The Death Penalty in the OSCE Area

Background Paper 2010

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This paper updates *The Death Penalty in the OSCE Area: Background Paper 2009*. It is intended to provide a concise update to highlight changes in the status of the death penalty in OSCE participating States since the previous publication and to promote constructive discussion of this issue. It covers the period from 1 July 2009 to 30 June 2010.

All comments or suggestions should be addressed to ODIHR's Human Rights Department.

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Overview

The worldwide trend towards the full abolition of the death penalty continued during the reporting period for this background paper, from 1 July 2009 to 30 June 2010. Several OSCE participating States have taken significant legal, judicial, political and *de facto* steps in this regard. Death sentences and execution rates declined in the United States, and the debate on the introduction of a moratorium has increased in intensity in Belarus, although executions continued to be carried out. In the Russian Federation, the Constitutional Court ruled out any possible reinstatement of the death penalty there when it prolonged the existing moratorium on the practice until when, in adherence to the country's international obligations, a formal abolition of the death penalty is put in place.

Two countries that had already fully abolished the death penalty in their domestic legislation also confirmed this at the international level during the reporting period. In Kyrgyzstan, the parliament adopted a law on accession to the Second Optional Protocol of the United Nations International Covenant of Civil and Political Rights, which is aimed at the abolition of the death penalty. It was signed into law by the president in March 2010, but the formal accession is yet to take place. On 19 December 2009, Spain ratified the Council of Europe's 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.

Nonetheless, two OSCE participating States – the United States and Belarus – continued to carry out executions during the reporting period, and Kazakhstan passed a law expanding the list of crimes for which the death penalty can be imposed as a sentence by one, from eight to nine.

At the international level, on 3 July 2009, the OSCE Parliamentary Assembly adopted the Vilnius Declaration, outlining a set of policy recommendations to the governments of the OSCE participating States.[1] The Declaration, voted on by 213 parliamentarians from 50 OSCE countries, contained a resolution calling upon participating States who maintain the death penalty to declare an immediate moratorium

[1] OSCE Parliamentary Assembly, Resolution on a Moratorium on the Death Penalty and Towards Its Abolition, AS (09) D 1 E, Vilnius Declaration, Vilnius, 29 June – 3 July 2009. See Annex 1.

on executions. [2] It also encourages participating States that have not abolished the death penalty to respect safeguards protecting the rights of those facing these sentences, as laid down in the United Nations Economic and Social Council Safeguards.[3]

During the reporting period, the Second Optional Protocol to the International Covenant on Civil and Political Rights marked its 20th anniversary, on 15 December 2009. Marking this historic moment, the United Nations High Commissioner for Human Rights called for the universal abolition of capital punishment, urging all states to ratify the Protocol.[4]

The 4th World Congress Against the Death Penalty was held in Geneva from 24 to 26 February 2010. The Final Declaration of the Conference acknowledged positive developments, such as the greater number of countries that have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, and mentioned the commitment by Switzerland and Spain to help "to implement a universal moratorium on executions in 2015".[5] At the conference, Italy's Secretary of State for Foreign Affairs, Enzo Scotti, declared that his country was planning to present a new resolution to abolish capital punishment worldwide at the United Nations in the fall of 2010.[6]

While there are no OSCE commitments requiring the abolition of the death penalty, the OSCE participating States have committed themselves to only impose capital punishment in a manner not contrary to their international commitments and to keep the question of whether or not to retain the death penalty under consideration.[7] In addition, the participating States that retain the death penalty in some form have committed themselves to ensuring transparency regarding the practice by making information about its use available to the public.[8] One of the main purposes of this publication is to provide an opportunity for participating States to make such information available on an annual basis. Accordingly, in June 2010, a questionnaire on the use of the death penalty was sent to each of the six participating States for

2 *Ibid.*

3 *Ibid.*

4 "UN human rights chief calls for universal abolition of the death penalty", UN News Centre, 15 December 2009, <http://www.un.org/apps/news/story.asp?NewsID=33259&Cr=pillay&Cr1>.

5 Final Declaration of the 4th World Congress Against the Death Penalty, Geneva, 26 February 2010, Ensemble Contre la Peine de Mort website, <http://www.abolition.fr/fr/depeches/1305-final-declaration--4th-world-congress-against-the-death-penalty--geneva---february-26,-2010>.

6 Italian Ministry of Foreign Affairs, "Italy and Human Rights – Death Penalty", <http://www.esteri.it/MAE/Templates/GenericTemplate.aspx?NRMODE=Published&NRNODEGUID=%7b8CB58445-8860-4597-89FA-122A8794BB9C%7d&NRORIGINALURL=%2fMAE%2fEN%2fPolitica_Estera%2fTemi_Globali%2fDiritti_Umani%2flItalia_e_i_Diritti_Umani%2ehtm%3fLANG%3dEN&NRCACHEHINT=Guest&LANG=EN#3>.

7 For a list of relevant OSCE commitments, see Annex 1.

8 Document of the 1990 Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, see Annex 1.

which there were country entries in the 2009 edition.[9] Belarus, Kazakhstan, Latvia, the Russian Federation and the United States of America responded to the questionnaire, while no reply was received from Tajikistan. The OSCE Centre in Astana and the OSCE Office in Dushanbe did, however, contribute valuable information. Other information was collected from media reports and reports by NGOs.

As in previous years, it is hoped that the reader will find this background paper to be a useful resource in the further discussion of issues related to the right to life, the application of capital punishment and its abolition.

9 The six participating States that retained the death penalty in some way in 2009 were Belarus, Kazakhstan, Latvia, the Russian Federation, Tajikistan and the United States of America. The questionnaire is reproduced in Annex 4. "The Death Penalty in the OSCE Area – Background Paper 2009", OSCE Office for Democratic Institutions and Human Rights, 29 September 2009, <http://www.osce.org/odihr/item_11_33276.html>.

The Status of the Death Penalty in the OSCE Area

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.

Fifty OSCE participating States are abolitionist:

- Albania
- Andorra
- Armenia
- Austria
- Azerbaijan
- Belgium
- Bosnia and Herzegovina
- Bulgaria
- Canada
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Georgia
- Germany
- Greece
- Holy See
- Hungary
- Iceland
- Ireland
- Italy
- Kyrgyzstan
- Liechtenstein
- Lithuania
- Luxembourg
- The former Yugoslav Republic of Macedonia
- Malta
- Moldova
- Monaco
- Montenegro
- Netherlands
- Norway
- Poland
- Portugal
- Romania
- San Marino
- Serbia
- Slovak Republic
- Slovenia
- Spain
- Sweden
- Switzerland
- Turkey
- Turkmenistan
- Ukraine
- United Kingdom
- Uzbekistan

<u>Partly abolitionist:</u> The death penalty has been abolished for crimes committed in peacetime but is retained for crimes committed in wartime.

One participating State is partly abolitionist:

- Latvia

***<u>De facto</u>* <u>abolitionist:</u> The death penalty is retained for crimes committed in peacetime, but executions are not carried out.**

Three participating States are *de facto* abolitionist:

- Kazakhstan
- Russian Federation
- Tajikistan

<u>Retentionist:</u> The death penalty is retained for crimes committed in peacetime, and executions are carried out.

Two participating States are retentionist:

- Belarus
- United States of America

1. Abolitionist States

On 16 December 2009, **Spain** ratified Protocol No. 13 to the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in wartime and in peacetime, becoming the 42nd European Country to do so. Spain had abolished the death penalty in its domestic legislation in 1978.

Although they do not usually result in lasting discussions, issues related to the application of capital punishment also resurface from time to time in abolitionist states. As part of the process leading up the adoption of a law in **Kyrgyzstan** to ratify the Second Optional Protocol of the International Covenant of Civil and Political Rights, the question of the death penalty was raised again. At a meeting of the National Security Council, in September 2009, the Head of the State Committee for National Security, Murat Sutalinov, reportedly proposed the restoration of capital punishment, arguing chiefly that the death penalty acts as a deterrent to crime.[10] Despite this, on 11 February 2010, Kyrgyzstan's parliament passed the "Law on the Accession of the Kyrgyz Republic to the Second Optional Protocol of the International Covenant of Civil and Political Rights Aiming at the Abolition of the Death Penalty",[11] which was signed into law by the then-President Kurmanbek Bakiyev on 17 March 2010.[12]

In **Ukraine**, the Communist Party proposed that the death penalty be reinstated for grave crimes, and put the question forward in the country's parliament on 16 February 2010.[13] The request was turned down by an overwhelming majority, with only 32 of the 413 registered deputies voting in favour.[14]

The United Nations Human Rights Committee addressed one individual case from **Uzbekistan**, in which it reached the conclusion that the right to a fair trial had been

10 "Pressure Grows In Kyrgyzstan For Return Of Death Penalty", 16 November 2009, Radio Free Europe, <http://www.rferl.org/content/Pressure_Grows_In_Kyrgyzstan_For_Return_Of_Death_Penalty/1879349.html>.

11 Declaration by the High Representative, Catherine Ashton, on behalf of the EU on the parliamentary and presidential approval of the Kyrgyz law on accession to the Second Optional Protocol to the ICCPR on the abolition of the death penalty, Spanish Presidency of the European Council's Website, 17 March 2010, <http://www.eu2010.es/en/documentosynoticias/declaracionespesc/mar16_pesc.html>.

12 "Kyrgyzstan joined the Second Optional Protocol of the UN aiming at the abolition of the death penalty", Zamandash Press news agency website, 17 March 2010, <http://www.eng.zpress.kg/news/news_only/5/3606.py>.

13 Country information on Ukraine, Hands off Cain Website, 16 February 2010, <http://www.handsoffcain.info/bancadati/schedastato.php?idstato=13000473&idcontinente=20>.

14 *Ibid*.

violated and allegations of torture not adequately addressed in a case that resulted in the handing down of a death sentence and subsequent execution.[15] On 22 July 2009, it published its Views, recalling that the imposition of a death sentence after proceedings that did not meet fair-trial requirements amounted to a violation of the right to life, pursuant to Article 6 of the International Covenant on Civil and Political Rights.[16]

2. Partly Abolitionist States

LATVIA

At present, the Criminal Code of Latvia allows for the imposition of death sentences for convictions for murder with aggravating circumstances, and only when committed in wartime.[17] The country is in the process of ratifying Protocol No. 13 to the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in both wartime and peacetime. On 19 May 2008, the Government of Latvia endorsed a draft law on the ratification of the Protocol. The approval of the parliament is still being sought, and there have been no further developments in the reporting period for the 2010 Background Paper.[18]

3. *De Facto* Abolitionist States

KAZAKHSTAN

In Kazakhstan, the death penalty has been abolished for most cases, except acts of terrorism entailing loss of life and grave crimes committed in wartime.[19] While a law entered into force in 2009 reducing the number of crimes for which death sentences could be handed down from 18 to eight,[20] later legislative developments saw the ap-

15 Communication No. 1280/2004, *Tolipkhuzhaev v. Uzbekistan*, Views adopted on 22 July 2009.

16 *Ibid*.

17 Article 37 of the Criminal Code of Latvia, 15 October 1998, as amended on 18 May 2000.

18 Response to the ODIHR questionnaire on the death penalty from the Permanent Mission of Latvia to the OSCE, 15 July 2010.

19 Constitution of the Republic of Kazakhstan, as amended on 21 May 2007.

20 These crimes were genocide, mercenary, high treason, sabotage, terrorism, application of prohibited means and methods of conducting a war and planning, preparation for, starting or waging a war of aggression.

plication of this sentence extended to one additional crime, raising the number to nine.

According to amendments to the Criminal Code signed into law on 14 June 2010, attempting to kill the president of Kazakhstan may be punishable by death.[21] The newly introduced Article 166-1 of the Criminal Code[22] reads that "an attempt upon the life of the First President of the Republic of Kazakhstan – the Nation's Leader, committed for the purposes of termination of his state activity or out of revenge for such activity, shall be punished by deprivation of freedom for a period from 15 to 20 years, or by capital punishment or life imprisonment".[23] This development runs against the overall global trend towards the full abolition of the death penalty.

RUSSIAN FEDERATION

A moratorium on the application of the death penalty has been in place in the Russian Federation since 1996, in line with the country's agreement to abolish capital punishment as a condition for gaining membership in the Council of Europe.[24] In 1999, the Constitutional Court ruled that the death penalty could not be applied until all of the country's then-89 regions had introduced jury trials.[25] Chechnya became the final Russian region to institute jury trials, on 1 January 2010. On 29 October 2009, anticipating this event, the Supreme Court of the Russian Federation reportedly sought clarification on the future of the moratorium.[26]

On 19 November 2009, the Constitutional Court ruled that the moratorium on the death penalty should be extended.[27] Court Chairperson Valery Zorkin reportedlyconfirmed that an "irreversible process to abolish capital punishment" was occur-

21 Response to the ODIHR questionnaire on the death penalty from the OSCE Centre in Astana to the OSCE, 14 July 2010.

22 *Ibid*. The full name of the law is "On the Amendments and Additions to Some Legislative Acts Concerning Modernization of the Legislation in the Sphere of Guaranteeing of Activities of the First President of Kazakhstan - the Nation's Leader", № 290 – IV.

23 *Ibid*.

24 "Honouring of the commitment entered into by Russia upon accession to the Council of Europe to put into place a moratorium on executions of the death penalty", Report, Council of Europe Parliamentary Assembly, 28 January 1997, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc97/EDOC7746.htm>.

25 "Russia and the Death penalty", International Federation for Human Rights (FIDH), 13 September 1999, < http://www.fidh.org/Russia-and-the-Death-Penalty>.

26 "Top Russian court asked to rule on death penalty moratorium," RIA Novosti, 29 October 2009, <http://en.rian.ru/russia/20091029/156640779.html>.

27 "Russia enshrines ban on death penalty", BBC News, 19 November 2009, <http://news.bbc.co.uk/2/hi/europe/8367831.stm>.

ring in Russia.[28] The moratorium on executions would be in place until the Russian Federation ratified Protocol 6 to the European Convention on Human Rights, which bans the death penalty. The Russian Federation has signed but not ratified the Protocol. The United Nations Human Rights Committee also noted "with concern that the death penalty [had] yet to be abolished de jure in the State party despite the welcome moratorium on the execution of death sentences in force since 1996".[29]

Despite this clear direction set out by the Constitutional Court, debate on the reinstatement of the death penalty occasionally resurfaces. According to reports of a statement made by State Duma Speaker Boris Gryzlov to two visiting members of the Parliamentary Assembly of the Council of Europe, "terrorist activities in Russia have been the factor that has prevented the country from abolishing capital punishment".[30]

The issue of retaining the death penalty for those convicted of committing terrorist acts received significant public coverage following the Moscow Metro bombings on 29 March 2010. Immediately after the bombings, the Committee on Judicial and Legal Affairs of the Federation Council, the upper house of the Russian parliament, reportedly began work on a draft law to introduce the death sentence for organizers of terrorist attacks resulting in multiple deaths.[31] Federation Council Speaker Sergei Mironov, on the other hand, stated that, even in the cases of convicted terrorists, he was "negative about calling off a moratorium on the death penalty."[32] Russian Federation President Dmitry Medvedev was reported as saying on 2 April 2010 that, even though he would not have introduced the death penalty moratorium in Russia in 1996, Russia would adhere to its international obligations.[33]

28 "Russia prolongs moratorium on death penalty, contemplates ban," RIA Novosti, 19 November 2009, <http://en.rian.ru/russia/20091119/156902623.html>.

29 Human Rights Committee, Concluding observations for the Russian Federation, Human Rights Committee, CCPR/C/RUS/CO/6, 24 November 2009.

30 "Russia can't abolish death penalty due to terrorist threats", Interfax, 23 March 2010, <http://www.interfax-religion.com/?act=news&div=7068>.

31 "Death Penalty Lingers in Former Soviet Republics", Kester Kenn Klomegah, IPS News, 5 April 2010, <http://ipsnews.net/news.asp?idnews=50912>.

32 "Russian upper house speaker against death penalty for terrorists", Sergey Mironov – Chairman of the Council of Federation of the Federal Assembly of the Russian Federation, official website, <http://mironov.info/publications/9966.php>.

33 "Authorities identify teen as Moscow subway bomber", Maxim Tkachenko and Matthew Chance, CNN Website, 2 April 2010, <http://edition.cnn.com/2010/WORLD/europe/04/02/russian.bombing/index.html>.

TAJIKISTAN

A moratorium on executions and the handing down of death sentences has been in place in Tajikistan since 15 July 2004. On 30 September 2009, at the annual OSCE Human Dimension Implementation Meeting, in Warsaw, the Tajik delegation stated the clear political will to fully abolish capital punishment in the future. This commitment was reinforced again in April 2010, when President Emomali Rahmon established a working group with the aim of analyzing the social and legal aspects of abolishing the death penalty in Tajikistan.[34] The working group is headed by Djumahon Davlatov, State Advisor on Legal Policy in the Executive Office of the President, and consists of government ministers and deputy ministers, as well as the General Prosecutor and the Human Rights Ombudsman. The latter has actively advocated for the full abolition of the death penalty and has pushed it as one his priorities. Several NGOs have been supporting the government's intentions in this area through the development of projects aimed at raising awareness of the issue and engaging in a dialogue on abolishing the death penalty and the general question of the right to life.[35]

4. Retentionist States

BELARUS

While the background paper for 2009 saw indications that Belarus was slowly moving towards the introduction of a moratorium on the application of the death penalty, in line with Council of Europe standards and requirements for membership,[36] monitoring during the reporting period for the 2010 background paper turned up mixed messages on the subject.

Only weeks after 23 June 2009, when the Parliamentary Assembly of the Council of Europe voted to restore Special Guest status to Belarus' parliament, on the condition that the country declares a moratorium on the imposition of the death penalty, [37] two death sentences were handed down. The two executions were carried out in March 2010, after the creation, on 4 February, of the working group "on the issue of the

34 Response from the OSCE Office in Tajikistan to the ODIHR questionnaire on the death penalty, 2 August 2010.

35 *Ibid*.

36 "The Death Penalty in the OSCE Area – Background Paper 2009", *op. cit.*, note 9.

37 "Belarus: PACE ready to restore Special Guest status if a moratorium on death penalty is decreed", Council of Europe website, 23 June 2009, <https://wcd.coe.int/ViewDoc.jsp?id=1463617&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE&RefreshDocsCache=yes>.

death penalty as an instrument of punishment", comprising members of both chambers of the Belarusian parliament.[38] As a result, the Parliamentary Assembly of the Council of Europe decided to suspend high-level contacts with the Belarusian parliament and governmental authorities, noting a "lack of progress towards the standards of the Council and a lack of political will to adhere to its values".[39] Belarus then told an OSCE Permanent Council Meeting in July that "in Belarus, too, there is a movement in favour of gradually limiting the application of (capital) punishment" and that "the Belarusian authorities and, in particular, the national parliament are continuing to give this subject the attention it deserves in order to gradually pave the way for an examination of the possibility of introducing a moratorium on the death penalty".[40]

Legal Framework

The Constitution of the Republic of Belarus provides that, until it is abolished, the death penalty may be applied in accordance with the law as an exceptional penalty for particularly serious crimes, and only as stipulated in the verdict of a court of law.[41] The Criminal Code states that the death penalty may be imposed for severe crimes connected with the deliberate deprivation of life with aggravating circumstances.[42] The death penalty is applicable to 12 crimes in peacetime and two additional crimes in times of war.[43]

Moratorium

There is no moratorium in place on either the handing down of death sentences or on executions.

38 "Belarus - death penalty: PACE President welcomes creation of a parliamentary working group", Council of Europe, press release - 095(2010), 4 February 2010, <https://wcd.coe.int/ViewDoc.jsp?id=1580573&Site=DC&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>.

39 PACE suspends its high-level contacts with the Belarusian Government and Parliament, PACE website, 29 April 2010, <http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=5513>.

40 OSCE Permanent Council Meeting, Statement by the Republic of Belarus, PC.DEL/656/09, Vienna, 30 July 2009.

41 Article 24 of the Constitution of the Republic of Belarus, 27 November 1996.

42 Article 59(1) of the Criminal Code, 9 July 1999, amended on 17 July 2006.

43 The death penalty is envisaged for the following crimes: "unleashing or conducting a war of aggression" (Article 122 part 2 of the Criminal Code of Belarus), "murder of a representative of a foreign state or international organization with the intention to provoke international tension or war" (Art. 124 part 2), "international terrorism" (Art. 126), "genocide" (Art. 127), "crimes against humanity" (Art. 128), "premeditated, aggravated murder" (Art. 139 part 2), "terrorism" (Art. 289 part 3), "terrorist acts" (Art. 359), "treason accompanied by murder" (Art. 356 part 2), "conspiracy to seize power" (Art. 357 part 3), "sabotage" (Art. 360 part 2), "murder of a police officer" (Art. 362), "use of weapons of mass destruction" (Art 134), and "murder of a person in violation of the laws and customs of war" (Art. 135 part 3).

Method of execution

The death penalty is carried out by means of shooting.[44] Relatives are reportedly not informed about the date and/or place of execution.[45] The bodies of those executed are reportedly not returned to families and their places of burial are not disclosed.[46]

Statistics

Death sentences

According to official statistics provided by the Supreme Court of Belarus, three individuals were sentenced to death during the reporting period.[47]

Andrei Zhuk, 26 years old at the time of sentencing, was sentenced to death on 17 July 2009 by the Minsk District Court.[48]After filing an appeal to the Supreme Court, the decision became final on 27 October 2009.[49]

The death sentence handed down to Vasily Yuzepchuk on 29 June 2009 by the Brest Regional Court, became final on 2 October 2009, after his appeal was rejected by the Supreme Court.[50] After having exhausted domestic remedies, both men submitted complaints to the United Nations Human Rights Committee, claiming that their rights under the International Covenant on Civil and Political Rights – including the right to a fair trial, torture and the right to life[51] – had been violated.[52] After reports that both complainants had been executed, the United Nations Human Rights Committee expressed "serious concerns" over the matter.[53]

On 14 May 2010, Oleg Gryshkovtsov and Andrei Burdyko, who were 29 and 28 years old at the time, respectively, were sentenced to death by firing squad by the

44 Article 59(1) of the Criminal Code of the Republic of Belarus.

45 Amnesty International Report 2010, Amnesty International website, <http://thereport.amnesty.org/regions/europe-central-asia>.

46 *Ibid.*

47 Response to the ODIHR questionnaire on the death penalty from the Permanent Delegation of the Republic of Belarus to the OSCE, 15 July 2010.

48 *Ibid.*

49 Council of Europe, Joint statement by Samuel Zbogar, Chairman of the Committee of Ministers, and Thorbjørn Jagland, Secretary General of the Council of Europe, 30 October, "Council of Europe concerned about a new death penalty case in Belarus", reported in the Council of Europe's Human Rights Information Bulletin No 78, July-October 2009, <http://www.coe.int/t/dghl/publications/bulletin/hrib78_en.pdf>.

50 Response to from the Permanent Delegation of the Republic of Belarus to the OSCE, op cit., note 50.

51 "Viasna issues statement on death sentences to Vasily Yuzepchuk and Andrei Zhuk", The Human Rights Centre Viasna, 28 October 2009, <http://spring96.org/en/news/30162/>.

52 "Press Conference by Human Rights Committee Following Conclusion of Session", 26 March 2010, United Nations website, Department of Public Information, News and Media Division, <http://www.un.org/News/briefings/docs/2010/100326_HRC.doc.htm>.

53 *Ibid.*

Grodno District Court.[54] Both men filed appeals of the sentences on 28 May 2010.[55] Official information from the Supreme Court of Belarus stated that the sentences had been confirmed.[56] In a press release, the Council of Europe called on the Belarusian authorities to commute the sentences, "to declare forthwith a moratorium on the use of the death penalty, and to commute the sentences of all prisoners sentenced to death to terms of imprisonment as a firm step to bring the country closer to the Council of Europe".[57]

Executions

Two persons were executed during the reporting period in Belarus.[58] While the dates of the executions of Andrei Zhuk and Vasily Yuzepchuk, both referenced above, were not made public, it is believed that both took place in Minsk around 18 March 2010.[59] After this information was leaked, four Belarusian activists protesting against the executions were reportedly detained near President Alexander Lukashenko's office.[60]

The Parliamentary Assembly of the Council of Europe reacted on 29 April 2010 by passing Resolution 1727, condemning the executions, "which were carried out in conditions of total secrecy".[61]

54 Country Profile of Belarus, Hands of Cain Website, 28 May 2010, <http://www.handsoffcain.info/bancadati/schedastato.php?idstato=13000170&idcontinente=20>.

55 *Ibid*.

56 Response to from the Permanent Delegation of the Republic of Belarus to the OSCE, *op.cit.*, note 50.

57 "Belarus: Council of Europe calls to commute two new death sentences", Press release - 395(2010), 17 May 2010, <https://wcd.coe.int/ViewDoc.jsp?id=1622933&Site=DC&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>.

58 Response to from the Permanent Delegation of the Republic of Belarus to the OSCE, *op.cit.,* note 50.

59 "Belarus executes two men: Andrei Zhuk and Vasily Yuzepchuk", 22 March 2010, Amnesty International website, <http://www.amnesty.org/en/library/asset/EUR49/004/2010/en/7b59d62c-8bd3-43ed-97b5-c009263436e0/eur490042010en.html>.

60 "Belarusian Activists Detained For Protesting Death Penalty", Radio Free Europe, 23 March 2010, <http://www.rferl.org/content/Belarusian_Activists_Detained_For_Protesting_Death_Penalty/1991821.html >.

61 Parliamentary Assembly of the Council of Europe, Resolution 1727, Council of Europe website, 29 April 2010, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1727.htm>.

International Safeguards

Pregnant women and minors

Belarus law does not allow for the execution of individuals who were less than 18 years of age at the time of the crime for which they were convicted or of women.[62] Persons more than 65 years of age also may not be sentenced to death.[63]

Pardon or commutation

The Constitution gives the President the authority to grant clemency, and death penalties may be commuted to life imprisonment.[64] No clemencies or commutations were granted during the reporting period, nor were any death sentences changed on appeal.[65]

UNITED STATES OF AMERICA

Legal Framework

In the United States the death penalty can be handed down by state, federal or military courts. There are currently 16 jurisdictions in the United States in which capital punishment is not used. These are the states of Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Mexico, North Dakota, New Jersey, New York, Rhode Island, Vermont, West Virginia, Wisconsin and the District of Columbia.

Moratorium

There is no formal moratorium on executions in place at the federal level in the United States, and responsibilities not vested in the Federal Government by the Constitution are reserved for state governments.

A number of states that have legislation permitting the death penalty have not imposed it within the past 30 years. A formal moratorium on executions instituted in 2000 due to concerns about a high risk of error after "thirteen people have been found to have been wrongfully convicted"[66] — remains in place in Illinois. While New York has a capital punishment statute (CPL 400.27), part of it has been ruled

62 Art. 59 (1) (2) of the Criminal Code of the Republic of Belarus.

63 Art. 59 (2) (3) of the Criminal Code of the Republic of Belarus.

64 Article 84 (19) of the Constitution of the Republic of Belarus.

65 Response to from the Permanent Delegation of the Republic of Belarus to the OSCE, *op.cit.,* note 50.

66 Governor Ryan Declares Moratorium On Executions, Will Appoint Commission To Review Capital Punishment System, Press Release, 31 January 2000, Illinois Government News Network, <http://www.illinois.gov/pressreleases/showpressrelease.cfm?subjectid=3&recnum=359>.

unconstitutional by the New York Court of Appeals.[67] As a result, no defendants may be sentenced to death until the State Legislature corrects the errors in the statute. New Mexico repealed the death penalty for offenses committed after 1 July 2009. Two persons previously convicted remain under sentence of death and one person is currently on trial in a case where the state is asking for the death penalty.[68]

Method of execution

Authorized methods of execution vary from state to state, although most use lethal injection. However, the last four federal execution dates were stayed to allow a federal court to consider whether lethal injection as a method of execution violates the Eighth Amendment of the United States Constitution, which prohibits cruel and unusual punishment.[69] Although the Supreme Court, in Baze v. Rees, 553 U.S. 35 (2008), rejected a claim that the typical lethal injection protocol, as employed by the federal government and the vast majority of states, constitutes cruel and unusual punishment, a *de facto* moratorium on executions exists in four states – California, Delaware, Kentucky and Maryland – over lethal-injection issues.[70]

The 3rd Circuit Court of Appeals of Delaware, however, ruled on 1 February 2010 that the death penalty is constitutional, clearing the way for executions to be carried out again in the state.[71] In Nebraska, executions were halted in 2008, when the state's Supreme Court ruled electrocution unconstitutional as a means of execution. Despite the fact that the Nebraska Legislature approved lethal injection as a method of capital punishment in 2009, executions have not been carried out because the new lethal-injection law is currently being challenged in courts.[72] Executions also remain effectively halted due to issues over lethal injection in Nevada and North Carolina.

A new method of execution was introduced in Ohio on 8 December 2009. Kenneth Biros reportedly became the first person in the United States to be executed with a one-drug, intravenous lethal injection.[73]

67 People v. Taylor, 9 N.Y.3d 129 (2007), Response from the Delegation of the United States to the OSCE to the ODIHR questionnaire on the death penalty, 18 August 2010.

68 *Ibid*.

69 *Ibid*.

70 *Ibid*.

71 Hands Off Cain 2010 Report, Delaware Profile, Hands Off Cain website, 1 February 2010, <http://www.handsoffcain.info/bancadati/schedastato.php?idstato=13000081&idcontinente=26>.

72 Response from the Delegation of the United States to the OSCE to the ODIHR questionnaire on the death penalty, *op. cit*., note 67.

73 "New Execution Method Is Used in Ohio", The New York Times, 8 December 2009, <http://www.nytimes.com/2009/12/09/us/09ohio.html>.

On 2 May 2010, The American Board of Anaesthesiologists decided to revoke the certification of any member who participates in executing a prisoner by means lethal injection.[74] About half of the 35 states that perform executions, including Virginia and North Carolina, require a doctor to be present.[75]

In Utah, the only state in the United States to offer death-row inmates the choice of a firing squad rather than lethal injection as a method of execution, 3rd District Judge Robin Reese signed, on 3 April 2010, the death warrant for Ronnie Lee Gardner, who chose to die by firing squad. He was executed on 18 June 2010.[76] The previous time this method had been used in Utah was in 1996.

Statistics

Death sentences

The number of death sentences handed down reportedly continued to decline for the period 1 July 2009 to 30 June 2010, reflecting a continuing trend. Though no official data were received, it is believed that the civilian death-row population was slightly less than indicated in the data received last year.[77]

Executions

During the reporting period, 49 individuals were reportedly executed in the United States.[78] This number is slightly lower than last year's statistics, with the number of executions carried out in Texas lower by almost 30 per cent. Of the reported executions, 21 were carried out in Texas, nine in Ohio, four in Virginia, three in Alabama, two each in Florida, Georgia, Mississippi and Oklahoma, and one in each of Indiana, Louisiana, Tennessee and Utah.[79]

In Texas, Bobby Wayne Woods was executed on 3 December 2009 despite reported pleas from his lawyers that he was mentally impaired.[80] In 2002, the United States Supreme Court banned capital punishment for the mentally handicapped, but Texas

74 "Anaesthesiologists and Capital Punishment", Commentary, American Board of Anaesthesiology, 2 April 2010, <http://www.deathpenaltyinfo.org/documents/CapitalPunishmentCommentary.pdf>.

75 "Group to censure physicians who play role in lethal injections", Washington Post, 2 May 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/05/01/AR2010050103190.html>.

76 "Ronnie Lee Gardner put to death by firing squad", The Telegraph, 18 June 2010, <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/7837003/Ronnie-Lee-Gardner-put-to-death-by-firing-squad.html>.

77 As of 1 January 2009, the number of death row inmates was 3,297 according to official data received.

78 Death Penalty Information Centre, Execution Database for 2009 and 2010, <http://deathpenaltyinfo.org/executions>.

79 *Ibid*.

80 "Killer With Low I.Q. Executed in Texas", The New York Times, 3 December 2009, <http://www.nytimes.com/2009/12/04/us/04execute.html>.

courts ruled that Mr. Woods' handicap did not meet the Supreme Court's definition of "impaired" and, thus, did not prevent him from being sentenced to capital punishment.[81]

International safeguards

The United States Constitution, which applies to both state and federal convictions, prohibits the imposition of the death sentence if the offender was under the age of 18 when the capital offense was committed,[82] is mentally disabled,[83] or is legally insane at the time of the scheduled execution.[84] Federal law specifically prohibits relying on a defendant's race or national origin in deciding to seek or impose the death penalty, and the federal death penalty statute additionally requires a sentencing jury to certify that the defendant's race was not considered in deciding the sentence.[85]

Fair trial guarantees

On 1 April 2009, the United States Supreme Court decided that federally appointed counsel can represent indigent clients in state clemency procedures in capital cases.86 The case raised the issue of whether a federal law that provides lawyers for part of appeals by indigent death-row inmates at the state level guarantees them the continuation of that representation through the state clemency process. The law says that such lawyers are to represent their clients in "all available post-conviction processes", including "proceedings for executive or other clemency". Unites States Supreme Court Justice John Paul Stevens stated that "[i]n authorizing federally funded counsel to represent their state clients in clemency proceedings, Congress ensured that no prisoner would be put to death without meaningful access to the 'fail-safe' of our justice system."

Foreign nationals

On 23 October 2009, the United States and European Union signed an extradition agreement that allows European Union Member States to refuse to send suspects

81 "Texas executes Low-IQ convicted Killer", 3 December 2009, Hands Off Cain Website, <http://www.handsoffcain.info/archivio_news/200912.php?iddocumento=12318014&mover=0>.

82 See *Roper v. Simmons*, 543 US 551 (2005).

83 See *Atkins v. Virginia*, 536 US 304 (2002).

84 See *Ford v. Wainwright*, 477 US 399 (1986).

85 Response from the Delegation of the United States to the OSCE to the ODIHR questionnaire on the death penalty, *op. cit.*, note 67.

86 See Harbison v. Bell, 129 S. Ct. 1481 (2009).

to the United States who could face the death penalty. "Extradition to the US will henceforth only be possible under the condition that the death penalty will not be imposed or, if for procedural reasons such condition cannot be complied with, that the death penalty will not be carried out."[87] As of 14 March 2010, there were 131 known foreign nationals, comprising 34 nationalities, under sentence of death in the United States.[88]

Pardon or commutation

During the reporting period, seven death-row inmates were reportedly acquitted or saw their charges dismissed.[89] On 14 October 2009, **South Carolina** issued a posthumous pardon to Thomas and Meeks Griffin, two brothers who had been executed on 29 September 1915 for the killing of a Confederate veteran of the United States Civil War.[90]

87 "EU/US agreements on extradition and on mutual legal assistance," Council of the European Union, press release, 23 October 2009, <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/110727.pdf>.

88 Response from the Delegation of the United States to the OSCE to the ODIHR questionnaire on the death penalty, *op. cit.*, note 67.

89 "Innocent cases 2004-present", Death penalty Information Centre website, <http://www.deathpenaltyinfo.org/innocence-cases-2004-present>.

90 State of South Carolina, Department of Probation, Parole and Pardon Services, Pardon hearings and results, 14 October 2009, http://www.dppps.sc.gov/October%2014,%202009%20Pardon%20Hearing%20List.htm.

Annexes

Annex 1

OSCE Commitments and Resolutions on the Death Penalty

OSCE Parliamentary Assembly Annual Session, Vilnius, 19 June – 3 July 2009, Resolution on a Moratorium on the Death Penalty and Towards Its Abolition

…

The OSCE Parliamentary Assembly:

37. Condemns all executions wherever they take place;

38. Calls upon participating States applying the death penalty to declare an immediate moratorium on executions;

39. Encourages the participating States that have not abolished the death penalty to respect safeguards protecting the rights of those facing the death penalty as laid down in the United Nations Economic and Social Council Safeguards;

40. Calls on Belarus to take immediate steps towards abolition of the death penalty by promptly establishing a moratorium on all death sentences and executions with a view to abolishing the death penalty as provided by the United Nations General Assembly resolution 62/149, adopted on 18 December 2007, and resolution 63/168, adopted on 18 December 2008;

41. Calls upon the Government of the United States of America to adopt a moratorium on executions leading to the complete abolition of the death penalty in federal legislation and to withdraw its reservation to Article 6(5) of the International Covenant on Civil and Political Rights;

42. Calls upon the Republic of Kazakhstan, with a view to the complete abolition of the death penalty, to amend its Criminal Code in accordance with its constitutional amendment of 21 May 2007;

43. Calls upon Latvia to amend its Criminal Code in order to abolish the death penalty for murder with aggravating circumstances if committed during wartime;

44. Calls upon the retentionist participating States to encourage ODIHR and OSCE Missions, in co-operation with the Council of Europe, to conduct awareness-raising activities against recourse to the death penalty, particularly with the media, law enforcement officials, policy-makers and the general public;

45. Further encourages the activities of NGOs working for the abolition of the death penalty.

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.

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.

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.

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.

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.

Annex 2

OTHER INTERNATIONAL STANDARDS AND PROVISIONS 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.

Moratorium on the use of the death penalty, UN General Assembly Resolution 62/149, 18 December 2007[91]

The General Assembly,
Guided by the purposes and principles contained in the Charter of the United Nations,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child,

91 Another resolution was adopted by the UN General Assembly one year later, on 18 December 2008, on the implementation of the 2007 General Assembly resolution 62/149, UN Doc. A/63/430/Add.2, draft res. I., 18 December 2008.

Recalling also the resolutions on the question of the death penalty adopted over the past decade by the Commission on Human Rights in all consecutive sessions, the last being its resolution 2005/59, in which the Commission called upon States that still maintain the death penalty to abolish it completely and, in the meantime, to establish a moratorium on executions,

Recalling further the important results accomplished by the former Commission on Human Rights on the question of the death penalty, and envisaging that the Human Rights Council could continue to work on this issue,

Considering that the use of the death penalty undermines human dignity, and convinced that a moratorium on the use of the death penalty contributes to the enhancement and progressive development of human rights, that there is no conclusive evidence of the death penalty's deterrent value and that any miscarriage or failure of justice in the death penalty's implementation is irreversible and irreparable,

Welcoming the decisions taken by an increasing number of States to apply a moratorium on executions, followed in many cases by the abolition of the death penalty,

1. *Expresses its deep concern* about the continued application of the death penalty;

2. *Calls upon* all States that still maintain the death penalty to:

(a) Respect international standards that provide safeguards guaranteeing the protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984;
(b) Provide the Secretary-General with information relating to the use of capital punishment and the observance of the safeguards guaranteeing the protection of the rights of those facing the death penalty;
(c) Progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed;
(d) Establish a moratorium on executions with a view to abolishing the death penalty;

3. *Calls upon* States which have abolished the death penalty not to reintroduce it;

4. *Requests* the Secretary-General to report to the General Assembly at its sixty-third session on the implementation of the present resolution;

5. *Decides* to continue consideration of the matter at its sixty-third 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.

Extract from EU Guidelines on the Death Penalty: revised and updated version, 2008

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 acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults nor as a mandatory sentence.

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 an independent and impartial competent court after legal proceedings, including those before special tribunals or jurisdictions, 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; the death penalty will not be carried out as long as any related legal or formal procedure, at the international or at the national level, is pending.

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.

Extract from European Parliament resolution of 1 February 2007 on the initiative in favour of a universal moratorium on the death penalty

The European Parliament,

…

1. Reiterates its long-standing position against the death penalty in all cases and under all circumstances and expresses once more its conviction that the abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights;

2. Calls for a worldwide moratorium on executions to be established immediately and unconditionally with a view to the worldwide abolition of the death penalty, through

a relevant resolution of the current UN General Assembly, whose actual implementation the UN Secretary-General should be able to monitor.

Annex 3

RELEVANT RECOMMENDATIONS MADE AT THE 2009 OSCE HUMAN DIMENSION IMPLEMENTATION MEETING

During the 2009 OSCE Human Dimension Implementation Meeting, held in Warsaw from 28 September to 8 October 2009, views were also exchanged on the question of the abolition of the death penalty.[92] *Working Session 4: Rule of law II* addressed the issues of capital punishment, the prevention of torture and the protection of human rights in fighting terrorism. The majority of interventions focused on the death penalty and the prevention of torture.

Ambassador Janez Lenarčič, the Director of ODIHR, highlighted the steady decrease in the use of capital punishment, with Uzbekistan being the 50th participating State to abolish it, in 2008. Many speakers urged for the abolition of capital punishment and for an immediate moratorium on its use. The recent adoption of the OSCE Parliamentary Assembly resolution on a moratorium on the death penalty and towards its abolition was generally welcomed. Some speakers mentioned the need of awareness-raising exercises. It was also noted that capital punishment does not prevent crime and that it does not make our societies any safer. Moreover, the imposition of capital punishment generates many problems and risks, including that of judicial errors that lead to the execution of innocent people.

The following recommendations were made:

- The two OSCE participating States where executions still take place should abolish capital punishment and, in the meantime, adopt a moratorium on capital punishment.
- All participating States that still maintain the possibility to apply capital punishment should abolish it for all crimes.
- There should be a moratorium on the death penalty and an affirmation of the right to life.
- National parliaments should form coalitions against the death penalty.

92 "Human Dimension Implementation Meeting Consolidated Summary", OSCE Office for Democratic Institutions and Human Rights, 28 September- 08 October 2009.

Annex 4

QUESTIONNAIRE ON THE DEATH PENALTY SENT OUT BY ODIHR IN JUNE 2010

1. Please inform us of any developments with regard to the death penalty in your country since 1 July 2009.

LEGAL FRAMEWORK

2. The attached paper is a copy of the entry related to your country in the publication of 2009. It should list all crimes that carry the death penalty. Please check this list and inform us if any corrections or changes are required.
3. Has the number of crimes that carry the death penalty increased or decreased since the last publication?
4. Do any crimes under your country's Code of Military Law carry the death penalty? Have there been any changes since the last publication?
5. Have any steps been taken to introduce, retain, or remove a moratorium on executions? If yes, please provide details and the legal basis for those changes and please attach copies of relevant legislation or presidential decrees.
6. If a moratorium is in place, have there been any changes since last year's publication in the specific procedure regulating the treatment and rights of persons subjected to the moratorium? If yes, please attach copies of relevant legislation or presidential decrees.
7. If a moratorium is in place, please list the name and place of detention of all persons currently subjected to the moratorium.

STATISTICS

8. Please provide us with statistics on the number of persons who have been sentenced to death in the period from 1 July 2009 to 30 June 2010.
9. Please provide us with the full name and age of persons who have been sentenced to death in the period from 1 July 2009 to 30 June 2010.

10. Please indicate the specific crime for which each of these persons was sentenced.

11. Please list which of these sentences has entered into force (i.e., all appeal stages have been exhausted).

12. Please list which court passed each of the sentences.

13. Please indicate if any of the persons sentenced to death in the period from 1 July 2009 to 30 June 2010 were:
    - Under the age of 18 at the time the crime was committed;
    - Pregnant women or women with dependent infants;
    - Diagnosed as having any form of mental disorder;
    - Non-nationals. Please indicate whether or not each of these persons received consular assistance.

14. If there have been changes since the last year's publication, please detail the regulations in place regarding the treatment of persons on death row and attach copies of the relevant legislation and regulations.

15. Please provide us with the full name and age of persons who have been executed in the period from 1 July 2009 to 30 June 2010. Please also indicate the specific crime for which each of these persons was executed.

16. Please indicate if any of the persons executed in the period from 1 July 2009 to 30 June 2010 were:

    - Under the age of 18 at the time the crime was committed.
    - Pregnant women or women with dependent infants.
    - Diagnosed as having any form of mental disorder.
    - Non-nationals. Please indicate whether or not each of these persons received consular assistance.

17. Which state body is responsible for keeping statistics on sentences, executions and commutations?

18. Please provide us with the full name and age of any persons sentenced to death who have been granted clemency or had their sentence commuted since 1 July 2009.

SAFEGUARDS

19. Please describe if there have been any changes in 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?

20. 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).

21. What system is in place to ensure that interim stays by the UN Human Rights Committee are complied with and transmitted to all the relevant actors at the national level? Have there been any changes in this system since last year's publication?

22. Please list the names of any persons who have been executed while a procedure regarding their case was ongoing before an international body.

23. If there have been changes since last year's publication, please describe the procedural process of considering a request for clemency, including the factors that are taken into account when considering such a request.

24. If there have been changes since last year's publication, please indicate the procedure for informing relatives of the date of execution and the date that the execution has been carried out, as well as of the place of burial of executed persons.

MISCELLANEOUS

25. Please indicate ways in which you have co-operated with other intergovernmental organizations on this issue in the period from 1 July 2009 to 30 June 2010.

Annex 5

Status of Ratifications of Relevant Treaties

Status of Ratifications as of: 5 August 2010

Participating State	Status	ICCPR	2nd Optional Protocol	ECHR	Protocol No. 6	Protocol No. 13
Albania	A	r	r	r	r	r
Andorra	A	r	r	r	r	r
Armenia	A	r	not ratified	r	r	signed
Austria	A	r	r	r	r	r
Azerbaijan	A	r	r	r	r	not ratified
Belarus	R	r	not ratified	n/a	n/a	n/a
Belgium	A	r	r	r	r	r
Bosnia and Herzegovina	A	r	r	r	r	r
Bulgaria	A	r	r	r	r	r
Canada	A	r	r	n/a	n/a	n/a
Croatia	A	r	r	r	r	r
Cyprus	A	r	r	r	r	r
Czech Republic	A	r	r	r	r	r
Denmark	A	r	r	r	r	r
Estonia	A	r	r	r	r	r
Finland	A	r	r	r	r	r
France	A	r	r	r	r	r
Georgia	A	r	r	r	r	r
Germany	A	r	r	r	r	r
Greece	A	r	r	r	r	r
Holy See	A	not ratified	not ratified	n/a	n/a	n/a
Hungary	A	r	r	r	r	r
Iceland	A	r	r	r	r	r
Ireland	A	r	r	r	r	r
Italy	A	r	r	r	r	r
Kazakhstan	DA	r	not ratified	n/a	n/a	n/a
Kyrgyzstan	A	r	ratified	n/a	n/a	n/a
Latvia	PA	r	not ratified	r	r	signed

Participating State	Status	ICCPR	2nd Optional Protocol	ECHR	Protocol No. 6	Protocol No. 13
Liechtenstein	A	r	r	r	r	r
Lithuania	A	r	r	r	r	r
Luxembourg	A	r	r	r	r	r
Malta	A	r	r	r	r	r
Moldova	A	r	r	r	r	r
Monaco	A	r	r	r	r	r
Montenegro	A	r	r	r	r	r
Netherlands	A	r	r	r	r	r
Norway	A	r	r	r	r	r
Poland	A	r	signed	r	r	signed
Portugal	A	r	r	r	r	r
Romania	A	r	r	r	r	r
Russian Federation	DA	r	not ratified	r	signed	not ratified
San Marino	A	r	r	r	r	r
Serbia	A	r	r	r	r	r
Slovak Republic	A	r	r	r	r	r
Slovenia	A	r	r	r	r	r
Spain	A	r	r	r	r	ratified
Sweden	A	r	r	r	r	r
Switzerland	A	r	r	r	r	r
Tajikistan	DA	r	not ratified	n/a	n/a	n/a
Turkey	A	r	r	r	r	r
Turkmenistan	A	r	r	n/a	n/a	n/a
Ukraine	A	r	r	r	r	r
United Kingdom	A	r	r	r	r	r
United States of America	R	r	not ratified	n/a	n/a	n/a
Uzbekistan	A	r	r	n/a	n/a	n/a
Former Yugoslav Republic of Macedonia	A	r	r	r	r	r

Notes:

r = ratification or accession
signed = signature only
not ratified = neither signed not ratified
n/a = non-applicable as not member of the Council or Europe

A = abolitionist
DA = *de facto* abolitionist
PA = partly abolitionist
R = retentionist
in bold = developments since last reporting