

# THE DEATH PENALTY IN THE OSCE AREA

BACKGROUND PAPER 2003/1

HUMAN DIMENSION IMPLEMENTATION MEETING

OCTOBER 2003



This paper was prepared by the Human Rights Section of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) in co-operation with OSCE field offices. Every effort has been made to ensure that the information contained in this paper is accurate and impartial.

This paper updates Background Paper 2002/1 of September 2002. It is intended to provide a comparative overview of the death penalty throughout the OSCE region and to promote constructive discussion. The content of the paper does not necessarily reflect the policy or position of the OSCE or the ODIHR.

Any comments or suggestions should be addressed to the Human Rights Section of the ODIHR.

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# INTRODUCTION<sup>1</sup>

The Organization for Security and Co-operation in Europe (OSCE) has 55 participating States. The majority of these states have abolished the death penalty for all crimes. **Chapter 1** of this paper lists the participating States of the OSCE and classifies them as abolitionist, partly abolitionist, *de facto* abolitionist, or retentionist.

While the commitments undertaken by OSCE participating States do not require them to abolish the death penalty, there are a number of commitments regarding its use. In particular, participating States have committed themselves to impose the death penalty only in a manner that is not contrary to their international commitments. Accordingly, **Chapter 2** of this paper seeks to provide a clear overview of the international standards on the death penalty that have been developed within the forums of the OSCE, the United Nations, the Council of Europe, and the European Union.

The participating States that retain the death penalty have also committed themselves to make information on its use available to the public. In **Chapter 3** of this paper, the ODIHR seeks to facilitate the compliance of participating States with this commitment by providing a forum for the publication and dissemination of such information. It is the intention of the ODIHR that this chapter is based primarily on information received from the participating States themselves. It includes information on the legal framework, statistics on sentences and executions, and information on compliance with the international standards outlined in Chapter 2.

Finally, a copy of the questionnaire that was sent to the participating States requesting information on the use of the death penalty is attached as an annex along with full-text reproductions of the relevant OSCE commitments and other international standards.

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<sup>1</sup> This paper updates Background Paper 2002/1. The reporting period covered by this paper is from 30 June 2002 to 30 June 2003. Information on developments that have occurred since 30 June 2003 will be indicated as such.

# 1.

## THE STATUS OF THE DEATH PENALTY IN THE OSCE AREA

The status of the death penalty differs among the 55 participating States of the OSCE. For the purpose of this paper, each participating State has been classified as **abolitionist**, **partly abolitionist**, **de facto abolitionist**, or **retentionist** according to the status of the death penalty in the relevant state's law and practice.

**Abolitionist: The death penalty has been abolished for all crimes.**

The majority of the participating States are abolitionist: Andorra, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia and Montenegro, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkmenistan, Ukraine, and the United Kingdom.

Four participating States are partly abolitionist:

- Albania
- Greece
- Latvia
- Turkey

**De facto abolitionist: The death penalty is retained for crimes committed in peacetime and in wartime, but executions are not carried out.**

Three participating States are *de facto* abolitionist:

- Armenia
- Kyrgyzstan
- The Russian Federation

**Retentionist: The death penalty is retained for crimes committed in peacetime and in wartime, and executions are carried out.**

Five participating States are retentionist:

- Belarus
- Kazakhstan
- Tajikistan
- The United States of America
- Uzbekistan

## 2.

# INTERNATIONAL STANDARDS ON THE DEATH PENALTY

The aim of this chapter is to provide an overview of the international standards on the death penalty that have been developed by the OSCE, the Council of Europe, the United Nations, and the European Union. For the purposes of this overview, the international standards have been divided into two main categories:

- International standards abolishing the death penalty; and
- International standards restricting the use of the death penalty.

### 2.1

## INTERNATIONAL STANDARDS ABOLISHING THE DEATH PENALTY

### Council of Europe

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) does not require the abolition of the death penalty.<sup>2</sup> However, since the adoption of the ECHR, steps have been taken to develop legally binding instruments that do abolish the death penalty.

The Council of Europe has adopted **Protocol No. 6** to the ECHR,<sup>3</sup> which **abolishes the death penalty during peacetime**. All new member states of the Council of Europe are required to ratify Protocol No. 6 within a certain time limit.<sup>4</sup> In addition, the Council of Europe has also adopted **Protocol No. 13** to the ECHR,<sup>5</sup> which is the first legally binding instrument that **abolishes the death penalty in all circumstances, including in time of war**. Protocol No. 13 entered into force on 1 July 2003.

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<sup>2</sup> ETS No. 005. Entered into force on 3 September 1953.

<sup>3</sup> ETS No. 114. Entered into force on 1 March 1985. Article 2 of Protocol No. 6 provides that a state may make provision in its law for the death penalty in respect of acts committed in times of war or of imminent threat of war.

<sup>4</sup> Resolution 1044 (1994) of the Parliamentary Assembly of the Council of Europe on the Abolition of Capital Punishment, 4 October 1994.

<sup>5</sup> ETS No. 187. Entered into force on 1 July 2003.

- Forty-one OSCE participating States have ratified Protocol No. 6. Bosnia and Herzegovina ratified it on 30 June 2002.<sup>6</sup>
- Seventeen OSCE participating States have ratified Protocol No. 13. Fourteen have ratified it since 30 June 2002: Andorra, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, Georgia, Hungary, Liechtenstein, Romania, San Marino, Sweden, and Ukraine.<sup>7</sup>

### United Nations (UN)

The International Covenant on Civil and Political Rights (ICCPR) does not require the abolition of the death penalty.<sup>8</sup> However, since the adoption of the ICCPR, steps have been taken to develop a legally binding instrument that does require the abolition of the death penalty. Accordingly, the UN has adopted the **Second Optional Protocol** to the ICCPR,<sup>9</sup> which **abolishes the death penalty during peacetime**.

Thirty-four OSCE participating States have ratified the Second Optional Protocol. None has ratified it since 30 June 2002.

### European Union (EU)

Article 2 of the Charter of the Fundamental Rights of the European Union,<sup>10</sup> which is politically binding on EU member states, provides that no one shall be condemned to death or executed.

## 2.2 INTERNATIONAL STANDARDS RESTRICTING THE USE OF THE DEATH PENALTY

### OSCE

OSCE commitments, which are of a politically binding nature, do not require the abolition of the death penalty. However, the OSCE participating States have committed

<sup>6</sup> Of the 55 OSCE participating States, 45 are member states of the Council of Europe.

<sup>7</sup> Of these 14, Bosnia and Herzegovina and Hungary have ratified Protocol No.13 since 30 June 2003.

<sup>8</sup> UN General Assembly Resolution 2200 A (XXI) of 16 December 1966. Entered into force on 23 March 1976.

<sup>9</sup> UN General Assembly Resolution 44/128 of 15 December 1989. Entered into force 11 July 1991. Article 2 of the Second Optional Protocol provides that no reservation is admissible except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

<sup>10</sup> The Presidents of the European Parliament, European Council, and European Commission signed and proclaimed the Charter on behalf of their institutions on 7 December 2000 in Nice, France.



themselves to carry out the death penalty only for the **most serious crimes** and in a **manner not contrary to their international commitments**.<sup>11</sup>

### Council of Europe

As seen above, the ECHR, which is of a legally binding nature, does not require the abolition of the death penalty. Article 2 of the ECHR, which enshrines the right to life, provides that:

“No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”

The text of the ECHR itself places no explicit restrictions on the use of the death penalty, save that it can only be carried out following conviction by a court of a crime for which the death penalty is provided for by law. However, the jurisprudence of the European Court of Human Rights has interpreted both Article 2 and Article 3 of the ECHR as placing certain limitations on the use of the death penalty.<sup>12</sup>

### United Nations

The ICCPR, which is of a legally binding nature, does not require the abolition of the death penalty. Article 6 of the ICCPR provides for the right to life but recognizes the death penalty as a permissible exception to the right to life. However, while the ECHR places few specific restrictions on the use of the death penalty, the text of the ICCPR provides that no one shall be deprived of the right to life arbitrarily and lists a number of specific restrictions and limitations on the use of the death penalty. Article 6(2) provides that:

- The death sentence may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime;
- The death sentence may be imposed only in a manner not contrary to the provisions of the ICCPR, and the death penalty may be carried out only pursuant to a final judgement rendered by a competent court;
- Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence;
- The death sentence shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women.

<sup>11</sup> Concluding Document of the 1989 Vienna Follow-up Meeting, “Questions relating to Security in Europe”, Paragraph 24. The OSCE commitments also place a number of positive obligations on participating States that choose to retain the death penalty. A full-text reproduction of the OSCE commitments on the death penalty can be found in Annex 1.

<sup>12</sup> Article 3 of the ECHR prohibits torture and inhuman or degrading treatment or punishment.

The limitations set out in Article 6(2) have been interpreted by the Human Rights Committee in its Concluding Observations on State Party Reports, in its General Comment No. 6, and in its jurisprudence on individual complaints.<sup>13</sup> In addition, the limitations set out in Article 6(2) have also been interpreted and expanded upon in documents produced by other UN bodies, in particular, in the ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty<sup>14</sup> and in the annual resolutions of the Commission on Human Rights on the Question of the Death Penalty.<sup>15</sup> The following is a brief overview of the nature of the restrictions set out in Article 6(2) on the basis of the documentation produced by the above-mentioned bodies.<sup>16</sup>

### **Most serious crimes**

General Comment No. 6 states that the term “most serious crimes” must be read restrictively to mean that the death penalty should be an exceptional measure. The ECOSOC Safeguards specify that the scope of the crimes punishable by the death penalty should not go beyond intentional crimes with lethal or other extremely grave consequences. The Human Rights Committee has gone further than this, stating that the imposition of the death penalty for crimes that do not result in loss of life would be contrary to the ICCPR.<sup>17</sup> Resolution 2003/67 of the Commission on Human Rights states that the death penalty should not be imposed for non-violent acts such as financial crimes, non-violent religious practice or expression of conscience, and sexual relations between consenting adults.

### **In a manner not contrary to the provisions of the ICCPR and pursuant to a final judgement rendered by a competent court**

States parties are obliged to observe rigorously all the fair-trial guarantees set out in Article 14 of the ICCPR. The Human Rights Committee is of the opinion that a violation of the right to life would result from an execution following a trial that fails to ensure the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal.<sup>18</sup> The

<sup>13</sup> General Comment No. 6, adopted at the 16th session of the Human Rights Committee, 1982.

<sup>14</sup> Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, UN Economic and Social Council Resolution 1984/50, adopted on 25 May 1984.

<sup>15</sup> The most recent resolution of the Commission on Human Rights on the Question of the Death Penalty is Resolution 2003/67, April 2003.

<sup>16</sup> Unless otherwise indicated, the documents referred to in the following overview are not of a legally binding nature.

<sup>17</sup> CCPR/C/79/Add.25, 3 August 1993.

<sup>18</sup> General Comment No. 6.

ECOSOC Safeguards and Resolution 2003/67 of the Commission on Human Rights also state that all legal proceedings should conform to Article 14 of the ICCPR.<sup>19</sup>

### **Persons below the age of 18 and pregnant women**

The prohibition on the death sentence for crimes committed by persons below the age of 18 is reiterated in the Convention on the Rights of the Child (CRC), which is of a legally binding nature.<sup>20</sup> This principle has been reaffirmed by the ECOSOC Safeguards and Resolution 2003/67 of the Commission on Human Rights. In addition, the Sub-Commission on the Promotion and Protection of Human Rights has stated that the imposition of the death penalty for crimes committed by persons below the age of 18 is contrary to customary international law.<sup>21</sup> The prohibition on the execution of pregnant women was reaffirmed by a number of resolutions of the Commission on Human Rights and the ECOSOC Guidelines.<sup>22</sup>

Although Article 6(2) prohibits the execution of only two specific categories of persons, this list should not be considered exhaustive. Indeed, the ECOSOC Safeguards extend this restriction to the elderly, mothers with dependent infants, the insane, and the mentally disabled.

### **Right to seek pardon or commutation**

The term “pardon” means the removal of the death sentence and release, while the term “commutation” means the substitution of the death sentence with a less severe sentence. The right to seek pardon or commutation has been reaffirmed by General Comment No. 6, the ECOSOC Safeguards, and Resolution 2003/67 of the Commission on Human Rights.

Finally, it should be noted that the use of the death penalty also raises issues under Article 7 of the ICCPR on the prohibition of torture and inhuman or degrading treatment. The Human Rights Committee has found violations of Article 7 in certain

<sup>19</sup> The Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions has stated that the process leading to the imposition of the death penalty must also comply with Articles 9 and 15 of the ICCPR.

<sup>20</sup> Article 37 of the Convention on the Rights of the Child, UN General Assembly Resolution 44/25 of 20 November 1989. Entered into force on 2 September 1990.

<sup>21</sup> Resolution 2000/17, 17 August 2000.

<sup>22</sup> The Human Rights Committee has expressed the opinion that the prohibition on the execution of children and pregnant women represents a norm of customary international law. On this basis, the Human Rights Committee has stated that state parties may not reserve the right to execute children or pregnant women. See General Comment No. 24, adopted at the 52nd session of the Human Rights Committee, 1994.

cases concerning detention on death row, the method of execution, and the issuance of execution warrants to mentally incapable persons.

### European Union

The EU takes an active stance against the death penalty in its relations with accession countries and third countries. First, the abolition of the death penalty is a prerequisite to accession to the EU.<sup>23</sup> Second, the EU has developed *Guidelines on European Union policy towards third countries on the death penalty*.<sup>24</sup> These Guidelines, which are reproduced in Annex 2, contain a list of minimum standards on the use of the death penalty.

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<sup>23</sup> The abolition of the death penalty for peacetime crimes is an element of the Copenhagen Criteria for accession countries to the European Union.

<sup>24</sup> General Affairs Council, Luxembourg, 29 June 1998.

### 3.

## THE DEATH PENALTY IN THE OSCE AREA

The 12 participating States that retain the death penalty in some form have committed themselves to ensuring transparency by making information about its use available to the public.<sup>25</sup> This chapter aims to facilitate compliance with this commitment by providing a forum for participating States to make such information available on an annual basis. It is comprised of country entries on the **12** participating States that retain the death penalty in some form. In addition, there is also a country entry on the **five** participating States that have abolished the death penalty for all crimes yet retain certain provisions on the death penalty in domestic legislation.

It is the ODIHR's intention that the content of each country entry should be based primarily on information provided by the participating States themselves. Accordingly, a questionnaire on the use of the death penalty was sent to each of the relevant participating States. The questionnaire, which is reproduced in Annex 3, requested detailed information on the legal framework, statistics on sentences and executions, and information on compliance with the international standards outlined in Chapter 2.

Eight of the 12 participating States that retain the death penalty in some form responded to the questionnaire: Albania, Belarus, Kazakhstan, Latvia, Turkey, the Russian Federation, the United States of America, and Uzbekistan. In addition, two of the five participating States that have abolished the death penalty yet retain certain provisions on the death penalty in their legislation also responded to the questionnaire: Azerbaijan and Serbia and Montenegro. The information received from the participating States has been complemented by information received from other sources, including OSCE field presences, intergovernmental organizations, non-governmental organizations, and media reports.<sup>26</sup> Where there was no response from the participating State, the information relied upon is solely from these other sources.

Each country entry contains information on relevant international instruments, the country's legal framework, statistics, and compliance with international safeguards. First, the section on "relevant international instruments" lists the legally binding instruments the state has ratified. When read in conjunction with Chapter 2 of this paper, this

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<sup>25</sup> Copenhagen Document 1990, Paragraph 17.8.

<sup>26</sup> The responses received from participating States are kept by the Human Rights Section of the ODIHR. Copies are available upon request.

section should indicate exactly which binding commitments the participating State has undertaken. Second, the section on “legal framework” outlines those crimes for which the death sentence can be imposed. It is in this section that trends towards reduction in scope or abolition are discussed. Third, the section on “statistics” indicates the number of death sentences that have been imposed and executed during the reporting period of this paper. Fourth, the section on “international safeguards” indicates the extent to which each participating State complies with the international standards that were outlined in Chapter 2 of this paper.

## 3.1

# ALBANIA<sup>27</sup>

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>28</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	-
CRC	R
ECHR	R
Protocol No. 6 to the ECHR	R
Protocol No. 13 to the ECHR	S

**Status:** partly abolitionist

### LEGAL FRAMEWORK

The death penalty is retained for serious crimes committed in wartime or during a state of emergency.<sup>29</sup> The Military Criminal Code envisages the death penalty for seven crimes if committed in wartime or during a state of emergency: surrender to enemy forces, releasing state secrets, collaborating with the enemy, desertion by senior military personnel, non-observance of orders, forcing others to violate orders, and murder.<sup>30</sup> Albania signed Protocol No. 13 to the ECHR on 26 May 2003.

#### Method of execution

There is currently no provision on this in Albanian law. Law No. 8331 provides that rules on the execution of the death penalty will be regulated by special provisions.<sup>31</sup>

<sup>27</sup> The Delegation of Albania to the OSCE responded to the questionnaire. This entry was written with the assistance of the OSCE Presence in Albania.

<sup>28</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>29</sup> Article 8(a), Military Criminal Code, Law No. 8003, 1955. Amended by Law No. 8991, 4 July 2002.

<sup>30</sup> Articles 25, 26, 28, 34, 47, 50, and 77, Military Criminal Code.

<sup>31</sup> 21 April 1998.

## INTERNATIONAL SAFEGUARDS

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### **Persons under the age of 18 at the time the crime was committed**

Persons who were below the age of 18 at the time the crime was committed cannot be sentenced to death.<sup>32</sup>

### **Pregnant women**

Women cannot be sentenced to death.<sup>33</sup>

### **Persons suffering from any form of mental disorder**

There is no provision on this in Albanian law. Law No. 8331 provides that rules on the execution of the death penalty will be regulated by special provisions.

### **The right to seek pardon or commutation**

The Constitution gives the President the authority to grant clemency.<sup>34</sup> The cases of all persons sentenced to death are automatically considered regardless of whether the sentenced person has submitted an appeal for clemency. Sentences are not executed until the decision on clemency has been issued.<sup>35</sup>

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<sup>32</sup> Article 8(a), Military Criminal Code.

<sup>33</sup> Article 8(a), Military Criminal Code.

<sup>34</sup> Constitution of Albania, 21 October 1998.

<sup>35</sup> Article 70 of the Criminal Code, Law No. 7895, 27 January 1995, and Article 462(3) of the Criminal Procedure Code, Law No. 7905, 21 March 1995.



## 3.2

# ARMENIA<sup>36</sup>

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>37</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	-
CRC	R
ECHR	R
Protocol No. 6 to the ECHR	S
Protocol No. 13 to the ECHR	-

**Status:** *de facto* abolitionist

### LEGAL FRAMEWORK

The Constitution of the Republic of Armenia states that: “Everyone has the right to life. Until such time as it is abolished, the death penalty may be prescribed for particularly grave crimes as an exceptional punishment.”<sup>38</sup> The new Criminal Code, which came into force on 1 August 2003, replaces the death penalty with life imprisonment.<sup>39</sup> The previous Criminal Code of 1961 had envisaged the death penalty for a number of crimes.<sup>40</sup>

Although the death penalty is not envisaged by the new Criminal Code, it has been retained for murder with aggravating circumstances, terrorist acts, and the rape of female minors if committed before the entry into force of the new Criminal

<sup>36</sup> The Delegation of Armenia to the OSCE did not respond to the questionnaire. This entry was written with the assistance of the OSCE Office in Yerevan, Armenia, and with the co-operation of the Ministry of Justice.

<sup>37</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>38</sup> Article 17 of the Constitution of the Republic of Armenia, 5 July 1995.

<sup>39</sup> Adopted on 18 April 2003.

<sup>40</sup> Adopted on 7 March 1961 and entered into force on 1 July 1961.

Code on 1 August 2003.<sup>41</sup> Accordingly, the five men who are currently on trial for the murder of eight senior officials in the National Assembly in 1999 may be sentenced to death.

Upon accession to the Council of Europe in January 2001, Armenia undertook to abolish the death penalty for crimes committed in peacetime and to ratify Protocol No. 6 within a year.<sup>42</sup> In response to the decision to retain the death penalty for the crimes referred to above, the Secretary-General of the Council of Europe commented that:

“Partial abolition of the death penalty in Armenia is a move towards fulfilling this country’s commitments as a Council of Europe member State. This is the first step in the right direction. Nevertheless, I do hope the Armenian parliamentarians will lift, as soon as possible, the last restrictions to allow the complete abolition of this unacceptable punishment.”<sup>43</sup>

**It should be noted that, on 9 September 2003, the Armenian parliament voted to abolish the death penalty and to ratify Protocol No. 6. It was not possible to take account of this development in this publication, as it occurred just before going to press.**

## **Moratorium**

*A de facto* moratorium has been in place since 1991.

## **Method of execution**

Shooting<sup>44</sup>

<sup>41</sup> Article 3 of the Law on the Application of the Criminal Code, 18 April 2003.

<sup>42</sup> On 15 July 2003, the Armenian Constitutional Court ruled that Protocol No. 6 to the ECHR is in conformity with the Constitution of Armenia, Decision of the Constitutional Court 437 of 15 July 2003.

<sup>43</sup> Council of Europe Secretary General Walter Schwimmer called the Armenian decision concerning capital punishment “a first step in the right direction”, Press Release, Council of Europe, 22 April 2003.

<sup>44</sup> In the event of a person’s being sentenced to death under the exception provided in the Law on the Application of the Criminal Code of 18 April 2003, the method of execution would remain the same as that previously provided for in Article 22 of the Criminal Code of 1961.

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 STATISTICS
 

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**Death sentences**

Two persons were sentenced to death in the period from 30 June 2002 to 30 June 2003.<sup>45</sup> On 1 August 2003, the death sentences of all 42 persons on death row were commuted to life imprisonment.

**Executions**

None

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 INTERNATIONAL SAFEGUARDS
 

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**Persons under the age of 18 at the time the crime was committed**

Persons who were below the age of 18 at the time the crime was committed cannot be sentenced to death.<sup>46</sup>

**Pregnant women**

Pregnant women or women who were pregnant at the time the crime was committed cannot be sentenced to death.<sup>47</sup>

**Non-nationals**

The relevant consulate or embassy can be notified of the arrest or detention of a non-national upon request.<sup>48</sup> A non-national has the right to notify the relevant consulate or embassy upon his or her arrest or detention.<sup>49</sup>

**The right to seek pardon or commutation**

The Constitution gives the President authority to grant clemency<sup>50</sup> and provides that all persons are entitled to petition for pardon or commutation of the

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<sup>45</sup> Mr. Hakob Khachatryan, born in 1979, was convicted of murder in aggravating circumstances under Article 99, Criminal Code 1961. Mr. Aram Petrosyan, born in 1978, was convicted of murder in aggravating circumstances under Article 99, Criminal Code 1961.

<sup>46</sup> In the event of a person's being sentenced to death under the exception provided in the Law on the Application of the Criminal Code of 18 April 2003, the provision in Article 22 of the Criminal Code of 1961 prohibiting the execution of persons who were under the age of 18 at the time of the crime would still apply.

<sup>47</sup> In the event of a person's being sentenced to death under the exception provided in the Law on the Application of the Criminal Code of 18 April 2003, the provision in Article 22 of the Criminal Code of 1961 prohibiting the execution of pregnant women would still apply.

<sup>48</sup> Article 13, Law on the Treatment of Arrested and Detained Persons, 6 February 2002. Article 63 and Article 65 of the Criminal Procedure Code, 1999.

<sup>49</sup> Article 13, Law on the Treatment of Arrested and Detained Persons, 6 February 2002. Article 63 and Article 65 of the Criminal Procedure Code, 1999.

<sup>50</sup> Article 55(17) of the Constitution.

penalty imposed.<sup>51</sup> The procedure for considering appeals for pardon is governed by a Presidential Decree of 1997.<sup>52</sup> Appeals are initially considered by the Presidential Clemency Commission, which prepares recommendations for the President on the basis of materials on the personality and criminal history of the person and the gravity of the crime. In compliance with the 1961 Criminal Code, death sentences may be commuted to imprisonment for a non-fixed period of time, but not exceeding 20 years.<sup>53</sup> For those persons convicted prior to 1 August 2003, under the 1961 Criminal Code, and having been sentenced to death for any crime other than one of the three crimes listed above, death sentences shall be substituted with life imprisonment.<sup>54</sup> On 1 August 2003, the President signed a decree commuting the sentences of all 42 persons on death row.<sup>55</sup>

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<sup>51</sup> Article 40 of the Constitution.

<sup>52</sup> Decree of the President of the Republic of Armenia "On the General Rules for Considering Requests for Pardon", 14 August 1997.<sup>53</sup> Article 23 of the Criminal Code of 1961.

<sup>54</sup> Article 6 of the Law on the Application of the Criminal Code of 18 April 2003.

<sup>55</sup> Article 6 of the Law on the Application of the Criminal Code. The name and age of each of these persons is available from the Human Rights Section of the ODHR upon request.

### 3.3 AZERBAIJAN<sup>56</sup>

#### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>57</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	R
CRC	R
ECHR	R
Protocol No. 6 to the ECHR	R
Protocol No. 13 to the ECHR	-

**Status:** abolitionist<sup>58</sup>

#### LEGAL FRAMEWORK

The exact legal framework on the death penalty appears to contain a number of discrepancies:

- The **Constitution** allows the death penalty, until its complete abolition, for especially grave crimes against the state, life, and health of a human being;
- The **Law on Accession to the Second Optional Protocol** allows the death penalty during wartime for serious crimes of a military nature committed during wartime;
- The **Constitutional Law on the Regulation and Implementation of Human Rights and Freedoms** allows no exception to the right to life except for deaths resulting from lawful conduct of war.

<sup>56</sup> The Delegation of Azerbaijan to the OSCE responded partially to the questionnaire. This entry was written with the assistance of the OSCE Office in Baku, Azerbaijan.

<sup>57</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>58</sup> Azerbaijan has been classified as abolitionist. However, the classification is not strict, as certain provisions on the death penalty are retained in domestic legislation.

### Constitution of Azerbaijan<sup>59</sup>

The Constitution allows for a relatively broad application of the death penalty. Article 27 of the Constitution provides that, "Everyone has the right to life." However, Article 27(3) allows for the death penalty as a permissible exception to the right to life. It provides that, "The death penalty, as the ultimate measure of punishment, until its complete abolition, may be prescribed by law only for especially grave crimes against the state, life and health of a human being." It is of interest that no attempt was made to include an amendment to Article 27(3) in the far-reaching package of constitutional amendments that was voted on in the referendum of August 2002.

### Law on Accession to the Second Optional Protocol<sup>60</sup>

The Law on Accession to the Second Optional Protocol allows for a limited application of the death penalty. Azerbaijan has entered a reservation to the Protocol providing for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.<sup>61</sup>

### Constitutional Law on the Regulation of the Implementation of Human Rights and Freedoms<sup>62</sup>

The Constitutional Law appears to prohibit the use of the penalty in all circumstances. It provides that the right to life in Article 27 of the Constitution shall not be limited except for deaths resulting from lawful conduct of war, and no reservation to it shall be made.

**Despite these discrepancies, Azerbaijan has been classified as abolitionist due to the fact that the Criminal Code makes no provision for the death penalty for crimes committed in peacetime or in wartime.**

<sup>59</sup> Constitution of the Republic of Azerbaijan, 12 November 1995, with amendments introduced by the referendum of 24 August 2002.

<sup>60</sup> Law on Accession to the ICCPR Concerning the Second Optional Protocol on the Abolition of Capital Punishment, 11 December 1998, as amended by Law No 704-IQD, 5 October 1999.

<sup>61</sup> Azerbaijan initially reserved the right to apply the death penalty for grave crimes committed during wartime or in condition of threat of war. However, a number of other states parties objected to the wording of the reservation on the basis that it partly contradicted Article 2 of the Second Optional Protocol, as it was not limited to serious crimes of a military nature committed in wartime. Azerbaijan altered the wording of the reservation in September 2000.

<sup>62</sup> No. 404-IKQ EIF/Azerbaijan Newspaper, 4 January 2003, No. 2.

## 3.4 BELARUS<sup>63</sup>

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>64</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	-
CRC	R

**Status:** retentionist

### LEGAL FRAMEWORK

The death penalty is retained for crimes committed in peacetime and in wartime. The Constitution of the Republic of Belarus provides that, until its abolition, the death penalty may be applied in accordance with the law as an exceptional penalty for particularly serious crimes and only in accordance with the verdict of a court of law.<sup>65</sup> The Criminal Code provides that the death penalty can be imposed for severe crimes connected with the deliberate deprivation of life with aggravating circumstances.<sup>66</sup>

The death penalty is envisaged for 14 crimes: acts of aggression, murder of a representative of a foreign state or international organization with the intention to provoke international tension or war, international terrorism, genocide, crimes against the security of humanity, murder with aggravating circumstances, terrorism, terrorist acts, treason that results in loss of life, conspiracy to seize power, sabotage, murder of a police officer, use of weapons of mass destruction, and violations of the laws and customs of war.<sup>67</sup>

<sup>63</sup> The Delegation of Belarus to the OSCE responded partially to the questionnaire. This entry was written with the assistance of the OSCE Office in Minsk, Belarus.

<sup>64</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>65</sup> Article 24 of the Constitution of the Republic of Belarus, 27 November 1996.

Article 59(1), Criminal Code, 9 July 1999.

<sup>67</sup> Articles 122(2), 124(2), 126, 127, 128, 139(2), 289(3), 359, 356(2), 367(3), 360(2), 362, 134, and 135(3) of the Criminal Code.

## Moratorium

No moratorium on executions is in place. On 30 May 2002, the House of Representatives of the National Assembly held hearings on the issue of the death penalty. It was widely reported that the majority of the parliamentarians opposed the abolition of the death penalty or the introduction of a moratorium.<sup>68</sup> However, following the hearing, the House of Representatives recommended that the Council of Ministers should study the possibility of the gradual abolition of the death penalty.<sup>69</sup>

## Method of execution

Shooting<sup>70</sup>

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## STATISTICS

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### Access to statistics on the use of the death penalty

Official statistics on persons sentenced to death were provided, although official statistics on executions were not provided. The Delegation of Belarus to the OSCE informed the ODHR that "all information related to the procedure of execution of the death penalty is regulated by internal regulations that are considered to be a State secret". In its Concluding Observations on the fourth periodic report submitted by Belarus, the Human Rights Committee expressed its concern at the secrecy surrounding the procedures relating to the death penalty at all stages.<sup>71</sup>

### Death sentences

According to official statistics, the death sentences of three persons came into force during the period from 30 June 2002 to 30 June 2003.<sup>72</sup>

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<sup>68</sup> Belarusian Parliament fails to abolish death penalty, "Beloruskaya gazeta", Minsk, 3 June 2002.

<sup>69</sup> Point 2, Recommendations of the House of Representatives of the National Assembly on the results of parliamentary hearings on the topic of "Political and Legal Issues Regarding the Abolition of the Death Penalty in the Republic of Belarus", No. 484-II/1Y 13 June 2002.

<sup>70</sup> Article 59(1), Criminal Code.

<sup>71</sup> Concluding Observations of the Human Rights Committee, CCPR/C/79/Add.86, 19 November 1997, Paragraph 8.

<sup>72</sup> O.V. Bagratsov, 31; V.A. Staver, 23; and D.F. Kharkhal, 32. All three were convicted of murder with aggravating circumstances under Article 139 of the Criminal Code. All sentences came into force during the second half of 2002. According to information received from the OSCE Office in Minsk, Sergei Lischuk was sentenced to death on 30 December 2002 for murder with aggravating circumstances.



## Executions

Official statistics were not provided. The head of the Committee for the Execution of Sentences has been reported as saying that five persons were executed in 2002 and that one person had been executed as of 27 January 2003.<sup>73</sup>

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## INTERNATIONAL SAFEGUARDS

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### Persons under the age of 18 at the time the crime was committed

Persons who were below the age of 18 at the time the crime was committed cannot be sentenced to death.<sup>74</sup>

### Pregnant women

Women cannot be sentenced to death.<sup>75</sup>

### Persons suffering from any form of mental disorder

Where it is established that a person sentenced to death has a mental disorder resulting in the inability to be aware of his or her actions or to control them, the sentencing court may suspend the execution. In the event that the person recovers, the sentencing court shall decide whether the death sentence should be executed or substituted with another punishment.<sup>76</sup>

### Non-nationals

The relevant consulate or embassy must be notified of the arrest or detention of a non-national.<sup>77</sup>

### The right to a fair trial

In its Concluding Observations on the fourth periodic report of Belarus, the Human Rights Committee felt it necessary to draw attention to the Committee's jurisprudence establishing that the imposition of the death penalty following a trial that does not comply with due-process requirements violates the right to life.<sup>78</sup>

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<sup>73</sup> Five death-row inmates executed in 2002, Charter 97, 27 January 2003. According to information received from the OSCE Office in Minsk, Vitaly Staver was executed on 5 February 2003.

<sup>74</sup> Article 59(2)(1), Criminal Code.

<sup>75</sup> Article 59(2)(2), Criminal Code. In addition, Article 59(2)(3) also stipulates that the death penalty cannot be applied to men who are over the age of 65 at the time when the sentence is pronounced.

<sup>76</sup> Article 176, Criminal Executive Code, No. 365-3, 11 January 2002.

<sup>77</sup> Law on the Legal Status of Foreigners, 3 June 1993.

<sup>78</sup> Concluding Observations of the Human Rights Committee, CCPR/C/79/Add.86, 19 November 1997, Paragraph 13.

### The right to seek pardon or commutation

The Constitution gives the President authority to grant clemency.<sup>79</sup> Appeals are considered initially by the Clemency Commission. The cases of all persons sentenced to death are automatically considered regardless of whether the sentenced person has submitted an appeal for clemency. Death sentences are not executed until a decision on clemency has been issued.<sup>80</sup> The death penalty can be commuted to life imprisonment.<sup>81</sup>

Official statistics were not provided.<sup>82</sup>

### Rights of relatives

Relatives are not informed in advance of the date of execution. The sentencing court is obliged to inform a close relative that the execution has been carried out. The body is not returned, and the place of burial is not disclosed.<sup>83</sup> In two recent cases, the UN Human Rights Committee has found the treatment of the relatives of persons sentenced to death in Belarus to amount to inhuman treatment in violation of Article 7 of the ICCPR.<sup>84</sup>

The Human Rights Committee stated that the complete secrecy surrounding the date of execution, the place of burial, and the refusal to hand over the body for burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress.

As a result, the Government of Belarus is obliged to prevent similar violations from occurring in the future. It is also obliged to provide the applicants in the two cases with an effective remedy, including information on where their relatives are buried and compensation for the anguish suffered.

<sup>79</sup> Article 84(19) of the Constitution.

<sup>80</sup> The Regulation on the Procedure of Granting Clemency to Citizens Convicted by the Courts of the Republic of Belarus, Decree of the President, No. 250, 3 December 1994.

<sup>81</sup> Article 59(3) of the Criminal Code. Article 174(1) of the Criminal Executive Code provides that persons sentenced to death have the right to appeal for clemency in accordance with the law.

<sup>82</sup> According to information received from the OSCE Office in Minsk, the death sentence of Dmitry Kharkhal was commuted on 11 June 2003.

<sup>83</sup> Article 175, Criminal Executive Code.

<sup>84</sup> CCPR/C/77/D/887/1999, 24 April 2003, Paragraph 8.4, and CCPR/C/77/D/886/1999, 28 April 2003, Paragraph 9.4.

## 3.5 BOSNIA AND HERZEGOVINA<sup>85</sup>

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>86</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	R
CRC	R
ECHR	R
Protocol No. 6 to the ECHR	R
Protocol No. 13 to the ECHR	R <sup>87</sup>

**Status:** abolitionist<sup>88</sup>

### LEGAL FRAMEWORK

The death penalty has been abolished for crimes committed in peacetime and in wartime. Neither the Constitution<sup>89</sup> nor the Criminal Code<sup>90</sup> of Bosnia and Herzegovina makes any provision for the death penalty. In addition, Bosnia and Herzegovina has ratified both the Second Optional Protocol to the ICCPR and Protocols No. 6 and No. 13 to the ECHR, which take precedence over any provisions on the death penalty in domestic law.<sup>91</sup>

<sup>85</sup> The Delegation of Bosnia and Herzegovina to the OSCE did not respond to the questionnaire. This entry was written with the assistance of the OSCE Mission to Bosnia and Herzegovina.

<sup>86</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>87</sup> Bosnia and Herzegovina ratified Protocol 13 on 29 July 2003.

<sup>88</sup> Bosnia and Herzegovina has been classified as abolitionist. However, the classification is not strict, as certain provisions on the death penalty are retained in domestic legislation.

<sup>89</sup> Constitution of Bosnia and Herzegovina, Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, 14 December 1995.

<sup>90</sup> BiH official gazette 03/03, 10 February 2003. Entered into force on 1 March 2003.

<sup>91</sup> Article 2(2) of the Constitution of Bosnia and Herzegovina.

## FEDERATION OF BOSNIA AND HERZEGOVINA

The Constitution of the Federation does not provide for the death penalty. A new Federation Criminal Code came into force on 1 August 2003 that does not provide for the death penalty. The previous Criminal Code had envisaged the death penalty for 19 crimes committed in wartime or imminent danger of war.<sup>92</sup>

## REPUBLIKA SRPSKA

The Constitution of Republika Srpska provides that the death penalty may be pronounced for the most serious crimes.<sup>93</sup> However, there is no provision for the death penalty in the Criminal Code of Republika Srpska.<sup>94</sup>

### INTERNATIONAL SAFEGUARDS

In October 2002, the Human Rights Chamber of Bosnia and Herzegovina found a violation of Protocol No. 6 to the ECHR in the case of *CH/02/8679 et al.*<sup>95</sup> The applicants were four Algerian nationals who are currently detained in US detention facilities in Guantanamo Bay, Cuba.<sup>96</sup> In October 2001, the four were detained by Bosnian authorities pending an investigation into their alleged participation in international terrorism. In January 2002, the Supreme Court of the Federation ordered the release of the men on the basis that there were no further grounds for their detention. However, after their release, they were immediately arrested and handed over to US forces on 18 January 2002.

The Chamber ruled that the failure of the Bosnian authorities to seek assurances that the four would not be sentenced to death before handing them over to US forces violated Protocol No. 6 to the ECHR. The Chamber ordered the Bosnian authorities to take all possible steps to prevent the applicants from being either sentenced to death or executed.

<sup>92</sup> Criminal Code of the Federation of Bosnia and Herzegovina, F BiH official gazette 36/03.

<sup>93</sup> Article 11(2) of the Constitution of Republika Srpska.

<sup>94</sup> Criminal Code of Republika Srpska, RS official gazette 49/03, 25 June 2003. Entered into force on 1 July 2003.

<sup>95</sup> *CH/02/8679 et al.*, Decision on admissibility and merits, 11 October 2002. Similar decisions were issued in the cases of *Bensayah Belkacem (CH/02/9499)* and *Mustafa Ait Idir (CH/02/8961)* on 4 April 2003.

<sup>96</sup> *Hadj Boudellaa, Saber Lahmar, Boumediene Lakhdar, and Mohamed Nechle.*

## 3.6 GEORGIA<sup>97</sup>

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>98</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	R
CRC	R
ECHR	R
Protocol No. 6 to the ECHR	R
Protocol No. 13 to the ECHR	R

**Status:** abolitionist<sup>99</sup>

### LEGAL FRAMEWORK

The death penalty has been abolished for crimes committed in peacetime and in wartime.<sup>100</sup> The Criminal Code makes no provision for the death penalty, and Georgia has ratified both the Second Optional Protocol to the ICCPR and Protocols No. 6 and No. 13 to the ECHR. However, the Constitution of Georgia still provides that the death penalty, until its complete abolition, may be imposed by the Supreme Court for especially grave crimes against a person's life.<sup>101</sup>

<sup>97</sup> The delegation of Georgia to the OSCE did not respond to the questionnaire. This entry was written with the assistance of the OSCE Mission to Georgia.

<sup>98</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>99</sup> Georgia has been classified as abolitionist. However, the classification is not strict, as certain provisions on the death penalty are retained in domestic legislation.

<sup>100</sup> The internationally unrecognized separatist entities of Abkhazia and South Ossetia retain the death penalty, although both have introduced a moratorium on executions.

<sup>101</sup> Article 15 of the Constitution of Georgia, 24 August 1995.

## 3.7

# GREECE<sup>102</sup>

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>103</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	R
CRC	R
ECHR	R
Protocol No. 6 to the ECHR	R
Protocol No. 13 to the ECHR	S

**Status:** partly abolitionist

### LEGAL FRAMEWORK

The Constitution of Greece provides that the death penalty shall not be imposed for political crimes unless they are composite.<sup>104</sup> However, the death penalty has been removed from the Criminal Code for crimes committed during peacetime.

Greece has entered a reservation to the Second Optional Protocol to the ICCPR enabling it to apply the death penalty in wartime pursuant to a conviction for a most serious crime of a military nature committed during wartime. The Military Criminal Code retains the death penalty for certain crimes committed in time of war.<sup>105</sup>

In June 2002, the Delegation of Greece to the OSCE informed the ODIHR that Greece intended to ratify Protocol No. 13 to the ECHR shortly. As of 30 June 2003, Greece had not ratified Protocol No. 13 to the ECHR.

<sup>102</sup> The Delegation of Greece to the OSCE did not respond to the questionnaire.

<sup>103</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>104</sup> Article 7(3) of the Constitution of Greece, 11 June 1975.

<sup>105</sup> Article 6(2) of Law 2287/95, official gazette A'20.

## 3.8

# KAZAKHSTAN<sup>106</sup>

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>107</sup>
ICCPR	-
Second Optional Protocol to the ICCPR	-
CRC	R

**Status:** retentionist

### LEGAL FRAMEWORK

The Constitution of the Republic of Kazakhstan envisages the death penalty, as an exception to the right to life, for especially grave crimes.<sup>108</sup> The death penalty is envisaged for 10 crimes: murder with aggravating circumstances; terrorism; attempt on the life of a person administering justice or preliminary investigations; attempt on the life of the President; state treason; sabotage; planning, preparation, or conduct of aggressive war; use of prohibited means and methods of conducting war; genocide; and mercenary participation in armed conflict. The death penalty is also envisaged for eight military crimes if committed in time of war: insubordination or non-observance of orders, opposition to a superior or forcing him or her to violate his or her duties, violence against a superior, desertion, evasion from military service, violation of vigil-duty rules, abuse of power, and abandoning or surrendering weapons to the enemy.<sup>109</sup>

<sup>106</sup> The Delegation of Kazakhstan to the OSCE responded partially to the questionnaire. This entry was written with the assistance of the OSCE Centre in Almaty, Kazakhstan.

<sup>107</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>108</sup> Article 15 of the Constitution of the Republic of Kazakhstan, 30 August 1995. Also see Article 49(1) of the Criminal Code, 1 January 1998.

<sup>109</sup> Articles 96(2), 233, 340, 167, 165, 171, 156(2), 159(2), 160, 162(4), 367(3), 368(3), 369(3), 373(3), 374(3), 375(3), 380(3), 380(3), and 383 of the Criminal Code.

In 1999, the Supreme Court issued a resolution to the effect that the death penalty is not mandatory. The resolution states that the death penalty should only be pronounced if there are aggravating circumstances and if the person poses an exceptional danger to society.<sup>110</sup>

### **Moratorium**

There is no moratorium in place. However, the possibility of introducing a moratorium is under discussion. In his annual address to the nation on 29 April 2002, the President stated that it is necessary to study the question of introducing a moratorium with a view to abolishing capital punishment. In his annual address to the nation on 4 April 2003, the President said: "It is important to continue to make the law more humane. It is time for the government to start creating organizational, material, and legal conditions to resolve the issue of introducing a moratorium on the death penalty. Specifically, life sentences should be introduced."

Accordingly, a moratorium on executions has been linked to the introduction of life imprisonment. The Delegation of Kazakhstan to the OSCE informed the ODIHR that a draft law on life imprisonment is currently under consideration. The draft law envisages the introduction of life imprisonment as an alternative form of punishment to the death penalty as of 1 January 2004. The Delegation informed the ODIHR that the introduction of life imprisonment is the first step towards the introduction of a moratorium on executions.

### **Method of execution**

Shooting<sup>111</sup>

The death penalty cannot be executed until one year after the sentence has entered into force.<sup>112</sup>

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## STATISTICS

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### **Access to statistics on the death penalty**

Statistics on death sentences, executions, and acts of pardon and commutation were received from the Prosecutor-General's Office and the Ministry of

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<sup>110</sup> Resolution No. 1 of the Supreme Court Plenary of the Republic of Kazakhstan "On the Observation of the Rule of Law at the Stage of Imposition of Punishment", 30 April 1999.

<sup>111</sup> Article 49(1), Criminal Code. Article 167, Criminal Executive Code, 13 December 1997.

<sup>112</sup> Article 49(4), Criminal Code.



Interior.<sup>113</sup> The Centre of Legal Information under the Prosecutor-General's Office is responsible for maintaining statistics on the death penalty.

### Death sentences

The Prosecutor-General's Office provided the following statistics:

Year	Death sentences passed <sup>114</sup>	Death sentences that entered into force
2002	21	17
2003	8	0

### Executions

Statistics received from the Prosecutor-General's Office indicate that 15 persons were executed in 2001, 21 were executed in 2002, and three were executed during the first quarter of 2003.<sup>115</sup> Information on the identities of executed persons was not provided.

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## INTERNATIONAL SAFEGUARDS

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### Persons under the age of 18 at the time the crime was committed

Persons who were below the age of 18 at the time the crime was committed cannot be sentenced to death.<sup>116</sup>

### Pregnant women

Women cannot be sentenced to death.<sup>117</sup>

### Persons suffering from any form of mental disorder

There is no provision in domestic legislation explicitly prohibiting the execution of persons with any form of mental disorder.

<sup>113</sup> The statistics from the Prosecutor-General's Office and the Ministry of Interior were received in response to a request from the OSCE Centre in Almaty in advance of an international conference on "Life Imprisonment: International Standards and Practice", which was held in Almaty on 23-24 June 2003. The Delegation of Kazakhstan to the OSCE also provided relevant statistics on death sentences.

<sup>114</sup> Differing statistics were received from the Ministry of Interior, which informed the ODHR that 51 death sentences were passed in 2002 and that 28 death sentences were passed in 2003.

<sup>115</sup> Differing statistics were received from the Ministry of Interior, which indicate that 32 persons were executed in 2001, 33 were executed in 2002, and 14 were executed during the first half of 2003.

<sup>116</sup> Article 49(2), Criminal Code.

<sup>117</sup> Article 49(2), Criminal Code. This article also stipulates that the death penalty cannot be applied to men who are over the age of 65 at the time the sentence is pronounced.

## Non-nationals

The relevant consulate or embassy must be notified of the arrest of a non-national within three days.<sup>118</sup>

## The right to a fair trial

In its Concluding Observations on the initial report of Kazakhstan, the UN Committee against Torture expressed its concern about the insufficient level of independence of the judiciary and the insufficient level of guarantees for the independence of the defence counsel.<sup>119</sup>

## The right to seek pardon or commutation

The Constitution provides that all persons sentenced to death shall have the right to appeal for clemency. The procedure for the consideration of appeals by the Clemency Commission is regulated by a decree of the President.<sup>120</sup> The cases of all persons sentenced to death are considered, regardless of whether the sentenced person has submitted an appeal for clemency. Sentences are not executed until a decision on clemency has been issued. The death penalty can be commuted to life imprisonment or 25 years' imprisonment.<sup>121</sup> The Clemency Commission has been criticized due to the perceived overrepresentation of state officials and underrepresentation of independent experts.

Statistics received from the Prosecutor-General's Office indicate that two persons were granted clemency in 2001, nobody was granted clemency in 2002, and nobody was granted clemency in the first quarter of 2003.<sup>122</sup>

## Rights of relatives

Relatives are not informed of the date of execution in advance. The sentencing court is obliged to inform the spouse or a close relative that the execution has been carried out. The body is not returned, and the location of the place of burial is not disclosed to the relatives until at least two years after the burial has taken place.<sup>123</sup>

<sup>118</sup> Article 138, Criminal Procedure Code.

<sup>119</sup> A/56/44, 17 May 2001, Paragraph 128.

<sup>120</sup> Presidential Decree No. 2975 "On Provisions for Pardoning Procedure by the President of the Republic of Kazakhstan", 7 May 1996.

<sup>121</sup> Article 15 of the Constitution and Article 49(3) of the Criminal Code.

<sup>122</sup> Differing statistics were received from the Ministry of Interior, which indicate that four persons were granted clemency in 2001, two persons were granted clemency in 2002, and nobody was granted clemency in the first half of 2003.

<sup>123</sup> Article 167, Criminal Executive Code.

## 3.9 KYRGYZSTAN<sup>124</sup>

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>125</sup>
Article 6 of the ICCPR	R
Second Optional Protocol to the ICCPR	-
Article 37 (a) of the CRC	R

**Status:** *de facto* abolitionist

### LEGAL FRAMEWORK

The Constitution provides that the death penalty can be used only in exceptional cases for the most serious crimes.<sup>126</sup> The Criminal Code envisages the death penalty for six crimes: murder, rape of a juvenile, attempt upon the life of a state or public official, attempt upon the life of a person administering justice or conducting an investigation, attempt upon the life of an employee of a law enforcement body, and genocide.<sup>127</sup>

During the consideration of the initial report of Kyrgyzstan by the Human Rights Committee in July 2000, the Kyrgyz Delegation to the OSCE referred to a growing trend within Kyrgyz society in favour of abolishing the death penalty.<sup>128</sup> The national human rights programme provides for the development of a draft law on the abolition of the death penalty by 2006.<sup>129</sup>

<sup>124</sup> The Delegation of the Kyrgyz Republic to the OSCE did not respond to the questionnaire. This entry was written with the assistance of the OSCE Centre in Bishkek in co-operation with Ministry of Foreign Affairs of the Kyrgyz Republic.

<sup>125</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>126</sup> Article 18 of the Constitution of the Kyrgyz Republic, 5 May 1993.

<sup>127</sup> Articles 97, 129, 294, 319, 340, and 373 of the Criminal Code, 1 October 1997.

<sup>128</sup> Summary Record, CCPR/C/SR.1841, 1 February 2002.

<sup>129</sup> National Human Rights Programme 2002 to 2010, 2 January 2002.

## Moratorium

An official moratorium on executions is in place. A moratorium was initially introduced by a Presidential Decree that entered into force on 8 December 1998. The moratorium has subsequently been extended three times. The current moratorium will be in place until the end of 2003.<sup>130</sup> The Human Rights Committee commended the moratorium on executions and urged Kyrgyzstan to extend it indefinitely and to commute the sentences of persons on death row.<sup>131</sup>

## Method of execution

Shooting<sup>132</sup>

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## STATISTICS

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### Access to statistics on the death penalty

The Ministry of Foreign Affairs informed the ODIHR that information on the number and identity of persons sentenced to death is of a classified nature. In this context, it is of interest to note that statistics on the number of persons sentenced to death were provided during the initial report of Kyrgyzstan to the Human Rights Committee.<sup>133</sup>

### Death sentences

Official statistics were not provided. According to unofficial statistics, 140 persons were believed to be on death row as of June 2003.<sup>134</sup>

### Executions

None

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<sup>130</sup> Presidential Decree "On Prolongation of the Term of Moratorium on Execution of the Death Penalty in the Kyrgyz Republic". 1 January 2003.

<sup>131</sup> Concluding Observations of the Human Rights Committee, CCPR/CO/69/KGZ, 24 July 2000, Paragraph 8.

<sup>132</sup> Article 155(2), Criminal Executive Code, 13 December 1999. This article also provides that the execution should not be carried out in public.

<sup>133</sup> CCPR/C/113/Add.1, 3 December 1999, Paragraph 188.

<sup>134</sup> Information received from the Kyrgyz-American Bureau for Human Rights and the Rule of Law. Amnesty International reported that 160 persons were on death row in December 2002, AI Index: EUR 58/001/2002, 18 December 2002.

## INTERNATIONAL SAFEGUARDS

**Persons under the age of 18 at the time the crime was committed**

Persons who were below the age of 18 at the time the crime was committed cannot be sentenced to death.<sup>135</sup>

**Pregnant women**

Women cannot be sentenced to death.<sup>136</sup>

**Persons suffering from any form of mental disorder**

There is no provision in national law explicitly prohibiting the execution of persons with any form of mental disorder.

**Non-nationals**

The relevant consulate or embassy must be notified of the arrest of a non-national within 12 hours.<sup>137</sup> The Ministry of Foreign Affairs informed the ODIHR that no non-nationals were sentenced to death during the reporting period.

**The right to seek pardon or commutation**

The Constitution gives the President authority to grant clemency<sup>138</sup> and provides that all persons sentenced to death have the right to seek clemency.<sup>139</sup> The cases of all persons sentenced to death are automatically considered by the Presidential Clemency Commission regardless of whether the sentenced person has submitted an appeal for clemency.<sup>140</sup>

The Ministry of Foreign Affairs informed the ODIHR that two persons who had been sentenced to death were granted clemency during the period from 30 June 2002 to 30 June 2003.<sup>141</sup>

**Rights of relatives**

Relatives are not informed of the date of execution in advance. The administration of the institution where the execution was carried out is obliged to notify a close relative, although the date the execution was carried out is not disclosed. The body is not returned, and the place of burial is not disclosed.<sup>142</sup>

<sup>135</sup> Article 50(2), Criminal Code.

<sup>136</sup> Article 50(2), Criminal Code.

<sup>137</sup> Article 99, Criminal Procedure Code, 30 June 1999.

<sup>138</sup> Article 46 of the Constitution.

<sup>139</sup> Article 18(4) of the Constitution.

<sup>140</sup> The clemency procedure is governed by the Presidential Decree "On General Principles of Amnesty and Clemency".

<sup>141</sup> The death sentences of Sharabidin Toktobayev and Kanatbek Tabaldiyev were commuted to 30 years' imprisonment on 5 April 2003.

<sup>142</sup> Article 155(5), Criminal Executive Code.

## 3.10 LATVIA<sup>143</sup>

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>144</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	-
CRC	R
ECHR	R
Protocol No. 6 to the ECHR	R
Protocol No. 13 to the ECHR	S

**Status:** partly abolitionist

### LEGAL FRAMEWORK

The death penalty has been abolished for crimes committed in peacetime. However, the Criminal Code envisages the death penalty for murder in especially aggravating circumstances if committed in wartime.<sup>145</sup> The Delegation of Latvia to the OSCE informed the ODIHR that bills on the ratification of the Second Optional Protocol to the ICCPR and Protocol No. 13 to the ECHR have been submitted to parliament.

#### Method of execution

Shooting<sup>146</sup>

<sup>143</sup> The Delegation of Latvia to the OSCE responded partially to the questionnaire.

<sup>144</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>145</sup> Article 37, Criminal Code, 15 October 1998, with amendments of 18 May 2000 and 1 June 2000.

<sup>146</sup> Article 37(1), Criminal Code.

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**INTERNATIONAL SAFEGUARDS**

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**Persons under the age of 18 at the time the crime was committed**

Persons who were below the age of 18 at the time the crime was committed cannot be sentenced to death.<sup>147</sup>

**Pregnant women**

Women cannot be sentenced to death.<sup>148</sup>

**Persons suffering from any form of mental disorder**

In the event that a person who has been convicted of a criminal offence is subsequently diagnosed with a mental illness that deprives him or her of the ability to understand or control his or her actions, the court may order his or her release from serving the sentence, and compulsory measures of a medical nature may be imposed.<sup>149</sup>

**The right to seek pardon or commutation**

The Constitution gives the President authority to grant clemency. The Constitution provides that the procedures for the issuance of clemency shall be set out in a specific law.<sup>150</sup> On the basis of the Law on Clemency, the death penalty can be commuted to life imprisonment.<sup>151</sup>

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<sup>147</sup> Article 37(3), Criminal Code.

<sup>148</sup> Article 37(3), Criminal Code.

<sup>149</sup> Article 59(5), Criminal Code.

<sup>150</sup> Article 45 of the Constitution of Latvia, 15 February 1922, restored on 6 July 1993.

<sup>151</sup> 16 June 1998.

## 3.11

# MOLDOVA<sup>152</sup>

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>153</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	-
CRC	R
ECHR	R
Protocol No. 6 to the ECHR	R
Protocol No. 13 to the ECHR	S

**Status:** abolitionist<sup>154</sup>

### LEGAL FRAMEWORK

Moldova has abolished the death penalty for crimes committed in peacetime and in wartime.<sup>155</sup> The death penalty is not provided for in the Criminal Code. However, the Constitution provides that: "The death penalty shall be abolished. Nobody shall be sentenced to such punishment except for crimes committed in time of war or in the event of imminent danger of war and only in accordance with the law."<sup>156</sup>

<sup>152</sup> The Delegation of Moldova to the OSCE did not respond to the questionnaire. This entry was written with the assistance of the OSCE Mission to Moldova.

<sup>153</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>154</sup> Moldova has been classified as abolitionist. However, the classification is not strict, as certain provisions on the death penalty are retained in domestic legislation.

<sup>155</sup> The death penalty is retained in the internationally unrecognized separatist entity of Transdnistria, though a moratorium on executions is currently in place.

<sup>156</sup> Article 24(3) of the Constitution of the Republic of Moldova, 29 July 1994, as amended by Law No. 351-XV, 12 July 2001.



## 3.12

# THE RUSSIAN FEDERATION<sup>157</sup>

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>158</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	-
CRC	R
ECHR	R
Protocol No. 6 to the ECHR	S
Protocol No. 13 to the ECHR	-

**Status:** *de facto* abolitionist

### LEGAL FRAMEWORK

The Constitution of the Russian Federation provides for the death penalty, until its abolition, as an exceptional punishment for especially grave crimes against life.<sup>159</sup> The Criminal Code of the Russian Federation envisages the death penalty for five crimes: premeditated murder with aggravating circumstances, assassination attempt against a state or public figure, attempt against the life of a person administering justice or conducting preliminary investigations, attempt against the life of a law enforcement officer, and genocide.<sup>160</sup>

Upon accession to the Council of Europe on 28 February 1996, the Russian Federation committed itself to introducing a moratorium on executions and to ratifying Protocol No. 6 to the ECHR within three years. A Presidential Decree was issued on 16 May 1996 that requested the Government to elaborate a draft law on the ratifi-

<sup>157</sup> The Delegation of the Russian Federation to the OSCE responded partially to the questionnaire.

<sup>158</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>159</sup> Article 20(2), Constitution of the Russian Federation, 25 December 1993.

<sup>160</sup> Articles 105(2), 277, 295, 317, and 357, Criminal Code, 13 June 1996.

cation of Protocol No. 6.<sup>161</sup> As of 30 June 2003, the Russian Federation had still not ratified Protocol No. 6. The Parliamentary Assembly of the Council of Europe has urged the Russian Federation to abolish the death penalty and to conclude the ratification of Protocol No. 6 to the ECHR.<sup>162</sup>

## Moratorium

A draft law on the introduction of a moratorium on executions was rejected by parliament on 14 March 1997. However, a two-tier *de facto* moratorium is currently in place that prohibits both the application and the execution of death sentences.

First, the President put a *de facto* moratorium on executions in place in August 1996.<sup>163</sup> Second, the Constitutional Court issued a *de facto* moratorium on the passage of death sentences on 2 February 1999. The Russian Constitution guarantees the right to trial by jury in cases where the death penalty is a potential sentence.<sup>164</sup> Accordingly, the Constitutional Court adopted a resolution prohibiting the passage of death sentences until such time as jury trials are introduced throughout the Russian Federation. At the time of the decision, jury trials were only available in nine of the 89 constituent entities of the Federation.<sup>165</sup>

The Criminal Procedure Code envisaged the national introduction of jury trials by January 2003.<sup>166</sup> However, on 11 December 2002, the parliament approved a bill to phase in jury trials in all the constituent entities except Chechnya by 1 January 2004. The bill envisages the introduction of jury trials in Chechnya by 1 January 2007. The introduction of jury trials throughout the Russian Federation in 2007 will remove the bar that the Constitutional Court has placed upon the passage of death sentences.

## Method of execution

### Shooting<sup>167</sup>

<sup>161</sup> Decree No. 724 "On the Gradual Decrease of the Application of the Death Penalty in Connection with Accession to the Council of Europe".

Resolution 1277, 23 April 2002.

<sup>163</sup> On 3 June 1999, President Yeltsin issued a Decree commuting the sentences of all persons on death row to either life imprisonment or deprivation of liberty for 25 years.

<sup>164</sup> Article 20(2) of the Constitution.

<sup>165</sup> The ruling was applied to the whole of the Russian Federation to ensure equality before the law.

<sup>166</sup> No. 174-FZ, 18 December 2002. Entered into force on 1 July 2002.

<sup>167</sup> Article 186, Criminal Executive Code, 8 January 1997.

## STATISTICS

**Death sentences**

None

**Executions**

None

## INTERNATIONAL SAFEGUARDS

**Persons under the age of 18 at the time the crime was committed**

Persons who were below the age of 18 at the time that the crime was committed cannot be sentenced to death.<sup>168</sup>

**Pregnant women**

Women cannot be sentenced to death.<sup>169</sup>

**Persons suffering from any form of mental disorder**

There is no provision in national law explicitly prohibiting the execution of persons with any form of mental disorder.

**Non-nationals**

The relevant consulate or embassy must be notified within 12 hours of the arrest of a non-national.<sup>170</sup>

**The right to seek pardon or commutation**

The Constitution and the Criminal Code give the President authority to grant clemency.<sup>171</sup> Clemency Commissions in each of the constituent entities consider appeals for clemency and make recommendations to the President.<sup>172</sup> All cases concerning persons sentenced to death are automatically considered regardless of whether the sentenced person has submitted an appeal for clemency. Sentences

<sup>168</sup> Article 59(2), Criminal Code.

<sup>169</sup> Article 59(2), Criminal Code. This article also stipulates that the death penalty cannot be applied to men who are over the age of 65 at the time when the sentence is pronounced.

<sup>170</sup> Article 96, Criminal Procedure Code, 18 December 2001.

<sup>171</sup> Article 89(c) of the Constitution and Article 85 of the Criminal Code.

<sup>172</sup> A single Presidential Pardon Commission was replaced by regional Pardon Commissions in each of the constituent entities by Presidential Decree "On the Procedure for Consideration of Clemency Appeals in the Russian Federation", 28 December 2001.

are not executed until a decision on clemency has been issued.<sup>173</sup> The death penalty can be commuted to life imprisonment or deprivation of liberty for 25 years.<sup>174</sup>

### **Rights of relatives**

Relatives are not informed in advance of the date of execution. The body is not returned, and the place of burial is not disclosed to relatives.<sup>175</sup>

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<sup>173</sup> Article 184, Criminal Executive Code.

<sup>174</sup> Article 59(3), Criminal Code.

<sup>175</sup> Article 186(4) of the Criminal Executive Code.

## 3.13

# SERBIA AND MONTENEGRO<sup>176</sup>

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>177</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	R
CRC	R
ECHR	S
Protocol No. 6 to the ECHR	S
Protocol No. 13 to the ECHR	S

**Status:** abolitionist<sup>178</sup>

### LEGAL FRAMEWORK

The death penalty has been abolished for crimes committed in peacetime and in wartime. The Charter of Human and Minority Rights and Civil Liberties, which forms an integral part of the Constitutional Charter of the State Union of Serbia and Montenegro, provides that: "Human life is inviolate. There shall be no death penalty in the State Union of Serbia and Montenegro."<sup>179</sup>

The Constitutions of the two Republics still retain certain provisions on the death penalty. However, preparations are under way in both Republics to harmonize the Republic Constitutions with the Constitutional Charter of the State Union

<sup>176</sup> The Delegation of Serbia and Montenegro to the OSCE responded to the questionnaire. This entry was written with the assistance of the OSCE Mission to Serbia and Montenegro.

<sup>177</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>178</sup> Serbia and Montenegro has been classified as abolitionist. However, the classification is not strict, as certain provisions on the death penalty are retained in domestic legislation.

<sup>179</sup> Article 11, Official Gazette of Serbia and Montenegro, No. 6/2003, 28 February 2003.

of Serbia and Montenegro.<sup>180</sup> This should result in the removal of the remaining references to the death penalty.

## REPUBLIC OF SERBIA

The Constitution of the Republic of Serbia provides that the death penalty can be pronounced only for the most serious criminal offences.<sup>181</sup> The death penalty was removed from the Criminal Law of the Republic of Serbia in March 2002.<sup>182</sup> On 2 August 2002, the death sentences of the 12 persons who had previously been sentenced to death were commuted to 40 years' imprisonment.<sup>183</sup>

## REPUBLIC OF MONTENEGRO

The Constitution of the Republic of Montenegro provides that the death penalty can be pronounced only for the most serious criminal offences.<sup>184</sup> The death penalty was removed from the Criminal Law of the Republic of Montenegro in June 2002.<sup>185</sup> On 2 August 2002, the death sentences of the three persons who had previously been sentenced to death were commuted to 40 years' imprisonment.<sup>186</sup>

<sup>180</sup> Article 51 of the Constitutional Charter provides that the Constitutions of both Republics should be harmonized with the Constitutional Charter. Official Gazette of Serbia and Montenegro, No. 1/2003, 4 February 2003.

<sup>181</sup> Article 14 of the Constitution of the Republic of Serbia, 28 September 1990.

<sup>182</sup> Official Gazette of the Republic of Serbia, No. 10/2002, 1 March 2002.

<sup>183</sup> The name, age, and crimes for which each of these persons was convicted have been provided by the Delegation of Serbia and Montenegro and are available from the Human Rights Section of the ODIHR upon request.

<sup>184</sup> Article 21 of the Constitution of the Republic of Montenegro, 12 October 1992.

<sup>185</sup> Official Gazette of the Republic of Montenegro, No. 30/2002, 28 June 2002.

<sup>186</sup> The name, age, and crimes for which each of these persons was convicted have been provided by the Delegation of Serbia and Montenegro and are available from the ODIHR upon request.

## 3.14 TAJIKISTAN<sup>187</sup>

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>188</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	-
CRC	R

**Status:** retentionist

### LEGAL FRAMEWORK

The Constitution provides that: “Everyone has the right to life. No one shall be deprived of life except by order of the court for exceptionally grave crimes.”<sup>189</sup> In July 2003, the death penalty was abolished for 10 crimes.<sup>190</sup> The death penalty was retained for five crimes: murder with aggravating circumstances, rape with aggravating circumstances, terrorism, biocide, and genocide.<sup>191</sup>

#### Moratorium

No moratorium on executions is in place. The OSCE Chairman-in-Office has called upon the President of Tajikistan to introduce a moratorium.

<sup>187</sup> The Delegation of Tajikistan to the OSCE did not respond to the questionnaire. This entry was written with the assistance of the OSCE Centre in Dushanbe, Tajikistan.

<sup>188</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>189</sup> Article 18 of the Constitution of the Republic of Tajikistan, 6 November 1994.

<sup>190</sup> Law No. 45 “On Amendments to the Criminal Code”, 1 August 2003. The death penalty was removed from the Criminal Code for hostage-taking, hijacking, banditry, illicit dealing in narcotics, cultivation of illegal substances, highway robbery or piracy, attempt on the life of a public figure, violent capture of authority, aggressive war, and the deliberate infringement of the norms of humanitarian law during armed conflict.

<sup>191</sup> Articles 104(2), 138(3), 179(4), 399, and 398 of the Criminal Code, 21 May 1998, with amendments of 1 August 2003.

**Method of execution**Shooting<sup>192</sup>**STATISTICS****Access to statistics on the death penalty**

Tajikistan treats information on death sentences and executions as a state secret.<sup>193</sup>

**Death sentences**

Official statistics were not provided. According to unofficial statistics compiled from media reports and information received from non-governmental organizations, at least 60 persons were sentenced to death in 2002, and at least 19 persons had been sentenced to death as of 30 June 2003.

**Executions**

Official statistics were not provided. According to unofficial statistics compiled from media reports and information received from non-governmental organizations, at least 16 appeals for clemency were rejected in 2002. It is understood that executions are usually carried out shortly after the rejection of the appeal for clemency.

**INTERNATIONAL SAFEGUARDS****Persons under the age of 18 at the time the crime was committed**

Persons who were below the age of 18 at the time the crime was committed cannot be sentenced to death.<sup>194</sup>

**Pregnant women**

In July 2003, a prohibition on sentencing women to death was introduced.<sup>195</sup> Previously, the prohibition had been limited to pregnant women.<sup>196</sup>

<sup>192</sup> Article 219(2), Criminal Executive Code, 6 August 2001. This article also provides that executions shall not be carried out in public.

<sup>193</sup> Article 9 (22), Law "On the Enumeration of Information To Be Considered a State Secret", 10 May 2002.

<sup>194</sup> Article 59(2), Criminal Code.

<sup>195</sup> Law No. 45 "On Amendments to the Criminal Code", 1 August 2003.

<sup>196</sup> Article 59(2), Criminal Code.



### **Persons suffering from any form of mental disorder**

If it is established that a person sentenced to death is suffering from a mental disorder that deprives the person of his ability to be aware of, or control, his actions, the execution is suspended, and the results of the medical examination are forwarded to the sentencing court.<sup>197</sup>

### **The right to a fair trial**

Since the beginning of 2001, Tajikistan has executed five persons despite requests for interim stays of execution by the Human Rights Committee. In at least four of these cases, the applications sent to the Human Rights Committee claimed that the death sentences were imposed as the result of trials that failed to comply with the fair-trial standards set out in the ICCPR.

### **The right to seek pardon or commutation**

The Constitution gives the President authority to grant clemency.<sup>198</sup> The cases of all persons sentenced to death are automatically considered by the Clemency Commission regardless of whether the person sentenced to death has submitted an appeal for clemency.<sup>199</sup> Sentences are not executed until a decision on clemency has been issued. The death sentence can be commuted to 25 years' imprisonment.<sup>200</sup>

Official statistics were not provided. According to unofficial statistics compiled from media reports and information received from non-governmental organizations, at least 16 appeals for clemency were rejected in 2002.

### **Rights of relatives**

Relatives are not informed in advance of the date of execution. The sentencing court is obliged to inform close relatives that the execution has been carried out.<sup>201</sup> The body is not returned, and the place of execution and the place of burial are not disclosed.<sup>202</sup>

<sup>197</sup> Article 222, Criminal Executive Code.

<sup>198</sup> Article 69(27) of the Constitution. Article 216 of the Criminal Executive Code provides that persons sentenced to death can apply to the President for clemency.

<sup>199</sup> The Commission was established by Presidential Decree No. 721, 8 May 1997.

<sup>200</sup> Article 59, Criminal Code.

<sup>201</sup> Amnesty International has reported that the notification procedure is not always complied with. See AI Index: EUR 60/008/2002, Amnesty International, London.

<sup>202</sup> Article 221, Criminal Executive Code.

## 3.15

# TURKEY<sup>203</sup>

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>204</sup>
ICCPR	S
Second Optional Protocol to the ICCPR	-
CRC	R
ECHR	R
Protocol No. 6 to the ECHR	S
Protocol No. 13 to the ECHR	-

**Status:** partly abolitionist

### LEGAL FRAMEWORK

The Constitution provides that the death penalty can be imposed only for terrorist crimes and crimes committed in time of war or imminent threat of war.<sup>205</sup> However, in August 2002, the death penalty was removed from the Criminal Code for all crimes committed in peacetime, including terrorism. The death sentences of all persons on death row were commuted to life imprisonment.

The death penalty was retained for crimes committed in time of war or imminent threat of war.<sup>206</sup> The Criminal Code now envisages the death penalty for eight crimes if committed in time of war or imminent threat of war.<sup>207</sup> In addition, the

<sup>203</sup> The Delegation of Turkey to the OSCE responded to the questionnaire.

<sup>204</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>205</sup> Article 38 of the Constitution of the Republic of Turkey 1982, as amended by Law No. 4709, 17 October 2001.

<sup>206</sup> Law 4771, 3 August 2002.

<sup>207</sup> Articles 125, 126, 129, 131, 133, 136, 137, and 149 of the Criminal Code.

Military Criminal Code envisages the death penalty for 26 crimes if committed in time of war or imminent threat of war.<sup>208</sup>

Turkey signed Protocol No. 6 to the ECHR on 15 January 2003, and it is expected that it will ratify the Protocol in the near future.

### **Method of execution**

Hanging<sup>209</sup>

In certain circumstances, the Military Penal Code provides for shooting as a means of execution.

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## INTERNATIONAL SAFEGUARDS

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### **Persons under the age of 18 at the time the crime was committed**

There is no explicit prohibition on sentencing to death persons who were below the age of 18 at the time the crime was committed.

### **Pregnant women**

There is no prohibition on sentencing pregnant women to death. However, the law does prohibit the execution of pregnant women before they have given birth.<sup>210</sup>

### **Persons suffering from any form of mental disorder**

It is prohibited to execute persons who are insane.<sup>211</sup>

### **The right to a fair trial**

The European Court of Human Rights issued its judgement in the case of *Öcalan v. Turkey* in March 2003.<sup>212</sup> *Öcalan* had been sentenced to death in June 1999 for treason and separatism. The Court found a violation of the prohibition on inhuman and degrading treatment on the basis that the imposition of a death sentence after an unfair trial subjects the person wrongfully to the fear that he will be executed. "The fear and uncertainty as to the future generated by the sentence of

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<sup>208</sup> Articles 54, 55, 56, 59, 60, 62, 63, 64, 69, 70, 75, 79, 80, 89, 91, 94, 97, 101, 102, 126, 127, 136, 159, and 160 of the Military Criminal Code, No. 1632, 22 May 1930.

<sup>209</sup> Article 2(4), Law on the Execution of Penalties, Law No. 647, 1965.

<sup>210</sup> Article 2(3), Law on the Execution of Penalties.

<sup>211</sup> Article 2(3), Law on the Execution of Penalties.

<sup>212</sup> Hudoc reference, REF00004133, 12 March 2003.

death, in circumstances where there exists a real possibility that the sentence will be enforced, must give rise to a significant degree of human anguish. Such anguish cannot be dissociated from the unfairness of the proceedings underlying the sentence which, given that a human life is at stake, becomes unlawful under the convention.<sup>213</sup>

### **The right to seek pardon or commutation**

The Constitution gives the President authority to grant clemency on grounds of chronic illness, disability, or old age.<sup>214</sup> The Criminal Code provides for the commutation of death sentences.<sup>215</sup>

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<sup>213</sup> *Öcalan v. Turkey*, Paragraph 207.

<sup>214</sup> Article 104 of the Constitution.

<sup>215</sup> Article 59, Criminal Code.

## 3.16

# THE UNITED STATES OF AMERICA

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>216</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	-
CRC	S
American Convention on Human Rights	S

**Status:** retentionist

### LEGAL FRAMEWORK

The death penalty is retained in federal, state, and military law.

#### Federal law

The death penalty is envisaged for 42 crimes at the federal level.<sup>217</sup>

#### State law

The death penalty is envisaged in 38 of the 55 states.<sup>218</sup> All 38 states envisage the death penalty for murder.<sup>219</sup>

<sup>216</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>217</sup> The relevant provisions regarding federal capital crimes are contained within 18 U.S.C., 21 U.S.C., and 49 U.S.C. For more-specific information relating to federal capital crimes by topic or by citation, see the Capital Defense Network website at [http://www.capdefnet.org/fdprc/contents/fed\\_cap\\_off/fed\\_cap\\_off.htm](http://www.capdefnet.org/fdprc/contents/fed_cap_off/fed_cap_off.htm).

<sup>218</sup> The states that have abolished the death penalty are Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, Wisconsin, and the District of Columbia.

<sup>219</sup> A complete list of capital crimes by state can be found at the website of the U.S. Department of Justice's Bureau of Justice Statistics at <http://www.ojp.usdoj.gov/bjs/pub/pdf/cp01.pdf>.

**Military law**

The death penalty is envisaged for 15 crimes in military law.<sup>220</sup>

**Moratorium****Federal law**

There is no moratorium on executions in place at the federal level.

**State law**

Of the 38 states that retain the death penalty, only Illinois currently has a moratorium in place. In January 2003, the newly elected Governor of Maryland, Robert L. Erlich, lifted the moratorium on executions that had been imposed by his predecessor.<sup>221</sup> The North Carolina Senate passed a bill in April 2003 imposing a two-year moratorium on executions until the completion of a review of the state's death-penalty system. The bill is currently pending in the state House of Representatives.

**Military law**

No executions have been carried out since 1961.

**Method of execution****Federal law**

In general, the method of execution is lethal injection.<sup>222</sup>

**State law**

The possible methods of execution are lethal injection, electrocution, the gas chamber, hanging, and shooting. Some states stipulate for a sole method of execution, whereas others provide for more than one possible method. The most common method of execution is lethal injection, which is either the sole or possible method of execution in all states except Nebraska. The second-most-common method is electrocution, which is the sole method of execution in Nebraska and a possible method of execution in nine states.

**Military law**

Lethal injection

<sup>220</sup> The Uniform Code of Military Justice, 31 May 1951.

<sup>221</sup> In March 2003, the Maryland Senate rejected a bill on the introduction of a moratorium until 2005.

<sup>222</sup> However, for crimes under the Violent Crime Control and Law Enforcement Act of 1994, the method is that of the state in which the conviction took place.

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## STATISTICS

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### Access to statistics on the death penalty

Official statistics on death sentences until December 2001 and executions until December 2002 are available to the public from the Bureau of Justice Statistics.<sup>223</sup>

### Death sentences

According to unofficial statistics, a total of 3,692 prisoners were on death row at the end of 2002.<sup>224</sup>

### Executions

According to official statistics, 71 persons were executed during 2002. According to unofficial statistics, 39 persons had been executed as of 30 June 2003.

#### *Federal law*

##### **2002**

According to official statistics, no persons were executed.

##### **2003**

According to unofficial statistics, **one person** has been executed.

#### *State law*

##### **2002**

According to official statistics, **71 persons were executed**. Of these, 33 were executed in Texas, seven in Oklahoma, six in Missouri, four in Georgia, four in Virginia, three in Florida, three in South Carolina, three in Ohio, two in Alabama, two in Mississippi, two in North Carolina, one in Louisiana, and one in California.

##### **2003**

According to unofficial statistics, **38 persons have been executed**. Of these, 16 were executed in Texas, nine in Oklahoma, three in Ohio, two in Florida, two in Alabama, two in Georgia, two in Indiana, one in Missouri, and one in Virginia.

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<sup>223</sup> See <http://www.ojp.usdoj.gov/bjs/>.

<sup>224</sup> All unofficial statistics referred to in this country entry are from the Death Penalty Information Center, <http://www.deathpenaltyinfo.org>.

**Military law**

No executions have been carried out since 1961.

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**INTERNATIONAL SAFEGUARDS**


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**Persons under the age of 18 at the time the crime was committed**

The United States has entered a reservation to Article 6 of the ICCPR that provides that “the United States reserves the right, subject to its constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age.”<sup>225</sup> The US Supreme Court has ruled that it is constitutional to sentence and execute persons who were at least 16 at the time of the crime.<sup>226</sup>

On 21 October 2002, the US Supreme Court refused to revisit its 1989 decision as to whether the execution of a person who was under the age of 18 at the time of the crime would be unconstitutional. Four of the nine Supreme Court Justices dissented from this refusal, stating that the execution of people for crimes committed when they were under 18 years old is “a relic of the past and is inconsistent with evolving standards of decency in a civilized society. We should put an end to this shameful practice.”<sup>227</sup> The following day, the Inter-American Commission found the United States to be violating a principle of *jus cogens* in its pursuit of the death penalty against persons who were under the age of 18 at the time of the crime.<sup>228</sup>

**Federal law**

Persons who were below the age of 18 at the time the crime was committed cannot be sentenced to death.<sup>229</sup>

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<sup>225</sup> The Human Rights Committee has expressed concern that this reservation may be incompatible with the object and purposes of the ICCPR. See Concluding Observations of the Human Rights Committee, CCPR/C/79/Add.50, A/50/40, par. 279, 3 October 1995.

<sup>226</sup> *Stanford v. Kentucky*, 492 U.S. 361 (1989). The US Supreme Court held that the Eighth Amendment does not prohibit the death penalty for crimes committed at age 16 or 17.

<sup>227</sup> Re: Kevin Nigel Stanford, 537 U.S. \_\_\_\_ (2002), 21 October 2002.

<sup>228</sup> Inter-American Commission. Report No. 62/02, Merits, Case 12.285. Michael Domingues, United States, 22 October 2002. See <http://www.cidh.oas.org/annualrep/2002eng/USA.12285.htm>.

<sup>229</sup> 18 U.S.C. § 3591(a)(2)(D), 18 U.S.C. § 3591 (b)(2).



**State law**

Of the 38 states that retain the death penalty, 22 permit the sentencing and execution of persons who were under the age of 18 at the time the crime was committed.

**Death sentences**

According to unofficial statistics, in 2002, four death sentences were imposed on persons who were under the age of 18 at the time of the crime.<sup>230</sup> According to unofficial statistics, one person who was under the age of 18 at the time of the crime had been sentenced to death as of 30 June 2003.<sup>231</sup>

**Executions**

According to unofficial statistics, three persons were executed in 2002, and one person had been executed as of 30 June 2003.<sup>232</sup>

**Military law**

Persons below the age of 18 cannot be sentenced to death.<sup>233</sup>

**Pregnant women**

Pregnant women cannot be executed under federal, state, or military law.

**Persons suffering from any form of mental disorder****Insanity**

The US Supreme Court has ruled that the execution of the insane violates the US Constitution.<sup>234</sup> On 11 February 2003, a United States Federal Appeals Court ruled it lawful to induce a death-row inmate to take medication, a consequence of which would be his reaching a level of sanity to enable execution. The case concerned Charles Singleton, who was sentenced to death for murder. Some years after the sentence was imposed, his mental health deteriorated to the extent that it was decided to commute the death sentence on grounds of mental incapacity. However, the Appeals Court overturned the decision and held it was permissible to force Mr. Singleton to take medication that would result in his being

<sup>230</sup> James Willis Bonds, aged 16 at the time of the crime; Aaron Wilson, aged 17 at the time of the crime; Jorge Alfredo Salinas, aged 17 at the time of the crime; and Shermaine Ali Johnson, aged 16 at the time of the crime.

<sup>231</sup> Tonathu Aguilar, aged 16 at the time of the crime.

<sup>232</sup> 2002: Napoleon Beazley, aged 17 at the time of the crime; T.J. Jones, aged 17 at the time of the crime; and Toronto Patterson, aged 17 at the time of the crime. 2003: Scott Allen Hain, aged 17 at the time of the crime.

<sup>233</sup> <http://www.deathpenaltyinfo.org>.

<sup>234</sup> Ford v. Wainwright, 477 U.S. 399 (1986).

sane enough to be executed. Mr. Singleton's lawyer has indicated that he will take the case to the Supreme Court, which has never ruled on whether prisoners may be medicated to make them sane enough to be executed.

### ***Mental Retardation***

In June 2002, the US Supreme Court held that the execution of mentally retarded persons violates the prohibition on cruel and unusual punishment in the Constitution.<sup>235</sup> The American Association of Mental Retardation defines mental retardation as substantial intellectual impairment appearing at birth or during childhood that impacts on the everyday life of the individual. The execution of mentally retarded persons had been prohibited under federal law prior to the ruling of the US Supreme Court.<sup>236</sup> However, all states are now required to implement legislation prohibiting the execution of mentally retarded persons.<sup>237</sup>

### **Non-nationals**

According to unofficial statistics, 119 non-nationals were reported to be on death row as of 6 August 2003. Of these, there have been allegations of a violation of the right to consular notification in 53 cases.<sup>238</sup> The right to consular notification is codified in the Vienna Convention on Consular Relations of 1963. The International Court of Justice has previously ruled that the US authorities violated the Vienna Convention by failing to inform detained non-nationals of their right to consular notification.<sup>239</sup> In January 2003, Mexico filed an application with the International Court of Justice concerning the cases of three Mexican nationals sentenced to death in the United States, who, they allege, were not informed of their right to consular notification. In February 2003, the International Court of Justice adopted an interim order requiring the United States to take all measures necessary to halt the execution of the three Mexican nationals.<sup>240</sup>

The Delegation of the United States to the OSCE informed the ODIHR that both federal and state laws provide for consular notification in the case of the arrest of non-nationals, although standard operating procedures for providing consular notification vary from jurisdiction to jurisdiction. As part of an ongoing effort to develop wider awareness of its consular-notification obligations, the State

<sup>235</sup> *Atkins v. Virginia*, 536 U.S. (2002).

<sup>236</sup> 18 U.S.C. §3596 (c).

<sup>237</sup> At the time of the ruling, 18 of the 38 states that retain the death penalty had prohibited the execution of mentally retarded persons.

<sup>238</sup> <http://www.deathpenaltyinfo.org>.

<sup>239</sup> *La Grande (Germany v. United States)*, 27 June 2001.

<sup>240</sup> *Aveno and other Mexican Nationals (Mexico v. United States)*. Public hearings are due to be held in December 2003.

Department informed the ODIHR that it distributes educational materials to federal, state, and local law enforcement agencies and organizes and participates in training seminars for law enforcement and corrections officers.

## The right to a fair trial

### ***Blanket commutations in Illinois***

In April 2002, a bipartisan commission appointed by then-Governor George Ryan of Illinois released the findings of its two-year study of the death-penalty system in Illinois. The commission recommended dozens of reforms to the state's criminal-justice system that would reduce the scope and arbitrariness of capital punishment and lower the risk of wrongful convictions and executions. The commission was unanimous in concluding that no system, given human nature and frailties, could ever guarantee absolutely that no innocent person would be sentenced to death. A majority of the commission favoured abolishing capital punishment entirely.

### ***Military Commissions***

The Military Order establishing Military Commissions to prosecute persons currently detained at Guantanamo Bay envisages the death penalty.<sup>241</sup> The Military Order has been widely criticized due to the perceived failure of the trial procedures contained therein to comply with international fair-trial standards. On 3 July 2003, President Bush declared six of the persons detained at Guantanamo Bay as eligible for trial before the Military Commissions. The United States has agreed not to seek the death penalty for citizens of the United Kingdom and Australia currently detained at Guantanamo Bay Naval Base.

### ***Racial prejudices***

In its Concluding Observations on the periodic report of the United States in 2001, the Committee for the Elimination of Racial Discrimination noted with concern that, according to the Special Rapporteur of the United Nations Commission on Human Rights on extrajudicial, summary, or arbitrary executions, there is a disturbing correlation between race, both of the victim and the defendant, and the imposition of the death penalty, particularly in Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas. The Committee urged the state party to ensure, possibly by imposing a moratorium, that no death penalty be imposed as a result of racial bias on the part of the prosecutors, judges, juries, or lawyers.<sup>242</sup>

<sup>241</sup> Military Commission Order No. 1, "Procedures for trials by military commissions of certain non-United States citizens in the war against terrorism", 21 March 2002, Part 6(g).

<sup>242</sup> Concluding Observations of the CERD on the United States, A/56/18, 14 August 2001, Paragraph 396.

**The right to pardon and commutation**

Persons sentenced to death under federal, state, and military law have the right to seek pardon or commutation. At the federal and state level, the President has the authority to grant clemency, and, at the state level, the governor has the authority to grant clemency, although the process differs from state to state.

According to unofficial statistics, clemency was granted in three cases in 2002. In January 2003, the former Governor of Illinois George Ryan, granted four pardons and commuted the sentences of all 167 persons on death row. To date, according to unofficial statistics, clemency has been granted in three other cases in 2003.

## 3.17

# UZBEKISTAN<sup>243</sup>

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>244</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	-
CRC	R

**Status:** retentionist

### LEGAL FRAMEWORK

The Constitution provides that, “The right to life is the inalienable right of every human being.”<sup>245</sup> The death penalty is envisaged for four crimes:<sup>246</sup> murder with aggravating circumstances, an act of terrorism, an act of aggression against another state, and genocide.<sup>247</sup>

In 1998, the Parliamentary Commissioner for Human Rights announced a policy of abolishing the death penalty in stages. Accordingly, the death penalty was abolished for five crimes in 1998 and for four more crimes in 2001.

#### Moratorium

No moratorium on executions is in place. The OSCE Chairman-in-Office and the UN Special Rapporteur on Torture have both called for the introduction of a moratorium on executions in Uzbekistan.

<sup>243</sup> The Delegation of Uzbekistan responded partially to the questionnaire. This entry was written with the assistance of the OSCE Centre in Tashkent, Uzbekistan.

<sup>244</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>245</sup> Article 24, Constitution of the Republic of Uzbekistan, 8 December 1992.

<sup>246</sup> Article 51, Criminal Code, 22 September 1994, with amendments of 29 August 2001.

<sup>247</sup> Articles 97(2), 155(3), 151(2), and 153 of the Criminal Code.

**Method of execution**Shooting<sup>248</sup>**STATISTICS****Access to statistics on the death penalty**

The Delegation of Uzbekistan to the OSCE informed the ODIHR that “information on the number of persons and other data with respect to persons sentenced to death is not subject to disclosure”.

In its Concluding Observations on the second periodic report submitted by Uzbekistan, the UN Human Rights Committee deplored Uzbekistan’s refusal to reveal the number of persons who have been executed or condemned to death and the grounds for their conviction. It urged Uzbekistan to provide such information as soon as possible.<sup>249</sup>

**Death sentences**

Official statistics were not provided. According to unofficial statistics compiled from media reports and information received from non-governmental organizations, at least 26 persons were sentenced to death during the period from 30 June 2002 to 30 June 2003.

**Executions**

Official statistics were not provided. According to unofficial statistics compiled from media reports and information received from non-governmental organizations, at least eight persons were executed during the period from 30 June 2002 to 30 June 2003. President Karimov has reportedly stated that approximately 100 people are executed each year.

<sup>248</sup> Article 51, Criminal Code. Article 140 of the Criminal Executive Code of 1 October 1997 provides that executions shall not be carried out in public.

<sup>249</sup> Concluding Observations of the Human Rights Committee, Uzbekistan, CCPR/CO/71/UZB, Paragraphs 6 and 7, 26 April 2001. In addition, the UN Special Rapporteur on Torture was not provided with any specific statistics regarding death-penalty cases, despite his requests. Report of the UN Special Rapporteur on Torture, Mission to Uzbekistan, E/CN.4/2003/68/Add.2, 3 February 2003, Paragraph 64.

## INTERNATIONAL SAFEGUARDS

**Persons under the age of 18 at the time the crime was committed**

Persons who were below the age of 18 at the time the crime was committed cannot be sentenced to death.<sup>250</sup>

**Pregnant women**

Women cannot be sentenced to death.<sup>251</sup>

**Persons suffering from any form of mental disorder**

There is no provision in national law prohibiting the execution of persons who have been diagnosed as suffering from a mental disorder. It has been reported that Muzaffar Mirzaev, who was executed in June 2002, was suffering from a mental illness.<sup>252</sup>

**Non-nationals**

The Delegation of Uzbekistan informed the ODIHR that no non-nationals were sentenced to death during the period from 30 June 2002 to 30 June 2003.

**The right to a fair trial**

Following his mission to Uzbekistan, the UN Special Rapporteur on Torture reported a lack of respect for the principle of the presumption of innocence, a lack of independence of the judiciary, and discretionary powers of the Prosecutor-General's Office regarding the access of detainees to legal counsel and to relatives.<sup>253</sup> The Human Rights Committee has also expressed its concern about allegations of torture for the purpose of obtaining confessions, in violation of Article 7 and Article 14 of the ICCPR.<sup>254</sup>

A number of death sentences have been executed despite requests of the Human Rights Committee to stay the executions. In July 2003, the Human Rights Committee deplored the executions of Muzaffar Mirzaev, Shukrat Andasbaev, Ulugbek Eshov, Ilkhom Babadzhanov, Maksud Ismailov, and Azamat Uteev. The Human Rights Committee reminded Uzbekistan that it amounts to a grave breach

<sup>250</sup> Article 51 of the Criminal Code.

<sup>251</sup> Article 51 of the Criminal Code. In addition, this article also stipulates that men over the age of 60 at the time of sentencing cannot be sentenced to death.

<sup>252</sup> AI Index: EUR 62/009/2003, Amnesty International, London.

<sup>253</sup> Report of the UN Special Rapporteur on Torture, Mission to Uzbekistan, E/CN.4/2003/68/Add.2, 3 February 2003, Paragraph 66.

<sup>254</sup> Concluding Observations of the UN Human Rights Committee, CCPR/CO/71/UZB, Paragraph 8, 26 April 2001.

of the Optional Protocol to execute an individual whose case is pending before the Committee, in particular where a request for interim protection has been issued.<sup>255</sup>

### The right to seek pardon or commutation

The Constitution gives the President authority to grant clemency.<sup>256</sup> The cases of all persons sentenced to death are automatically considered by the Clemency Commission under the Office of the President regardless of whether the sentenced person has submitted an appeal for clemency. Sentences are not executed until a decision on clemency has been issued.<sup>257</sup> The death penalty can be commuted to 25 years' imprisonment.<sup>258</sup>

### Rights of relatives

Relatives are not informed in advance of the date of execution. The sentencing court is obliged to inform close relatives that the execution has been carried out.<sup>259</sup> The body is not returned, and the place of burial is not disclosed. Following his mission to Uzbekistan, the Special Rapporteur on Torture expressed serious concern regarding the situation of relatives of persons sentenced to death:

“The complete secrecy surrounding the date of execution, the absence of any formal notification prior to and after the execution and the refusal to hand over the body for burial are believed to be intentional acts, fully mindful of causing family members turmoil, fear and anguish over the fate of their loved ones. The practice of maintaining families in a state of uncertainty with a view to punishing or intimidating them or others must be considered malicious and amounting to cruel and inhuman treatment.”<sup>260</sup>

<sup>255</sup> Press Release, 24 July 2003. On 24 July, the acting High Commissioner for Human Rights issued a press release expressing his concern regarding the executions of individuals for whom stays of execution had been requested by the Human Rights Committee.

<sup>256</sup> Article 93 of the Constitution.

<sup>257</sup> Regulation on the Procedure of Granting Clemency in the Republic of Uzbekistan. Approved by Decree of the President of the Republic of Uzbekistan NYII-1839, 11 September 1997.

<sup>258</sup> Article 51(3), Criminal Code.

<sup>259</sup> Article 140, Criminal Executive Code.

<sup>260</sup> Report of the UN Special Rapporteur on Torture, Mission to Uzbekistan, E/CN.4/2003/68/Add.2, 3 February 2003, Paragraph 65.



# ANNEX 1

## OSCE COMMITMENTS ON THE DEATH PENALTY

### Concluding Document of the 1989 Vienna Follow-up Meeting

#### Questions relating to security in Europe

- (24) With regard to the question of capital punishment, the participating States note that capital punishment has been abolished in a number of them. In participating States where capital punishment has not been abolished, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to their international commitments. This question will be kept under consideration. In this context, the participating States will co-operate within relevant international organizations.

### Document of the 1990 Copenhagen Meeting of the Conference on the Human Dimension of the CSCE

17. The participating States
- 17.1 recall the commitments undertaken in the Vienna Concluding Document to keep the question of capital punishment under consideration and to co-operate within relevant international organizations;
- 17.2 recall, in this context, the adoption by the General Assembly of the United Nations, on 15 December 1989, of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- 17.3 note the restrictions and safeguards regarding the use of the death penalty which have been adopted by the international community, in particular Article 6 of the International Covenant on Civil and Political Rights;
- 17.4 note the provisions of the Sixth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty;
- 17.5 note recent measures taken by a number of participating States towards the abolition of capital punishment;

- 17.6 note the activities of several non-governmental organizations on the question of the death penalty;
- 17.7 will exchange information within the framework of the Conference on the Human Dimension on the question of the abolition of the death penalty and keep that question under consideration;
- 17.8 will make available to the public information regarding the use of the death penalty;

### **Document of the 1991 Moscow Meeting of the Conference on the Human Dimension of the CSCE**

- (36) The participating States recall their commitment in the Vienna Concluding Document to keep the question of capital punishment under consideration and reaffirm their undertakings in the Document of the Copenhagen Meeting to exchange information on the question of the abolition of the death penalty and to make available to the public information regarding the use of the death penalty.
  - (36.1) They note
    - (i) that the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty entered into force on 11 July 1991;
    - (ii) that a number of participating States have recently taken steps towards the abolition of capital punishment;
    - (iii) the activities of several non-governmental organizations concerning the question of the death penalty.

### **Concluding Document of the 1992 Helsinki Summit**

The participating States

- (58) Confirm their commitments in the Copenhagen and Moscow Documents concerning the question of capital punishment.

### **Concluding Document of the 1994 Budapest Summit**

#### **Capital Punishment**

- 19. The participating States reconfirm their commitments in the Copenhagen and Moscow Documents concerning the question of capital punishment.

## ANNEX 2

### OTHER INTERNATIONAL STANDARDS ON THE DEATH PENALTY

#### United Nations

##### Extract from the International Covenant on Civil and Political Rights

###### 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.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

##### Second Optional Protocol to the International Covenant on Civil and Political Rights

###### Article 1

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.
2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

### **Article 2**

1. No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.
2. The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.
3. The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

### **Article 3**

The States Parties to the present Protocol shall include in the reports they submit to the Human Rights Committee, in accordance with article 40 of the Covenant, information on the measures that they have adopted to give effect to the present Protocol.

### **Article 4**

With respect to the States Parties to the Covenant that have made a declaration under article 41, the competence of the Human Rights Committee to receive and consider communications when a State Party claims that another State Party is not fulfilling its obligations shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

### **Article 5**

With respect to the States Parties to the first Optional Protocol to the International Covenant on Civil and Political Rights adopted on 16 December 1966, the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

### **Article 6**

1. The provisions of the present Protocol shall apply as additional provisions to the Covenant.
2. Without prejudice to the possibility of a reservation under article 2 of the present Protocol, the right guaranteed in article 1, paragraph 1, of the present Protocol shall not be subject to any derogation under article 4 of the Covenant.

### **Article 7**

1. The present Protocol is open for signature by any State that has signed the Covenant.
2. The present Protocol is subject to ratification by any State that has ratified the Covenant or acceded to it. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified the Covenant or acceded to it.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

### **Article 8**

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

### **Article 9**

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

### **Article 10**

The Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

- (a) Reservations, communications and notifications under article 2 of the present Protocol;
- (b) Statements made under articles 4 or 5 of the present Protocol;
- (c) Signatures, ratifications and accessions under article 7 of the present Protocol;
- (d) The date of the entry into force of the present Protocol under article 8 thereof.

### **Article 11**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

### **Extract from the Convention on the Rights of the Child**

#### **Article 37**

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

#### **Economic and Social Council: Safeguards guaranteeing protection of the rights of those facing the death penalty**

1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.
2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.
4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.
5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.
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.

7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.
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.
9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

### **Extracts from General Comment 6 of the Human Rights Committee**

1. The right to life enunciated in article 6 of the Covenant has been dealt with in all State reports. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (art. 4)... It is a right which should not be interpreted narrowly.  
...
6. While it follows from article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the "most serious crimes". Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the "most serious crimes". The article also refers generally to abolition in terms which strongly suggest (paras. 2 (2) and (6)) that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life within the meaning of article 40, and should as such be reported to the Committee. The Committee notes that a number of States have already abolished the death penalty or suspended its application. Nevertheless, States' reports show that progress made towards abolishing or limiting the application of the death penalty is quite inadequate.
7. The Committee is of the opinion that the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure. It also follows from the express terms of article 6 that it can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.

## **Commission on Human Rights Resolution 2003/67: The question of the death penalty**

*The Commission on Human Rights,*

*Recalling* article 3 of the Universal Declaration of Human Rights which affirms the right of everyone to life, article 6 of the International Covenant on Civil and Political Rights and articles 6 and 37 (a) of the Convention on the Rights of the Child,

*Recalling also* General Assembly resolutions 2857 (XXVI) of 20 December 1971 and 32/61 of 8 December 1977, as well as resolution 44/128 of 15 December 1989, in which the Assembly adopted and opened for signature, ratification and accession the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,

*Recalling further* the relevant Economic and Social Council resolutions, 1984/50 of 25 May 1984, 1985/33 of 29 May 1985, 1989/64 of 24 May 1989, 1990/29 of 24 May 1990, 1990/51 of 24 July 1990 and 1996/15 of 23 July 1996,

*Recalling* its previous resolutions in which it expressed its conviction that abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights,

*Noting* that, in some countries, the death penalty is often imposed after trials which do not conform to international standards of fairness and that persons belonging to national or ethnic, religious and linguistic minorities appear to be disproportionately subject to the death penalty, and condemning cases in which women are subjected to capital punishment on the basis of gender-discriminatory legislation,

*Welcoming* the exclusion of capital punishment from the penalties that the International Criminal Tribunal for the Former Yugoslavia, the International Tribunal for Rwanda and the International Criminal Court are authorized to impose,

*Commending* the States that have recently become parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights and welcoming the recent signature of the Second Optional Protocol by some States,

*Welcoming* the abolition of the death penalty which has taken place in some States since the last session of the Commission, and in particular in those States that have abolished the death penalty for all crimes,



*Welcoming also* the fact that many countries which still retain the death penalty in their penal legislation are applying a moratorium on executions,

*Welcoming further* regional initiatives aimed at the establishment of a moratorium on executions and the abolition of the death penalty,

*Referring* to the safeguards guaranteeing protection of the rights of those facing the death penalty, set out in the annex to Economic and Social Council resolution 1984/50,

*Deeply concerned* that several countries impose the death penalty in disregard of the limitations set out in the Covenant and the Convention on the Rights of the Child,

*Concerned* that several countries, in imposing the death penalty, do not take into account the safeguards guaranteeing protection of the rights of those facing the death penalty,

1. *Recalls* the sixth quinquennial report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, submitted in accordance with Economic and Social Council resolution 1995/57 of 28 July 1995 (E/2000/3), and welcomes the yearly supplement of the Secretary-General on changes in law and practice concerning the death penalty worldwide contained in his report (E/CN.4/2003/106), as requested in Commission resolution 2002/77;
2. *Reaffirms* resolution 2000/17 of 17 August 2000 of the Sub-Commission on the Promotion and Protection of Human Rights on international law and the imposition of the death penalty on those aged under 18 at the time of the commission of the offence;
3. *Calls upon* all States parties to the International Covenant on Civil and Political Rights that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty;
4. *Urges* all States that still maintain the death penalty:
  - (a) Not to impose it for crimes committed by persons below 18 years of age, and to exclude pregnant women from capital punishment;
  - (b) Not to impose the death penalty for any but the most serious crimes and only pursuant to a final judgement rendered by an independent and impartial competent court, and to ensure the right to a fair trial and the right to seek pardon or commutation of sentence;

- (c) To ensure that all legal proceedings, including those before special tribunals or jurisdictions, and particularly those related to capital offences, conform to the minimum procedural guarantees contained in article 14 of the International Covenant on Civil and Political Rights;
  - (d) To ensure that the notion of "most serious crimes" does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as financial crimes, non-violent religious practice or expression of conscience and sexual relations between consenting adults;
  - (e) Not to enter any new reservations under article 6 of the Covenant which may be contrary to the object and the purpose of the Covenant and to withdraw any such existing reservations, given that article 6 enshrines the minimum rules for the protection of the right to life and the generally accepted standards in this area;
  - (f) To observe the safeguards guaranteeing protection of the rights of those facing the death penalty and to comply fully with their international obligations, in particular with those under article 36 of the 1963 Vienna Convention on Consular Relations, particularly the right to receive information on consular assistance within the context of a legal procedure;
  - (g) Not to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person;
  - (h) To exclude mothers with dependent infants from capital punishment;
  - (i) To ensure that, where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering and shall not be carried out in public or in any other degrading manner, and to ensure that any application of particularly cruel or inhuman means of execution, such as stoning, be stopped immediately;
  - (j) Not to execute any person as long as any related legal procedure, at the international or at the national level, is pending;
5. *Calls upon* all States that still maintain the death penalty:
- (a) Progressively to restrict the number of offences for which the death penalty may be imposed and, at the least, not to extend its application to crimes to which it does not at present apply;
  - (b) To abolish the death penalty completely and, in the meantime, to establish a moratorium on executions;
  - (c) To make available to the public information with regard to the imposition of the death penalty and to any scheduled execution;
  - (d) To provide to the Secretary-General and relevant United Nations bodies information relating to the use of capital punishment and the observance of the safeguards guaranteeing protection of the rights of those facing the death penalty as contained in Economic and Social Council resolution 1984/50;

6. *Calls upon* States which no longer apply the death penalty but maintain it in their legislation to abolish it;
7. *Requests* States that have received a request for extradition on a capital charge to reserve explicitly the right to refuse extradition in the absence of effective assurances from relevant authorities of the requesting State that capital punishment will not be carried out;
8. *Requests* the Secretary-General to continue to submit to the Commission, at its sixtieth session, in consultation with Governments, specialized agencies and inter-governmental and non-governmental organizations, a yearly supplement on changes in law and practice concerning the death penalty worldwide to his quinquennial report on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, paying special attention to the imposition of the death penalty against persons younger than 18 years of age at the time of the offence;
9. *Decides* to continue consideration of the matter at its sixtieth session under the same agenda item.

## COUNCIL OF EUROPE

### Extract from the European Convention for the Protection of Human Rights and Fundamental Freedoms

#### Article 2

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
  - a. in defence of any person from unlawful violence;
  - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - c. in action lawfully taken for the purpose of quelling a riot or insurrection.

## **Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty**

### **Article 1 – Abolition of the death penalty**

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

### **Article 2 – Death penalty in time of war**

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

### **Article 3 – Prohibition of derogations**

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

### **Article 4 – Prohibition of reservations**

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

### **Article 5 – Territorial application**

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the date of receipt of such notification by the Secretary General.

### **Article 6 – Relationship to the Convention**

As between the States Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional articles to the Convention and all the provisions of the Convention shall apply accordingly.

### **Article 7 – Signature and ratification**

The Protocol shall be open for signature by the member States of the Council of Europe, signatories to the Convention. It shall be subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

### **Article 8 – Entry into force**

1. This Protocol shall enter into force on the first day of the month following the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.
2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, acceptance or approval.

### **Article 9 – Depositary functions**

The Secretary General of the Council of Europe shall notify the member States of the Council of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Protocol in accordance with Articles 5 and 8;
- d. any other act, notification or communication relating to this Protocol.

## **Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances**

### **Article 1 – Abolition of the death penalty**

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

### **Article 2 – Prohibition of derogations**

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

### **Article 3 – Prohibition of reservations**

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

#### **Article 4 – Territorial application**

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### **Article 5 – Relationship to the Convention**

As between the States Parties the provisions of Articles 1 to 4 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

#### **Article 6 – Signature and ratification**

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

#### **Article 7 – Entry into force**

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 6.
2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

### **Article 8 – Depositary functions**

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Protocol in accordance with Articles 4 and 7;
- d. any other act, notification or communication relating to this Protocol.

## **EUROPEAN UNION**

### **Extract from the Charter of the Fundamental Rights of the European Union**

#### **Article 2**

Right to Life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

### **Extracts from the Guidelines on EU Policy Towards Third Countries the Death Penalty**

#### **III Minimum standards paper**

Where states insist on maintaining the death penalty, the EU considers it important that the following minimum standards should be met:

- (i) Capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences. The death penalty should not be imposed for non-violent financial crimes or for non-violent religious practice or expression of conscience.
- (ii) Capital punishment may be imposed only for a crime for which the death penalty was prescribed at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

- (iii) Capital punishment may not be imposed on:
  - persons below 18 years of age at the time of the commission of their crime;
  - pregnant women or new mothers;
  - persons who have become insane.
- (iv) Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for alternative explanation of the facts.
- (v) Capital punishment must only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, and where appropriate, the right to contact a consular representative.
- (vi) Anyone sentenced to death shall have an effective right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals become mandatory.
- (vii) Where applicable, anyone sentenced to death shall have the right to submit an individual complaint under international procedures; the death sentence will not be carried out while the complaint remains under consideration under those procedures.
- (viii) Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases of capital punishment.
- (ix) Capital punishment may not be carried out in contravention of a state's international commitments.
- (x) The length of time spent after having been sentenced to death may also be a factor.
- (xi) Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering. It may not be carried out in public or in any other degrading manner.
- (xii) The death penalty should not be imposed as an act of political revenge in contravention of the minimum standards, e.g. against coup plotters.



## ANNEX 3

### QUESTIONNAIRE SENT TO PARTICIPATING STATES ON THE DEATH PENALTY

#### LEGAL FRAMEWORK

- 1) The attached paper is a copy of the entry that was made on your country in the publication of 2002. It should list all crimes that carry the death penalty. Please check this list and inform us if any corrections or changes are required.
- 2) Has the number of crimes that carry the death penalty increased or decreased since the last publication? Please also attach a copy of the complete text of all crimes that carry the death penalty.
- 3) If it was not included in last year's publication, please also provide us with information about any crimes that carry the death penalty under your country's Code of Military Law. Please also attach a copy of the complete text of all crimes that carry the death penalty under the Code of Military Law.
- 4) Have any steps been taken to introduce, retain or remove a moratorium on executions since last year's publication?
- 5) If a moratorium is in place, please indicate whether it is *de jure* or *de facto* and describe in detail the basis for the operation of the moratorium. (For example, reasons could include the existence of a presidential decree or automatic commutation.)

#### STATISTICS

(In your answers to these questions, please provide us with separate statistics for civilian and military crimes.)

- 6) Please provide us with statistics on the number of persons who have been sentenced to death in the period 30 June 2002 to 30 June 2003.
- 7) Please provide us with the full name and age of persons who have been sentenced to death in the period 30 June 2002 to 30 June 2003. Please also indicate the specific crime for which each of these persons has been sentenced.
- 8) Please indicate if any of the persons sentenced to death in the period from 30 June 2002 to 30 June 2003 were:

- Under the age of 18 at the time the crime was committed;
  - Pregnant women or women with dependent infants;
  - Diagnosed as insane;
  - Diagnosed as having any form of mental disorder;
  - Non-nationals. Please indicate whether or not each of these persons received consular assistance.
- 9) Please indicate the length of time spent on death row of each of the persons who have currently been sentenced to death. Please indicate the average amount of time spent on death row.
- 10) Please provide us with the full name and age of persons who have been executed in the period 30 June 2002 to 30 June 2003. Please also indicate the specific crime under which each of these persons was executed.
- 11) Please indicate if any of the persons executed in the period from 30 June 2002 to 30 June 2003 were:
- Under the age of 18 at the time the crime was committed;
  - Pregnant women or women with dependent infants;
  - Diagnosed as insane;
  - Diagnosed as having any form of mental disorder;
  - Non-nationals. Please indicate whether or not each of these persons received consular assistance.
- 12) Which state body is responsible for keeping statistics on sentences, executions, pardon and commutations? Are there any specific legal or administrative regulations on the compilation and retention of such statistics?
- 13) Please provide us with the full name and age of any persons sentenced to the death penalty who have either been pardoned, had their sentence commuted, or have been subject to an amnesty since 30 June 2002. Please also provide us with dates of any pardons, commutations, and amnesties.

### **INTERNATIONAL SAFEGUARDS**

(In your answers to these questions, please provide us with separate answers with regard to civilian and military crimes.)

- 14) Please describe the procedure for informing all non-nationals who have been accused of committing a crime, for which the death penalty is a potential sentence, of their right to receive consular assistance. Is this procedure mandatory?

- 15) Please list all cases regarding the use of the death penalty that have been decided since the last publication, or are currently ongoing, before international bodies (e.g., UN Human Rights Committee, International Court of Justice, European Court of Human Rights).
- 16) Please list the names of any persons who have been executed while a procedure regarding their case was ongoing before an international body.
- 17) Do persons who have been sentenced to death have the right to seek pardon? If yes, please describe the legal basis of this right.
- 18) Who is authorized to consider a request for pardon?
- 19) Please describe the procedural process of considering a request for pardon, including the factors that are taken into account when considering such a request.
- 20) Do persons who have been sentenced to death have the right to seek commutation? If yes, please describe the legal basis of this right.
- 21) Please describe the procedural process of considering a request for commutation, including the factors that are taken into account when considering such a request.
- 22) Please indicate the procedure for informing relatives of the date of execution and the date that the execution has been carried out.
- 23) Please indicate the procedure for informing relatives of the place of burial of executed persons.

# ANNEX 4

## Status of Ratifications

Participating State	Status	ICCPR	2nd Optional Protocol	CRC	ECHR	Protocol No. 6	Protocol No. 13
Albania	PA	r		r	r	r	s
Andorra	A	s		r	r	r	s
Armenia	DA	r		r	r	s	
Austria	A	r	r	r	r	r	s
Azerbaijan	A	r	r	r	r	r	
Belarus	R	r		r	n/a	n/a	n/a
Belgium	A	r	r	r	r	r	r
Bosnia-Herzegovina	A	r	r	r	r	r	r (29 July 2003)
Bulgaria	A	r	r	r	r	r	r
Canada	A	r		r	n/a	n/a	n/a
Croatia	A	r	r	r	r	r	r
Cyprus	A	r	r	r	r	r	r
Czech Republic	A	r		r	r	r	s
Denmark	A	r	r	r	r	r	r
Estonia	A	r		r	r	r	s

Participating State	Status	ICCPR	2nd Optional Protocol	CRC	ECHR	Protocol No.6	Protocol No.13
Finland	A	r	r	r	r	r	s
France	A	r		r	r	r	s
Georgia	A	r	r	r	r	r	r
Germany	A	r	r	r	r	r	s
Greece	PA	r	r	r	r	r	s
Holy See	A			r	n/a	n/a	n/a
Hungary	A	r	r	r	r	r	r (16 July 2003)
Iceland	A	r	r	r	r	r	s
Ireland	A	r	r	r	r	r	r
Italy	A	r	r	r	r	r	s
Kazakhstan	R			r	n/a	n/a	n/a
Kyrgyzstan	DA	r		r	n/a	n/a	n/a
Latvia	PA	r		r	r	r	s
Liechtenstein	A	r	r	r	r	r	r
Lithuania	A	r	r	r	r	r	s
Luxembourg	A	r	r	r	r	r	s
The Former Yugoslav Republic of Macedonia	A	r	r	r	r	r	s

Participating State	Status	ICCPR	2nd Optional Protocol	CRC	ECHR	Protocol No. 6	Protocol No. 13
Malta	A	r	r	r	r	r	r
Moldova	A	r		r	r	r	s
Monaco	A	r	r	r	n/a	n/a	n/a
Netherlands	A	r	r	r	r	r	s
Norway	A	r	r	r	r	r	s
Poland	A	r		r	r	r	s
Portugal	A	r	r	r	r	r	s
Romania	A	r	r	r	r	r	r
Russian Federation	DA	r		r	r	s	
San Marino	A	r		r	r	r	r
Serbia and Montenegro	A	r	r	r	s	s	s
Slovak Republic	A	r	r	r	r	r	s
Slovenia	A	r	r	r	r	r	s
Spain	A	r	r	r	r	r	s
Sweden	A	r	r	r	r	r	r
Switzerland	A	r	r	r	r	r	r
Tajikistan	R	r		r	n/a	n/a	n/a

Participating State	Status	ICCPR	2nd Optional Protocol	CRC	ECHR	Protocol No. 6	Protocol No. 13
Turkey	PA	s		r	r	s	
Turkmenistan	A	r	r	r	n/a	n/a	n/a
Ukraine	A	r		r	r	r	r
United Kingdom	A	r	r	r	r	r	s
United States of America	R	r		s	n/a	n/a	n/a
Uzbekistan	R	r		r	n/a	n/a	n/a

Notes:

- r = ratification
- s = signature only
- n/a = non-applicable
- A = abolitionist
- DA = de facto abolitionist
- PA = partly abolitionist
- R = retentionist