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ROMOLDOVA

@Developments on the death penalty

Introduction

Since achieving independence the former Soviet republic of Moldova has made various and welcome moves towards abolition of the death penalty. The number of peacetime offences carrying a possible death sentence has been almost halved from its Soviet-era total, and all women are now exempted from this punishment. Officials have also provided Amnesty International with detailed statistical information on the application of the death penalty, figures that were regarded as secret for much of the history of the USSR.

However Moldova, like all 15 states which have emerged from the break-up of the USSR, retains the death penalty in law and continues to pass death sentences. Although no executions have been carried out since 1989, the main reason for this is said to be not a result of official policy but of practical obstacles: Moldova lacks the necessary facilities to carry out executions.

This paper examines the moves towards abolition in Moldova, and outlines the current state of legislation and practice concerning the death penalty.

Human rights and the death penalty

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.

The death penalty in the Soviet era

Present-day Moldova was incorporated into the Soviet Union as the Moldavian Soviet Socialist Republic (SSR) in 1944, and the legal system and criminal codes that developed subsequently were based on centralized Soviet models. Much of classical socialist doctrine has rejected the use of the death penalty and, in conformity with socialist principles, Soviet criminal and penal theory tended formally to give preference to correction and re-education rather than retribution as a means of dealing with offenders and criminality. In spite of this, the judicial death penalty was used throughout most of the history of the USSR except for short periods in 1917, 1920, and 1947 to 1950. Although the death penalty was referred to as "an exceptional measure of punishment" in force only "until its complete abolition", it could be imposed under the criminal code of the Moldavian SSR for 18 peacetime offences, including ones not involving the use of violence.

Cases involving a possible death sentence were tried, as throughout the USSR and in other criminal cases, by a bench of three judges, only one of whom was professionally trained. The others were lay judges known as "people's assessors" who sat for at most four weeks in two years. Sentence was passed by a

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majority verdict. Prisoners could appeal against the sentence or verdict to the next highest court. Death sentences could also be reduced by a judicial review, if the relevant judicial authority lodged a protest, and if all else failed prisoners could petition for clemency. This could be granted by the Presidium of the Moldavian Supreme Soviet (parliament), and its USSR equivalent.

The Moldavian SSR, like several other republics of the former USSR, lacked its own facilities for execution. Prisoners were said to have been sent to neighbouring Ukraine or to Russia for death sentences to be carried out.

Moves towards abolition in independent Moldova

In June 1990 parliament adopted a declaration of sovereignty which asserted the supremacy of the Moldovan Constitution and laws over those of the USSR. In May 1991 the words "Soviet Socialist" were removed from the republic's name and in August 1991, after the failed coup in Moscow, Moldova proclaimed its independence from the USSR. This independence received international recognition following the collapse of the Soviet Union, and the country became a member of the United Nations in March 1992.

The following month parliament passed a law dated 1 April which made a number of amendments to the Moldovan Criminal Code (the code still currently in use pending adoption of a new one is that of the Soviet era which dates from 1960). This law abolished the death penalty as a possible punishment for six offences: "espionage" (Article 62 of the Criminal Code), "actions disrupting the work of corrective labour institutions" (Article 74-1), "making or passing counterfeit money or securities" (Article 84), "violation of rules for currency transactions" (Article 85), "theft of state or social property on an especially large scale" (Article 123-1) and "bribe-taking" (Article 187). The last four offences were the so-called economic crimes, which did not involve the use of violence.

In addition the law also slightly reduced the grounds under which the death penalty can be applied for rape. Previously this offence was punishable by a possible death sentence (under Article 102 of the Criminal Code) if the rape was committed under aggravated circumstances: that is, if the victim was a minor, or if the offence was committed by "an especially dangerous recidivist", or if it resulted in "especially grave consequences". Following the amendment, rape by an especially dangerous recidivist was dropped from this category and now carries a sentence of from eight to 15 years' imprisonment. The death penalty can still be imposed if the offence takes place under the two other aggravated circumstances, the definition of a minor being given now as someone under 14.

The law of 1 April 1992 also forbids the execution of women (previously only pregnant women were exempt) and those under the age of 18 (as was previously the case).

Amnesty International greatly welcomed these moves as being in tune with the current worldwide trend towards enshrining abolition in law, and hoped that they would serve as an example to the other states of the former USSR which had yet to take such steps. However, the organization remains concerned that nine offences continue to carry a possible death sentence in peacetime. These nine offences, as listed to Amnesty International delegates during a visit to the Ministry of Justice in February 1994, are given in Appendix I.

Amnesty International understands that a draft criminal code to replace the Soviet-era one is due to come before the new parliament elected in February 1994, and hopes that the Moldovan authorities will take this opportunity to reduce further the scope of the death penalty.

Statistics on the application of the death penalty

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Another welcome move has been the willingness of the Moldovan authorities to provide information on the application of the death penalty. In Soviet times such statistics were regarded as secret and figures for the USSR were not released officially until 1991, for the first time since 1934. These were not broken down into separate statistics for the constituent republics, however, and to Amnesty International's knowledge the first information on the application of the death penalty in Moldova was not publicly available until after the country achieved independence.

Since then the authorities have provided Amnesty International with figures, and in February 1994 the organization's delegates were given a comprehensive table of information covering the years 1980 to 1993. In addition to the numbers of death sentences passed and carried out, and the number of commutations to a term of imprisonment, the figures are also broken down by categories including sex, age, nationality, article of the criminal code and previous conviction.

These statistics are set out in translation in Appendices II and III. According to this information, 67 people were sentenced to death between 1980 and 1993. Only one of these was a woman, sentenced in 1990. All death sentences were for premeditated, aggravated murder (Article 88 of the Criminal Code) except for one passed in 1981 for "an attempt on the life of a police officer" (Article 206-1). Eight death sentences were commuted to life imprisonment, most recently two in 1990. Forty-three people were executed in the period from 1980 to 1989; no executions have been recorded since then.

These figures indicate that the reductions in the scope of the death penalty contained in the law of 1 April 1992, although a welcome step in enshrining abolition legislatively, actually reflected the pattern of application which had already existed for a number of years up until that point and were therefore unlikely to change significantly the numbers of those sentenced to death and executed. For example only one woman had been sentenced to death in the 12 years before the April 1992 law exempted all women from execution, and no death sentences had been passed since at least 1980 for any of the six offences for which the death penalty was abolished through that law.

Lack of an automatic right to appeal

The Minister of Justice, Alexei Barla neagă, informed Amnesty International delegates during their visit in February 1994 of several legal reforms. Prisoners now have the right of access to a defence lawyer from the moment of their detention. Previously this right could not be exercised in most cases until after the state had concluded its investigation and the official indictment had been presented, which could take months. The Soviet system of people's assessors (see above) has also been replaced. Now cases are heard by one, two or three professional judges depending on the gravity of the case. Cases where the defendant faces a possible death sentence are heard by a bench of three judges if the Supreme Court acts as the court of first instance.

When the Supreme Court does act in this capacity, however, the verdict is final and cannot be appealed. Previously defendants could lodge an appeal to the Supreme Court of the USSR, but since the demise of the Soviet Union there is currently no provision for an appeal to a higher body. The only possibility of overturning the death sentence is a protest against the sentence by the relevant judicial authority, but this does not happen automatically. The President of Moldova has the power to grant clemency and commute the sentence to a term of imprisonment, but this process examines only mitigating factors and does not constitute a judicial review of the case.

When Moldova was still part of the USSR it had no intermediate-level courts, and cases involving a possible death sentence were heard by the Supreme Court as court of first instance. If this practice is continuing, it means that all those sentenced to death are being deprived of the right of appeal to a court

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of higher jurisdiction, a right stipulated by international legal standards (for excerpts from such standards see Appendix IV). A planned review envisages that the Supreme Court will cease to function as a court of first instance, and so will be able to act as an appeal court in such cases. Amnesty International hopes that the new parliament will take steps without delay to bring the situation in Moldova into line with internationally recognized norms.

Death sentence in the self-proclaimed Dnestr Moldovan Republic

The two death sentences passed in Moldova during 1993 did not include one handed down in the self-proclaimed Dnestr Moldovan Republic (DMR), an area in the east of the country which declared itself independent in 1990. Although not recognized internationally the DMR has established its own parallel government structures including a prosecutor's office and Supreme Court.

On 9 December 1993 the DMR Supreme Court delivered its verdict in the case of six men, referred to unofficially in some quarters as the "Tiraspol Six", who had faced a range of charges in connection with alleged terrorism against the DMR (for further information please see the Amnesty International document *Moldova: The trial of the "Tiraspol Six"*, AI Index: EUR 59/03/93, dated October 1993). One of the six, Ilie Ilăscu, was sentenced to death for "organizing especially dangerous state crimes" under Article 69 of the Criminal Code of the Moldavian SSR, and for "espionage" under Article 63.

The DMR authorities do not consider themselves bound by Moldovan legislation, including the April 1992 amendments on abolition. Furthermore, as the DMR does not recognize the authority of the Moldovan court system, Ilie Ilăscu has thus been deprived of his right to appeal against the death sentence to a court of higher jurisdiction. Amnesty International is urging the DMR authorities not to carry out the death sentence passed on Ilie Ilăscu. The organization is approaching the officials solely in their position of *de facto* authority over the area of Moldova under their control, and not as a mark of recognition *de jure*.

A stay on executions

Although death sentences continue to be passed in Moldova none has been carried out since 1989, when six people were executed.

One reason for this is said to be the absence of an executioner and other facilities. A Deputy Chairperson of the Moldovan Supreme Court was quoted by the Ukrainian newspaper *Golos Ukrainy (Voice of Ukraine)* on 20 February 1993 as saying that in Soviet times prisoners under sentence of death were sent out of the republic for execution. Death sentences were carried out in prisons in the cities of Lvov and Sochi, in neighbouring Ukraine and Russia respectively, but this is no longer possible following independence. The article quoted the Procurator General, Dumitru Postovan, as describing the situation as "extremely inhumane" and said that some of the prisoners had been awaiting execution for almost two years. The newspaper reported that there were 15 people on death row in Moldova at that time.

Amnesty International is continuing to urge the authorities to commute all death sentences to a period of imprisonment, in line with the organization's opposition to the death penalty in all cases without reservation on the grounds that it is a violation of the universally guaranteed right to life.

The "deterrence" argument for retention

Writing in the Moldovan newspaper *Nezavisimaya Moldova (Independent Moldova)* on 12 May 1992, M. Balabanov, a consultant at the Ministry of Justice, reviewed the creation of a parliamentary commission to

work on a new criminal code. He mentioned the many letters received by the ministry from members of Amnesty International urging abolition of the death penalty, but concluded that for the time being this punishment would remain the state's deterrent against potential murderers and other perpetrators of violence.

Countless men and women throughout the world have been executed on the assumption that their deaths will deter others from crime, especially the crime of murder. Yet study after study in diverse countries has failed to find convincing evidence that the death penalty has any unique capacity to deter others from committing particular crimes. It is wrong to assume that all those who commit such a serious crime as murder do so after rationally calculating the consequences. Murders are often committed in moments of passion, when extreme emotion overcomes reason. They are also committed under the influence of alcohol or drugs, or in moments of panic when the perpetrator is caught in the act of stealing. Some murderers are highly unstable and mentally ill. In none of these cases can fear of the death penalty be expected to act as a deterrent.

There is another serious flaw in the deterrent argument. People who plan serious crimes in a calculated manner may decide to proceed despite the risk in the belief that they will not be caught. Criminologists have long argued that the way to deter such people is not to increase the severity of the punishment but to increase the likelihood of detection and conviction.

The death penalty may even have the reverse effect to that intended. Someone who knows that they risk death for the crime they are committing may be more likely to kill witnesses or others who could identify and incriminate them.

Furthermore, crime figures from abolitionist countries fail to show that abolition of the death penalty produces a rise in the crime rate. A study of research findings on the relationship between the death penalty and homicide rates, conducted for the United Nations Committee on Crime Prevention in 1988, concluded that "this research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis".

Conclusion

In practice the death penalty is an arbitrary punishment. It is irrevocable and always carries the risk that the innocent may be put to death. The irrevocable punishment of death removes not only the victim's right to seek legal redress for wrongful conviction, but also the state's capacity to correct its errors.

Amnesty International is continuing to urge the Moldovan authorities to:

- ◆ commute all pending death sentences, and refrain from imposing any new ones;
- ◆ take the opportunity of a new criminal code to move towards total abolition of the death penalty in practice;
- ◆ ensure that everyone sentenced to death has the right to appeal to a court of higher jurisdiction, and to seek pardon or commutation of sentence.

APPENDIX I

**LIST OF OFFENCES IN THE MOLDOVAN CRIMINAL CODE CURRENTLY CARRYING A
POSSIBLE DEATH SENTENCE IN PEACETIME, AS PROVIDED TO AMNESTY
INTERNATIONAL BY THE MINISTRY OF JUSTICE IN FEBRUARY 1994**

1. Article 61 Treason
2. Article 63 Terrorist acts
3. Article 64 Terrorist acts against a representative of a foreign state
4. Article 65 Sabotage
5. Article 70 Especially dangerous state crimes committed against a foreign state
6. Article 74 Banditism
7. Article 88 Premeditated murder under aggravated circumstances
8. Article 102 Aggravated rape
9. Article 206-1 Attempt on the life of a police officer

APPENDIX II - STATISTICAL INFORMATION ON THE DEATH PENALTY IN MOLDOVA
(figures given to Amnesty International by the Supreme Court of Moldova, February 1994)

YEAR	TOTAL DEATH SENTENCES PASSED	SEX		ARTICLE OF CRIMINAL CODE		TOTAL EXECUTED	TOTAL COMMUTED
		MALE	FEMALE	88	206-1		
1980	5	5	-	5	-	4	1
1981	8	8	-	7	1	6	2
1982	6	6	-	6	-	5	1
1983	5	5	-	5	-	5	-
1984	6	6	-	6	-	5	-
1985	2	2	-	2	-	2	-
1986	6	6	-	6	-	6	-
1987	3	3	-	3	-	3	-
1988	2	2	-	2	-	1	1
1989	7	7	-	7	-	6	1
1990	7	6	1	7	-	-	2
1991	6	6	-	6	-	-	-
1992	2	2	-	2	-	-	-
1993	2	2	-	2	-	-	-

APPENDIX II CONTINUED- STATISTICAL INFORMATION ON THE DEATH PENALTY IN MOLDOVA
 (figures given to Amnesty International by the Supreme Court of Moldova, February 1994)

YEAR	AGE			NATIONALITY						PRE- VIOUS CONVIC- TION
	UP TO 30	UP TO 40	OVER 40	RUSSIAN	GAGAUZ	MOLDO-VAN	BELARUSS -IAN	UKRAIN-IAN	ROMANY	
1980	4	1	-	1	-	3	-	1	-	2
1981	6	2	-	1	-	5	-	2	-	6
1982	6	-	-	1	1	2	-	2	-	5
1983	2	2	1	2	-	1	1	-	1	3
1984	6	-	-	-	2	4	-	-	-	3
1985	1	1	-	1	-	1	-	-	-	-
1986	5	1	-	1	-	5	-	-	-	4
1987	-	3	-	-	-	1	-	2	-	3
1988	2	-	-	1	-	1	-	-	-	2
1989	6	1	-	2	-	3	-	2	-	3
1990	4	3	-	2	-	4	-	1	-	3
1991	5	1	-	1	-	5	-	-	-	4
1992	1	1	-	-	1	-	-	1	-	-
1993	2	-	-	-	-	1	-	1	-	1

APPENDIX III

EXTRACTS FROM INTERNATIONAL HUMAN RIGHTS STANDARDS RELATING TO THE DEATH PENALTY

Universal Declaration of Human Rights (selected articles)

Article 3

Everyone has the right to life, liberty and security of person.

International Covenant on Civil and Political Rights (selected articles)

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

UNESCO Resolution 1984.50 : Safeguards guaranteeing protection of the rights of those facing the death penalty (selected articles)

Annex

4. Capital punishment may be imposed only when the guilt of the person charged is based on clear and convincing evidence leaving no room for an alternative explanation of the facts.

6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.

8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.

UNESCO resolution 1989.64 : Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (selected articles)

Article 1

Recommends that Member States take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable, by:

- b) Providing for mandatory appeals or review with provision for clemency or pardon in all cases of capital offence;
- c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;

Article 5

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.

United Nations General Assembly Resolution 3261 of 8 December 1977 (see selected article)

Article 1

[The General Assembly] reaffirms 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".

Council of Europe: Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty (see selected article)

Article 1

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.