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THE DEATH PENALTY IN THE RUSSIAN FEDERATION

Amnesty International is concerned that the Russian Federation retains the death penalty, and continues to pass death sentences. This is notwithstanding the fact that the Russian Federation committed on joining the Council of Europe on 28 February 1996 “to sign within one year and ratify within three years from the time of accession Protocol no.6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms on the abolition of the death penalty, and put into place, with immediate effect from the day of accession, a moratorium on executions.” Indeed, executions are known to have continued and at an increased rate for some time after Russia’s accession until an unofficial moratorium was put in place in August 1996. Amnesty is concerned that the unofficial nature of the moratorium means that the legal and procedural frameworks remain in place for executions to be re-started at any time.

Amnesty International is opposed to the death penalty in all cases and without reservation on the grounds that it is a violation of 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.

Legislation: The death penalty may be imposed for the following five peace-time offences under the new Criminal Code of the Russian Federation which came into force on 1 January 1997:

- Article 105 “aggravated murder”
- Article 277 “attempted murder of a state or public figure”
- Article 295 “attempted murder of a person administering justice or conducting a preliminary investigation”
- Article 317 “attempted murder of an employee of a law-enforcement agency”
- Article 357 “genocide”

Exemptions: A death sentence may not be passed on women, on men over 65 and under 18 at the time of the offence or when sentence is passed. The death penalty may not be imposed on anyone ruled to have been insane when the crime was committed or when judgment was passed.

Judicial process: Despite the fact that the new constitution adopted on 12 December 1993 guarantees the right to trial by jury to people charged with a capital offence, most capital cases are still tried by a bench of three judges, of whom only one is professionally trained. A defence lawyer must assist in capital cases. Prisoners can appeal against the verdict or sentence to the

next highest court within seven days of receiving a written copy of the judgement. As their cases are heard at a higher level at the first instance, however, prisoners under sentence of death have fewer opportunities to appeal than many other prisoners.

Death sentences may also be reduced by a judicial review. Under this procedure a higher court re-examines the case after it has received a protest against the judgment of the court of first instance or the court of appeal.

If these remedies fail, prisoners under sentence of death can petition for clemency, which may be granted by the President. These are examined first by the Presidential Clemency Commission which considers all cases in which a death sentence has been passed, even if the prisoner has not, or refuses to, submit such a petition on his own behalf. The recommendations of the Clemency Commission are passed to the President of the Russian Federation, who makes the final decision.

Reports on a number of death penalty cases being tried by jury in the Russian Federation are encouraging. Trial by jury was introduced into some areas of the Russian Federation in early 1994, and is currently operating in nine of the 89 regions of the federation. There was a significant fall in the number of death sentences handed down by the juries, even though in the majority of cases the trials involved articles of the Russian Criminal Code punishable by death.

Statistics: Anatoly Pristavkin, the chairman of the Presidential Clemency Commission, reported that 140 executions had been carried out in 1996, 103 of them after Russia joined the Council of Europe. Valery Borshev, Duma deputy and a representative of the public chamber of Human Rights under the President, referred to a study carried out in Russia which claimed that judicial errors had been made in 30 per cent of the death penalty cases. Other official statements claimed that between 53 and 62 executions took place in 1996.

Unofficial sources reported that 90 people had been executed in 1995, although the official figure presented to the Council of Europe was 16. Amnesty International recorded the executions of at least 62 people during 1995. A draft law on the moratorium on executions, prepared by two Duma deputies, was not passed by the Duma, but despite this, official statements say that no executions have been carried out in Russia since August 1996.

According to official government information, as of 30 April 1998, 894 prisoners remained on death row. However, in October the Minister of Justice reported that 839 people were under sentence of death, while no executions were allegedly carried out since August 1996.

Amnesty International is concerned about the apparent discrepancies in the official government statistics. The organization fears for the safety and for the lives of at least 55 people on death row, who appear to have disappeared from statistics reported by the government in October.

Prison Conditions: Conditions in Russia's penitentiaries and pre-trial detention centres continue to amount to cruel, inhuman or degrading treatment. The prisons, built mainly in the 17th-19th centuries, contain over a million convicts and are grossly overcrowded. Thousands of prisoners have no individual bed and have to sleep in shifts, often without bedding. Many cells are filthy and pest-ridden, with inadequate light and ventilation. Food and medical supplies are frequently inadequate. Lung, circulatory and skin diseases, especially tuberculosis and scabies, are widespread; mental illness is also common. In October 1998 officials reported 2,000 HIV-positive prisoners. Prisoners condemned to death are held in cells designed for solitary confinement which measure two metres by one-and-a-half metres (sometimes there are up to five prisoners to a cell, according to an article in the Russian newspaper "Obshchaya Gazeta" in February 1998). They are permitted a half-hour exercise period per day

and receive a one hour-long visit per month. They may remain in these conditions for years while the appeals process takes place.

Method of execution: Shooting. The sentence is carried out with the head of the detention facility, a doctor and a procurator present. The family are informed, but are not told the exact date and place of execution, or of burial. They are not entitled to claim the body.

Prospects for abolition: On 4 August 1998, the Minister of Justice, Pavel Krasheninnikov, stated that the Russian Federation would abolish the death penalty by April 1999. However, the Presidential list of federal laws to be adopted this year relating to human rights, as part of the initiatives to mark the Year of Human Rights in the Russian Federation declared by President Yeltsin, does not mention the introduction in national law of a moratorium on executions. Also, there is no mention of ratifying Protocol 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, relating to the abolition of the death penalty.

Amnesty International is especially concerned about the Government's official opinion on the draft law on a moratorium, signed on 30 April by the then Deputy Prime Minister Boris Nemtsov, that the death penalty should not be abolished because of the expense of providing life imprisonment for some 1,300 death penalty prisoners by the year 2000. In other words: it would be cheaper to kill than to protect human rights.

However, Amnesty International was appalled by the recent statement of the Russian Minister of Internal Affairs, Sergey Stepashin, who reportedly has promised tougher law and order enforcement in the Russian Federation, declaring that serious criminals should be sentenced to death. Sergey Stepashin reportedly stated on Russian national television channel NTV on 11 November: "A thief should go to prison, but a gangster should be killed".

In 1994 Sergey Stepashin, then head of the Russian Federal Security Services (FSB), made a similar statement while commenting on the Presidential Decree on fighting organized crime No. 1226, which provided for detention of criminal suspects for up to a month without a charge and without access to a lawyer (which was later rescinded by President Boris Yeltsin after a popular outcry): "I am all for the violation of human rights if the human is a bandit or a criminal".

In June 1998, Amnesty International received assurances by the Minister of Internal Affairs, Sergey Stepashin, during a meeting in London, that all steps would be taken to abolish the death penalty in the Russian Federation and to stop the practice of torture and ill-treatment of suspects in custody by law enforcement officials.

Parliamentary and public opposition to complete abolition remains strong, with the rising crime rate and the unstable political climate often quoted in support of this position. The results of a public opinion poll among the population of Moscow and St. Petersburg reported in the "Obshchaya Gazeta" article from February 1998 stated that eighty percent of the population are in favour of capital punishment, with forty percent in favour of public execution. The new constitution, adopted on 12 December 1993, retains the death penalty. Article 20 deals with the death penalty and states the following:

- 1) Each person has the right to life
- 2) Until its abolition the death penalty can be prescribed by federal law as the supreme penalty for particularly grave crimes against life, the accused being granted the right to trial by jury.

The constitution gives no time frame for the possible abolition of the death penalty.

Amnesty International is calling on the authorities to take immediately the following steps:

- *The President and the central government should issue public orders to all prison governors that there is an official moratorium on executions in place.*
- *All existing death sentences should be commuted. No further death sentences should be handed down. Any that are handed down should immediately be commuted.*
- *The government and parliament must adopt a law on a moratorium on executions pending the full abolition of the death penalty. The parliament should enact the legislation, prepared by the Ministry of Justice, to remove the death penalty from the Russian penal code. The constitution also should be amended to exclude the death penalty.*
- *The Russian Federation should move swiftly to ratify Protocol No. 6 to the European Convention on Human Rights. The Government should fully abolish the death penalty by 28 February 1999, the deadline set by the Council of Europe on Russia's accession in 1996.*
- *The authorities should publish comprehensive information on the use of the death penalty, including the names and case details of all prisoners executed and all prisoners currently under sentence of death, and should remove the secrecy surrounding executions.*