
amnesty international

USSR

Prospects for Abolition of the Death Penalty

JULY 1991

SUMMARY

AI INDEX: EUR 46/20/91

DISTR: SC/CO/DP/PG

The death penalty continues to be used widely as an "extreme measure of punishment" in the USSR. Amnesty International believes the death penalty to be the ultimate cruel, inhuman and degrading form of punishment and seeks its worldwide abolition. In 1991 the USSR Ministry of Justice published death penalty statistics for the first time since 1934. They reveal that 445 death sentences were passed in 1990 and showed that there was a marked increase on the figure given for the previous year. Draft legal reforms were published in December 1988, proposing to limit the scope of crimes punishable by the death penalty, but have not yet been formally adopted. A number of people who would have been exempt from the death penalty under the proposed new legislation have been sentenced to death since it was first published. In December 1989 the USSR voted in favour of a UN resolution adopting the Second Optional Protocol to the International Covenant on Civil and Political Rights, which is the first treaty of worldwide scope aimed at abolition of the death penalty.

This document looks at recent developments affecting the use of the death penalty in the USSR, including the initiatives taken by individual republics with respect to death penalty legislation. It reports on the appeals and clemency procedures open to a person who has been sentenced to death and describes the work of the USSR Clemency Commission. The paper draws attention to the firm public support for the death penalty in the USSR and also documents the beginning of a movement for abolition of the death penalty there.

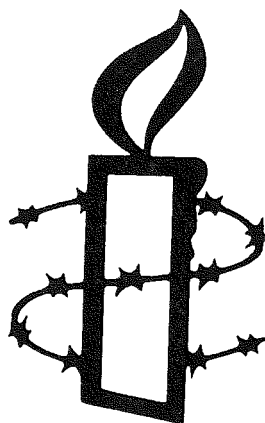
This report summarizes an 18-page document (7340 words), *USSR: Prospects for Abolition of the Death Penalty* (AI Index: EUR 46/20/91), issued by Amnesty International in July 1991. Anyone wanting further details or to take action on this issue should consult the full document.

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

amnesty international

USSR

Prospects for abolition of the death penalty



July 1991
AI Index: EUR 46/20/91
Distr: SC/CO/DP/PG

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

USSR

Prospects for Abolition of the Death Penalty

Introduction

Amnesty International is seriously concerned at the continuing widespread use of the death penalty in the USSR. It believes the death penalty to be the ultimate cruel, inhuman and degrading form of punishment and seeks its worldwide abolition. The extent to which the death penalty is being used in the USSR was shown by death penalty statistics published in 1991 for the first time since 1934. In 1990 445 death sentences were passed, according to USSR Ministry of Justice officials, a marked increase on the 1989 figure of 276. The Soviet authorities intend to retain the death penalty as "an extreme measure of punishment". This was confirmed when on 2 July 1991 the Soviet parliament defeated proposals to abolish it. Amnesty International nevertheless welcomes the USSR's vote in December 1989 in favour of the UN resolution adopting the Second Optional Protocol to the International Covenant of Civil and Political Rights and hopes that it will eventually ratify it. The Second Optional Protocol, which was co-sponsored by the Ukraine, is the first treaty of worldwide scope aimed at abolition of the death penalty.

The Soviet authorities first announced that they would be re-examining the use of the death penalty in the course of a legal review in 1987. At present 18 crimes are punishable by death in peacetime, including ones which do not involve the use of violence and only pregnant women, juvenile offenders and the insane have been made exempt from the death penalty. The Soviet parliament has given a first and second reading to draft Fundamentals of Criminal Legislation of the USSR and Union Republics, which propose restricting the scope of the death penalty and which were first published in the Soviet newspaper *Izvestiya* in December 1988. Legal guarantees have been introduced to protect those facing possible death sentences, including trial by jury and the right to have access to a defence lawyer from the start of the investigation, although it is not known to what extent they have been put into practice.

Publication of Death Penalty Statistics

The death penalty continues to be used widely as an "extreme measure of punishment" in the USSR. This was shown by death penalty statistics announced at a press conference

on 16 January 1991 by the new Minister of Justice, Sergey Lushchikov. This was the first time that such statistics had been made public since they were withheld by Joseph Stalin in 1934. Despite a progressive decrease in death sentences from 770 in 1985, of which 20 were commuted, to 271 in 1988 with 72 commutations, the 1989 figures indicate a reversal of this trend. In 1989 276 death sentences were passed and there was a sharp reduction in commutations to 23. The figures for 1990 were given at a further USSR Ministry of Justice press conference on March 5 and show a dramatic increase to 445 death sentences, with 29 commutations. It was also reported that 195 executions were carried out in 1990. While the majority of those executed were convicted of murder under aggravating circumstances, six people were executed for rape, seven for the attempted murder of a police officer and one each for treason, banditry and disruption of the work of corrective-labour institutions. The death penalty statistics provided by the USSR Ministry of Justice reveal a significantly higher number of death sentences and executions than those which had come to Amnesty International's attention through its monitoring of the Soviet media and other sources.

The publication of statistics on the use of the death penalty was seen as a positive development by Amnesty International. The organization would, however, also like to see the publication of statistics for each category of offence punishable by the death penalty in years prior to 1990, and on the number of death sentences reversed or commuted on appeal, in conformity with Resolution 1989/64 of the United Nations Economic and Social Council. It would also welcome information on the number of death sentences imposed by courts of first instance and publication of statistics on the use of the death penalty since 1950, the year the death penalty was last reinstated in the USSR. Amnesty International would also be very interested to learn the statistics on the use of the death penalty by the republics of the USSR.

The USSR and worldwide Trends towards Abolition

Amnesty International welcomes the growing recognition in the USSR of the importance of international standards on human rights. It is in this framework that it particularly appreciates the USSR's support of the Second Optional Protocol to the International Covenant on Civil and Political Rights, (co-sponsored by the Ukrainian Soviet Socialist Republic, which has a separate seat at the UN). The Second Optional Protocol, which was adopted at the UN General Assembly in December 1989, would be binding on all states ratifying it to accept the obligation under international law to abolish the death penalty for peacetime offenses. At the UN Commission on Human Rights in early 1989 the head of the Soviet delegation expressed the hope that the USSR would be able to join the treaty in the future. The United Nations has confirmed that the Second Optional

Protocol to the International Covenant on Civil and Political Rights has now been ratified by ten countries and will enter into force on 11 July 1991.

The death penalty statistics published by the USSR Ministry of Justice show that the USSR ranks with China, Nigeria and Iran as being among the countries with the world's highest number of recorded executions. However, in supporting the Second Optional Protocol the USSR joined its voice to those of the increasing number of countries in Europe and worldwide, which have taken steps towards abolition of the death penalty. Nearly half the countries of the world have now abolished the death penalty in law or practice. Countries which have recently abolished the death penalty for all crimes include Cambodia, New Zealand and Romania in 1989 and the Czech and Slovak Federative Republic, Hungary, Ireland, Mozambique and Namibia in 1990. Nepal recently abolished the death penalty for murder and Bulgaria has announced a moratorium on executions while legislation concerning the death penalty is under consideration. Of these at least one country - Hungary - abolished the death penalty despite adverse public opinion. Since the Second World War the death penalty, once abolished, has not been reintroduced in any European country apart from the USSR.

Recent Legislation affecting the Use of the Death Penalty

Amnesty International is concerned that on 2 July the Soviet parliament voted to retain the death penalty in the USSR. The organization does, however, welcome the progress that has been made towards reducing the scope of crimes punishable by death in the USSR. The first steps in this direction were taken when the new Draft Fundamentals of Criminal Legislation were published in the *Izvestiya* in December 1988. According to the original proposals the scope of crimes punishable by the death penalty was to be reduced from 18 crimes in peace-time to six: state treason, espionage, terrorist acts, sabotage, intentional homicide with aggravating circumstances and rape of a minor. Speaking at the press conference on March 5 the USSR Minister of Justice, Sergey Lushchikov, said that the final draft of the new legislation retained four categories of crime punishable by the death penalty - treason, acts of terrorism, acts of sabotage and premeditated murder with aggravating circumstances. The draft, was given a second reading, however, in the Soviet parliament on 2 July 1991. According to Moscow radio it now retains the death penalty for treason, premeditated murder with aggravated circumstances and also for "particularly grave crimes against peace and the safety of mankind" (presumably meaning war crimes and genocide). Amnesty International is concerned that, according to this draft, the rape of a minor will also carry the death penalty, a crime which was not included in those listed by the Minister of Justice in March. According to an *Izvestiya* report on 2 July a proposal was made during the reading to reintroduce the provision that the death sentence could be commuted to a 20-

year prison sentence. The draft considered at the first reading on 5 April 1991 had proposed to reduce this term to 15 years. The new legal guidelines passed by the Soviet parliament on 2 July make women and people under 18 exempt from the death penalty (although those under 18 at the time of the offence or when sentence is passed were already exempt under previous death penalty legislation). Amnesty International is concerned that the guidelines do not appear to exempt men over the age of 60 as was originally envisaged by the draft legislation. Despite the Soviet parliament's passing of the new legal guidelines on 2 July, which affect the scope of crimes punishable by the death penalty, the Draft Fundamentals of Criminal Legislation have yet to be formally adopted as a whole. Although if adopted they will significantly reduce the scope of the death penalty, the USSR Justice Minister has nevertheless expressed the opinion that the present situation in the country is not ripe for the abolition of capital punishment.

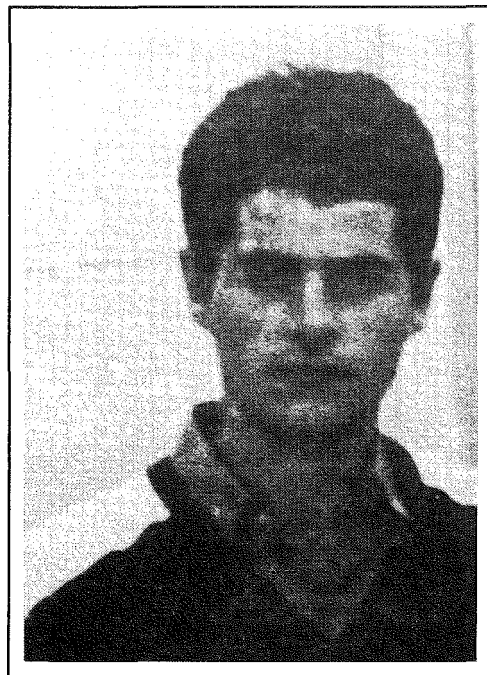
Regrettably there has been no stay on the passing of death sentences or on executions pending the outcome of the review on the death penalty. Furthermore death sentences have been handed down against people convicted of crimes, which would have been exempt from the death penalty under the Draft Fundamentals of Criminal Legislation. At least four such cases have come to light since they were first published in December 1988. These were a Turkmenian book-keeper convicted of economic crimes who was sentenced to death in December 1988, one woman sentenced to death in the Ukraine in April 1989, and two men over sixty who were convicted of war crimes in the Ukraine, (one of whose final petition for clemency was turned down in August 1990). Amnesty International hopes that these sentences were not carried out, particularly in the light of assurances given to it in April 1990 by the then Chairman of the USSR Clemency Commission that the Commission would not allow the execution of minors, women, men over 60 or people convicted of economic crimes. One 72-year-old man convicted for war crimes in the Ukraine was reported to have been executed earlier, in October 1989. As far as Amnesty International is aware no death sentences passed for crimes exempt from the death penalty under the new legislation have been handed down since 1989 and according to the USSR Ministry of Justice no women were executed in 1990. Amnesty International welcomes the commutation in early 1990 of two death sentences passed for economic crimes. At the same time the organization is concerned that since January 1989 at least two people have been sentenced to death without right of appeal, contrary to Article 14 (5) of the International Covenant on Civil and Political Rights. They were Andrey Zapevalov and I.Mandzhikov, both in their early twenties, and sentenced to death in the Russian Republic and in the Kazakh Republic of the USSR respectively.

Amnesty International appreciates new legislation which has been introduced to enhance the legal guarantees of people charged with capital offences. The possibility of trial by jury was introduced for capital and other grave crimes by the new Fundamentals of Court Organization for the USSR and Union Republics, which came into effect on 1

December 1989. This legislation stipulates the presence of a defence lawyer from the moment a person is "arrested, detained or charged", rather than on completion of the preliminary investigation, as was formerly the case. The aim of the new legislation, which now explicitly incorporates the presumption of innocence, was to lay down basic principles of judicial activity. Although the importance of the legislation should not be underestimated, its provisions were not mandatory and it was left up to individual republics whether to take them up or not. According to an interview with legal expert and Doctor of Law Valery Savitsky in the 22/90 issue of the Soviet journal *Novoye Vremya* (New Times), there has been little evidence that the republics (with the exception of the three Baltic ones) were in any hurry to do so. As an example he points out that the Law on the Judicial System of the Russian Republic fails even to mention "trial by jury".

Union Republics and Death Penalty Legislation

One of the most significant recent developments affecting the use of the death penalty in the USSR is that some union republics are now beginning to take their own initiatives with regard to death penalty legislation. Traditionally capital crimes in the USSR have been legislated centrally from Moscow. When Amnesty International discussed abolition of the death penalty with Soviet officials in Moscow, it was said that individual republics may be given greater freedom to draw up their own legislation on the death penalty. In the context of this greater independence Amnesty International welcomed an initiative taken by the Georgian parliament in March 1991, when it adopted a law abolishing the death penalty altogether for economic crimes. Pending death sentences which have been passed for such crimes will be replaced by terms of imprisonment of up to 15 years. In adopting this legislation the republican authorities have limited the scope of crimes punishable by the death penalty in the Georgian Republic in advance of the Soviet



Goga Alborov, who was sentenced to death in March 1991 in the Republic of Georgia, which has abolished the death penalty for economic crimes, but retains it for murder and other crimes.

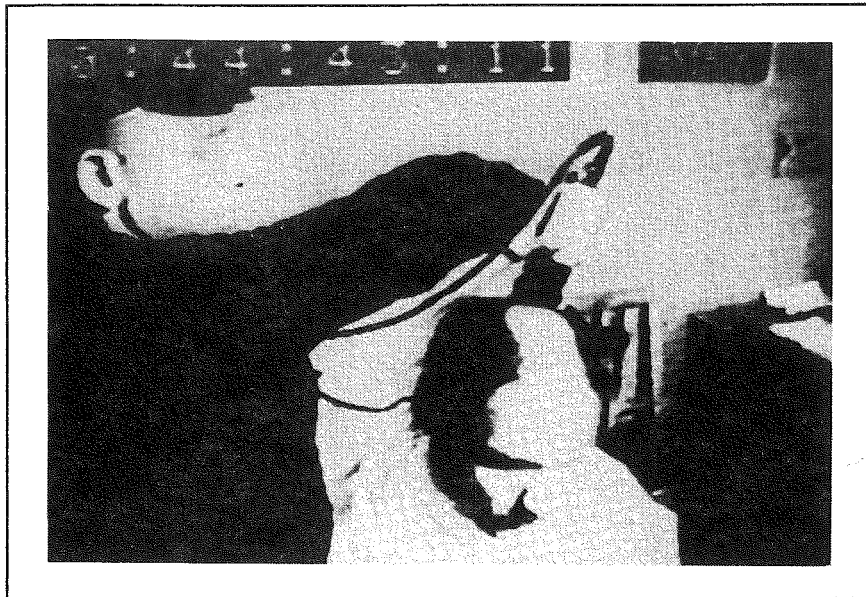
authorities, who have yet to pass draft legislation abolishing the death penalty for economic and other crimes.

This was not the only welcome initiative taken by the Republic of Georgia with respect to legislation affecting use of the death penalty. On 28 December 1990 the Georgian parliament adopted a law on courts, along similar lines to the USSR Fundamentals of Court Organization. It provides for cases punishable by the death penalty to be heard by a judge and six people's assessors. The presence of defence counsel in such cases is guaranteed from the moment of detention, arrest or charge. The new Georgian legislation also provides for the election of city and district judges by the Minister of Justice of the Georgian Republic (and by the Ministers of Justice of the two autonomous republics within its confines). This is a significant departure from the organization of Soviet courts, where higher ranking judges are still elected by their respective soviets (councils). It is to be hoped that the new legislation will help to safeguard the independence of judges in the Republic of Georgia.

Amnesty International does not know whether other republics of the USSR have taken any steps towards incorporating Soviet legislation on trial by jury for death penalty cases into their own.

The organization welcomes the publication of a draft constitution for the Russian Republic, which takes the first steps towards narrowing the scope of the death penalty. Published in the *Konstitutsionny Vestnik* (Information Bulletin) No. 4 of the Committee on Constitutional Supervision of the Russian Federation in 1990, it limits the imposition of the death penalty to only one offence, that of murder under aggravating circumstances. At the same time it guarantees a condemned person the right to petition for clemency and sets forth as its goal the abolition of the death penalty "by creating the necessary conditions in society".

According to a report by the Latvian parliamentary Committee on Human Rights and Nationalities the death penalty is seldom applied in the Latvian Republic. All those who were executed in 1990 and 1991 are said to have been sentenced to death for multiple murder and approximately half of the 10-11 death sentences, which the report says are passed on average each year, are commuted. The report says that it is expected that the criminal code will be amended by the Latvian parliament in September 1991 and that it will reduce the scope of crimes punishable by the death penalty to multiple murder, aggravated rape and murder with aggravating circumstances.



27-year-old Valery Dolgov, sentenced to death for murder in 1986, is prepared for his cell in Latvia by having his head and moustache shaved

Legislative initiatives taken by union republics may sometimes also result in the introduction of the death penalty for more crimes than new Soviet legislation plans for. For example, according to an *Izvestiya* report of 3 January 1991 the Uzbek Soviet Socialist Republic has extended the scope of capital crimes by introducing tougher measures making rape committed during mass disturbances punishable by the death penalty.

Amnesty International has written to the head of each union republic, as well as the USSR Ministry of Justice, calling for a moratorium on all death sentences and executions. It also urged for all death sentences already passed to be commuted, pending a review of the death penalty, and for the individual republics to publish their own death penalty statistics.

Possible Delays in Introduction of new Legislation

Although Amnesty International welcomes the new Soviet legislation which formally improves on the procedural rights open to those facing possible death sentences, it is concerned that these rights should be guaranteed in practice. The Soviet press has recently published a number of articles expressing concern that legislation on trial by

jury has not yet been introduced in practice. Doctor of Law Aleksandr Larin, for example, writes in the 14/91 issue of *Novoye Vremya*:

"All sorts of obstacles are being put in the way of the introduction of a jury which would decide on a defendant's guilt without a judge-official - that is to say independently of the party-state hierarchy".

The same concern is voiced in an article favouring abolition of the death penalty, which was published by the Soviet daily *Komsomolskaya Pravda* in June 1990:

"New legislation on court organization has long been adopted, at last establishing trial by jury for all cases in which the death sentence may be passed. But as yet it remains only on paper".

If trial by jury has not been introduced in practice, death penalty cases may continue to be tried as they were in the past - by a judge assisted in court by two People's Assessors. These are lay people with no legal experience, elected for a two year period, who sit for a maximum of four weeks in two years. They may pass a death sentence by a majority verdict: that is, by two of the three people who comprise the bench. Some Soviet jurists have criticized the majority vote principle and the lack of legal training of People's Assessors. They say that it is incompatible with the special care which is needed in reaching a verdict on cases punishable by death.

Competence of Judiciary in Passing Death Sentences

The death penalty is discretionary but Soviet reformers have voiced doubts that judges are sufficiently competent, independent and impartial to hand down death sentences. They may be inclined to accept the case presented by the prosecution, because the official who prosecutes the cases - the Procurator - is also responsible for ensuring "the correct application of the law". An article by Doctor of Law Gennady Khokhryakov, published in *Literaturnaya Gazeta* on 27 March 1991, points out that in the course of a case defence lawyers lodge appeals on behalf of their clients to the procuracy, which is the body that supports the accusation. Another criticism voiced in the Soviet press is the investigator's dependence on the procuracy. In *Novoye Vremya* Aleksandr Larin criticizes the delay in introducing a long-proposed independent investigation committee, which would put an end to the investigator's dependence on the procuracy, security organs, militia and local bodies.

A number of reports have recently appeared in the Soviet press on convictions of members of the judiciary, and in particular of the procuracy, on grounds of bribery and

corruption. According to one newspaper report, for example, a judge in the Nikolayev region of the Ukraine, was found guilty of taking bribes. He had in the course of his career handed down death sentences against those convicted of crimes such as bribery, among others. It is to be hoped that the adoption of a new law on contempt of court which came into force in December 1989 will help to prevent this kind of abuse. The law made it a criminal offence to exercise pressure on judges in any way, although it did not guarantee their immunity from political influence. Another new law "On the Status of Judges in the USSR", which came into force in December 1989, did not fully guarantee judges' immunity to political influence either, although it aimed to ensure their unconditional independence. To this end it took the election of lower level judges away from the local soviet (council) and placed it in the hands of the soviet at the next higher administrative level. Judges of higher rank, however, from the level of autonomous region up, are still elected by their respective soviet, on whom they are also dependent for their housing.

While the new legislation on courts formally improves on the procedural rights open to those facing possible death sentences some Soviet defence lawyers say that in practice they do not have satisfactory access to their clients. In theory defence lawyers are authorized to speak with their clients in private, to have access to all the materials of their case, and to take an active part in the questioning of the suspect and the summoning of witnesses. In practise they assert that in order to gain access to their clients they must ask permission of the official investigating the case - who in many instances is also the person prosecuting the case. Numerous investigators are said to have refused them access to case materials, or to have placed tight restrictions on them. Reformers frequently question the extent to which defence lawyers are free to work, saying that increasing restrictions are being placed on them. Gennady Khokhryakov, writing in *Literaturnaya Gazeta*, goes so far as to describe defence lawyers at the preliminary investigation as "silent witnesses". He also points out that as defence lawyers in the provinces may easily lose their jobs and find it difficult to find another position, they may fear coming into conflict with the court and the procuracy. If this is the case it may affect defence lawyers' impartiality.

Appeals and Clemency Procedures

Amnesty International appreciates the greater openness with which Soviet officials have recently spoken about legislative procedures associated with the death penalty. This is reflected in an interview with Gennady Cheremnykh, head of the USSR parliamentary clemency body, published in *Izvestiya* on 1 October 1990. The interview describes what avenues are open to a condemned person to contest his or her sentence. Although persons sentenced to death have only one possibility of appeal, the appeal must pass

through several stages before this avenue is exhausted. After sentence has been passed the condemned person has the right to appeal within seven days. If, for any reason, he or she fails to do this the defence lawyer is under obligation to do so on his or her behalf. About two months after the sentence is handed down the case is sent together with the appeal to the Supreme Court of the republic in which the sentence was passed. It may take up to six months for the Supreme Court to examine the generally extensive case material. If it is decided that a sentence has been passed in error, the court where it was handed down is informed that the sentence has been quashed. An error of this nature may lead to the end of a judge's career, Gennady Cheremnykh explains.

If the death sentence is upheld, the article continues, the condemned person can petition the commission attached to the Presidium of the Supreme Soviet of the republic for clemency. From here the case is sent for a second consideration to the republican Supreme Court and then to the republic's procuracy. Subsequently, it takes a further three to six months before the case comes before the Presidium of the Supreme Soviet of the republic for consideration. (However, recently it has taken much longer before cases are examined, on account of delays due to the creation of new organs of power.) If the death sentence is upheld at all levels by the republican instances and petition for clemency has not been granted, the condemned person's petition for clemency goes to the USSR Supreme Court and Procuracy. When a conclusion on the case in question has been reached, papers from both departments are passed on for study by the USSR Clemency Commission and a date set for considering a petition for clemency. According to Gennady Cheremnykh, in practice it is at least two years before all avenues of appeal against a death sentence have been exhausted.

Amnesty International would welcome improvements in the appeals procedure. In certain republics opportunities for appeal are limited. For example, in Estonia, Latvia, Lithuania, Moldova and Armenia capital cases are heard at the highest level by the republican Supreme Court, whose decisions cannot be appealed to a higher court. In the other 10 republics, "exceptionally important" capital cases are also heard by the highest court, and cannot therefore be appealed. The lack of provision for appealing to a higher court is in contradiction of Article 14(5) of the International Covenant on Civil and Political Rights, ratified by the USSR in 1973, which says:

"Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

When an Amnesty International delegation visited Moscow in spring 1989 USSR procuracy officials said that proposals were being considered to set up new collegia, especially to hear appeals from prisoners sentenced by republican Supreme Courts acting as courts of first instance. It is not known whether such collegia have been introduced

in practice. According to representatives of the Moscow City Bar, however, prisoners under sentence of death were able to contest the judgement of a Supreme Court even prior to these proposals. It is up to the prisoner's advocate, who can request the procurator or a higher court to contest the judgement of the Supreme Court. Although Moscow City Bar representatives said that advocates do usually take this initiative, it is not known how often procurators and higher courts launch protests as a result.

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 judgement of the court of first instance or the court of appeal. A protest may be lodged only by a Procurator or a Court President, and their levels of authority in this area are set forth in the Code of Criminal Procedure. Although death sentences are suspended pending appeal, they may still be carried out before a judicial review has been completed.

The USSR Clemency Commission

Amnesty International believes that people condemned to death should have an automatic right to clemency hearings. As it stands, although clemency hearings are not a condemned prisoner's automatic right in the USSR, he or she may petition for clemency at any stage. While automatic clemency hearings are not enshrined in Soviet law, USSR clemency commission officials told Amnesty International in 1990 that all death sentences without exception come before the USSR Clemency Commission, even if an individual has not made a plea for clemency. A person sentenced to death can petition for clemency to the Presidium of the Supreme Soviet of the republic where sentence has been passed, or to the President of the USSR, who has the ultimate authority to decide whether a petition for clemency should be granted. President Gorbachov was reported by Gennady Cheremnykh in another *Izvestiya* interview on 2 April 1991 to have endorsed all conclusions reached by the Clemency Commission up until that time.

In the course of Gennady Cheremnykh's two interviews with *Izvestiya* in October 1990 and April 1991 he also provided, for the first time in the Soviet press, a detailed account of how the USSR Clemency Commission works. He explained that the Commission convenes on average once a month to discuss death penalty cases, considering on average between 25 and 30 petitions for clemency at each session. Of these between three and five per cent are granted. In 1990 226 petitions for clemency in death penalty cases are reported to have been considered, of which 18 were granted on grounds of the person's youth or other mitigating circumstances. A further 208 were rejected because of the severity of the crime committed and the danger the persons sentenced to death represented to society. All of these people were condemned to death

for premeditated murder, usually of several victims, and had in the majority of cases been previously convicted.

The current twelve-person Clemency Commission was established in November 1990 and includes parliamentarians and representatives of public, legal and scientific spheres. It carries out preliminary consideration of petitions for clemency and puts its proposals to the President. New legislation is planned to enhance the commission's legal status. In 1990 Soviet officials told Amnesty International that new clemency legislation covering *inter alia* regulations governing the method of execution would be drawn up. The previous Clemency Commission consisted of seven parliamentary deputies. If only four of these were present it nevertheless retained the right to meet and make decisions. When members of the Commission disagreed over a petition for clemency the question would be put to the vote, as Gennady Cheremnykh explained. The Commission does not have the right to examine a death sentence for its legality or in order to establish how far it is justified. It must be guided only by principles of mercy, taking into account the criminal's personality and the circumstances of the crime. It lies outside the Commission's competence to decide whether a judicial error has been made.

Clemency Commission officials told Amnesty International in April 1990 that the Commission meets with senior representatives of the Procuracy, Supreme Court, Ministry of Justice, Ministry of the Interior and the Military Procuracy. If a foreigner is involved a member of the Committee for State Security is also present. The Clemency Commission ask the Procuracy and the Supreme Court for a recommendation on cases, but in many instances is reported to disagree with their conclusions, in which case an "independent investigation" may be called for. Parliamentary deputies are allowed to appear before the commission, while representatives of state bodies, the public and the media are also permitted access. Officials assured Amnesty International that lawyers wishing to appear before the commission would be permitted to do so.

Soviet officials report that clemency is granted for the most part at republican level either by the republic's President or parliamentary presidium. The Russian Republic has set up its own nine person Clemency Commission on the USSR model. Amnesty International does not know whether Clemency Commissions along similar lines have been set up in other republics.

Public Opinion and the Death Penalty

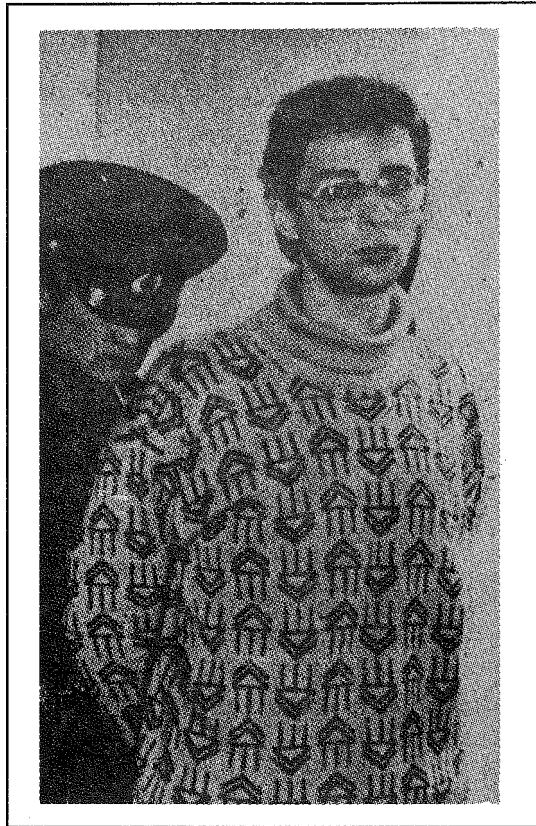
Soviet public opinion is still firmly entrenched in its support for the death penalty, which is perceived as an effective way of preserving law and order. This may be largely due to the recent publicity given to the reportedly increasing rate of violent crime in the USSR, which has accelerated since crime statistics on violent crime were first published in 1988. The extent of public support for the death penalty was reflected in the results of a Leningrad television poll on the death penalty in February 1989. Eight out of 10 people said that they would be prepared to carry out the death penalty with their own hands, while a further 600 sent telegrams to the studio expressing their support for the death penalty. Strong support for the death penalty was also reflected in a poll carried out among 466 deputies of the Russian parliament in June 1990 which showed that 87 per cent were in favour of keeping the death penalty for murder.

Union and republican parliaments are strongly influenced by firm public support for the death penalty. For example, according to the *Estonian Independent* of 25 April 1991, the Christian Democrats in the Estonian parliament withdrew a proposal to abolish capital punishment in Estonia. The decision to withdraw the proposal was taken in response to numerous letters they received demanding that capital punishment should be retained, because of the recent sharp increase in crime. With crime figures on the increase - the USSR Ministry of Justice reported that there were 13,076 convictions for premeditated murder in 1989 - it is unlikely that public opinion will swing in favour of abolition of the death penalty of its own accord.

Amnesty International is concerned that the strength of public opinion in favour of the death penalty may prejudice a defendant's right to a fair trial, which is enshrined in Article 14 (1) of the International Covenant on Civil and Political Rights. In 1989, for example, the Soviet newspaper *Moskovskaya Pravda* reported that a man had been sentenced to death in the Tatar city of Naberezhnye Chelny. The sentence was handed down at the end of a four-day trial held in an outdoor stadium in front of 5,000 spectators, after angry citizens threatened to strike unless the trial was open to a wide public. Writing about the outcome of the trial the Soviet newspaper *Moscow News* wrote: "The sentence was easy to predict - the atmosphere ensured that there was no alternative".

In another case a 23-year-old student - Andrey Zapevalov - was sentenced to death without right of appeal in November 1989. At least 16 reports had been published in the press, conveying him guilty as charged and quoting numerous members of the public who wanted him executed. It is reported that most witnesses at the trial admitted that they had followed the case in the media. Amnesty International welcomed the commutation of his sentence in April 1991.

The new law "On the Status of Judges in the USSR" introduces criminal liability for anyone committing contempt of court or perverting the course of justice. It refers specifically to prejudicial reporting by the media of cases which are *sub judice*. A number of other reports have appeared in the Soviet press on the pressure brought to bear by large crowds of people calling for death sentences to be handed down for specific crimes. One report describes how in the Armenian town of Leninakan the crowd took justice into their own hands and beat to death a man who had been convicted of the rape of a minor. Another describes how residents of the Russian town of Cherkessk demanded that four 15-year-old boys convicted of murdering a girl who was their classmate, be publicly "quartered". The residents also urged the Supreme Soviet of the Russian Republic to change the law which makes those under the age of 18 exempt from the death penalty.



Andrey Zapevalov, who was sentenced to death without right of appeal in November 1989

Voices for Abolition

Despite a broad spectrum of support for the death penalty it is nevertheless encouraging that an increasing number of individual voices are being raised which are in favour of its abolition in the USSR. One of the most notable was that of Academician Andrey Sakharov, who was the first person in the USSR to include abolition of the death penalty

in an electoral programme, before his death in December 1989. More recently, in October 1990, Patriarch Ilya II, the head of the Georgian Orthodox Church, wrote to President Gorbachov appealing for an end to capital punishment. He said that the death penalty had not solved the problem of increasing crime rates. Support for abolition was also expressed by Pranas Kuris, the former Lithuanian Minister of Justice in July 1989. In a letter to Amnesty International he welcomed its campaign against the death penalty and said that Amnesty International's abolitionist arguments would be taken into account in the revision of the republic's Criminal Code. Amnesty International also welcomed a letter from Viktor Sharashenidze, the former Georgian Minister of Justice which said that:

"Complete abolition of all extreme and exceptional measures of punishment is the aim of every developed and civilized society and unequivocally, this is the objective we must pursue".

Several lawyers' organizations number among Soviet abolitionists, including the USSR Union of Defence Lawyers. The Armenian Advocates' Association also opposes the death penalty, but favours the imposition of life sentences. Some reformers say that it is the fact that it is impossible to isolate a criminal from society for more than 15 years, the current maximum sentence, (except where death sentences are commuted to 20 years' imprisonment) which leads many judges to hand down death sentences. It is regrettable that the economic difficulties inherent in introducing life imprisonment have in the past been pointed out by, among others, an official of the Clemency Commission.

Abolition of the death penalty is also the aim of a group formed in Moscow in June 1990, the first of its kind in the USSR. In its founding statement the "Society against the death penalty" calls for a moratorium to be passed on the implementation of all death sentences passed under existing legislation and for all such sentences to be re-examined by independent lawyers. Central to the group's concerns is the risk that innocent people may be executed as long as there is provision for the death penalty. The real nature of such a risk has been brought home by several alarming examples which have been reported in the Soviet press. For example, in October 1987 *Znamya yunosti* (Banner of youth), reported the case of Vladimir Toisev, who was wrongly sentenced to death in the Belorussian republic for murdering his wife. His appeal was rejected and he spent 18 months in a cell awaiting execution before a petition for clemency filed by his relatives was granted, and his sentence commuted to 15 years' imprisonment. Vladimir Toisev served 14 years and eight months before a higher court reviewed his case and acquitted him, four months before he completed his term in 1987. The newspaper said that the investigators in charge of his case had extracted a confession from him during night-time interrogations and had beaten his 15-year-old brother to obtain corroborative evidence. Not long after he was sentenced to death it seems the real culprit was

identified by investigators, but they suppressed his identity in order to conceal what they had done.

Two other issues which have surfaced in the last few years further highlight the risk of innocent people being executed. Firstly, the open commemoration of the thousands who died after summary execution in the Stalin era, as well as the acknowledgement by the Soviet government for the first time in 1990 of its responsibility for the thousands of Polish officers executed at Katyn in 1940. Secondly, lawyers and the media have become increasingly frank in exposing shortcomings of the legal system, which in death penalty cases could result in the loss of innocent lives. Concern over the possible implications of the death penalty is expressed by parliamentarian Professor Fyodor Burlatsky in his foreword to Amnesty International's report on the death penalty - *When the State Kills* - which has been translated into Russian and published in the USSR:

"... if [the death penalty] is kept in the law in principle, it will not be difficult to extend its scope to more and more different crimes, and then we will not be far from a return to mass repressions".

Secrecy and the Death Penalty

The secrecy surrounding capital punishment in the USSR remains a serious concern. Although publication of the death penalty statistics was an important step towards changing this, Amnesty International is concerned that there is still no detailed statistical breakdown of information on how the death penalty is carried out. Moreover, the Soviet press does not publish reports on all death penalty cases and there is still very little information available on how the death penalty is carried out. There is no official information available on where executions take place, who is present and what role is played by doctors in the process. Concern about the lack of openness regarding death penalty procedures was also expressed by legal scholar Professor Sofia Kelina in an article in *Moscow News* published on 2 July 1989:

"I think it is important to formulate and publish the rules for administering the death penalty. At the moment this tragic procedure is regulated by instructions only a few people see".

In August 1990 the Soviet newspaper *Trud* went a little way towards remedying this situation, by publishing an interview with a Soviet executioner for the first time in the Soviet press. It, too, highlights the extent of the secrecy surrounding the executioner's work:

".... [the executioner] became one of those who carry out the highest measure of punishment, one of those people whose professional activity remains the strictest of secrets. Very few people in the country know how many of them there are and who they are. Not even their nearest and dearest suspect that their husband, father, son, friend has acquired a 'second profession'."

According to the *Trud* interview, after the prosecutor has informed the prisoner that his last petition for clemency has been turned down he or she is taken down the corridor to a cell by the executioner. Here the sentence is carried out without warning by a shot aimed at the vital organs. After the execution has taken place the prosecutor and doctor arrive to fill out the necessary documents. However, according to Aleksandr Grinenko, head of the Leningrad regional health directorate the prison doctor is first summoned to examine the condemned person before execution is allowed to take place. The doctor who is also present while the sentence is carried out is subsequently responsible for pronouncing the executed person dead.

Regrettably it has often been the case in the past that relatives of the condemned are not informed whether or when death sentences have been carried out. In 1988 Amnesty International was investigating reports that the relatives of four Georgians who were sentenced to death in 1984 for an unsuccessful hijack attempt still did not know if the sentences had been carried out or commuted. Amnesty International has also received a report from the mother of one young man executed for murder, Anatoly Buzanov, that the mothers of people who have been executed are not allowed to know where or even in which town their sons have been buried.

Conclusion

Amnesty International considers widespread public discussion of the death penalty an essential step on the path towards abolition. It hopes that the publication of the Russian translation of its report on the death penalty - *When the State Kills* - which took place in the USSR in 1990 - will help to promote such debate. Apart from its letters to the head of each union republic and the USSR Minister of Justice, Amnesty International appeals to the Soviet authorities for the commutation of every death sentence which comes to its attention in the USSR. Such appeals are made in the context of its struggle against the death penalty worldwide, on the grounds that it violates the right to life, and the right not to be subjected to cruel, inhuman or degrading treatment or punishment as proclaimed in the Universal Declaration of Human Rights.

Amnesty International believes the death penalty to be arbitrary and unfair, whatever the nature of the crime and however scrupulous the judicial procedures by which it is

enforced. It does not know whether any detailed study on the relationship between the death penalty and the crime rate has been made in the USSR. The overwhelming conclusion from studies on the death penalty in other countries is that there is no reliable evidence that the death penalty is an effective deterrent against crime. A study conducted in 1988 by the United Nations Committee on Crime Prevention and Control, in its conclusion on the relation between the death penalty and homicide rates, nevertheless finds that "the fact that all the evidence continues to point in the same direction is persuasive *a priori* evidence that countries need not fear sudden and serious changes in the curve of crime if they reduce their reliance upon the death penalty". What the death penalty may do is to distract society from seeking more effective means to combat serious crime. The Second Optional Protocol of the International Covenant on Civil and Political Rights aims to abolish the death penalty in the belief that this would be a step towards the progressive development of human rights. Amnesty International hopes that the USSR will ratify the Second Optional Protocol as soon as it is in a position to do so and that the death penalty will be abolished in the USSR in the foreseeable future.

USSR

Prospects for Abolition of the Death Penalty - an Update

Amnesty International welcomes the adoption of new legislation, passed since this paper was written, which reduces the scope of crimes punishable by the death penalty in the USSR from 18 to five. The Fundamentals of Criminal Legislation of the USSR and Republics were adopted on 1 July 1991 and published in the Soviet newspaper *Izvestiya* on 19 July. They will take effect as a whole on 1 July 1992 although Article 40, which concerns the death penalty, came into force on the date of publication. The new legislation retains the death penalty for treason, premeditated murder with aggravating circumstances, rape of a minor with aggravating circumstances, kidnapping of a minor with especially grave consequences and grave crimes against the peace and security of mankind. It exempts women and those under the age of 18 from the death penalty (although those under 18 at the time of the offence or when sentence was passed, were already exempt under previous death penalty legislation). The sentences of women who have been sentenced to death and of men sentenced to death for crimes which no longer carry the death penalty will be commuted to 15-year prison terms. This does not, however, apply to those convicted of criminal responsibility for state crimes. The death penalty will be carried out, as before, by shooting.

Amnesty International regrets that the draft proposal to exempt men over 60 from the death penalty has been dropped under the new legislation. It also regrets that the number of capital crimes has been increased from the four mentioned by the USSR Minister of Justice, Sergey Lushchikov, at a press conference in January, to five.

According to the latest information from Gennady Cheremnykh, head of the USSR parliamentary clemency body, 208 death sentences were carried out in 1990, chiefly in the Russian Republic and the Ukrainian Soviet Socialist Republic.