

@DEATH PENALTY NEWS

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A SUMMARY OF EVENTS ON THE DEATH PENALTY AND MOVES TOWARDS WORLDWIDE ABOLITION

TURKEY: ALL DEATH SENTENCES COMMUTED

In a major move which strengthens the abolitionist trend in Western Europe, all death sentences in Turkey have been commuted under the new Anti-Terror Law.

The law, passed on 11 April, states that death penalties imposed or to be imposed for crimes committed before 8 April 1991 cannot be carried out. The law affects prisoners facing trial on capital charges for crimes committed before 8 April, those sentenced to death whose cases are on appeal to a higher court, and those whose appeals have been heard.

Prisoners convicted and sentenced to death for rape, drug smuggling, offences under certain articles of the military code, and those convicted of politically-related crimes under Articles 125 and 146/1 of the penal code have had their sentences commuted to 20 years' imprisonment. Those sentenced to death for other

years.

Following the passage of the law, the Prime Minister's office withdrew the files of prisoners, said to number 276, whose death sentences were awaiting ratification by the Grand National Assembly (parliament). (Under Turkish law, when a prisoner sentenced to death has exhausted all legal remedies, the case is referred to the parliament, which must ratify the sentence before it can be carried out.)

The new Anti-Terror Law also deals with the investigation and trial of people suspected of political violence. It will result in the conditional release of up to 40,000 prisoners who have served part of their jail sentences, including a number of "prisoners of conscience".

There has been a *de facto* moratorium on executions in Turkey since the last execution in 1984, but death sentences have continued to be

imposed, and the number of cases awaiting ratification by the parliament has grown steadily. Between the military coup of September 1980 and October 1984, 50 people were executed: 27 of them had been convicted of politically related offences, all but one involving killings, and 25 of common crimes.

Both during the period of military rule and afterwards, AI and other organizations made repeated appeals to the Turkish authorities not to carry out executions. In November 1990, the Grand National Assembly ratified amendments to the penal code which reduced by 16 the offences punishable by death. The death penalty is retained for 15 offences including murder. There was a threat in October 1990 that executions might be resumed but this threat was not realised (see *Death Penalty News*, November 1990).

DEATH PENALTY PROTOCOL COMES INTO FORCE IN JULY

The world's first pact of universal scope aimed at ending the death penalty has received the necessary minimum of ten ratifications and comes into effect in July.

The United Nations has confirmed that the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, has now been ratified by ten countries and will enter into force on 11 July.

The ten countries, together with the dates of ratification, are: Australia (2 October 1990), Finland (4 April 1991), the former German Democratic Republic (GDR) (16 August 1990), Iceland (2 April 1991), the Netherlands (26 March 1991), New Zealand (22 February 1990), Portugal (17 October 1990), Romania (27 February 1991), Spain (11 April 1991) and Sweden (11 May 1990).

Although the GDR is now part of the Federal Republic of Germany (FRG), the United Nations considers that the GDR's ratification remains valid. Under the terms of the unification/accession agreement between the FRG and the GDR, the FRG reserves the right to make known its views regarding any treaties which the GDR had ratified beforehand and the FRG had not. The FRG has not communicated any views in respect of the Second Optional Protocol which, in any event, the FRG itself has signed.

¶I further 12 countries have signed the protocol, indicating their intention to ratify it at a later date. The most recent signature is that of Austria on 8 April 1991.

States that become parties to the protocol are bound not to carry out executions. Only a limited exception is permitted: states may make a reservation when accepting the protocol which allows them to use the death penalty "in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime."

CHINA: DRAMATIC INCREASE IN EXECUTIONS

¶I recorded more than 960 death sentences in China during 1990 and at least 750 executions. These figures are the highest ¶I has recorded since 1983 when an anti-crime campaign is believed to have resulted in the space of a few months in several thousand executions after summary trials. In the first four months of 1991, ¶I has recorded over 360 death sentences of which at least 280 were carried out. ¶I believes the actual figures to be several times higher than those it has recorded.

The Hong Kong Government's Hospital Services Department has stated that kidneys apparently from executed Chinese prisoners have been bought by people in Hong Kong for transplants. ¶I delegation from the Hong Kong Medical Association met Chinese doctors last year and asked them to stop the practice of transplanting the kidneys of executed prisoners. The Chinese doctors reportedly said they opposed the trade in organs but had little power to intervene if families of dead prisoners gave their consent for the removal and sale of kidneys.

IRAN: MASS EXECUTIONS

¶According to the official Iranian news agency, IRNA, 41 people were executed on 15 May for trafficking in drugs. IRNA reported that these executions were carried out in the northeastern city of Mashhad, where 24 drug traffickers were executed on 29 April and 34 on 17 March. Scores more have been executed elsewhere in Iran this year under laws which set the death penalty for possession of 30 grams of heroin or five kilograms of opium. The total number of officially reported executions this year is now over 450.

BARBADOS: BISHOP SPEAKS OUT AGAINST THE DEATH PENALTY

In a monthly broadcast made on Easter Sunday, 31 March, the Roman Catholic Bishop of Bridgetown, Anthony Dickson, spoke of his opposition to the death penalty in response to recent calls for its use.

Bishop Dickson expressed his personal condolence to the families of victims of crimes of violence. "Anguish and pain are very real in those whose loved ones are needlessly destroyed ... Families should be counselled to work through their negative emotions with a view of their ultimately being able to forgive. This will take time. Forgiveness can be truly life-giving for the afflicted family. We must remember that we are capable of receiving forgiveness to the extent that we are capable of forgiving."

Rehabilitation should take priority over the death penalty, he said. "The imposition of the death sentence implies that the person convicted is incapable of rehabilitation (or that the state is unwilling to undertake the cost and trouble of rehabilitation) ... It is un-Christian to write off the apparently most hardened criminal as incapable of change for the better."

He described capital punishment as a violation of the dignity of the human person: "From the nature of the human person created in the image and likeness of God flow certain inalienable rights, fundamental of which is the right to life. These fundamental rights are not granted by the state. The state has a moral obligation, imposed by the Creator, to guarantee and safeguard these rights. Given the lack of certainty that capital punishment is a deterrent to murder and given the fact that adequate security can be provided to protect the community from the murderer, it is my opinion that the state acts immorally when it executes for murder."

While acknowledging that every crime demanded punishment, reparation and compensation he expressed the view that "life imprisonment, with the possibility of a commutation should there be evidence of rehabilitation, is adequate" punishment for the crime of murder. "Reparation to society, and compensation to dependents of victims of homicide, can take on a more positive aspect than is possible with hanging."

He noted that he had earlier suggested that "lack of personal self-worth, the high rate of unemployment among our youth, the drug culture, the passion to acquire material goods at all cost and the violation of power at all levels in the society" were some of the causes of violence in the country. He added that "Whereas the death penalty will eliminate the perpetrators of violent crime, of its nature it cannot resolve the causes of violent behaviour."

DEATH PENALTY NEWS: We regret that there will be no August edition of the Death Penalty News. The next edition will be produced in October.

USA: SUPREME COURT CURBS APPEALS; OTHER DEVELOPMENTS

A US Supreme Court ruling, issued on 16 April, will restrict the number of times prisoners under sentence of death may challenge the constitutionality of their convictions or sentences. In *McCleskey v Zant*, a Georgia death penalty case, the Court voted 6-to-3 to set tough new standards that severely curtail a state prisoner's ability to bring second or subsequent *habeas corpus* petitions before a federal court.

Justice Anthony M Kennedy, writing for the majority, said that the Court's new standard "should curtail the abusive petitions that in recent years have threatened to undermine the integrity of the *habeas corpus* process". Writing for the dissent, Justice Thurgood Marshall described the new standard as "manifestly unfair," and criticized the court's "utter indifference to the injustice of retroactively applying" its new rule to petitioners like McCleskey.

In recent years some 40 percent of all death sentences have been overturned by federal courts because of constitutional errors in the conviction or sentence.

In another development, David Chandler on 14 May became the first person to be sentenced to death under a 1988 federal law allowing capital punishment for *drug-related killings*. Chandler was convicted of running a marijuana operation in Alabama and Georgia and of protecting the operation by soliciting the murder of a police informer. The Federal Bureau of Prisons will have to decide the method and place of execution. Chandler will appeal against his conviction and sentence.

The last prisoner executed under US federal law was Victor Fugger in 1963 in Iowa. He had been convicted of murder and kidnapping.

A bill prohibiting the execution of mentally retarded

persons in the state of New Mexico was signed into law on 31 March by the Governor, Bruce King. The bill takes effect as of 14 June.

A husband and wife, married for over 50 years, have been sentenced to death in Missouri. Ray Copeland, aged 76, was sentenced to death on 22 May for the murder of five men in 1989. His wife, Faye Copeland, aged 69, was convicted on the same charges and sentenced to death on 27 April. They become the oldest man and woman on death row in the nation. The Copelands' defense counsel had contended that it was absurd to seek the death penalty for people so unlikely to live through their lengthy appeals.

According to the NAACP Legal Defense and Educational Fund, as of 24 April there were **2,457 prisoners under sentence of death** in the USA.

KUWAIT: HUNDREDS MAY FACE DEATH PENALTY

Trials for some 200 prisoners accused of various crimes related to "collaboration with the enemy" began in May in the Kuwaiti Martial Law Court. No official definition of "collaboration" exists in Kuwaiti law. However, according to Kuwait's Attorney General, the state defines collaboration as "transferring important information to the enemy regarding the military or internal affairs of Kuwait, harbouring enemy soldiers or other such elements, undertaking any deeds to aid or abet the enemy, and espionage". The Attorney General has also reportedly said that those found guilty of these offenses will be executed. Most of the defendants are Palestinians but they also include Iraqis, Sudanese, Jordanians, members of the "Bidun" community (stateless people residing in Kuwait) and others.

The European Parliament, the parliamentary body of the European Community, adopted a resolution on Kuwait on 16 May calling for "all prisoners to have the right to a fair trial with due regard for internationally recognized rules of law, without

TAIWAN: WOULD-BE ORGAN DONOR'S EXECUTION TAKES 34 HOURS

Huang Chia-ching, a death row prisoner, was executed by firing squad on 16 April. He had said he wanted to donate his organs for medical research and was therefore shot in the head instead of the heart. However, according to a report published in the *China Post* on 17 April, when Huang Chia-ching was taken to the hospital for the organs to be removed he was found by doctors to be still alive. According to press statements, doctors at the hospital declared that although Huang Chia-ching was not conscious his heart was still beating, and he was placed in an intensive care unit. Organ donors may only be declared brain dead when they are in a coma and cannot breathe by themselves for 12 hours. Thirty-four hours after the initial execution, the Justice Ministry ordered that a

recourse to the death penalty". An Al delegate was in Kuwait between 19 May and 1 June to observe the trials to assess whether they are being held in accordance with internationally recognized standards of fair trial.

second bullet be fired into his head and so he was taken from the hospital to the execution ground to be shot a second time. The hospital were subsequently unable to use his organs as he had been dead too long.

SOUTH AFRICA: "UPINGTON 14" - ACQUITTALS AND COMMUTATIONS; OTHER DEVELOPMENTS

The appellate division of South Africa's Supreme Court in Bloemfontein on 29 May overturned the death sentences of 14 people in the murder case known as the "Upington 14". Judge C M Grosskopf commuted the death sentences, imposed by the circuit court in Upington in May 1989, of three of the prisoners to ten to 12 years' imprisonment. The 11 others, who were acquitted of murder and given suspended sentences of 12 to 24 months for public violence, have now been released. One of them, Andrew Lekhahyang, said "It's unbelievable ... I didn't dream this would happen ... You know, that place, that place Death Row is not suitable for a person ... I mean, you realize, I was thinking every day in terms of being

hanged!"

These 14 people together with 11 others were convicted of the murder in November 1985 of a municipal policeman. One of the accused was convicted of murder because the court found that he had struck the fatal blows which killed the deceased. The 24 others were convicted of murder on the grounds of having shared a "common purpose" to carry out the killing. The court held that there were no extenuating circumstances in 14 of the 25 defendants' cases and imposed the mandatory death sentence in accordance with the law then in force.

Of the remaining 11 who had been found guilty of murder, but who had not been sentenced to death by

the trial court, three were acquitted on all charges, seven were found guilty of public violence and received suspended sentences, and one received an eight-year sentence.

Earlier this year on 16 April President F W de Klerk commuted the death sentences of 17 prisoners. Justice Minister Robie Coetzee said that the sentences were commuted on the recommendation of a judicial panel set up to review the cases of those sentenced to death before the Criminal Law Amendment Act came into force in July 1990. The death sentences were commuted to prison sentences ranging from 20 years to life. An unknown number of other cases, in which the panel upheld the death sentence, were passed to the Appeal Court for consideration.

JAPAN: NO EXECUTIONS IN 1990

No executions were carried out in Japan in 1990. This was the first year since 1968 without executions.

Between 1980 and 1989 15 people were executed in Japan; in recent years there have been one or two executions per year. In 1988 two people were executed and in 1989 there was one execution. However, in 1990 five death sentences were upheld by the Supreme Court. Some 90 prisoners convicted of murder are believed to remain under sentence of death.

ENGLISH-SPEAKING ABOLITION ANNOUNCED

The death penalty has been abolished for murder in Anguilla, British Virgin Islands, the Cayman Islands, Montserrat, and Turks and Caicos Islands, after discussions between the British Government and the governors of the five dependent territories. The decision was announced by the British Secretary of State for Foreign Affairs, Douglas Hurd, on 28 March. He said that the government hoped that a sixth territory, Bermuda, which is self-governing, would decide to follow this example as soon as possible. (Bermuda held a public referendum in 1990 in which retention of the death penalty was favoured; see *Death Penalty News*, November 1990.)

The announcement of abolition provoked

CARIBBEAN:

USSR: GEORGIA ABOLISHES DEATH PENALTY FOR ECONOMIC CRIMES; ZAPEVALOV SENTENCE COMMUTED

The Georgian Supreme Soviet has adopted a law which abolishes the death penalty for the forgery or passing on of forged banknotes or securities, for violations of the law on foreign currency operations, for the theft of large amounts of state or public property and for the receipt of large bribes, the Soviet news agency Tass reported on 21 March. Death sentences for these crimes which have been passed but not carried out will be replaced by imprisonment of up to 15 years.

In another development in the USSR, the death sentence passed against 24-year-old Andrey Zapevalov was commuted to 20 years' imprisonment on 30 April. Zapevalov was sentenced to death without right of appeal in November 1989 for the murder of two women. He had appealed for clemency, pointing out that in addition

one Cayman Island legislator, Mekzeva Bush, to call for a conference with his counterparts in other territories in the hope of having the death penalty retained.

Abolition of the death penalty will bring the laws of the five territories into line with those of Great Britain, which abolished the death penalty for murder in the 1960s.

to its opposition to the death penalty in all circumstances, it believed that the sentence, which was passed by the Criminal Cases Collegium of the Supreme Court of the Russian Republic, was imposed after an unfair trial. Before he was convicted Soviet press and television published at least 16 reports on his case, treating him as guilty and quoting numerous members of the public who wanted him executed. Most witnesses at the trial reportedly admitted that they had followed the case in the media.