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£EUROPE

@Moving towards complete abolition of the death penalty

INTRODUCTION

Amnesty International (AI) has a vision of a world without executions. In Europe today this vision is closer to reality than ever before.

Presently 28 European countries have abolished the death penalty either in law or in practice. Since 31 December 1989 five European countries have abolished the death penalty for all offences - Andorra, the Czech and Slovak Federal Republic, Hungary, Ireland and Romania. European countries account for nearly half of the 44 countries worldwide that have abolished the death penalty for all offences.

There have been moves towards abolition in other European countries where the penalty is still retained in law. Albania reduced the crimes punishable by death from 34 to 11 in May 1990. In Belgium a bill to abolish the death penalty for peacetime offences is presently awaiting parliamentary approval. The Grand National Assembly of Bulgaria introduced a moratorium on executions in July 1990. AI has received no reports of executions in Poland since 1988. There has been a de facto moratorium on executions in Turkey since the last execution in 1984 and in 1991 the Grand National Assembly ratified amendments to the Penal Code which reduced the number of offences punishable by death from 29 to 13. The death penalty has also been abolished under the constitutions of Slovenia (1989), Croatia (1990) and Macedonia (1991).

There are several points worth noting in the progress towards abolition: First, abolition has often come as the outcome of a long experience and debate over the death penalty, in which the reasons for abolition become thoroughly understood by those taking the decisions. As one newly elected member of parliament of the United Kingdom said in 1983, "It is only when you take part in the debate that the case against hanging becomes overwhelmingly obvious."

Second, in the discussions, international experience is relevant. Since the early 19th century, members of parliament and others arguing for abolition have been citing examples and statistics from other countries in support of abolition at home.

Third, the abolitionist experience has been successful. Since the Second World War the death penalty, once abolished, has not been reintroduced in any European country apart from the former USSR. The collective success of abolition in Western Europe may be summed up in the statement of the European Ministers of Justice, at their 12th Conference in

1980, that "It has not been established that the total abolition of the death penalty by many member States [of the Council of Europe] has led to any negative consequences in the field of criminal policy" and confirming that "the ultimate aim is the abolition of the death penalty in member States".

Fourth, support for the death penalty is likely to decrease over the years as the public gets used to the fact that the penalty no longer exists. In the Federal Republic of Germany, according to one poll repeated at intervals, support for the death penalty dropped from 55 per cent one year after abolition (in 1950) to 22 per cent in 1986, and the decline has been steady, apart from temporary rises in support following politically motivated killings.

Fifth, although the issue can take time to ripen, the actual decision to abolish the death penalty sometimes comes very quickly, in moments when dramatic political situations create new opportunities for human rights. Some of the recent cases of abolition in Europe are examples of this point.

AI's vision of a world without executions is based on a conviction that the death penalty violates fundamental human rights: the right to life and the right not to be subjected to cruel, inhuman or degrading punishment. Amnesty International believes that the death penalty is an illegitimate form of punishment: the gallows and the electric chair should survive only in museums, alongside the medieval torturer's rack and thumbscrews. Amnesty International opposes the death penalty in all cases and appeals for clemency in all urgent cases that come to its attention. Amnesty International holds that the abolition of the death penalty enhances respect for human rights. This view is finding increasing acceptance.

The link between the death penalty and human rights is increasingly being made. It can be seen in such texts as the Portuguese Constitution of 1976, where the prohibition of the death penalty comes immediately after the statement that "Human life is inviolable", or in the decree that abolished the death penalty in the former German Democratic Republic (1987), which refers to "the preservation of human rights as a whole".

The death penalty is increasingly coming under the ambit of human rights in the United Nations and other intergovernmental organizations. Both the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR) now have optional protocols on the abolition of the death penalty, and a similar protocol to the American Convention on Human Rights has been adopted. The Human Rights Committee, the monitoring body set up under the ICCPR, has stated in a general comment on Article 6 of that Covenant that "all measures of abolition [of the death penalty] should be considered as progress in the enjoyment of the right to life". The UN Economic and Social Council (ECOSOC) has adopted safeguards to be applied in all death penalty cases. The United Nations Special Rapporteur on summary or arbitrary executions, appointed in 1982, has

developed a system of sending urgent messages to governments on the basis of appeals from various sources alleging imminent or threatened summary executions, including executions in cases where the 1984 ECOSOC safeguards have not been observed.

Among European intergovernmental organizations, the Parliamentary Assembly of the Council of Europe has appealed to the parliaments of member states which retain the death penalty in peacetime to abolish it (resolution 727 of 22 April 1980). In the European Community (EC), the European Parliament has declared that the death penalty violates human rights and invoked the "common civilization" of member states in appealing for abolition (resolutions of 18 June 1981 and 17 January 1986). The European Parliament has frequently appealed for clemency in urgent death penalty cases, as have the EC's foreign ministers acting within the framework of the European Political Cooperation. Further possible action towards the worldwide abolition of the death penalty was under consideration in the European Parliament as of the beginning of 1992.

A CHRONOLOGY OF THE ABOLITION OF THE DEATH PENALTY IN EUROPE SINCE THE SECOND WORLD WAR

Although the death penalty has existed from ancient times, voices against it have been raised for many centuries in Europe and other parts of the world. In the first recorded parliamentary debate on the death penalty (427 BC), Diodotus persuaded the Athenian Assembly to reverse its decision to execute all adult males of the rebellious city of Mitylene. Cesare Beccaria presented a sustained critique of the death penalty in his On Crimes and Punishments, published in Italy in 1764, and in the following decades there were attempts to abolish the death penalty in several countries, although they were short-lived.

In the nineteenth century and the period leading up to the Second World War, the death penalty was permanently abolished in San Marino (1865), Portugal (1867), the Netherlands (1870), Norway (1905), Sweden (1921), Iceland (1928) and Switzerland (1942). Abolition was for common crimes in some of these countries and for all crimes in others. Elsewhere the death penalty was stopped in practice or restricted in scope.

Out of the atrocities of the Second World War came a new thirst for human rights. Nations released from authoritarian rule abolished the death penalty, and the pace of abolition quickened. The following chronology presents the most remarkable achievements in European abolition in the post-war period, accomplished at a time when progress towards abolition was also being made in other parts of the world.

CHRONOLOGY OF ABOLITION IN EUROPE **1947-1991**

1947 - Italy abolished the death penalty for peacetime offences in a new constitution, which came into force in 1948. Article 27 of the constitution states, "The death penalty is not admitted save in cases specified by military laws in time of war."

1947 - In the Soviet Union, the Presidium of the Supreme Soviet issued a decree abolishing the death penalty in peacetime. Soviet commentators referred to this abolition as "an act of socialist humanism of historical significance" and "a success in the struggle for peace, democracy, and socialist humanism". In 1950, however, the death penalty was reintroduced for certain crimes against the state, and in 1954 it was introduced for murder.

1949 - The Federal Republic of Germany (FRG) abolished the death penalty for all offences under the Basic Law of the FRG (the equivalent of a constitution). Article 102 states, "The death penalty is abolished."

1949 - Finland abolished the death penalty for peacetime offences in the Penal Code of 1949.

1950 - The Austrian parliament abolished the death penalty for ordinary offences. Under the German occupation, between 1939 and 1945, some 1,187 people had been executed in one prison alone, the Vienna Central Prison.

1950 - The European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) was signed on 4 November and came into force in 1953. Article 2 of the convention states that no one shall be intentionally deprived of life but - as an exception to this principle - allows for the death penalty.

1957 - The European Convention on Extradition was opened for signature. Article 11 of the convention allows countries which do not have or use the death penalty to refuse extradition to countries which do unless the requesting country gives satisfactory assurances that the death penalty will not be carried out.

1962 - Monaco abolished the death penalty for all offences under Article 20 of a new constitution. Article 20 states, "No one may be subjected to cruel, inhuman or degrading treatment. The death penalty is abolished."

1962 - The Council of Europe issued a report on "The Death Penalty in European Countries", prepared by the French jurist Marc Ancel. It noted that despite temporary setbacks and interruptions, "the movement has always been towards the abolition of capital punishment and in fact the attenuation of penalties in general."

1965 - Great Britain abolished the death penalty for murder for an experimental period of five years, a decision which was made permanent by resolutions of both Houses of Parliament in 1969. The unsatisfactory results of an attempt in 1957 to restrict the death penalty to murders committed in connection with a felony had contributed to the decision to do away with the death penalty for murder altogether.

1967 - An international colloquium was held at the University of Coimbra, Portugal, to commemorate the 100th anniversary of Portugal's abolition of the death penalty for ordinary offences. Lawyers, criminologists and other scholars presented papers on the experience of the death penalty and its abolition in Europe and the Americas. In its concluding statement the colloquium resolved "that capital punishment be universally and definitively abolished for all offences" and that "until the final abolition of capital punishment, all states which still adhere to it immediately declare a stay of its application."

1968 - Austria abolished the death penalty for all offences by unanimous vote of parliament. Article 85 of the Constitution, as amended by Law Paper No. 73/1968, states, "The death penalty is abolished."

1969 - The Vatican City State abolished the death penalty for all offences by repealing Article 4 of the Vatican Law on the Sources of Legislation.

1971 - Malta abolished the death penalty for homicide and other ordinary offences under the Criminal Code.

1972 - Finland abolished the death penalty for all offences by an amendment to the Penal Code of 1949. The vote in parliament approving the government's proposal to abolish the death penalty was 140 in favour and 29 against.

1972 - Sweden abolished the death penalty for all offences. Sweden went on to enshrine the prohibition of the death penalty in the Instrument of Government of the Swedish Constitution, which came into force in 1975.

1976 - Two years after the overthrow of the repressive Caetano government in Portugal, the death penalty was totally abolished. Article 25 of Portugal's new constitution, approved by the Constituent Assembly in 1976, stated: "In no case will there be the death penalty".

1977 - An international conference on the death penalty was convened by Amnesty International in Stockholm. One of the recommendations of the conference was that the European Convention on Human Rights should be amended so as to prohibit the death penalty.

1978 - The Danish parliament decided by 100 votes to 46 to abolish the death penalty for all wartime offences.

1978 - Spain abolished the death penalty for peacetime offences some three years after the death of Generalísimo Francisco Franco. The last executions had been carried out in 1975 when five men were shot by firing squad despite worldwide appeals for clemency.

1979 - Norway's parliament removed the death penalty from the Military Penal Code, thus abolishing it entirely. In its proposal to parliament to abolish the death penalty the government stated that it is an inhumane, punitive measure, and that the government was taking a principled stand against the death penalty for humanitarian reasons.

1979 - Luxembourg's Chamber of Deputies approved a bill abolishing the death penalty for all offences. The Penal Code was amended and no longer provides for the death penalty.

1980 - On 22 April the Parliamentary Assembly of the Council of Europe adopted a resolution appealing to the parliaments of member states to abolish the death penalty for peacetime offences, and along with it a recommendation that the European Convention on Human Rights, which allows for the death penalty, be amended accordingly. That recommendation resulted in the development of the Sixth Protocol to the European Convention on Human Rights, adopted in 1983 (see below).

1981 - France abolished the death penalty for all offences under the new coalition government which came to power earlier in the year. Seven people were under sentence of death at the time.

Introducing the government's abolitionist proposal in the French National Assembly, Minister of Justice Robert Badinter said: "Those who want a justice which kills are inspired by two beliefs: the belief that there are men who are totally guilty, that is, men who are totally responsible for their acts, and the belief that there can be a justice so sure of its infallibility that it can say that this person can live and that one must die. Both assertions seem to me, at my age, equally false."

1982 - The Netherlands parliament, in the course of revising the constitution, adopted by a large majority a provision abolishing the death penalty for all offences. Article 114 of the new constitution states: "Capital punishment may not be imposed."

1983 - The Sixth Protocol to the European Convention on Human Rights was opened for signature by member states of the Council of Europe on 28 April. The Sixth Protocol is the first international treaty developed to prohibit the death penalty. Under the terms of the protocol, a country which becomes a party to it is required to abolish the death penalty; the only exception permitted is for offences committed "in time of war or of imminent threat of war". The Sixth Protocol came into force on 1 March 1985 when it was ratified by the necessary minimum of five countries (see Appendix III for text).

1983 - In Cyprus the death penalty was abolished for ordinary crimes.

1984 - Turkey, which was returning to civilian rule after a military coup in 1980, carried out its last executions on 7 and 25 October. Reacting to the 7 October execution, the European Parliament on 11 October called on the Turkish authorities "to suspend the carrying out of any further death sentences with immediate effect". Several European governments also condemned the executions.

1986 - On 17 January, during its second directly elected legislative term, the European Parliament adopted a new resolution on the death penalty favouring accession to the Sixth Protocol to the European Convention on Human Rights by all member states. This resolution went further than a 1981 European Parliament resolution on the death penalty, by declaring that "the death penalty is a cruel and inhuman form of punishment and a violation of the right to life, even where strict legal procedures are applied" (see Appendix IV for text).

1987 - Liechtenstein abolished the death penalty for all offences in a new Penal Code approved by the Landtag (parliament) on 24 June; the commission preparing the code had cited abolitionist developments elsewhere in Europe as a reason for abolition.

1987 - On 17 July the Council of State of the German Democratic Republic issued a decree abolishing the death penalty; official reasons attached to the decree included "the preservation of human rights" and "the recommendations within the framework of the United Nations for the gradual removal of the death penalty from the lives of nations".

1987 - An international conference on the death penalty was held in Siracusa, Italy, organized by the International Institute of Higher Studies in Criminal Sciences. In an address to the conference, Mr A. Adinolfi, Under-Secretary General of the Council of Europe, said he hoped that the Sixth Protocol to the European Convention on Human Rights abolishing the death penalty in peacetime, would "signal the launching of a broader and deeper conception of the right to life as the right of each human being not merely to live, but to live in dignity."

1989 - On 7 July 1989 the European Court of Human Rights found that if the United Kingdom were to extradite Jens Soering, a national of the Federal Republic of Germany, to the United States to face trial for capital murder in the Commonwealth of Virginia, it would violate its obligations under Article 3 of the European Convention on Human Rights: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". Factors contributing towards the court's decision included the long period between sentence and execution (six to eight years on average in Virginia) and the severity of conditions on death row.

1989 - After the overthrow of the government of President Nicolae Ceausescu, Romania's interim president, Ion Iliescu, announced the abolition of the death penalty.

1990 - Andorra adopted its first written penal code, making no provision for the death penalty.

1990 - Following the overthrow of the government of Gustav Husak in late 1989, the Czech and Slovak Federal Republic (Czechoslovakia) amended its penal code, abolishing the death penalty for all offences. Referring to the abolition, a government representative told the United Nations Economic and Social Council in New York on 9 May: "Czechoslovakia wants to join those countries that rate the right to life among the most fundamental human rights..."

1990 - In Hungary the Constitutional Court abolished the death penalty by ruling that its provision under the penal code violated new provisions of the country's constitution. The court declared: "The right to life and human dignity is a right to an absolute value which imposes restrictions on the criminal jurisdiction of the state."

1990 - In Ireland the parliament voted to abolish the death penalty for the three crimes for which it was still retained.

1990 - In the latest of a series of debates on the death penalty since its abolition for murder in 1965, the United Kingdom House of Commons (lower house of parliament) on 17 December rejected a move to reintroduce the death penalty for murder by 367 votes to 182. A counter-motion to abolish the death penalty for treason was defeated by a margin of only 32 votes.

1991 - On 13 September 1991 the Belgian Council of Ministers approved a bill to abolish the death penalty for peacetime offences. The bill is awaiting parliamentary approval. Under the provisions of the draft law the death penalty would be retained for serious military offences committed in time of war.

1991 - In Switzerland a proposal to eliminate the death penalty from the Military Penal Code was approved by the National Council (one of the chambers of the parliament). The Council of States, the second chamber of parliament, is expected to vote on the amendment in 1992.

THE DEATH PENALTY IN EUROPE: A COUNTRY SURVEY

ALBANIA: MOVES TOWARDS ABOLITION

On 8 May 1990 the Albanian parliament approved draft laws which cut the number of crimes punishable by death from 34 to 11. Under these laws the death penalty was abolished for women; previously only pregnant women could not be executed. Agitation and propaganda against the state are no longer capital offences but the death penalty remains for certain "economic crimes", and for treason, espionage, terrorism, genocide and murder.

Amnesty International knows of six people who were sentenced to death in 1991, four of whom were executed. One death sentence was commuted and the Supreme Court ordered a retrial in the case of the sixth person.

ANDORRA: TOTALLY ABOLITIONIST

A new penal code introduced in September 1990 made no provision for the death penalty. Previously, justice was administered by a court using the law of custom - an unwritten system based on Roman, Justinian, Catalan, Canon, Spanish and Napoleonic law. The death penalty has been used only once this century, in 1943 when a citizen convicted of the murder of his two brothers was shot by firing-squad.

ARMENIA (REPUBLIC OF): RETENTIONIST

To Amnesty International's knowledge the Armenian Criminal Code retains a possible death penalty for 18 offences in peacetime, but in the absence of official statistics no information is available on the application of this punishment in practice.

AUSTRIA: TOTALLY ABOLITIONIST

In 1919 the national constituent assembly abolished the death penalty for ordinary offences. This abolition was incorporated in Article 85 of the Federal Constitution of 1920. However, under military law, the death penalty was reintroduced in 1934 for ordinary offences. Forty-four prisoners were executed between 1934 and 1938. During the German occupation, between 1938 and 1945, some 1,187 people were executed in Vienna Central Prison, and there were executions elsewhere as well. After the Second World War, between 1945 and 1950, 46 prisoners were executed; 30 of them had been convicted of war crimes.

In 1950 the Austrian parliament decided to abolish the death penalty for ordinary offences, and in 1968 the parliament unanimously adopted a resolution abolishing the death penalty in time of war. This decision had the effect of finally abolishing the death penalty for all offences.

Article 85 of the Federal Constitution of 1920, as amended, states: "The death penalty is abolished."

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was signed by Austria in April 1991.

The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was ratified by Austria on 5 January 1984.

AZERBAIDZHAN (REPUBLIC OF): *RETENTIONIST*

In a letter received in September 1991, Amnesty International was informed by the Minister of Justice of the Azerbaydzhani Republic that the criminal code was being reviewed and that, although the death penalty would be retained, its use would be reduced from 18 peacetime offences to five: treason; premeditated murder under aggravating circumstances; rape of a minor under aggravating circumstances; crimes against peace, security and humanity; and kidnapping of a child leading to especially grave consequences. Women would be exempted from the death penalty, as would persons under 18 as is currently the case. The Minister also stated that the death penalty was rarely used in Azerbaydzhani, and then practically only for premeditated murder under aggravating circumstances. To Amnesty International's knowledge no official statistics on the use of the death penalty have been published for the republic.

BELARUS (REPUBLIC OF): *RETENTIONIST*

Belarus retains the death penalty for 18 offences in peacetime, although information on its application is very limited in the absence of any official statistics. According to unofficial sources, in 1990 the Presidium of the Republic's Supreme Soviet (parliament) reviewed 13 death sentences, all for premeditated murder under aggravating circumstances, but commuted only one. In 1989 eight petitions for clemency were reviewed, but none granted.

BELGIUM: *ABOLITIONIST IN PRACTICE BUT NOT IN LAW*

On 13 September 1991 the Belgian Council of Ministers approved a bill to abolish the death penalty for peacetime offences. Under the provisions of the draft law the death penalty would be retained for serious military offences committed in time of war.

In an explanatory memorandum, three reasons were given for abolition: that the death penalty is an ineffective punishment, that its inclusion in Belgian legislation is misleading, and that it has detrimental consequences for Belgium's international relations.

The bill was submitted to the parliament on 25 September but was never formally tabled because the parliament was dissolved in October 1991. It is expected that the new parliament will consider the bill at some later stage.

Under the Penal Code of 1867 the death penalty is provided for serious crimes against the person, and specified crimes against state security. In addition, mandatory death sentences were introduced in June 1975 for kidnapping and in June 1976 for hijacking an aircraft, in both cases when aggravating circumstances can be proved. The death penalty is also provided for certain crimes in the Military Penal Code for members of the armed forces.

Since 1863 death sentences for common criminal offences have, with one exception, always been commuted. In March 1918 a frontline military officer was executed after being convicted of the murder of a pregnant civilian. Some 15 people were, however, executed in the course of the First World War for crimes against external state security, and about 242 people were executed by firing-squad between November 1944 and August 1950 after being convicted of war-related crimes against the external security of the state. No execution has been carried out since August 1950.

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was signed by Belgium on 12 July 1990.

The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was signed by Belgium on 28 April 1983.

BULGARIA: MOVES TOWARDS ABOLITION

A moratorium on executions was introduced in Bulgaria on 20 July 1990 by the 400-member Grand National Assembly (GNA). This was followed on 21 August by the commutation of the death sentences of 11 of the 12 people on death row at the time by President Zhelev.

Under the penal code of 1968 which reduced the number of crimes punishable by death from 50 to 31, Article 38 states that the death penalty is imposed only if the crime has been carried out in an exceptionally serious manner and if the objectives of the punishment "cannot be achieved by a less severe punishment."

An optional death penalty is provided for several crimes against the state including treason, espionage and sabotage. Article 116 lists 11 different types of homicide punishable by an optional death penalty. They include premeditated murder; the killing of a Bulgarian official or an official of an ally; and killing for personal gain. Other offences which carry an optional death penalty include robbery with violence; war crimes; genocide; and preparing epidemic bacteria with the intention of causing infection in other people. In addition, the penal code lists five military crimes which carry an optional death sentence.

In May 1985 the GNA approved amendments to the penal code which provided for an optional death penalty for acts of terrorism by means of explosives or other methods. In October 1986 it approved amendments which provided for an optional death penalty for armed robbery.

The death penalty cannot be imposed on anyone aged under 20 at the time of the crime (18 for soldiers or in wartime), or on women pregnant at the time of the crime or the sentencing. Pregnant women cannot be executed, the sentence being

commuted to a minimum of 15 years' imprisonment. The death penalty cannot be imposed on people extradited from a foreign country for that purpose; in such cases the sentence is commuted to 20 years imprisonment.

In July 1991 the GNA adopted a new constitution which included a clause (number 28) which stated that "Everyone has the right to life. Any attempt on a person's life will be prosecuted as a grave crime". No clear interpretation of this has yet emerged and it has not been followed by abolition in law. The moratorium of July 1990 remains in force.

CYPRUS: ABOLITIONIST FOR ALL BUT EXCEPTIONAL CRIMES

On 15 December 1983 the Council of Ministers voted in favour of the abolition of the death penalty for premeditated murder and its replacement with life imprisonment (Criminal Code [Amendment] Law 1983).

The Criminal Code retains the death penalty for treason (Section 36), instigating invasion (Section 37) and piracy with violence (Section 69). Certain offences against the state carry the death penalty under the Military Criminal Code. The death penalty may not be imposed on pregnant women or children under the age of 16 when the crime was committed.

The last execution was carried out by hanging on 13 June 1962.

CZECH AND SLOVAK FEDERAL REPUBLIC: TOTALLY ABOLITIONIST

On 3 May 1990, the parliament of the Czech and Slovak Federal Republic adopted an amendment to the penal code, abolishing the death penalty for all offences. The law came into force on 1 July 1990. Referring to the abolition, a government representative told the UN Economic and Social Council in New York on 9 May: "Czechoslovakia wants to join those countries that rate the right to life among the most fundamental human rights..."

DENMARK: TOTALLY ABOLITIONIST

The death penalty was abolished for ordinary offences under the Civil Penal Code which came into force in 1933.

After the Second World War a special retroactive law was enacted which provided the death penalty for certain crimes committed during the German occupation of Denmark. Forty-six people were executed; the last execution took place in 1950.

In 1952 a law was enacted which provided for the death penalty for crimes committed during a state of war or foreign occupation. This law was repealed by the *Folketing* (parliament) in May 1978 by 100 votes to 46. The effect of this decision was

to abolish the death penalty for all military offences, including those in the Military Penal Code.

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was signed by Denmark on 13 February 1990.

The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was ratified by Denmark on 1 December 1983.

ESTONIA: RETENTIONIST

In October 1991 Amnesty International wrote to Olev Laanjärv, the Minister of Internal Affairs, expressing its concern at the execution of Rein Oruste, who the organization understood had been convicted of murder. According to the Estonian daily *Paevaleht* of 27 September, the Minister had announced that Rein Oruste had been executed on 11 September 1991, the first such sentence to be carried out in Estonia itself since 1968, and that the legal procedures had been observed. However, the newspaper also reported allegations from other sources that Rein Oruste was shot on 11 September by prison officials while in the washroom at institution JuM-422/2, in retaliation for an earlier altercation with prison guards.

Amnesty International requested clarification on the circumstances of Rein Oruste's death, such as whether he and his family had been informed of his pending execution, where it took place and which officials were present. It also requested a copy of the official regulations regarding the procedure for executions in the Republic of Estonia (the Minister was quoted in the article as saying that previous death sentences passed in Estonia since 1968 had been carried out in Leningrad, now St Petersburg, in the Russian Republic). The organization reiterated its hope, expressed in a letter to the Chairman of the Supreme Council earlier in the year, that the Republic of Estonia would impose a moratorium on death sentences and executions while the use of the death penalty was reviewed, and that full statistics on the death penalty would be published. Publication of such material for a range of categories is urged in resolution 1989/64 adopted by the United Nations Economic and Social Council regarding the protection of the rights of people facing the death penalty.

FINLAND: TOTALLY ABOLITIONIST

The death penalty was abolished for peacetime offences in the penal code of 1949, and for all offences on 5 May 1972 by an amendment to the penal code of 1949 which came into force on 1 June 1972. In its preamble to the bill amending the penal code, the government stated that there was no convincing argument for preventive effects of the death penalty. The government also referred to the possibility of an innocent person being sentenced to death and executed. Furthermore, it was suggested by the government that abolition of the death penalty was as natural as abolishing the use of torture and other cruel punishments. The vote in parliament approving the government's proposal to abolish the death penalty was 140 in favour and 29 against.

Between 1939 and 1944, 500 people were sentenced to death by courts-martial for war crimes and executed by firing-squad. Most of these executions took place in 1942. The last execution for an ordinary criminal offence was carried out in 1826.

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was ratified by Finland in April 1991.

The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was ratified by Finland on 10 May 1990.

FRANCE: TOTALLY ABOLITIONIST

The death penalty was abolished for all offences, both civil and military, under Law No. 81-908 of 9 October 1981, which came into effect the following day. Article 1 states, "The death penalty is abolished."

France abolished the death penalty for political offences in 1848. However, two decree laws of June 1938 and July 1939 and an enactment (*ordonnance*) of June 1960 provided for the death penalty for a number of offences against state security.

Until October 1981, both the penal code and the Code of Military Justice authorized the use of the death penalty for a number of civil and military crimes. Between 1966 and 1977 nine people who had been convicted of criminal offences were executed by guillotine. The last execution was carried out on 10 September 1977, following a conviction for murder, rape and torture. Seven people were under sentence of death when the death penalty was abolished.

The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was ratified by France on 17 February 1986.

GEORGIA (REPUBLIC OF): RETENTIONIST

In April 1991 Georgia abolished the death penalty for certain economic offences, and commuted all pending death sentences for these crimes. The most recent executions took place in October 1991, when two people were shot. As of February 1992 there were nine people under sentence of death in the republic, all convicted of murder, although the provisional government has stated its intention to announce a moratorium on executions pending fresh elections and a debate on abolition by the new parliament.

FEDERAL REPUBLIC OF GERMANY: TOTALLY ABOLITIONIST

The death penalty was abolished in both the German Democratic Republic (1987) and the Federal Republic of Germany (1949) prior to the accession of the former to the latter in October 1990. This means the death penalty is abolished in the unified country, the name of which is the Federal Republic of Germany.

The death penalty was abolished in the former German Democratic Republic in a decree issued by the Council of State on 17 July 1987. The necessary legislative changes were approved by the People's Chamber on 18 December 1987.

The death penalty was abolished for all offences under the 1949 Basic Law (the equivalent of a constitution) of the former Federal Republic of Germany. Article 102 states, "The death penalty is abolished." The last execution was in 1949.

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was ratified by the German Democratic Republic on 16 August 1990. Although the German Democratic Republic is now part of the Federal Republic of Germany, the United Nations considers that the German Democratic Republic's ratification remains valid. The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was ratified by the Federal Republic of Germany on 5 July 1989.

GREECE: ABOLITIONIST IN PRACTICE BUT NOT IN LAW

In January 1991 Athanasios Kanellopoulos, then Minister of Justice under the New Democracy government which has been in power since April 1990, announced that he would shortly be submitting draft legislation to the Greek parliament proposing the abolition of the death penalty in law. In November 1991 New Democracy deputy Lambros Papegeorgopoulos submitted draft legislation to the Greek parliament proposing the complete abolition of the death penalty from Greek legislation. However, Amnesty International was concerned by reports in the Greek press in February 1992 that a cross-party parliamentary committee drawing up preliminary draft legislation on drugs-related offences had recommended the death penalty for certain offences. The legislation will be discussed by a government committee before being submitted to the parliament.

A total of nine articles of the penal code provide for the death penalty. In all nine cases except one (138.1) the death penalty is optional. Forty-three articles of the Military Penal Code provide for the death penalty. In 18 of these cases the death penalty is mandatory.

Under the Greek Penal Code of 1950 an optional death penalty is provided for causing explosions resulting in death, for armed robbery resulting in death or severe injury, and for murder in certain circumstances, namely if the crime was particularly abhorrent in method and surrounding circumstances, and the criminal is considered dangerous to society.

Provision for the death penalty for military crimes and crimes against the state includes killing or attempting to kill the head of state, negotiating with a foreign government resulting in war against Greece, and colluding with the enemy in wartime and espionage. Article 138 of the penal code provides for a mandatory death penalty for "attempting to detach territory from Greece".

The Military Penal Code also provides for the death penalty for a series of offences. For example, Article 70b of the Military Penal Code (prohibiting insubordination) under which conscientious objectors are convicted for refusing to perform military service carries an optional death penalty.

The Greek Constitution limits the use of the death penalty for political offences. Article 7(3) of the Constitution of Greece of 11 June 1975 states, "The death sentence shall not be imposed for political crimes, unless these are composite" (that is, unless there are aggravating factors).

Under Article 96 (Conversion of the death penalty) of Law No. 1851 passed in 1989, the death penalty is converted *ipso facto* into life imprisonment when three years have passed from the moment when the sentence which imposed it became irrevocable.

The last execution was carried out on 25 August 1972 for a conviction of murder. Since then a number of death sentences have been imposed by Greek courts but no executions have been carried out. Since 1972 all death sentences have been commuted to life imprisonment by the President.

The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was signed by Greece in 1983 but has not been ratified.

HUNGARY: TOTALLY ABOLITIONIST

On 24 October 1990 the Constitutional Court of Hungary declared the death penalty unconstitutional stating that it violates the "inherent right to life and human dignity" as provided under Article 54 of the country's constitution together with a new provision under Article 8 of the constitution that "while regulations concerning basic rights and responsibilities in the Hungarian Republic are defined by law, the fundamental content of that right cannot be restricted."

The last death sentence to be passed in Hungary was in April 1990 on a person convicted of rape who was later reprieved. The last execution was in July 1988.

The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was signed by Hungary on 6 November 1990.

ICELAND: TOTALLY ABOLITIONIST

The death penalty was abolished for all offences and replaced by life imprisonment in 1928 under the Law of Some Provisional Changes to the penal code of 25 June 1869 and Additions to It.

The last execution was carried out in 1830 when two people found guilty of murder were beheaded.

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was ratified by Iceland on 2 April 1991.

The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was ratified by Iceland on 22 May 1987.

IRELAND: TOTALLY ABOLITIONIST

The Government Bill (Criminal Justice Bill Number 2) abolishing the death penalty passed through the Irish Parliament (Dail) on 13 June 1990, and was then signed into law by the President of the Republic on 13 July 1990. The measure became effective immediately.

Introducing the government's abolitionist bill in the Irish Parliament (Dail) the Minister of Justice, Mr. Burke, said that "in finally abolishing the death penalty Ireland will be joining the vast bulk of western developed nations who have already done so...".

ITALY: ABOLITIONIST FOR ALL BUT EXCEPTIONAL CRIMES

The death penalty was abolished for all offences under a new penal code of 1889, but reintroduced for certain crimes against the state under Law No. 2008 of 25 November 1926, following a number of attacks on the life of the head of the Italian Government, Benito Mussolini. The new penal code of 1930, which came into force on 1 July 1931, increased the number of crimes against the state punishable by death and reintroduced the death penalty for certain serious common criminal offences.

On 10 August 1944 Decree Law No. 224 abolished the death penalty for all crimes in the 1930 Penal Code. However, it was retained under a separate Decree Law No. 159 of 27 July 1944 for serious crimes of fascism and collaboration with National Socialist fascists (*nazifascisti*). On 10 May 1945 Decree Law No. 234 introduced the death penalty as an exceptional and temporary measure for serious criminal offences such as participation in an armed band; robbery with violence; and extortion.

The death penalty was finally abolished for common criminal offences and military offences committed in peacetime under the new Constitution of the Republic of Italy of 27 December 1947. Article 27, which was implemented by Decree Law No. 21 of 22 January 1948, states, "The death penalty is not admitted save in cases specified by military laws in time of war." The Wartime Military Penal Code retains the death penalty for a wide range of offences. The President is empowered by Article 87 of the constitution to grant pardon or to commute a sentence.

Between 26 April 1945 and 5 March 1947, 88 people were executed for collaboration with the Germans during World War II. The shooting of three men in March 1947 were the last known executions carried out in Italy.

In August 1989 the Chamber of Deputies (lower house of parliament) asked the government to prepare legislation abolishing the death penalty from the Wartime Military Penal Code. Several proposals aiming at the total abolition of the death penalty, put forward by members of various political parties, have been awaiting detailed examination by the Justice Committee of the Chamber of Deputies since 1989.

During a meeting with Amnesty International in October 1991, the Italian Prime Minister, Giulio Andreotti, indicated his support for a revision of the Wartime Military Penal Code leading to total abolition of the death penalty.

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the use of the death penalty, was signed by Italy on 13 February 1990.

The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was ratified by Italy on 29 December 1988.

LATVIA: RETENTIONIST

The Republic of Latvia retains the death penalty.

In an April 1991 letter to the Chairman of the Supreme Council, Amnesty International pointed out the organization's total opposition to the death penalty, and urged a moratorium on death sentences and executions pending a review and the publication of full statistics. It welcomed the recent commutation of the death sentence passed on Viktor Smirnov for murder by the Latvian Supreme Court in April 1990, and urged that all other pending death sentences also be commuted. Amnesty International mentioned the case of one other man on which it had details: Roman Gasparovich, who was sentenced to death for murder by the Latvian Supreme Court on 24 May 1990.

In January 1992 AI received a reply from the Latvian Ministry of Justice which stated that the death penalty is currently provided for nine different offences committed under aggravating circumstances. A committee comprising members of the Supreme Soviet and lawyers has been set up to review the Criminal Code which will discuss the retention or abolition of the death penalty.

According to the letter nine people were sentenced to death in 1989, four were executed and one was granted clemency; in 1990 five people were sentenced to death, three were executed and one was granted clemency; in 1991 four people were sentenced to death, three of whom were executed. All those sentenced to death and executed had been convicted of premeditated murder under aggravating circumstances.

LIECHTENSTEIN: TOTALLY ABOLITIONIST

On 24 June 1987 the *Landtag* (parliament) adopted a new penal code which abolished the death penalty for all offences. The vote approving this proposal to abolish the death penalty was unanimous. The new penal code came into force on 1 January 1989. When it was introduced in parliament, the commission set up by the government to reform the penal code stated that the death penalty should be abolished because its retention would be contrary to current European and international trends.

The death penalty was previously provided for murder, damage to property leading to the foreseeable death of a person, and high treason under the Austrian Penal Code of 1852 as applied in Liechtenstein. The last execution was carried out in 1785 by beheading.

The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was ratified by Liechtenstein on 15 November 1990.

LITHUANIA: RETENTIONIST

The Republic of Lithuania retains the death penalty, but in recent years has progressively reduced its scope. On 3 December 1991 the Supreme Council adopted an amendment to the Criminal Code in accordance with which only premeditated murder under aggravating circumstances carries a possible death sentence. Persons aged under 18 at the time the crime was committed, as well as women pregnant at this time, are exempted from the death penalty. Persons who develop limited responsibility after sentencing, as well as women who become pregnant or give birth after sentencing, may not be executed.

In January 1992 the Ministry of Justice reported that three people had been sentenced to death in Lithuania since March 1990. All three people were convicted of murder, and all had their sentences commuted.

LUXEMBOURG: TOTALLY ABOLITIONIST

On 17 May 1979 the Chamber of Deputies approved a bill abolishing the death penalty for all offences by a majority of 32 votes to 14. The penal code was amended and no longer provides for the death penalty; the Constitution, however, does not explicitly rule out its use.

In 1948 the penal code was revised to replace beheading by shooting. After the Second World War, 18 people were sentenced to death, nine of whom were executed. The last execution for an ordinary criminal offence was on 7 August 1948. The last execution for war crimes was on 24 February 1949.

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was signed by Luxembourg on 13 February 1990.

The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was ratified by Luxembourg on 19 February 1985.

MALTA: ABOLITIONIST IN PRACTICE BUT NOT IN LAW

Malta abolished the death penalty in 1971 for all offences in the Criminal Code (Criminal Code [Amendment][Number 2]Act). However, it is retained under the Armed Forces Act of 1970 for a series of offences committed by those subject to military law, such as aiding the enemy, communicating intelligence to the enemy, or taking part in a mutiny. Trial is by court-martial. An amendment to the Malta Armed Forces Act passed by the House of Representatives on 10 April 1990 limits the use of the death penalty to times of war.

Under the constitution of 1964, the President has the power to grant pardon, and to reprieve or commute death sentences after receiving the advice of the Cabinet.

The last execution was carried out in 1943.

The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was ratified by Malta on 26 March 1991.

MOLDOVA (REPUBLIC OF): RETENTIONIST

To Amnesty International's knowledge Moldova's criminal code still retains the death penalty for 18 offences in peacetime. Details on the application of this punishment are meagre in the absence of any official statistics. However a member of the parliamentary Commission on Human Rights and Nationalities, in an interview published on 10 December 1991, stated that "unfortunately the death penalty is used quite frequently in our republic. On 21 June 1991 there were 10 people on death row in Chisinau [the capital]".

MONACO: TOTALLY ABOLITIONIST

The death penalty was abolished for all offences in 1962 under Article 20 of a new constitution of 17 December 1962. Article 20 states, "No one may be subjected to cruel, inhuman or degrading treatment. The death penalty is abolished." The last execution was by guillotine in 1847.

NETHERLANDS: TOTALLY ABOLITIONIST

The death penalty was abolished by statute in 1870 for all peacetime offences. The death penalty was, however, retained in the Military Penal Code for certain wartime offences. The last execution for a crime committed in peacetime was carried out in 1860. The last executions under military jurisdiction were in 1945.

During the Second World War the Dutch Government in exile in London issued the Royal Buitengewoon Besluit Oorlogsmisdrijven, Special Decree on War Crimes, of 22 December 1943. It provided for the death penalty for certain war crimes committed during the German occupation; its provisions were incorporated into a statute on war crimes in July 1952. After the war a number of people were executed under the provisions of the decree. The last execution took place in 1952.

On 11 April 1982 the Dutch Parliament adopted by a large majority a constitutional provision abolishing the death penalty for all offences. In the revised Constitution of the Kingdom of the Netherlands, which came into effect on 17 February 1983, Article 114 states: "Capital punishment may not be imposed."

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was ratified by the Netherlands on 26 March 1991.

The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was ratified by the Netherlands on 25 April 1986.

NORWAY: TOTALLY ABOLITIONIST

The death penalty was abolished for premeditated homicide and other ordinary offences under the Civil Penal Code of 22 May 1902, which came into force on 1 January 1905. It was retained in the Military Penal Code of 22 May 1902 until 1979 when the death penalty was abolished for all offences.

After World War II, 37 people convicted of treason and other serious war crimes connected with the German occupation were executed - the last on 29 August 1948. The last execution for an ordinary criminal offence was carried out in 1876 by beheading.

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was ratified by Norway on 5 September 1991.

The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was ratified by Norway on 25 October 1988.

POLAND: NO EXECUTIONS

Amnesty International has not received any reports of executions in Poland since April 1988. An unofficial moratorium on the use of the death penalty is currently in force.

The current penal code of 1969 states that the death penalty is "exceptionally provided for the most serious crimes" (Article 38). In practice it is almost exclusively imposed for murder.

The death penalty was abolished once before in Poland, in 1899, after parliamentary discussion which began early in the 19th century. It was reintroduced in 1926.

PORTUGAL: TOTALLY ABOLITIONIST

The death penalty was abolished for all offences in a new constitution which was approved by the Constituent Assembly in 1976. The Assembly voted unanimously in favour of Article 25 of the constitution which states, "1. Human life is inviolable. 2. In no case will there be the penalty of death."

Portugal abolished the death penalty for political offences in 1852, and for common criminal offences in 1867. In 1911 the death penalty was abolished for all offences, but it was reinstated in 1916 for military crimes committed in wartime "in a theatre of war".

The last execution for a common criminal offence was in April 1846. The last known recorded execution under military jurisdiction was carried out in May 1849. However, death sentences were imposed by military courts on a number of occasions

until 1905. Although several of these sentences are known to have been commuted, it has not been possible to verify that none were actually carried out.

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was ratified by Portugal on 17 October 1990.

The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was ratified by Portugal on 2 October 1986.

ROMANIA: *TOTALLY ABOLITIONIST*

On 31 December 1989, following the overthrow of President Ceausescu, the death penalty was abolished for all offences by the new authorities, the National Salvation Front headed by President Ion Iliescu.

The last executions were of President Ceausescu and his wife Elena on 25 December 1989 after a summary trial.

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was ratified by Romania on 27 February 1991.

RUSSIAN FEDERATION: *RETENTIONIST*

Death sentences are regularly passed and carried out in the Russian Federation, although the exact figures are not available as the authorities do not publish official statistics on its use. The most recent indication of the scale came from the head of the parliamentary Clemency Commission of the former USSR in July 1991, who reported that most of the 208 executions recorded in the USSR in 1990 were carried out in two republics - Russia and Ukraine. The great majority of these executions were said to have been for aggravated murder.

On 5 December 1991 the Russian parliament abolished the death penalty for three economic offences: speculation (Article 88), aggravated bribe-taking (Article 173) and large scale theft of state property (Article 93-1). No amendment was mentioned for Article 87, "making or passing counterfeit money or securities" which provides for the death penalty for this offence if committed as a form of business.

However, further reductions in the scope of the death penalty were indicated by the Russian Minister of Justice in an interview on 28 January 1992. Speaking about a draft new criminal code, to come before parliament for a first reading in the spring of 1992, the Minister said that only three offences would carry the death penalty in the new code: war crimes, genocide and premeditated murder under aggravating circumstances. This would contrast with the then current total he gave of 27 such offences, including 18 crimes in peacetime. Women would be exempted from the death penalty, as would minors which is already the case.

SAN MARINO (Republic of): *TOTALLY ABOLITIONIST*

The death penalty was first abolished for all offences in 1848. Between 1853 and 1858 it was reintroduced for exceptional crimes. The first penal code of the Republic, introduced in 1865, made no provision for the death penalty. The last known execution was carried out in 1468.

The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was ratified by San Marino on 22 March 1989.

SPAIN: ABOLITIONIST FOR ALL BUT EXCEPTIONAL CRIMES

The death penalty was in use until its abolition for common criminal offences in 1932 when the penal code was reformed under the Second Republic. However, it was reinstated for certain crimes of terrorism in 1934 and reintroduced for murder and other common crimes in 1938.

Three years after the death of the head of state, Generalissimo Francisco Franco, in 1975, a new constitution was approved by popular referendum in December 1978. This abolished the death penalty for peacetime offences but retained it for offences under the Military Penal Code in time of war. A new Military Penal Code, which retained the death penalty as an optional punishment for a wide range of wartime offences, came into force in June 1986. While the new Military Penal Code was under consideration, members of the *Cortes* (parliament) introduced a motion to remove the death penalty, but it was defeated.

As head of state, the King has the constitutional power to grant clemency.

The last executions were on 17 September 1975 when five men convicted of murdering public order officials were shot by firing-squad despite worldwide appeals for clemency.

In November 1990 there was a debate in the Spanish parliament concerning the ratification of the accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aiming at the abolition of the death penalty. There was a large majority in favour of ratifying the Protocol but with a reservation "which 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". Spain subsequently ratified the Second Optional Protocol to the ICCPR with this reservation on 11 April 1991.

The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was ratified by Spain on 14 January 1985.

SWEDEN: TOTALLY ABOLITIONIST

The death penalty was abolished for peacetime offences on 3 June 1921 (Act 1921:288), a proposal to this effect being approved by a large majority in the *Riksdagen* (parliament). Abolition of the death penalty for wartime offences followed

some 50 years later, in an act adopted in 1972 which came into force on 1 July 1973 (Act 1973:20). The effect of this decision, voted by 266 to 37, was to abolish the death penalty for all offences.

The prohibition of the death penalty is enshrined in the Instrument of Government of the Swedish Constitution, which came into effect on 1 January 1975. Chapter 8, Article 1 originally stated, "No law or other regulation may imply that a sentence for capital punishment can be pronounced." In 1976 this statement was moved to Chapter 2 on Fundamental Liberties and Rights, where Article 4 states, "Capital punishment may not occur." By placing the statement in this Chapter, it applies not only to Swedish citizens but also to alien residents who are thus protected against expulsion or extradition to states where the death penalty is still practised.

The last execution was carried out in 1910.

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was ratified by Sweden on 11 May 1990.

The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was ratified by Sweden on 9 February 1984.

SWITZERLAND: ABOLITIONIST FOR ALL BUT EXCEPTIONAL CRIMES.

Switzerland abolished the death penalty for political offences in 1848, and for all offences except those committed under the Military Penal Code in time of war under the new Federal Constitution of 1874. However, the relevant article of the 1874 constitution (Article 65) was amended five years later in 1879 so that the death penalty was once again prohibited for political crimes only. This provision is still part of the present constitution.

Following this amendment, between 1880 and 1894, 10 Swiss cantons reintroduced the death penalty into their penal codes for serious, non-political offences and in some cantons it remained in effect until the end of 1941. The last execution under cantonal penal legislation was in 1940 in the Canton of Obwalden.

The Swiss Penal Code of 21 October 1937 (which came into force on 1 January 1942) centralized the legislation on civil penal law throughout the cantons of the Swiss Confederation. It made no provision for the death penalty and had the effect of overturning those provisions which had existed in cantonal penal codes, thus effectively abolishing the death penalty for peacetime offences.

The death penalty is, however, retained under the Military Penal Code of June 1927 which came into force in 1928, and is applicable in time of war or imminent threat of war for a wide range of offences. The death penalty is mandatory for "desertion to the enemy" but optional for all other offences.

During the Second World War, the Federal Council (the executive of the Confederation) introduced the death penalty in a temporary, emergency law in 1940 for revealing military secrets and for treason. Between 1942 and 1945, of the 33 people who were sentenced to death, 17 were executed (by shooting). The last execution was on 7 December 1944.

On 16 September 1991 the Federal Council stated that it had approved a proposal to eliminate the death penalty from the Military Penal Code. The proposed amendment was then passed to the National Council which approved it unanimously in October 1991. The Council of States, the second chamber of parliament, is expected to vote on the amendment during 1992.

The Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, was ratified by Switzerland on 13 October 1987.

TURKEY: SCOPE OF THE DEATH PENALTY REDUCED, COMMUTATION OF DEATH SENTENCES

There has been a de facto moratorium on executions in Turkey since the last execution in 1984, but death sentences have continued to be imposed. An earlier de facto moratorium from 1972 to 1980 was brought to an end when, between the military coup of September 1980 and October 1984, a total of 50 people were executed: 23 of them had been convicted of common crimes, and 27 for politically related offences, all but one involving killings.

Under the Anti-Terror Law, passed in April 1991, hundreds of pending death sentences were commuted to terms of imprisonment. In November 1990, the Grand National Assembly ratified amendments to the penal code which reduced the number of offences punishable by death from 29 to 13. These include separatist offences under Article 125 and a number of other offences against the state or the constitution, as well as common criminal offences including murder.

Important institutions such as the Turkish Bar Association and the Turkish Human Rights Association have voiced their strong opposition to the death penalty, and in 1991 the Turkish Medical Association issued a directive that doctors should under no circumstances participate in executions.

Following the formation of a new government in November 1991, the new Justice Minister Seyfi Oktay expressed his personal opposition to the death penalty, but the following month Prime Minister Süleyman Demirel expressed the view that abolition was "not on Turkey's agenda".

Meanwhile, prosecutors in criminal and state security courts are continuing to demand the death penalty.

UKRAINE: RETENTIONIST

Death sentences are regularly passed and carried out in Ukraine, although the exact figures are not available as the authorities do not publish official statistics on its use. The most recent indication of the scale came from the head of the parliamentary Clemency Commission of the former USSR in July 1991, who reported that most of the 208 executions recorded in 1990 in the USSR were carried out in two republics - Ukraine and Russia. The great majority of these executions were said to have been for aggravated murder.

Amnesty International is not aware of any discussion in the Ukrainian parliament to limit the scope of the death penalty, which may be imposed for 18 peacetime offences.

UNITED KINGDOM: ABOLITIONIST FOR ALL BUT EXCEPTIONAL CRIMES

The Murder (Abolition of Death Penalty) Act, 1965 abolished the death penalty for murder for a five-year experimental period. Abolition of the death penalty for murder in Great Britain was made permanent by resolutions of both Houses of Parliament on 18 December 1969.

The death penalty is retained for high treason both in peacetime and in wartime under the Treason Act, 1914, and in England and Wales for piracy with violence under the Piracy Act, 1837.

The death penalty is retained for a number of offences committed by members of the armed forces in wartime such as treason and espionage, under the Army Act, 1955; the Air Force Act, 1955; and the Naval Discipline Act, 1957. Under the Armed Forces Act adopted in 1981, the death penalty was abolished for civilians convicted of spying on board a naval ship or at an overseas naval establishment.

A death sentence may not be imposed on anyone who was aged under 18 at the time of the offence nor on a woman pregnant at the date of the imposition of the sentence.

The royal Prerogative of Mercy is exercised by the monarch on the advice of the Secretary of State for Home Affairs.

The Northern Ireland (Emergency Provisions) Act 1973 abolished the distinction previously used in Northern Ireland between murder and "capital murder" - that is, the murder of a police officer or prison officer in the course of duty - and provided a maximum penalty of life imprisonment for murder.

Since the death penalty was abolished for murder, motions to reintroduce it have been defeated in the House of Commons (lower House of Parliament) on a number of occasions. Most recently a vote on a motion to reintroduce the death penalty for murder was held on 18 December 1990. Three hundred and fifty voted against the return of the death penalty for the murder of a policeman; 215 voted in favour. Three hundred and sixty-seven rejected mandatory death penalty for all murders; 182 voted in favour.

The last executions - of two men convicted of murder - were on 13 August 1964.

VATICAN CITY STATE: TOTALLY ABOLITIONIST

In June 1929, offences committed within the Vatican City State were placed under the jurisdiction of the Italian Penal Code and related laws under Article 4 of the Vatican Law on the Sources of Legislation (see under *Italy*). Article 4 stated that attacks on the life, person or liberty of the Pope were punishable in accordance with Article 1 of Italian Law No. 2008 of 25 November 1926, which provided the death penalty for attacks on the head of state. Article 4 also stated that in the case of an attack on a foreign head

of state within Vatican City State, the penalty would be that applicable in the victim's own state.

On 21 June 1969, however, a Vatican law was promulgated which amended Vatican penal law and procedure and repealed the provisions of Article 4, thereby abolishing the death penalty for all offences.

**CONSTITUENT REPUBLICS OF THE FORMER FEDERAL SOCIALIST REPUBLIC OF YUGOSLAVIA: CROATIA, SLOVENIA AND MACEDONIA - ABOLITIONIST
SERBIA, BOSNIA-HERCEGOVINA AND MONTENEGRO - RETENTIONIST**

In June 1991 the Republics of Croatia and Slovenia declared their independence from the Socialist Federal Republic of Yugoslavia (SFRY). The Assembly of the Republic of Macedonia declared its sovereignty and autonomy in September 1991.

The death penalty was abolished under the Constitutions of Slovenia (1989), Croatia (1990) and Macedonia (1991). Serbia, Bosnia-Herzegovina and Montenegro retain laws, enacted in 1977, under which the following crimes may be punished by death: aggravated forms of murder; armed robbery resulting in loss of life; aiding or inciting anyone under 14 or of unsound mind to commit suicide. In addition, under the Criminal Code of Serbia a person who intentionally aids anyone under 18 in perpetrating aggravated murder may be punished by death, a provision designed to discourage families from using minors (exempt from the death penalty) to carry out vendetta killings.

The death penalty is also provided under the Criminal Code of the SFRY (which remains in force in the Republics of Serbia, Bosnia-Herzegovina, Montenegro and Macedonia). Although the Constitution of the SFRY describes the death penalty as an "exceptional" measure, almost a third (44) of the 141 articles of the Criminal Code of the SFRY carry an optional death penalty. Of these, 20 allow the death penalty only in wartime or when in immediate danger of war. On 5 October 1991 four members of the SFRY Presidency ruled that courts were to apply the provisions of Article 226 paragraph 3 of the Criminal Code of the SFRY under which offences against the armed forces committed in time of war or immediate danger of war may be punished by death. These include non-violent offences such as desertion and failure to respond to call-up.

A Yugoslav citizen who "signs or recognizes capitulation or who accepts or recognizes the occupation of Yugoslavia or any part of it" may be punished by death, as may a person who assassinates a state leader. Article 139 paragraph 2 stipulates that certain offences against the state, including armed rebellion, terrorism and sabotage, may be punished by the death penalty if the perpetrator in committing them deliberately kills one or more people. Genocide and other war crimes are also punishable by death, as are the offences of international terrorism, hostage-taking and hijacking an aeroplane, if the perpetrator deliberately kills one or more people.

A person who is under 21 at the time of committing the offence can be sentenced to death only for offences against the state, against humanity and international law, or military offences. A person who is under 18 at the time of the offence cannot be sentenced to death, and pregnant women are also exempted from

the death penalty. A pregnant woman cannot be executed during pregnancy or for a year after she has given birth. Severely physically and mentally ill people cannot be executed while their illness lasts.

In practice, over the last 10 years the imposition of the death penalty has been limited largely to cases of aggravated murder (such as multiple or particularly brutal murders). Amnesty International does not know of any death sentences or executions carried out in 1991.

APPENDICES

- I ABOLITIONIST AND RETENTIONIST COUNTRIES IN EUROPE
- II SECOND OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AIMING AT THE ABOLITION OF THE DEATH PENALTY
- III PROTOCOL NO. 6 TO THE CONVENTION (EUROPEAN CONVENTION) FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS CONCERNING THE ABOLITION OF THE DEATH PENALTY
- IV RESOLUTION ON THE ABOLITION OF THE DEATH PENALTY AND THE ACCESSION TO THE SIXTH PROTOCOL TO THE CONVENTION (EUROPEAN CONVENTION) FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, ADOPTED BY THE EUROPEAN PARLIAMENT
- V SELECTED INTERNATIONAL TREATIES ON THE DEATH PENALTY.