty may not be applied to persons under 18 at the time the crime was committed, to women, or to men over 65 years of age.*

At present the criminal code contains four other peacetime offences in addition to premeditated murder which carry a possible death sentence, exempts only pregnant women and has no age limit for the execution of men (see the July report *Ukraine - The death penalty: a cruel, inhuman and degrading punishment*). If passed, the draft Criminal Code would be a concrete step towards limiting the application of the death penalty in law. It should be borne in mind, however, that according to official statistical information all but two of the hundred of death sentences passed in recent years have been for premeditated, aggravated murder. The restriction of the death penalty in law to just this offence, therefore, would not appear to be a major factor in reducing the overall number of death sentences passed. In addition the absence of public information on the sex and age of those

---

<sup>4</sup> The most recent statement by the Special Rapporteur on this point is in his report to the 1995 session of the UN Commission on Human Rights, UN Document number E/CN.4/1995/61, paragraph 375

sentenced to death and executed also makes it impossible to judge what impact the proposed changes in the draft would have on the actual figures of death penalty application.

## **Death penalty statistics for 1995**

Amnesty International's July report *Ukraine - The death penalty: a cruel, inhuman and degrading punishment* highlighted the great reluctance to make public statistical information on the application of the death penalty in Ukraine, with officials refusing to provide details on the grounds that such information constituted a state secret<sup>5</sup>. Indeed the Ukrainian delegation presenting the Fourth Periodic Report to the Human Rights Committee in July were unable to provide the death penalty statistics requested by the Committee during the session, leaving Committee members to rely instead on the official Ministry of Justice figures quoted in the above-mentioned Amnesty International.

These figures, released in May this year, showed that in 1994 143 people were sentenced to death, 60 people were executed and only two had their sentences commuted. To Amnesty International's knowledge the only information publicly available so far for 1995 is that provided by the Ukrainian authorities to the Parliamentary Assembly of the Council of Europe. According to that information 74 death sentences had been passed in the first six months of the year, but nothing was provided on the number of executions during the same period.

---

<sup>5</sup> On 17 August 1995 the newspaper *Uryadovy kurer* (Government Bulletin) published "Information which constitutes a state secret of Ukraine". Point 4.48 listed as a state secret "information about the carrying out of sentences on those sentenced to the supreme measure of punishment [that is, the death penalty], or on persons who carry out these sentences".

## Executions

Although the number is unknown, executions have taken place so far in 1995 according to information provided to Amnesty International by relatives of those on death row. The July report *Ukraine - The death penalty: a cruel, inhuman and degrading punishment*, for example, highlights the case of Vasily Krivonos who was executed in January - although his mother was only informed officially of his death at the end of March. Another relative kept in this awful suspense was the mother of death row prisoner Aleksandr Vitalyevich Datsenko, sentenced to death for murder and rape by the Military Court of the Central Military District on 14 February 1994.

Aleksandr Datsenko, born 1969

Aleksandr Datsenko's appeal against the death sentence was turned down by the Supreme Court of Ukraine on 1 February 1995, and his petition for clemency - the last resort against execution - was rejected by President Kuchma of Ukraine on 13 March. As relatives are not informed in advance of the date of execution the strain on them is understandably enormous around this time, as they are left not knowing if their most recent visit or letter will be the last.

Aleksandr Datsenko's mother visited her son on death row in the city of Donetsk on 28 March, and he wrote to her the following day. When she returned to the prison in April, however, she was denied entry and told without explanation that she could not see her son. She was referred for further information to the regional court, but the relevant person could not be located when she visited and no one could provide her with concrete information. This uncertainty continued over the next months, and she was only informed by the Donetsk prison authorities that her son had been moved in a letter dated 20 May. This merely noted that he had been transferred in March, no exact date given, and referred her back to the regional court for further details. Writing at that time she says: "I know that my son is no longer alive."

## Recommendations

Amnesty International opposes the death penalty in all cases throughout the world, and without reservation, on the grounds that it is a violation of the universally guaranteed right to life. No matter what reason a government gives for killing prisoners and what method of execution is used, the death penalty cannot be divorced from the issue of human rights. Article 3 of the Universal Declaration of Human Rights proclaims that "Everyone has the right to life". Article 5 categorically states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Amnesty International believes that the death penalty violates these rights.

Amnesty International is calling on the Ukrainian authorities to:

- ◆ take the opportunity of current discussion of a new criminal code (see *Ukraine: The death penalty: a cruel, inhuman and degrading punishment*) to abolish the death penalty for all offences, in line with the recommendations of the Human Rights Committee and the United Nations General Assembly.
- ◆ impose a moratorium on executions

In the light of Recommendation 1246 of the Parliamentary Assembly of the Council of Europe, calling for the creation of a control mechanism under which states and states whose legislative assemblies enjoy special guest status - like Ukraine - would set up commissions with a view to abolishing capital punishment, Amnesty International is urging the authorities to:

- ◆ create an official commission on the death penalty, as described in recommendation 1246 of the Parliamentary Assembly of the Council of Europe.

Amnesty International is also urging the authorities to:

- ◆ ensure that the relatives of those sentenced to death are fully and promptly informed at each stage of the prisoner's case.
- ◆ publish comprehensive statistics on the use of the death penalty, in line with the recommendation of the UN Economic and Social Council (ECOSOC), which *"Urges Member States to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted."*<sup>6</sup>

---

<sup>6</sup> Article 5 of ECOSOC Resolution 1989/64 on Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty.

## APPENDIX

*List of military offences in the Ukrainian Criminal Code which carry a possible death sentence if committed in time of war or in a combat situation*

1. Article 232 "Insubordination"
2. Article 234 "Resisting a superior or compelling him to violate official duties"
3. Article 236 "Forcible actions against a superior"
4. Article 241 "Desertion"
5. Article 242 "Unwarranted abandonment of unit in a combat situation"
6. Article 243 "Evasion of military service by maiming or any other method"
7. Article 245 "Intentional destruction or damaging of military property"
8. Article 249 "Violation of service regulations for guard duty"
9. Article 251 "Violation of rules for performing combat lookout"
10. Article 254<sup>7</sup> "Abuse of authority or official position by a military official"
11. Article 254-2 " Exceeding of authority or official position by a military official"
12. Article 254-3 "Neglectful attitude towards duty by military authorities"
13. Article 255 "Surrendering or abandoning to the enemy of means of waging war"
14. Article 256 "Abandonment of sinking warship"
15. Article 257 "Unwarranted abandonment of battlefield or refusal to use a weapon"
16. Article 258 "Voluntary surrender into captivity"
17. Article 260 "Looting"
18. Article 261 "Violence against the population in an area of military operations"

---

<sup>7</sup> Article 254 was amended, and articles 254-2 and 254-3 added, in August 1995. The remaining articles listed above are from the Soviet-era criminal code dating from 1961 and still currently in use in Ukraine