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UKRAINE

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Introduction

Since the break up of the former Soviet Union in 1991, independent Ukraine has taken steps towards restriction of the death penalty in law. The number of peacetime offences carrying a possible death sentence has been reduced from 17 to five, and the current draft constitution proposes only one such offence.

In spite of these welcome moves the number of death sentences and executions in Ukraine remains very high. Official statistics issued by the Ministry of Justice in May 1995 show that during the previous year 143 people were sentenced to death and 60 people were executed, while only two people had their death sentences commuted. To Amnesty International's knowledge the number of executions in the first of 1995 has not been made public, but the organisation fears that the figure will be at least as high as during previous years (for example, unofficial sources report 15 executions from 1 January to 8 March 1995 in just two of Ukraine's 24 administrative regions). These figures put Ukraine among the countries with the highest annual numbers of executions in the world.

Furthermore, the use of the death penalty in Ukraine is still surrounded by secrecy: Authorities are reluctant to provide full statistics in compliance with international recommendations; places and procedures of execution are considered state secrets; and a general debate about the use of the death penalty in Ukraine is being hindered by lack of public awareness regarding the whole process.

This paper examines the moves towards restriction of the death penalty in Ukraine, and outlines the current state of legislation and practice concerning the death penalty. It also details several individual cases, including that of a young man, subsequently executed, who had just turned 18 at the time the offence of which he was convicted was committed.

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 during Soviet times

During the time that the Ukrainian Soviet Socialist Republic (SSR) was part of the Soviet Union, its legal system was based on the centralized Soviet model. 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

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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 Ukrainian SSR for 17 peacetime offences, including ones not involving the use of violence.

Cases involving a possible death sentence were tried, as throughout the USSR and as 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 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 Ukrainian Supreme Soviet (parliament), and its USSR equivalent.

During most of the Soviet era information on the application of the death penalty was considered to be a state secret, and it was not until January 1991 that the USSR Minister of Justice revealed limited death penalty statistics, for the first time since 1934. The Ukrainian SSR, which had separate membership from the USSR at the United Nations (UN), was co-sponsor in 1989 of the first treaty of worldwide scope aimed at abolition of the death penalty - the second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). This entered into force on 11 July 1991, but regrettably had not yet been ratified by independent Ukraine. States parties to the second Optional Protocol believe "that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights", and are convinced "that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life".

Developments in independent Ukraine

On 16 July 1990 Ukraine proclaimed its sovereignty and the primacy of the republican laws over USSR laws. In the aftermath of the failed coup in Moscow in August 1991, the Ukrainian Supreme Soviet declared the republic's independence on 24 August, and this was reaffirmed in a popular referendum on 1 December. Ukrainian independence received international recognition following the demise of the Soviet Union at the end of 1991.

The death penalty and the court system

Cases involving a possible death sentence are tried by regional courts, the intermediate level in the court system in Ukraine. Above regional courts is the Supreme Court, which to Amnesty International's knowledge has not passed death sentences as a court of first instance in recent years.

A death sentence may not be passed under the current Criminal Code on anyone under 18 at the time of the offence; on a woman who was pregnant at the time the crime was committed or when sentence was passed; or on anyone ruled to have been insane when the crime was committed or when judgement was passed. The death penalty may also not be carried out on a woman pregnant at the time of execution. Similar exemptions have been in force since the Criminal Code was first adopted in 1961.

As in Soviet times capital cases are tried by a bench of three judges, of whom only one is professionally trained. Once a death sentence is passed it can be overturned in three ways:

- Prisoners can appeal against the verdict or sentence to the next highest court within seven days of

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receiving a written copy of the judgement;

- 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;
- Prisoners under sentence of death can petition for clemency to the President of Ukraine, who, following changes in the country's political structure, now has the constitutional right to exercise clemency.

To Amnesty International's knowledge very little is known publicly about the Presidential Clemency Commission, the body that reviews clemency petitions (along with other applications for pardon), and which passes recommendations to the President, who has the final constitutional authority on whether or not to commute a death sentence. From unofficial sources the organisation has learned that the commission in its current composition was formed following general elections in March 1994, and started reviewing cases in December that year. No specific details are available on the members of the commission and their attitude towards the death penalty, or on how the commission functions. Amnesty International believes the current commission reporting to President Leonid Kuchma, like the previous Clemency Commission under former President Kravchuk, is recommending commutation in very few cases.

Moves towards restricting the death penalty in law

On 17 June 1992 the death penalty was abolished for 12 peacetime offences. This reduced the number of articles in the Criminal Code carrying a possible death sentence in peacetime from 17 to five. The offences that were no longer punishable by death included state crimes like "Treason" (article 56), "Espionage" (article 57), "Organization of especially dangerous crimes against the state" (article 64), "Especially dangerous crimes against the state committed against another working people's state" (article 65), "Banditry" (article 69) and "Actions disrupting the work of corrective labour organisations" (article 69-1); so-called economic crimes like "Counterfeiting" (article 79), "Violation of rules for currency transactions" (article 80), "Large scale theft of state or social property" (article 86-1) and "Aggravated bribe-taking" (article 168); as well as "Aggravated rape" (article 117) and "Aggravated hijacking of an aircraft" (article 217-2).

Amnesty International greatly welcomed these moves as being in tune with the current worldwide trend towards enshrining abolition in law. However, the organization remains seriously concerned about the widespread use of capital punishment in Ukraine.

Five offences continue to carry a possible death sentence (see Appendix I). However, official statistical information (see below) indicates that all but two of the hundreds of death sentences passed in recent years have been for premeditated, aggravated murder (article 93). This means that the moves towards abolition as described above have had no real impact on the actual number of death sentences passed and carried out.

Statistics and the death penalty

The number of death sentences and executions in recent years in Ukraine has been very high, both in absolute terms and in relation to the population of the country (some 51 million). Official statistics issued by the Ministry of Justice in May 1995 show that during the previous year 143 people were sentenced to death (all for premeditated murder) and 60 people were executed. In 1993 the number of death sentences was 117 (again, all for premeditated murder) and 78 people were executed. In 1992 there were 79 death

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sentences (77 for premeditated murder and two for aggravated rape) and 103 executions. Although these figures show a steady rise in the number of death sentences passed over the last three years, and a corresponding fall in the number of actual executions, it is difficult to extrapolate trends from such limited information. For example the comparatively lower number of executions in 1994 may reflect the delay in hearing clemency petitions following the change of President.

According to these figures from the Ministry of Justice the number of instances when death sentences were quashed on appeal was very small - 14 in 1992 and 11 in 1993. The number of commutations in this period was even smaller - six in 1992, only one in the whole of 1993, and two in 1994. However, slightly different information on the number of commutations is given in the document prepared by Ukraine for its fourth periodic report to the UN Human Rights Committee (the body of experts which monitors implementation of the International Covenant on Civil and Political Rights). According to this report 21 death sentences were commuted during the report period: six in 1990, six in 1991, five in 1992, three in 1993 and one in the first quarter of 1994.

To Amnesty International's knowledge the number of executions in the first of 1995 has not been made public, but the organisation fears that the figure will be at least as high as during previous years. For example, unofficial sources report that 15 people were executed between 1 January and 8 March 1995 in two of Ukraine's 24 regions (Lugansk and Donetsk). These figures, if confirmed and translated nationwide, would indicate a continuing high rate of execution in the country.

Secrecy and the death penalty

International standards recommend the publication of comprehensive statistics on the application of the death penalty (see below), and the willingness of the Ministry of Justice to provide figures is in welcome contrast to most Ukrainian officials who have been reluctant to reveal any figures. The reasons given are the same as those from the Soviet era - that such information constitutes a state secret. For example, in February 1993 Amnesty International delegates in Ukraine were told by the then Procurator General that such statistics had been made a state secret by a normative act of the former USSR. As Ukraine did not have a corresponding act, he explained, the USSR act remained in force and statistics could not be published. This in spite of the fact that the USSR had itself published statistics in 1991.

Since then Ukraine has moved to provide its own regulations limiting public access to such information. A member of the Ukrainian human rights group "Memorial" received negative responses from two regional prosecution offices ("prokuratura") which he had approached for details on the application of the death penalty in their areas. In May this year he was informed by the Lugansk regional office that "in accordance with Article 30 of the Law of Ukraine "On Information" and Decree No. 25637/98 of the Ukrainian Cabinet of Ministers dated 29 December 1993, information on the number of death sentences passed constitutes a state secret to which access is limited". The same month the Donetsk regional office responded that "in accordance with Ukrainian General Prosecutor's Decree No. I-s of 16 January 1995 "On the introduction of a temporary list of documents to be classified as secret in prosecution offices of Ukraine" the information you request cannot be provided as it is secret". It is also reported that a similar decree stipulating a temporary list of secret documents has been issued by the Supreme Court of Ukraine. These various regulations may explain why Ukraine was among the few countries which did not respond to a questionnaire on the abolition of capital punishment prepared and issued by the Council of Europe Committee on Legal Affairs and Human Rights in March 1994. The Parliamentary Assembly of the Council of Europe officially expressed its regret about Ukraine's refusal in Resolution 1044 which was adopted on 4 October 1994.

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Information on where executions are carried out or how the execution procedure is performed are also considered state secrets, as in Soviet times. Unofficial sources have reported to Amnesty International that death row prisoners from the three eastern Ukrainian regions of Donetsk, Kharkiv and Lugansk are executed in the city of Dnipropetrovsk. From the limited amount of information known to the organisation it appears that, on average, prisoners sentenced to death are executed within a year of their conviction.

Relatives of prisoners on death row are not informed in advance of the date of the execution. After the death sentence has been carried out they receive a death certificate; this can, however, sometimes take months, so that relatives can be under the assumption that the prisoner is alive for months after the actual execution.

Relatives are not entitled to the body of an executed prisoner, which is buried in an unmarked grave in a location not revealed to them.

Amnesty International believes that informed public debate about the issue of the death penalty in Ukraine is seriously hindered by this official reluctance to provide full information on the application of the death penalty.

Draft Constitution and Criminal Code

The Constitution and Criminal Code that are currently in use in Ukraine are those inherited from the Soviet era but have been subject to significant modifications since their adoption, especially following the demise of the Soviet Union. However, since Ukraine's independence work has been undertaken to replace them: currently there exists a draft Constitution as well as two draft versions of a new Criminal Code.

The draft Constitution currently under discussion retains the death penalty. In the wording of a draft dated 26 October 1993, Article 21 reads:

"Every human being has the inalienable right to live and cannot be arbitrarily deprived of it.

"The law defends the life of human beings against any unlawful infringements.

"Everybody has the right to defend his life and the life of others in every lawful way against any unlawful infringements.

"The death penalty until its complete abolition can be applied in accordance with the law as an exceptional measure of punishment for deliberate murder only after sentence by jury trial."

Amnesty International has little information about the progress made by the Constitutional Commission in elaborating the draft Constitution. The Commission reportedly consists of 40 people, with the President and the Supreme Council Speaker being its co-chairmen. On 23 January 1995 the Supreme Council Speaker Oleksandr Moroz was reported to have denied the existence of irreconcilable differences between him and President Leonid Kuchma on the issue of a clear division of functions between power structures as stipulated in the draft. On that same occasion he said he expected to arrive at a mutually agreed document by mid-April 1995.

One of the two current drafts for a new Criminal Code was worked out by a Cabinet of Ministers' working group, the other by the Supreme Council permanent commission for legal questions and law and order. In both drafts the number of offences carrying a possible death sentence has been brought down to one: premeditated murder under aggravated circumstances. The draft by the Cabinet of Ministers would extend

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the scope of those exempted from the death penalty to cover all women, and men over the age of 65. At present both drafts are being discussed by the Supreme Council. Little is known by Amnesty International about the progress of these discussions.

Individual cases

Vasily Mikhaylovich Krivonos

Vasily Krivonos was sentenced to death for murdering five persons by the Vinnytsya Regional Court on 18 November 1993. At the time of the crime of which he was convicted he had just turned 18 and was said to have learning difficulties and to have a history of nervous and psychiatric problems. He claimed that his confession was obtained under duress and he denied the charge of premeditated aggravated murder. He was reportedly granted access to a lawyer and to his mother only after the prosecution had completed its investigation and compiled the indictment.

His appeal against the death sentence was rejected by the Supreme Court of Ukraine on 24 February 1994 and a petition for clemency was lodged with the President on 10 March 1994. Former President Leonid Kravchuk reportedly deferred taking a decision on Vasily Krivonos' clemency petition following international pressure and widespread publicity about his case in the Ukrainian media. Urgent appeals by Amnesty International, among others, apparently had an enormous impact, with television, radio and newspaper journalists picking up the case and giving it wide coverage, although this was not always sympathetic towards Vasily Krivonos or his mother. Not long after the appeal his mother was visited by journalists who took pictures of her and who went around the village telling that her son would soon be shot.

On 5 August 1994 a local newspaper Bershadsky Kray published an interview said to have been taken with Vasily Krivonos in prison in which he appeared to confess to the crimes. According to his mother, however, her son during the trial and all meetings with her in prison had always maintained that he did not commit the murders. During one of these meetings in August 1994 he appeared to have been severely beaten. She reports that his face was covered in bruises and he could hardly speak because of his injuries. The prison guards allegedly explained that the beatings were because "he would not listen to us". When his mother asked him about the newspaper interview he answered that "they `talked' with me and now I confess to everything".

In April 1994 the Special Rapporteur on extrajudicial, summary or arbitrary executions sent an urgent appeal on behalf of Vasily Krivonos to the Ukrainian Government. On 31 May 1994 the Special Rapporteur received a reply informing him that the President of Ukraine was considering the clemency petition. On 26 October 1994 the Special Rapporteur received another communication stating that the clemency petition had not yet been examined. In a reply to a German Member of Parliament dated 14 November 1994 the Ukrainian ambassador in Germany wrote that the clemency petition was still being examined.

Through unofficial channels Amnesty International in April 1995 learned of Vasily Krivonos' execution. He was executed sometime in January 1995. His mother was only informed of his death at the end of March.

Vladimir Alekseyevich Yepikov

Vladimir Yepikov, born on 12 March 1951, was sentenced to death by the Donetsk Regional Court on 29

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January 1993 for premeditated, aggravated murder. The Supreme Court turned down his appeal on 13 May 1993; according to his partner he did not write a petition for clemency because he was convinced there was no chance of being granted clemency because of his former convictions: he had previously spent 8 years in prison colonies.

It is not known to Amnesty International when Vladimir Yepikov was actually executed but from a letter received by the organisation from his partner in November 1993 it appears very likely that he was executed sometime that same month. In her letter she wrote that "I was told today by the Regional Court that Vladimir was moved from Donetsk investigation-isolation prison to the place of execution and I am now waiting for the official death certificate. The death certificate does not mention the place of execution, but all prisoners know that executions are carried out in Dnipropetrovsk... Once they arrive at their final destination the prisoners are executed within a week. I have become acquainted with a woman whose only son was taken to Dnipropetrovsk on 22 August 1993 and executed on 29 August 1993. None of the possessions of those executed, not even a last letter of farewell are returned to their relatives. It is heartbreaking to see the mother's grief..."

Aleksey Alekseyevich Petrov

Aleksey Petrov was sentenced to death for attempted premeditated murder (Article 93 qualified with Article 17 of the Ukrainian Criminal Code) by the Zhitomir regional court on 8 February 1995. According to his mother Aleksey Petrov has had mental health problems since childhood. Doubts about his state of mind reportedly caused the court of first instance to return the criminal case against him for additional investigation. Notwithstanding the fact that the psychiatrist who provided the expert medical testimony pointed to the fact that Aleksey Petrov had behavioural problems, he was eventually considered to be of sound mind.

Very few details about the crime are known but according to his mother, Aleksey Petrov helped his victims after he committed the crime. He called an ambulance, helped carry the stretchers and offered his blood for transfusion. One of his victims appealed to the Ukrainian Supreme Court not to execute Aleksey Petrov but this plea was rejected.

The Ukrainian Supreme Court rejected his appeal on 20 April 1995 and he is now facing imminent execution. To Amnesty International's knowledge this is one of very few instances in which a death sentence was passed for attempted premeditated murder in Ukraine.

The "deterrence" argument for retention

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 deterrence 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

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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 abolitionists 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 support that executions have a greater 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".

Conclusions and recommendations

The United Nations General Assembly has stated 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".

The Human Rights Committee, the body of experts which monitors implementation of the ICCPR, has stated in General Comment 6 that states parties are obliged to limit the use of the death penalty and has recommended that they "consider reviewing their criminal laws in that light". The committee has explained that Article 6 "also refers generally to abolition in terms which strongly suggest (paragraphs 2 (2) and (6)) that abolition is desirable. It has concluded that "all measures of abolition [of the death penalty] should be considered as progress in the enjoyment of the right to life".

Amnesty International is calling on the Ukrainian authorities to:

- ◆take the opportunity of a new criminal code to move towards total abolition of the death penalty in line with the recommendations of the Human Rights Committee and the General Assembly.

In the light of Council of Europe Recommendation 1246, in which the Parliamentary Assembly recommends the setting up of a control mechanism under the Secretary General which would oblige all member states and states whose legislative assemblies enjoy special guest status - like Ukraine - to set up a commission as soon as possible in their country with a view to abolishing capital punishment, Amnesty International is urging the authorities to:

- ◆create an official commission on the death penalty. The experience in other countries has shown that where it is difficult to proceed immediately to a decision on abolition, creating a commission of enquiry may be a useful way of obtaining the facts on which a decision can be based. An official commission can serve to remove the issue of the death penalty from the political and emotional climate which so often surrounds it. The findings of a commission can provide officials, legislators and the public with an objective body of information to guide decisions on the issue.

- ◆pending the outcome of the work of an official commission on the death penalty, impose a moratorium on executions.

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APPENDIX I

**LIST OF OFFENCES IN THE UKRAINIAN CRIMINAL CODE CURRENTLY CARRYING A
POSSIBLE DEATH SENTENCE IN PEACETIME**

1. Article 58 Infringing the life of a state official in connection with his public work
2. Article 59 Infringing the life of a representative of a foreign state in order to cause international complications
3. Article 60 Sabotage
4. Article 93 Premeditated, aggravated murder
5. Article 190-1 Infringing the life of a militiaman, a member of the voluntary people's militia or a serviceman in connection with their activities in maintaining public order, under aggravated circumstances.

APPENDIX II

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.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

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.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

United Nations Economic and Social Council (ECOSOC) 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.

ECOSOC 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

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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 32/61 of 8 December 1977 (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 (selected article)

Article 1

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