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# RUSSIAN FEDERATION

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### 1. INTRODUCTION

Since the failed coup of August 1991, and the subsequent breakup of the former USSR, Amnesty International has welcomed Russia's continued implementation of various legislative changes aimed at bringing its laws into line with international standards. This paper gives an overview of some of those changes which have an impact on current human rights concerns within Amnesty International's mandate.

#### Background to reforms

Russia, like many republics of the former USSR, has frequently expressed its desire to be a "law-based state" (правовое государство), and break away from the Soviet practice of constitutional and other provisions being overridden or undercut by unpublished, secret directives. Work has been undertaken periodically on various items of basic law such as a new constitution and criminal code, which are intended to replace the Communist models and reflect, among other things, the country's obligations under international standards. However, various factors have combined to make these lengthy tasks. At the time of writing neither a new constitution nor a totally revised criminal code has been adopted, and the reforms that have taken place have been by piecemeal amendments to both.

#### The Declaration on Rights and Freedoms of the Individual and Citizen

One of the first acts of the Russian parliament following the failed coup was to adopt, on 22 November 1991, a Declaration on Rights and Freedoms of the Individual and Citizen (Декларация прав и свобод человека и гражданина). This begins with the iteration that a person's rights, freedoms, honour and dignity are the highest value of society and the state, and notes the necessity of bringing Russian law into line with internationally-acknowledged human rights standards (much of its language, and the rights laid down, reflect the International Covenant on Civil and Political Rights). The Declaration was subsequently incorporated into the Russian Constitution under a law dated 21 April 1992.

The Declaration reflected the belief that many such fundamental rights were either absent or severely circumscribed under Soviet law, and aimed at redressing this. Some provisions such as Article 5, under which no one may be deprived of his or her citizenship or expelled from the country, clearly reflect Russia's historical experience of the treatment of dissent. Others seek to address issues which reformers had long been pressing, without success, in the Soviet context. These include two issues of concern to Amnesty International - the death penalty and conscientious objection to compulsory military service.

Article 7 of the Declaration introduces the right to life, and proclaims that "The State is striving for the complete abolition of the death penalty". Although not an unequivocally abolitionist statement, it was an advance on the constitution of the time, which made no such mention, and the then criminal code, which stated only that the death penalty could be applied as an exceptional measure of punishment until its

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abolition.

The right to a civilian alternative service for conscientious objectors was introduced in Article 15. However, as described below, the proviso that this right is exercised in accordance with the procedure laid down by law has caused problems for conscientious objectors still waiting for the adoption of the necessary enabling legislation.

### **The draft new criminal code**

This period also saw the beginning of major proposed changes to the criminal code. Several amendments had already been made around the time of the Declaration, including the repeal in October 1991 of two articles - 142 and 227 - which specifically circumscribed the right to freedom of religion (and under which hundreds of people had in the past been imprisoned as prisoners of conscience), and, in December 1991, the abolition of the death penalty for three economic offences.

Early in 1992, the Ministry of Justice published the draft of a new criminal code for parliamentary discussion. According to the then Minister, it was designed to "remove ideology from the law" and it contained a number of proposals welcomed by Amnesty International. These included a reduction of the number of peacetime offences punishable by death to three; the decriminalization of consensual homosexual acts between adult males; and an explicit statement that those who refused military conscription on grounds of their religious or pacifist beliefs would be exempt from criminal responsibility. For further information on this draft please see the entry on Russia in [Amnesty International Concerns in Europe: November 1991 - April 1992](#).

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However, no parliamentary approval of the draft as a whole was obtained and since then tensions between the legislative and executive arms of the state have delayed adoption of both a new constitution and criminal code.

Amendments to the existing criminal code continue to be passed as separate pieces of legislation and the most recent changes of interest to Amnesty International are contained in a law, signed by President Boris Yeltsin on 29 April 1993, which came into force on publication in the parliamentary newspaper Rossiyskaya gazeta on 27 May this year. Amnesty International welcomes changes it makes to two areas of concern to the organization, in reducing the application of the death penalty and decriminalizing consensual male homosexuality. These changes are described below, with a background on Amnesty International's concerns.

### i. The death penalty

#### **Human rights and the death penalty**

Amnesty International opposes the death penalty in all cases, without reservation. 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.

#### **Background**

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 1947-1950. Although the death penalty was referred to as "an exceptional measure of punishment" in force only "until its complete abolition", until shortly before the break-up of the Soviet state it could be imposed in Russia for no fewer than 18 different peacetime offences, including some which did not involve violence.

In pre-"perestroika" USSR, the application of the death penalty was shrouded in secrecy: there was no public discussion of abolitionist arguments, and no publication of any statistics on the numbers of death sentences passed and carried out. Those cases which were reported in the press were frequently exemplary, used to accompany official campaigns against crime.

#### **Statistics**

After the announcement in February 1987 that the Soviet authorities intended to restrict the scope of the death penalty, the media, for the first time in decades, reported abolitionist views and exposed cases in AI Index: EUR 46/21/93 Amnesty International September 1993

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which innocent people were sentenced to death. The veil of secrecy was lifted further in early 1991 when the USSR published statistics on the death penalty, for the first time since 1934 (see Amnesty International Report 1992).

Amnesty International welcomes the Russian Federation's decision to continue this practice, which is in line with international recommendations. According to Amnesty International's knowledge the latest available comprehensive statistics from the Ministry of Justice relate to 1992, when a total of 159 death sentences were passed. This is a drop from the previous year, when 223 people were sentenced to death, but an increase on 1990 when 100 such sentences were handed down. However, these statistics do also show a progressive fall in executions, down from 76 in 1990 to 59 in 1991 and 18 in 1992.

According to the Ministry of Internal Affairs, as of 31 August 1993 there were 505 prisoners on death row in Russia. This figure was given at a briefing on that date by General Vladimir Bukin, head of the ministry's department overseeing the carrying out of punishments. He reported in addition that there had been fewer executions in 1993 compared to 1992, presumably over the first six months of both years, but gave no figure.

Moves towards abolition

### **Fall in executions and rise in commutations**

The decline in the number of executions reported in recent years has been accompanied by a rise in the number of commutations. According to Ministry of Justice figures these rose from a mere two in 1990, to 37 in 1991 and 54 in 1992.

This may reflect the changing attitudes of those involved in the appeal and clemency procedures. The trend may be given further impetus by a law passed on 17 December 1992 which replaced the previous 20-year term for a commuted death sentence with "life imprisonment". Abolitionists hope that the prospect of longer prison terms will make commutations of death sentences more acceptable publicly. It is currently unclear to Amnesty International whether "life imprisonment" means until the death of the prisoner, or a period, not subject to early release, which would be longer than the previous 20-year limit. Prisoners whose death sentences have been commuted serve their terms on special regime, the most severe of the four categories. Speaking at the briefing on 31 August, General Vladimir Bukin reported that there was a corrective labour camp in the north of the Sverdlovsk Region, in western Siberia, where such prisoners were held.

The fall in reported executions, and rise in commutations, are welcome steps towards abolition. They have been accompanied by two further moves in this direction - the reduction in application and in scope of the death penalty.

### **Reduction in scope**

Officials report that almost all the death sentences passed in recent years have been for premeditated, aggravated murder. This trend has been reflected in amendments to the criminal code which have reduced the number of peacetime offences, some not involving the use of violence, from a Soviet-era total of 18 down to 14 (a list of those offences currently carrying a possible death sentence is given in the

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attached appendix).

Moves in this direction had taken place before the breakup of the USSR, when in July 1991 the Soviet parliament reduced the scope of the death penalty to five offences, and exempted all women (see the Amnesty International report USSR: Prospects for Abolition of the Death Penalty, AI Index: EUR 46/20/91). However, by that stage the time had long passed since the constituent republics automatically incorporated all federal legislation into their own laws. To Amnesty International's knowledge no republic including Russia formally adopted these changes at that time, especially as the failed coup the following month accelerated the process of transferring legislative initiative.

Although it did not incorporate the July 1991 changes, Russia did take its own first steps towards a reduction in scope later that year when on 5 December a law was passed abolishing the death penalty for three economic offences: speculation (Article 88), aggravated bribe-taking (Article 173) and large-scale theft of state property (Article 93-1). However, to Amnesty International's knowledge a fourth economic offence still carries a possible death sentence. This is Article 87, "making or passing counterfeit money or securities", if the offence is committed as a form of business.

Abolition for these economic offences follows a trend among several republics of the former USSR towards limiting application of the death penalty only to crimes involving the use of violence, and may also reflect contradictions and tensions arising in the transition from a socialist command economy to a free market one. The most recent move to limit the scope of the death penalty in Russia is a reflection of changing political realities: Article 73, which carried a possible death sentence for "Especially dangerous crimes against the state committed against another working people's state", has been abolished completely under the law of 29 April 1993.

However, and regrettably, this law does also include a section which provides for a widening of the grounds for which the death penalty may be imposed in cases of murder. Under Article 102 of the Criminal Code a death sentence may be passed for premeditated murder committed under one or more of a number of listed "aggravating circumstances". The law of 29 April 1993 increases the number in this list by two, from 11 to 13. A death sentence is now possible if the murder is committed on grounds of national or ethnic hatred, or with the prior agreement of a group of persons. These may have been added by legislators seeking to allay public fears over the rise in ethnic strife and the influence of "mafia" or criminal gangs since the break-up of the Soviet Union.

### **Reduction in application**

In contrast, the moves towards reducing the application of the death penalty in the law of 29 April 1993 were unequivocal: now all women, and men aged over 65, are exempted. Previously only women who were pregnant were exempted (existing legislation already rules that a death sentence may not be passed on anyone under 18 at the time of the offence or when sentence was passed, or on anyone ruled to have been insane when the crime was committed or when judgement was passed). The July 1991 legislation passed by the Soviet parliament had exempted women, although a proposal in an earlier draft to exempt men over 60 was dropped.

Amnesty International welcomes this development as a further step on the way to total abolition. However, it is not clear if this change will have a significant impact on the prospective numbers of those

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sentenced to death. The statistics of recent years have not been broken down according to age or sex, and in the past very few of those reported as sentenced to death were women.

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Procedural changes

### **Introduction of trial by jury**

At present cases involving a possible death sentence are tried by a bench of three judges and the sentence is passed by a majority verdict, as in other criminal cases. Only one of the three judges is professionally trained. The others are lay judges known as "people's assessors" (**народные заседатели**) who sit at most for four weeks in two years.

During the period of "perestroika" many reformers questioned the independence of the Soviet judiciary, alleging that the people's assessors rarely disagreed with the professional judge who in turn could be placed under pressure by the so-called "telephone law" (**телефонное право**, whereby senior officials would telephone the judge before the trial started with directives on the outcome of the verdict and the sentence).

Trial by jury began to be discussed as an option, and provision for this in capital cases was first introduced by revised Fundamentals of Court Organization for the USSR and the Union Republics, which came into effect on 1 December 1989. However, these were not mandatory and it was left to the individual republics to decide whether or not to introduce them.

To Amnesty International's knowledge the first mention of jury trials in capital cases in Russia came in the Declaration on Rights and Freedoms of the Individual and Citizen of November 1991. Article 7 of this states that the death penalty, until its total abolition, "may be used as an exceptional measure of punishment for especially grave crimes only in accordance with a sentence passed by a court with the participation of jurors (**присяжные**). However, when the Declaration was incorporated into the Constitution in 1992, the mention of jurors was dropped.

Discussion continued and although a provision to introduce jury trials in law was voted down by one of the chambers of parliament on 3 March this year, the necessary changes and amendments were eventually approved and signed by President Yeltsin on 16 July 1993. Under the new law the accused is entitled to apply for a trial by jury in a territorial, regional or city court if charged with one or more of a number of serious crimes. These include all those offences that currently carry a possible death sentence, with the exception of espionage (Article 65). Suspected spies go before military tribunals - as do members of the armed forces, officers of the state security body, and prison and labour camp staff. The same codes of law apply in both military tribunals and ordinary courts, although the former are not covered by the newly-introduced jury provisions.

Trial by jury will be introduced initially in the administrative regions of Moscow, Ivanovo, Ryazan and Saratov, and in Stavropol Territory, from 1 November 1993. This will be extended to Ulyanovsk and Rostov Regions, and Altay and Krasnodar Territories, from 1 January 1994. No date is given for its introduction over the rest of the country, which has over eighty regions, territories and republics. Presumably the named areas are being used first on an experimental basis. All Russian citizens over the age of 25 are liable to jury service, with the exception of those having an uncleared criminal conviction or deemed non-accountable by a court.

Public opinion and the death penalty

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Abolitionist arguments appear as yet to have made few inroads with regard to Russian public opinion which, faced with soaring crime rates, remains in general firmly in favour of the death penalty. With increasing calls for firm measures, the argument that the death penalty deters crime is frequently heard.

### **The "deterrence" argument for retention**

Countless men and women 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 that 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 or 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.

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. While welcoming the steps already taken, Amnesty International is continuing to urge the Russian authorities to move further towards total abolition and, in the meantime, to commute all pending death sentences.

## ii) Homosexuality - amendment of Article 121

### **Amnesty International's position**

At its International Council Meeting (ICM) in Japan in September 1991, Amnesty International decided to consider as prisoners of conscience persons imprisoned solely because of their homosexuality, including the practice of homosexual acts in private between consenting adults.

### **Background**

In the former Soviet Union male homosexual acts (specifically sodomy) were illegal, and the criminal codes of each of the constituent republics contained a law, in two parts, punishing such activity. The first part of the law punished sodomy between consenting adults by up to five years' imprisonment. The second part carried a maximum eight-year sentence for such acts carried out by the use of force; threats; against a minor or using the dependent position of the other party.

Previously a taboo subject, with the advent of "perestroika" homosexuality began to be discussed more openly, and occasionally sympathetically, in the official press. Several unofficial groups of lesbians and

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gay men were set up, although public hostility remained high.

### **The case of Vladimir Mironov**

The absence of official statistics and the stigmatization of offenders made it very difficult to determine the numbers of men imprisoned for consensual homosexual activity. One case that did become known to Amnesty International following the organization's decision at the September 1991 ICM was that of Vladimir Mironov, at the time aged 43 and from Moscow.

Vladimir Mironov was arrested on 11 October 1990, and charged under the first part of Article 121 with consensual homosexual acts. He stood trial on 7 May 1991 at Volgograd District People's Court in Moscow. Despite reports that he and at least one other witness retracted testimony given during pre-trial detention on the grounds that it had been extracted under physical duress, he was sentenced to three years' imprisonment. He lodged an appeal with Moscow City Court, which sent the case back to Volgograd District Court for review. Amnesty International, having ascertained that the events concerned took place in private, regarded Vladimir Mironov as a prisoner of conscience and called for his immediate and unconditional release.

At the end of January 1992 Vladimir Mironov was released from custody on health grounds pending the rehearing, which took place on 17 March that year. He and his partner admitted having sexual relations but denied sodomy, and the case was closed because of insufficient evidence. The court also accepted allegations by witnesses questioned during the preliminary investigation that testimony had been obtained from them by police using threats.

### **Decriminalization of consensual homosexuality**

After the failed coup of August 1991, Ukraine became the first republic of the former USSR to amend its sodomy law when in December that year it repealed the first part, thereby decriminalizing consensual adult homosexual acts. Pressure from gay and lesbian activists mounted on the Russian authorities to follow suit regarding Article 121, the Russian law against sodomy.

The necessary legislative change was initiated on 29 April 1993, when President Boris Yeltsin signed the above-mentioned law on a number of amendments to the criminal code. In accordance with this the first part of Article 121 has been dropped, leaving a revised form modelled on the old part two in which the maximum sentence has been cut by one year. The article now reads:

"Article 121. Sodomy

Sexual relations between a man and another man (sodomy), committed with the use of physical force, threats or in relation to a minor, or using the dependent or helpless position of the victim, are punishable by a term of up to seven years."

The amendment came into force on 27 May 1993, when it was published in the parliamentary newspaper Rossiyskaya gazeta. Speaking at that time Vladimir Zimonenko, a spokesperson for the Ministry of Justice, said that the law had retroactive force and that those convicted under the first part of Article 121 would be released. He said that 25 men had been imprisoned under this part of the law in 1992.

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This figure was augmented in July, when the Ministry of Internal Affairs reported to the San Francisco-based International Gay and Lesbian Human Rights Commission that there were 73 men still imprisoned solely for consensual homosexuality, and a further 192 men imprisoned under multiple charges including the first part of Article 121. Amnesty International is seeking further information on the progress of releases following the amendment of Article 121.

### iii) Conscientious objection to compulsory military service

#### **International standards**

Conscientious objection to military service was recognized by the United Nations Commission on Human Rights (Resolution 1989/59) as a legitimate exercise of the right to freedom of thought, conscience and religion, a right guaranteed under Article 18 of the International Covenant on Civil and Political Rights. Resolution 1989/59 also recommends that states refrain from subjecting conscientious objectors to imprisonment, and that they provide an alternative service of non-punitive length and impartial decision-making procedures for applying it. This position was reaffirmed by the United Nations Commission on Human Rights in its Resolution 1993/84, of 10 March 1993.

#### **Background**

Under the Soviet Constitution military service was considered the "honourable duty" of all citizens, and there was no provision for young men unable to perform such service owing to their conscientiously-held beliefs. At any one time Amnesty International was aware of a number of such people imprisoned for their refusal to carry out compulsory military service. Those concerned were mainly religious believers whose faith prevented them bearing arms, or swearing the oath of military allegiance. In many cases the young men served more than one sentence for the same offence: following release from imprisonment they would again be called up, and would again refuse, leading to a further term in detention.

Conscientious objection, another of the formerly taboo subjects, began to be discussed more openly with the advent of "perestroika" and some republics introduced their own laws providing an alternative service before the breakup of the USSR. However, moves in Russia towards introducing a civilian alternative service in law for those whose convictions preclude carrying out military service have proceeded slowly. At the time of writing no such provision exists in law, and conscription remains obligatory for able-bodied males between 18 and 27. Those who evade call-up, for whatever reason, face up to five years' imprisonment under Article 80 of the Criminal Code.

### **Moves towards an alternative service**

The last years of the USSR saw a situation known as the "war of the laws" (ВОЙНА ЗАКОНОВ), in which the central authorities and the constituent republics sought to assert the primacy of their own laws and regularly issued decrees cancelling out those passed by the other side. The introduction of a civilian alternative service in Russia has faced its own form of this situation, with constitutional provisions not being reflected in enabling legislation or the requisite amendments to the criminal code.

As mentioned at the beginning of this report, Article 15 of the November 1991 Declaration on Rights and Freedoms of the Individual and Citizen introduced the right to an alternative service. It was enshrined in the Russian Constitution in April 1992 as Article 45, which reads:

"Each citizen of the Russian Federation whose convictions preclude carrying out military service has the right to replace it with alternative civilian duties in accordance with the procedure laid down by law".

No such law was introduced that year, although provisions were again foreshadowed in the law "On military obligations and military service" of 11 February 1993, which came into force on 1 March this year. Article 2 of the law clearly states that a citizen has the right to perform an alternative to military service, and under Article 25 one of the options facing conscription commissions is to send the conscript to perform such an alternative. However, on 19 May parliament passed a number of measures connected with the implementation of the law, and these included the suspension of the relevant references in Articles 2 and 25 until a law on alternative service comes into force.

Unfortunately, almost 18 months since the right to alternative service entered the constitution, conscientious objectors in Russia are still waiting for the enabling legislation to be passed, in line with international standards. In the meantime they face imprisonment for seeking to exercise their constitutional rights.

### **Imprisonment of conscientious objectors**

To Amnesty International's knowledge at least two conscientious objectors have been sentenced to imprisonment this year, although both are now at liberty. The trials took place in Moscow, and it is possible that there have been other cases unreported from provincial areas.

Aleksandr Sergeevich Chizhikov was sentenced to one year's imprisonment by Kuybyshev District Court in Moscow on 21 April 1993, for "evading regular call-up to active military service" (Article 80 of the Russian Criminal Code). A 20-year-old pacifist, Aleksandr Chizhikov stated his willingness to perform a civilian alternative service and quoted Article 45 of the Constitution in support of his refusal to respond to his call-up papers. However, the military enlistment authorities, the prosecutor's office (прокуратура) that brought the charge and finally the trial judge all refused to recognize the validity of Article 45 in the absence of a law on alternative service. Aleksandr Chizhikov was remanded pending appeal to Matrosskaya Tishina prison in Moscow. Just over a month later, on 26 May 1993, Moscow City Court refused to uphold his appeal against conviction but did suspend the sentence. Aleksandr Chizhikov was released, but has reportedly again received a set of call-up papers for the autumn conscription.

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Almost three weeks after sentencing Aleksandr Chizhikov, Kyubyshev District Court convicted another pacifist of the same offence. Oleg Nikolayevich Astashkin, born on 2 July 1973, had been sent five sets of call-up papers, from October 1991 to March 1992, but did not respond and instead went to live in the former Soviet republic of Latvia. He returned in September 1992, and was arrested on 17 November by officers from Moscow Police Department 140. He was transferred to Matrosskaya Tishina investigation prison to await trial where, in line with widely reported problems of overcrowding, he is said to have shared with some 90 others a cell built to hold 30.

Oleg Astashkin's trial began on 30 April 1993 and concluded, after an adjournment, on 5 May. The prosecutor contended that at the time Oleg Astashkin first refused his call-up papers, the 1967 USSR law "On Universal Military Service" was in force and so he should be tried for violating that. Oleg Astashkin's defence lawyers argued that the right to military service was enshrined in Article 45 of the Constitution and quoted Article 6 of the Criminal Code, which states that "a law eliminating the punishability of an act or reducing a punishment shall have retroactive force". Again the court was unconvinced and sentenced Oleg Astashkin to two years' imprisonment. However, as with Aleksandr Chizhikov, on appeal Moscow City Court changed the sentence to a suspended one and Oleg Astashkin was released from imprisonment.

As Russian law provides no civilian alternative to military service, Amnesty International regarded Aleksandr Chizhikov and Oleg Astashkin as prisoners of conscience, and appealed to the authorities for their immediate and unconditional release. The organization regrets that their sentences were only suspended, rather than the convictions quashed, and remains concerned that they may again face imprisonment should further prosecution for refusing call-up occur before the introduction of a law on alternative service. Amnesty International is continuing to urge that such a law be adopted without delay, and that it specifies a civilian alternative outside of the military machine, of non-punitive length, which will be open to all those with a religious, political, ethical or other conscientiously-held objection to military service. length.

### **Abolition of compulsory labour as a form of punishment**

One reform to the Russian Criminal Code welcomed in many quarters, that of the abolition of compulsory labour as a form of punishment, may by contrast adversely affect the severity of the sentence handed down in cases of conscientious objectors such as those described above.

Previously, a sentence of up to three years' imprisonment could be suspended if the convicted person was judged of good character and had no prior convictions, and replaced by the same amount of time spent on "compulsory labour" (условное осуждение к лишению свободы с обязательным привлечением осужденного к труду, Article 24-2 of the Criminal Code). This involved working under strict surveillance at a location determined by the authorities with restrictions on freedom of movement. Prisoners already serving a term of imprisonment could also be released to complete their sentence performing compulsory labour if they had shown themselves to be "on the path to correction".

Although regarded by Amnesty International as analogous to imprisonment, conditions of compulsory labour were less severe than those in a corrective labour colony and prior to the breakup of the USSR there was an increasing tendency to use this form of punishment, rather than imprisonment, in the cases of conscientious objectors known to the organization. However, in February 1993 parliament abolished

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compulsory labour and so this less severe alternative is no longer available as an option to imprisonment (also abolished were internal exile and banishment, two other forms of punishment that had been used in the past to punish political as well as criminal offenders: Nobel Peace Prize-winner Andrey Sakharov, for example, was banished to the closed city of Gorky, and after serving seven years' imprisonment Sergey Adamovich Kovalyov, now a deputy to parliament and head of its Human Rights Committee, spent a further three years in exile in a remote Siberia village over 10,000 kilometres from his Moscow home for his human rights activity).

#### iv) The new Constitution

Although parliamentary discussion of a new draft criminal code in total has been in abeyance recently, there have been moves to speed up discussion and adoption of a new constitution. At present the constitution dates from 12 April 1978, and has been amended over 100 times since then.

Disagreements over the type of constitution have mirrored current tensions in Russia between President Boris Yeltsin, who is seeking a strong presidential republic, and many members of the Supreme Soviet who favour a greater role for parliament. Dissensions have also arisen over the federative nature of the country, and the amount of power to be devolved to Russia's constituent autonomous republics, regions and territories.

Two draft constitutions were published earlier this year, reflecting the presidential and parliamentary positions. Both proclaimed Russia to be a democratic, law-based state and reiterated respect for human rights. The presidential draft, for example, which was published in *Izvestiya* on 30 April, stated in Article 8 that:

"In the Russian Federation basic rights and freedoms are recognized and guaranteed in accordance with the Universal Declaration of Human Rights and the generally recognized principles and norms of international law. Basic human rights and freedoms belong to everyone in Russia from birth".

The draft of the parliamentary Constitutional Commission, which appeared in *Rossiyskaya gazeta* on 8 May 1993, proclaimed in Article 2 (1) that:

"Man, his life and health, honour and dignity, inviolability of person and safety, and rights and liberties are the highest value in the Russian Federation. Their recognition, observance and protection are the principal obligation of the state".

Article 3 (4) stated that:

"Generally recognized principles and rules of international law and international treaties of the Russian Federation constitute part of its law. If a ratified international treaty of the Russian Federation establishes rules other than the law, the rules of the international treaty apply".

Article 48 of this draft also established the post of a parliamentary commissioner for human rights, responsible for supervising the observance of rights and freedoms.

Both drafts contained articles on the two issues of continuing concern to Amnesty International described above, that of the death penalty and conscientious objection. With regard to the death penalty, the

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parliamentary draft in Article 20 (2) stated that:

"The state aspires to the abolition of capital punishment. Capital punishment may, up until its abolition, be established by federal law as an exceptional measure of punishment for particularly heinous crimes against the person and be prescribed only in accordance with a verdict following trial by jury."

The presidential draft is similar, stating in Article 26 that:

"The death penalty, until its total abolition, may be applied as an exceptional measure of punishment for premeditated murder and for homicide during the commission of a felony, and only by a court verdict with the participation of jurors."

Similarly, both made provisions for an alternative to military service. Article 55 (3) of the parliamentary draft states:

"A citizen of the Russian Federation whose beliefs are contradicted by military service or who belongs to a small ethnic community and resides in the location of the compact settlement of this community, and also in other instances established by federal law, is entitled to substitute it with community service."

Presidential article 52 stated:

"A citizen whose beliefs or faith preclude the performance of military service, or in other cases as laid down by law, has the right to perform alternative civilian service instead."

Both drafts had sections dealing with transitional provisions, aimed at avoiding anomalies that may arise from delays between adoption of the constitution and the amendments it may necessitate in other laws and codes. The parliamentary draft stated only that federal laws must be adopted in keeping with the constitution, or brought into line with it, within a year after the constitution came into force. The time limit was two years for other laws and normative acts. However, the presidential draft was more specific on the areas of the death penalty and conscientious objection. Point three of this section stated that pending amendments to the criminal code the death penalty could only be applied for premeditated, aggravated murder, or premeditated murder or homicide committed during the course of a number of other serious crimes. Point four stated explicitly that "pending the adoption of a federal law on alternative service, citizens refusing for reasons of conscience to serve in the Russian Federation armed forces are to be sent to serve for the duration of their military duties in medical, construction, rescue, municipal or state institutions."

President Yeltsin convened a constitutional conference in Moscow in June this year, aimed at accelerating the adoption of a new basic law. Initially it was to consider only the presidential version, but a final draft constitution, based largely on the presidential version but incorporating changes from the parliamentary one, was agreed by the majority of delegates on 12 July. It passed to the assemblies of the republics, regions and territories of Russia for consideration, but major delays were anticipated as many of their representatives refused to initial the draft. Some of the republics, which are based around titular ethnic minorities, are seeking greater sovereignty while other regions and territories are pressing for levels of autonomy similar to those granted to the republics.

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A working group of the Constitutional Commission was set up by a presidential decree on 9 September to study the draft passed by the constitutional conference, and prepare proposals on working out a single agreed draft. At its final session on 15 September the group proposed that this single draft be prepared from the one presented by the constitutional conference and the one prepared by the Constitutional Commission. A joint working group would then present a coordinated document to a joint session of the Constitutional Commission and the constitutional conference by 10 October.

This timetable was revised, however, when President Yeltsin announced on 21 September that he was suspending the current parliament and calling elections on 11 and 12 December for a State Duma (the pre-revolutionary name for parliament), which will form the lower house of a new bicameral legislature to be known as the Federal Assembly. In accordance with his decree "On Progressive Constitutional Reform in the Russian Federation" an agreed draft constitution is to be presented by 12 December 1993, presumably for discussion and eventual approval by the new Federal Assembly.

### 3. CONCLUSION

Amnesty International welcomes the steps already made by the Russian Federation in the field of legal reforms, and its public commitments to international human rights standards. The organization recommends that these be consolidated in a new constitution that enshrines safeguards for human rights in accordance with these standards, and that the necessary legislation is passed to safeguard these rights in practice. In particular Amnesty International is urging legislators to take the opportunity of a new constitution to abolish the death penalty completely, and to take immediate steps to introduce a civilian alternative to military service, together with a fair procedure for applying it.



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## **APPENDIX**

### **OFFENCES IN THE RUSSIAN CRIMINAL CODE WHICH CURRENTLY CARRY A POSSIBLE DEATH SENTENCE**

Article 64: "Treason"

Article 65: "Espionage"

Article 66: "Terrorist act"

Article 67: "Terrorist act against a representative of a foreign state"

Article 68: "Sabotage"

Article 72: "Organization of especially dangerous crimes against the state"

Article 77: "Banditism"

Article 77-1: "Actions disrupting the work of corrective labour institutions"

Article 87: "Counterfeiting"

Article 102: "Premeditated, aggravated murder"

Article 117: "Aggravated rape"

Article 191-2: "Infringing the life of a militiaman"

Article 213-2: "Aggravated hijacking of an aircraft"

Article 240: "Resisting a superior or compelling him to violate official duties"