

**EXTERNAL**

18 March 1992

**@Yevgeny Vladimirovich BERESTOVSKY**

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**£Ukraine**

The information currently available on this case comes from an unofficial source, which reports that Yevgeny Berestovsky was sentenced to death on 26 April 1991 by the regional court in Dnepropetrovsk, Ukraine. He was convicted of premeditated murder under aggravating circumstances (Article 93 of the Ukrainian Criminal Code). The sentence was upheld by the Ukrainian Supreme Court on 23 July 1991.

Yevgeny Berestovsky, aged 29, was convicted of killing a woman in his home town of Dneproderzhinsk. The source of the information obtained by Amnesty International alleges that the investigator in the case originally sought to bring a charge of premeditated murder without aggravating circumstances (Article 94 of the Criminal Code), which carries a maximum sentence of 10 years imprisonment, but was compelled by unspecified higher authorities to substitute the charge under Article 93.

A petition for clemency is now pending before the President of Ukraine, who has the authority to commute the sentence. If this petition is turned down Yevgeny Berestovsky will face imminent execution.

Amnesty International opposes 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 and degrading treatment or punishment as proclaimed in the Universal Declaration of Human Rights. Amnesty International is appealing to the President of Ukraine to exercise his constitutional authority and commute the death sentence passed on Yevgeny Berestovsky.

**Background information**

Ukraine, which along with Belarus (formerly the Belorussian SSR) had separate membership from the USSR at the United Nations (UN), was co-sponsor in 1989 of the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), which entered into force on 11 July 1991 and is the first treaty of worldwide scope aimed at abolition of the death penalty. However Ukraine itself has yet to ratify the Second Optional Protocol, and death sentences are regularly passed and carried out in the republic. The exact figures are not available as the authorities do not publish official statistics on its use. In March 1992, however, unofficial sources

reported that there were 80 people awaiting execution in just two of the administrative areas of Ukraine: 20 persons in the Donetsk Region, and a further 60 persons in the Kiev Region. An earlier indication of the scale came from the head of the parliamentary Clemency Commission of the former USSR in July 1991, who reported that most of the 208 executions recorded in 1990 were carried out in two republics - Ukraine and Russia.

There has been no recent discussion in the Ukrainian parliament on the issue of the death penalty, and to Amnesty International's knowledge the republic's criminal code retains this punishment for 18 separate offences in peacetime. However the overwhelming majority of death sentences passed in recent years appear to have been for murder under aggravating circumstances.

A death sentence may not be passed on a pregnant woman or on anyone under 18, or ruled to have been insane, at the time of the offence or when sentence is passed. 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 first instance, however, prisoners under sentence of death have fewer opportunities to appeal than many other prisoners. Some have been sentenced to death without right of appeal.

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 judgement of the court of first instance or the court of appeal. Although death sentences are suspended pending appeal, they may still be carried out before a judicial review has been completed. If these remedies fail, prisoners under sentence of death can petition for clemency, which may be granted by the President of Ukraine. Following the break-up of the Soviet Union such prisoners no longer have the opportunity for a judicial review or petition to be considered by the federal USSR authorities, and have thereby lost a possible final avenue for commutation. Prior to this legal authorities estimated that it could take some two years for a death penalty case to reach resolution.

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