

THE DEATH PENALTY IN THE OSCE AREA

BACKGROUND PAPER 2002/1

OSCE HUMAN DIMENSION IMPLEMENTATION MEETING

SEPTEMBER 2002



This paper has been prepared by the Monitoring Unit of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE). Every effort has been taken to ensure that the information contained in this paper is accurate and impartial.

This paper updates Background Paper 2001/1 of September 2001. It is intended to provide a comparative view of developments related to the use of the death penalty throughout the OSCE region, to highlight key issues and to promote constructive discussion. The content of the paper does not necessarily reflect the policy or position of the OSCE.

Any comments or suggestions should be addressed to the ODIHR.

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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.

(Document of the 1991 Moscow Meeting of the Conference on the Human Dimension of the CSCE, paragraph 36)

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1. INTRODUCTION

In accordance with paragraph 17.7 of the Copenhagen Document¹, in which the OSCE participating States committed themselves to exchange information on the question of the abolition of the death penalty, this paper compares the use of the death penalty in the OSCE region. The paper updates Background Paper 2001/1 and covers the period from 30 June 2001 to 30 June 2002.

Chapter 2 of the paper provides an overview of OSCE commitments relating to the death penalty. It is apparent from this section that the OSCE commitments themselves do not prohibit the use of the death penalty. However, the OSCE participating States that retain the death penalty have committed themselves to only impose the death penalty for the most serious crimes and in a manner not contrary to their international commitments². In addition to the OSCE commitments, the Copenhagen Document refers to other international commitments on the use of the death penalty. Accordingly, Chapter 3 of the paper introduces the international standards that have been elaborated in other international forums. Chapter 4 specifically addresses the situation and main developments in 18 participating States. Of these states, 12 retain the death penalty³, three (Azerbaijan, Georgia and Moldova) contain internationally unrecognized separatist regions where the death penalty is used and three have either recently become abolitionist or retain the death penalty in inactive or anomalous legal provisions. Each country is discussed individually in a separate entry. Each entry consists of four sections. These are the relevant international instruments, legal framework, statistics and international standards.

Firstly, the section on relevant international instruments lists whether the particular country has signed or ratified the relevant binding international legal instruments on the use of the death penalty. When read in conjunction with Chapter 3 of the paper, this section indicates exactly which binding international commitments each participating State has undertaken. Secondly, the section on the legal framework outlines the legal status and scope of the death penalty. It is in this section that any trends towards reduction in scope or abolition are discussed. Thirdly, the section on statistics indicates

¹ Document of the 1990 Copenhagen Meeting of the Conference on the Human Dimension of the CSCE.

² Concluding Document of the 1989 Vienna Follow-up Meeting, 'Questions Relating to Security in Europe', paragraph 24.

³ Of the 55 participating States of the OSCE, 43 have abolished the death penalty.

the number of death sentences that have been passed and the number of executions that have been carried out. The majority of country entries provide statistics for 2000 and 2001. Where it has been possible to obtain statistics for the first part of 2002, these have also been included. Fourthly, the section on international standards assesses the extent to which each participating State complies with the limitations that are placed upon the use of the death penalty by international law.

Chapter 4 of the paper has been produced with the co-operation of the delegations of the participating States to the OSCE and the OSCE field operations. The OSCE/ODIHR contacted the OSCE delegation of each participating State reviewed in Chapter 4 and asked them to complete a detailed questionnaire on the use of the death penalty in their respective country⁴. Of the 18 delegations, which represent a country included in this publication, 11 completed the questionnaire⁵. Each country entry indicates whether it was completed with or without the assistance of the relevant OSCE delegation. In addition, the OSCE/ODIHR also sent a detailed questionnaire to all the OSCE field operations that carry out their activities in those participating States that retain the death penalty. The OSCE/ODIHR also relied upon additional information from other inter-governmental organizations, non-governmental organizations and media reports.

Finally, a full-text reproduction of the texts of relevant OSCE commitments and other international standards is attached in Annexes 1 and 2. A table comparing the ratification status of the relevant international instruments in the OSCE participating States is attached in Annex 3.

⁴ A questionnaire asking for information on the death penalty was sent to all 55 Delegations of the OSCE participating States. The ODIHR thanks all those Delegations that completed the questionnaire.

⁵ These are Albania, Armenia, Azerbaijan, Belarus, Cyprus, Greece, Latvia, the Russian Federation, Turkey, Uzbekistan and the Federal Republic of Yugoslavia. In addition we also received some information on federal legislation from the State Department of the United States of America.

2. OSCE COMMITMENTS RELATING TO THE DEATH PENALTY

The 1989 Vienna Concluding Document⁶ and the 1990 Copenhagen Document⁷ introduced the issue of the death penalty to the catalogue of CSCE/OSCE human dimension commitments. With the adoption of these Documents, the participating States committed themselves to,

- impose the death penalty, where not abolished, “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” (Vienna Document, ‘Questions relating to Security in Europe’, paragraph 24);
- keep the question of capital punishment under consideration (ibid.);
- co-operate on the issue within relevant international organizations (ibid.);
- exchange information on the question of the abolition of the death penalty (Copenhagen Document, paragraph 17.7);
- make available to the public information regarding the use of the death penalty (ibid., paragraph 17.8).

These commitments were subsequently reaffirmed by the participating States at the Moscow Meeting (1991), the Helsinki Summit (1992), and the Budapest Summit (1994).

⁶ Concluding Document of the 1989 Vienna Follow-up Meeting-, ‘Questions Relating to Security in Europe’, paragraph 24.

⁷ Document of the 1990 Copenhagen Meeting of the Conference on the Human Dimension of the CSCE.

3.

OTHER INTERNATIONAL STANDARDS AND INSTRUMENTS RELATING TO THE DEATH PENALTY

As seen in the previous Chapter, the OSCE participating States have committed themselves to impose the death penalty only for the most serious crimes and in a manner not contrary to their international commitments⁸. In particular, the Copenhagen Document explicitly refers to the following standards that have been elaborated within the forums of the United Nations and the Council of Europe:

- 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 (paragraph 17.3);
- the Second Optional Protocol to the International Covenant on Civil and Political Rights (paragraph 17.2);
- the Sixth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty (paragraph 17.4).

In addition, since the Copenhagen Document, the Council of Europe has recently adopted Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms on the issue of the death penalty⁹.

The limitations placed upon the use of the death penalty by these four legally binding instruments are discussed in this Chapter. The ratification status of each of these instruments in the 55 OSCE participating States can be found in Annex 3.

⁸ Concluding Document of the 1989 Vienna Follow-up Meeting, 'Questions relating to Security in Europe', paragraph 24.

⁹ ETS No.187. 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.

3.1 UNITED NATIONS (UN)

The International Covenant on Civil and Political Rights (ICCPR)¹⁰

The right to life is governed by Article 6. Article 6 does not prohibit the use of the death penalty. However, the General Comment of the UN Human Rights Committee on Article 6 of the ICCPR states that all measures of abolition should be considered as progress in the enjoyment of the right to life¹¹. In addition, in its most recent resolution on the death penalty, the UN Commission on Human Rights reaffirmed its previous resolutions in which it stated that the abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights¹². The resolution called upon all states that still maintain the death penalty to establish a moratorium on executions, with a view to completely abolishing the death penalty.

Whilst Article 6 does not expressly prohibit the death penalty, it does place a number of restrictions on the use of capital punishment. Firstly, it prohibits the imposition of the death sentence except for the most serious crimes. Secondly, it prohibits the application of the death penalty unless it is pursuant to a final judgement rendered by a competent court. Thirdly, it stipulates that those sentenced to death must have the right to seek pardon or commutation. Fourthly, it prohibits the imposition of the death sentence for crimes committed by persons below 18 years of age and prohibits the execution of pregnant women. These restrictions have been further defined and expanded upon by a number of forums within the UN¹³.

Serious crimes

Article 6(2) of the ICCPR provides that the death penalty may only be imposed for the most serious crimes. The General Comment of the UN Human Rights Committee states that the term 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure. The ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (ECOSOC Safeguards) further specify that the scope of the crimes which are punishable by the death penalty should not go

¹⁰ Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966. Entered into force on 23 March 1976.

¹¹ General Comment 6, adopted at the 16th session of the Human Rights Committee on 27 July 1982.

¹² Commission on Human Rights Resolution 2002/77, April 2002.

¹³ Whilst the provisions of the ICCPR and the Protocols thereto are binding, the following United Nations documents, except the Convention on the Rights of the Child, which are referred to in this section are not of a legally binding nature.

beyond intentional crimes with lethal or other extremely grave consequences¹⁴. In its most recent resolution on the question of the death penalty, the UN Commission on Human Rights called upon all states that maintain the death penalty to progressively restrict the death penalty. The resolution also states that the death penalty should not be imposed for non-violent acts such as financial crimes, sexual relations between consenting adults and non-violent religious practice or expression of conscience.

Competent court

Article 6(2) of the ICCPR provides that the death penalty may only be imposed in a manner not contrary to the provisions of the ICCPR and pursuant to a final judgement rendered by a competent court. The General Comment of the UN Human Rights Committee states that the procedural guarantees prescribed in the ICCPR must be observed. These guarantees include the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. The ECOSOC Safeguards also state that the death penalty may only be carried out pursuant to a final judgement rendered by a competent court after legal process that gives all possible safeguards to ensure a fair trial at least equal to those in Article 14 of the ICCPR. The most recent resolution of the UN Commission on Human Rights also states that all legal proceedings should conform to Article 14 of the ICCPR¹⁵.

Persons below the age of 18 and pregnant women

Article 6(5) of the ICCPR prohibits the death sentence for crimes committed by persons below the age of 18. It also prohibits the execution of pregnant women. The prohibition on the death sentence for crimes committed by persons below the age of 18 is reiterated in the Convention on the Rights of the Child (CRC). Article 37(a) provides that capital punishment shall not be imposed for offences committed by persons below the age of 18¹⁶. This principle has been reaffirmed by the ECOSOC Safeguards and a number of resolutions of the UN Commission on Human Rights¹⁷. In addition, the UN Sub-Commission on the Promotion and Protection of Human Rights has stated that the imposition of the death penalty on those aged below 18 at the time of the commission of

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

¹⁵ The Special Rapporteur on Extra-judicial, Summary and Arbitrary Executions has stated that the process leading to the imposition of the death penalty must comply with Articles 9, 14 and 15 of the ICCPR. See 'Issues of special concern to the special rapporteurs', www.unhcr.ch.

¹⁶ Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entered into force on 2 September 1990.

¹⁷ Commission on Human Rights Resolutions 2002/77 on the Death Penalty, 2002/36 on Extra-judicial, Summary or Arbitrary Executions, 2002/47 on the Administration of Justice, in Particular Juvenile Justice and 2002/92 on the Rights of the Child.

the offence is contrary to customary international law¹⁸. The prohibition on the execution of pregnant women was reaffirmed by the most recent Resolution of the UN Commission on Human Rights. The ECOSOC Guidelines extend this restriction to include new mothers.

Pardon/Commutation

Article 6(4) provides that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. This principle has been reaffirmed by the General Comment of the UN Human Rights Committee, the ECOSOC Safeguards and the most recent resolution of the UN Commission on Human Rights.

The Second Optional Protocol to the ICCPR¹⁹

The Second Optional Protocol goes further than the ICCPR itself and prohibits executions and requires state parties to abolish the death penalty in peacetime. However, the Second Optional Protocol does provide the possibility for State Parties to retain the death penalty for certain crimes committed in wartime. Article 2 states that no reservation to the Protocol is admissible except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

3.2 COUNCIL OF EUROPE

European Convention on Human Rights and Fundamental Freedoms (ECHR)²⁰

The death penalty is not prohibited by the ECHR as such. Article 2 of the ECHR provides that "No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law". Unlike the ICCPR, the ECHR places no explicit restrictions on the use of the death penalty. However, certain limits have been placed on the application of the death penalty through the jurisprudence of the European Court of Human Rights in relation to Article 2 and Article 3²¹. Moreover, since the ECHR entered into force, two additional Protocols that concern the abolition of the death penalty have been adopted.

¹⁸ Resolution 2000/17 of 17 August 2000.

¹⁹ Adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989.

²⁰ ETS No.005. Entered into force on 3 September 1953.

²¹ 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

Protocol No. 6 to the ECHR²²

Protocol No. 6 provides for the total abolition of the death penalty in peacetime but allows state parties to retain the death penalty in wartime. Article 1 states that the death penalty shall be abolished and that no one shall be condemned to such penalty or executed. According to Article 2 of the Protocol, a state may make provision in its law for the death penalty in respect of acts committed in times of war or of imminent threat of war²³. It is specified that the death penalty can only be applied in the instances laid down by the law and in accordance with its provisions.

All new Member States of the Council of Europe are required to commit to the introduction of an immediate moratorium and to ratify Protocol No. 6 within a certain time limit²⁴.

Protocol No. 13 to the ECHR²⁵

Protocol No. 13 provides for the total abolition of the death penalty in peacetime and in wartime. It is thus the first legally binding instrument that abolishes the death penalty in all circumstances with no exceptions. Article 1 states that the death penalty shall be abolished and that no one shall be condemned to such penalty or executed. There is no exception for crimes committed in times of war or of imminent threat of war²⁶. The Protocol has not yet entered into force. It will enter into force when it has been ratified by 10 Member States of the Council of Europe. As of 30 June 2002, it had been signed by 36 Member States and ratified by three Member States. These are Ireland, Malta and Switzerland.

3.3 EUROPEAN UNION (EU)

In addition to the international standards referred to in the Copenhagen Document, the following standard has been elaborated by the European Union.

²² ETS No.114. Entered into force on 1 March 1985.

²³ Articles 3 and 4 prohibit derogation and reservations being made in respect of the provisions of Protocol No.6.

²⁴ Resolution 1044 (1994) of the Parliamentary Assembly of the Council of Europe on the Abolition of Capital Punishment, text adopted on 4 October 1994.

²⁵ ETS No.187. Adopted by the Council of Europe Committee of Ministers on 21 February 2002 and opened for signature on 3 May 2002.

²⁶ Articles 2 and 3 prohibit derogation and reservations being made in respect of the provisions of Protocol No.13.

The Charter of the Fundamental Rights of the European Union²⁷

Article 2 of the Charter provides that no one shall be condemned to the death penalty or executed. The Charter is not a legally binding instrument but it does guide the policy of EU Member States²⁸.

²⁷ The Charter was signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission at the European Council meeting in Nice on 7 December 2000.

²⁸ In addition to this instrument, the EU also takes an active stance against the death penalty in its relations with accession countries and third countries. Firstly, the abolition of the death penalty is a pre-requisite to accession to the EU. It forms an element of the political criteria of the Copenhagen Criteria agreed by the Copenhagen European Council in June 1993. Secondly, the EU has developed Guidelines on EU policy towards third countries on the death penalty. These Guidelines provide that in its relations with third countries, the EU will work towards the universal abolition of the death penalty and insist that the death penalty be carried out in accordance with international standards. Accordingly the EU makes general demarches on the subject of the death penalty in multilateral fora and specific demarches on individual death penalty cases in third countries.

4. THE USE OF THE DEATH PENALTY IN THE OSCE REGION

For the purpose of this study, each participating State has been classified as abolitionist, partly abolitionist, de facto abolitionist or retentionist. The four terms have been defined in the following way.

Abolitionist:

The death penalty has been abolished for all offences committed in peacetime and wartime.

Partly abolitionist:

The death penalty has been abolished for all offences committed in peacetime but is retained for certain offences committed in wartime.

De facto abolitionist:

The death penalty is retained for certain offences committed in peacetime and wartime although executions are not carried out.

Retentionist:

The death penalty is retained for certain offences committed in peacetime and wartime and executions are carried out.

As of 30 June 2002, 43 OSCE participating States are abolitionist. Of the remaining 12 participating States that retain the death penalty in some form, three are partly abolitionist, four are de facto abolitionist and five are retentionist²⁹. The three participating States that have partly abolished the death penalty are Albania, Greece and Latvia. The four participating States that have de facto abolished the death penalty are Armenia, Kyrgyzstan, the Russian Federation and Turkey. The five participating States that retain the death penalty are Belarus, Kazakhstan, Tajikistan, the United States of America and Uzbekistan. In addition, the death penalty is also retained in some form in four internationally unrecognized separatist regions. These are Nagorno-Karabakh (within Azerbaijan), Abkhazia and South Ossetia (both within Georgia) and Transdniestria (within Moldova).

This Chapter focuses on the use of the death penalty in these 12 participating States and the four internationally unrecognized separatist regions. In addition, there are also entries on three participating States that have only recently become abolitionist or retain the death penalty in anomalous or inactive legal provisions. Each entry consists of four sections. These are the relevant international instruments, legal framework, statistics and international standards.

²⁹ Since the reporting period covered by this paper there have been significant changes to the Turkish law on the death penalty. See entry 4.15 on Turkey.

4.1

ALBANIA³⁰

RELEVANT INTERNATIONAL INSTRUMENTS

Relevant International Instruments	Signed	Ratified
Article 6 of the ICCPR	Yes	Yes
Second Optional Protocol to the ICCPR	No	No
Article 37(a) of the CRC	Yes	Yes
Protocol No.6 to the ECHR	Yes	Yes
Protocol No.13 to the ECHR	No	No

LEGAL FRAMEWORK

Status:

Partly abolitionist

Scope:

The death penalty has been abolished for all crimes committed in peacetime. In 1999 the Constitutional Court held that the death penalty in peacetime is "irreconcilable with the Constitution of the Republic of Albania"³¹. The death sentences of the ten persons on death row were all commuted to life sentences and the Criminal Code was amended accordingly.

The death penalty is retained for certain crimes committed in wartime or imminent threat of war. The Military Penal Code envisages the death penalty for seven crimes. These are surrender to enemy forces resulting in severe consequences, releasing state secrets, collaborating with the enemy, defection of senior military personnel, non-observance of orders, forcing others to violate orders and murder³².

³⁰ This entry was written with the assistance of the OSCE Presence in Albania and the Delegation of the Republic of Albania to the OSCE who completed our questionnaire on the death penalty.

³¹ Decision Number 65 of the Constitutional Court, 10 December 1999.

³² Articles 25, 26, 28, 34, 47, 50 and 77 of the Military Penal Code, Law No. 8003, 1955. Amended by Law No. 8991, 4 July 2002.

Moratorium:

N/A

Method of execution:

There is no legal provision on this in Albanian law.

STATISTICS

Number of death sentences passed:

N/A

Number of executions:

N/A

INTERNATIONAL STANDARDS

Juvenile Offenders:Persons who were below the age of 18 at the time when the crime was committed cannot be sentenced to death³³.**Pregnant women:**Women cannot be sentenced to death³⁴.**Clemency/Pardon:**

It has not been possible to obtain this information.

³³ Article 8(a) of the Military Penal Code.

³⁴ Article 8(a) of the Military Penal Code.

4.2

ARMENIA³⁵

RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Signed	Ratified
Article 6 of the ICCPR	Yes	Yes
Second Optional Protocol to the ICCPR	No	No
Article 37 (a) of the CRC	Yes	Yes
Protocol No.6 to the ECHR	Yes	No
Protocol No.13 to the ECHR	No	No

LEGAL FRAMEWORK

Status:

De facto abolitionist

Scope:

The death penalty is a legal punishment for crimes committed in peacetime and in wartime. The current Constitution of the Republic of Armenia states that, "Until such time as it is abolished, the death penalty may be prescribed for particularly grave crimes as an exceptional punishment"³⁶. The current Criminal Code envisages the death penalty for 23 crimes³⁷. These are treason, espionage, terrorist acts, terrorist act against a representative of a foreign state, subversion, banditry, actions undermining order in penitentiaries, desertion from the army in times of war, counterfeiting money or securities, premeditated murder in aggravating circumstances, rape of a female infant and bribery³⁸. The remaining 11 crimes which envisage the death penalty are military crimes³⁹. Upon accession to the Council of Europe in January 2001, Armenia undertook

³⁵ This entry was written with the assistance of the OSCE Office in Yerevan, Armenia and the Delegation of the Republic of Armenia to the OSCE who completed our questionnaire on the death penalty.

³⁶ Article 17 of the Constitution of the Republic of Armenia, 5 July 1995.

³⁷ The Criminal Code of the Republic of Armenia, 1961.

³⁸ Articles 56, 60, 61, 62, 63, 72, 72(2), 76(2), 82(2), 99, 112(4) and 185(3) of the current Criminal Code.

³⁹ Articles 246(c), 248(c), 250(b), 257(b), 259(g), 263(f), 269, 270(b), 271, 272 and 274 of the current Criminal Code.

to abolish the death penalty for crimes committed in peacetime and to ratify Protocol No.6 to the ECHR within a year. As of 30 June 2002, it had not completed either of these undertakings. According to official information, the ratification of Protocol No. 6 to the ECHR has been postponed until the next session of the National Assembly, which will be held in the autumn of 2002.

A new Criminal Code is before the National Assembly⁴⁰. Under the new Criminal Code the death penalty will be largely substituted by life imprisonment. However, the death penalty will be retained for three crimes⁴¹. These are murder in aggravating circumstances, terrorist acts and the rape of female infants⁴². These crimes will only carry the death penalty if committed before the new Criminal Code comes into force. This would enable the five men who are on trial for murdering eight senior officials in the Armenian Parliament in 1999 to be sentenced to death⁴³.

Moratorium:

A de facto moratorium has been in place since 1990. Whilst Armenian courts continue to sentence people to the death penalty, the President exercises as a matter of course his constitutional authority to issue pardon⁴⁴.

Method of execution:

Shooting⁴⁵.

STATISTICS

Number of death sentences passed:

According to official statistics⁴⁶, two persons were sentenced to death in 2000⁴⁷ and two persons were sentenced to death in 2001⁴⁸. As of 30 June 2002, one person was sentenced to death⁴⁹.

⁴⁰ In 2002 the National Assembly passed the General Provisions of the Code (General principles of criminal law). On 20 June 2002 the National Assembly also considered the Specific Provisions of the Code (Provisions defining criminal offences of the new criminal code).

⁴¹ Article 398 of the new Criminal Code.

⁴² Armenian Parliament votes to retain death penalty for parliament gunmen, Radio for Europe/Radio Liberty, 20 June 2002. This information was confirmed by the OSCE Office in Yerevan.

⁴³ Armenian Parliament votes to retain death penalty for parliament gunmen, Radio for Europe/Radio Liberty, 20 June 2002.

⁴⁴ Article 55(17) of the Constitution.

⁴⁵ Article 22 of the current Criminal Code.

⁴⁶ Official statistics provided by the Delegation of the Republic of Armenia to the OSCE.

⁴⁷ Ter-Sahakian was convicted under Articles 72 and 99 of the current Criminal Code. Alik Grigorian was convicted under Articles 72 and 99 of the current Criminal Code.

⁴⁸ Albert Hageyan was convicted under Article 99 of the current Criminal Code. Arman Iskandarian was convicted under Article 99 of the current Criminal Code.

⁴⁹ Hovsep Hovsepian was convicted under Article 99 of the current Criminal Code.

Number of executions:

None.

INTERNATIONAL STANDARDS:

Juvenile Offenders:

Persons who were below the age of 18 at the time when the crime was committed cannot be sentenced to death⁵⁰.

Pregnant women:

Pregnant women or women that were pregnant at the time the crime was committed cannot be sentenced to death⁵¹.

Clemency/Pardon:

The Constitution provides the President with the authority to pardon convicted persons⁵². Whilst Armenian courts continue to sentence people to the death penalty, the President exercises as a matter of course his constitutional authority to issue pardons.

⁵⁰ Article 22 of the current Criminal Code.

⁵¹ Article 22 of the current Criminal Code.

⁵² Article 55(17) of the Constitution.

4.3

AZERBAIJAN⁵³

RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Signed	Ratified
Article 6 of the ICCPR	Yes	Yes
Second Optional Protocol to the ICCPR	Yes	Yes ⁵⁴
Article 37 (a) of the CRC	Yes	Yes
Protocol No.6 to the ECHR	Yes	Yes
Protocol No.13 to the ECHR	No	No

LEGAL FRAMEWORK

Status:

Abolitionist (except for Nagorno-Karabakh)⁵⁵

Scope:

The death penalty has been abolished for all crimes committed during peacetime. There is currently no legal provision for the use of the death penalty in wartime. However, there is a legal framework that would enable the adoption of a future law providing for the use of the death penalty in states of emergency or wartime. Azerbaijan has entered a reservation to the Second Optional Protocol to the ICCPR providing for the application of the death penalty in wartime pursuant to a conviction for a most serious crime of a military nature committed during wartime. The law passed to enable accession to the Second Optional Protocol to the ICCPR states that Azerbaijan retains the right to,

⁵³ This entry was written with the assistance of the OSCE Office in Baku, Azerbaijan and the delegation of Azerbaijan to the OSCE who completed our questionnaire on the death penalty.

⁵⁴ Ratification is subject to a reservation enabling the use of the death penalty in wartime.

⁵⁵ Azerbaijan has been classified as abolitionist. However the classification is not strict as Azerbaijan does retain a clear legal framework to partly reintroduce the death penalty.

“launch a capital punishment for times of war or threat of war for grave crimes by adopting a special law”⁵⁶. To date, no such law has been adopted⁵⁷.

NAGORNO-KARABAKH⁵⁸

LEGAL FRAMEWORK

Status:

De facto abolitionist

Scope:

The death penalty is a legal punishment for crimes committed in peacetime and in wartime. The de facto Criminal Code of Nagorno-Karabakh is the Criminal Code of the Republic of Armenia 1961. It provides for the death penalty as an exceptional punishment, until its full abolition, for certain crimes.

The death penalty is envisaged for 23 crimes. These are treason, espionage, terrorist acts, terrorist act against a representative of a foreign state, subversion, banditry, actions undermining order in penitentiaries, desertion from the army in times of war, counterfeiting money or securities, premeditated murder in aggravating circumstances, rape of a female infant and bribery⁵⁹. The remaining 11 crimes which envisage the death penalty are military crimes⁶⁰.

Moratorium of execution:

There has been a de facto moratorium on executions in place since 1997.

⁵⁶ Article 2 of the Law of the Republic of Azerbaijan on Acceding to the International Covenant on Civil and Political Rights Concerning the Second Optional Protocol on the Abolishment of Capital Punishment, ‘Azerbaijan’ Newspaper No.1 (2114), 3 January, 1999. The wording used in the national law was also the original text of the reservation that Azerbaijan entered. However, this was changed on 28 September 2000 as a number of other contracting parties objected to the reservation as it was not limited to military crimes of a serious nature committed in wartime.

⁵⁷ Article 28 of the Law on the State of Emergency, 2 April 1999 provides for certain procedural aspects of the execution of the death penalty during a state of emergency. However, as there are no substantive provisions regulating the use of the death penalty, this article is obsolete.

⁵⁸ This entry was written based on information provided by the de facto Nagorno-Karabakh Ministry of Foreign Affairs in co-operation with the legal department of the de facto Nagorno-Karabakh Presidential Administration of the internationally unrecognized separatist region of Nagorno-Karabakh.

⁵⁹ Articles 56, 60, 61, 62, 63, 72, 72(2), 76(2), 82(2), 99, 112(4) and 185(3) of the de facto Criminal Code.

⁶⁰ Articles 246(c), 248(c), 250(b), 257(b), 259(g), 263(f), 269, 270(b), 271, 272 and 274 of the de facto Criminal Code.

Method of execution:

Shooting⁶¹. Relatives are informed of the date of execution before it is carried out⁶².

STATISTICS

Number of death sentences passed:

According to the statistics obtained from the de facto Nagorno-Karabakh authorities, two persons have been sentenced to death since 1 January 2000⁶³. In the first case a decree of clemency has been issued by the de facto President, which substituted the death penalty with 15 years imprisonment. The Clemency Commission has forwarded the second case for the consideration of the de facto President.

Number of executions:

None.

INTERNATIONAL STANDARDS

Juvenile Offenders:

Persons who were below the age of 18 at the time when the crime was committed cannot be sentenced to death⁶⁴.

Pregnant women:

Pregnant women or women that were pregnant at the time the crime was committed cannot be sentenced to death⁶⁵.

Clemency/Pardon:

The Clemency Commission prepares cases for consideration by the President⁶⁶. The final decision to issue a Decree of Clemency substituting the death penalty with imprisonment is taken by the de facto Nagorno-Karabakh President⁶⁷.

⁶¹ Article 22 of the de facto Criminal Code.

⁶² Internal Instruction of the de facto Nagorno-Karabakh Ministry of Interior.

⁶³ Both persons were convicted under Article 99 of the de facto Criminal Code.

⁶⁴ Article 22 of the de facto Criminal Code.

⁶⁵ Article 22 of the de facto Criminal Code.

⁶⁶ The Clemency Commission is regulated by the Provisions adopted by the Decree of the de facto Nagorno-Karabakh President as of 1 February 1995.

⁶⁷ The power of the de facto President to grant Clemency is set out in the de facto Law on the Nagorno-Karabakh President and the de facto Criminal Code.

4.4

BELARUS⁶⁸

RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Signed	Ratified
Article 6 of the ICCPR	Yes	Yes
Second Optional Protocol to the ICCPR	No	No
Article 37 (a) of the CRC	Yes	Yes

LEGAL FRAMEWORK

Status:

Retentionist

Scope:

The death penalty is a legal punishment for crimes committed in peacetime and wartime. The Constitution of the Republic of Belarus provides that until its abolition, the death penalty may be applied in accordance with the law as an exceptional penalty for particularly serious crimes and only in accordance with the verdict of a court of law⁶⁹. The Criminal Code of the Republic of Belarus provides that the death penalty can be imposed for severe crimes connected with the deliberate deprivation of life under aggravating circumstances⁷⁰.

The death penalty is envisaged for 14 crimes. These are act of aggression, murder of a representative of a foreign state or international organization with the intention to provoke international tension or war, international terrorism, genocide, crimes against humanity, murder committed under aggravating circumstances, terrorism, terrorist acts, treason that results in loss of life, conspiracy to seize power, sabotage, murder of a police officer, application of weapons of mass destruction and violations of the laws and customs of war⁷¹.

⁶⁸ This entry was written with the assistance of the OSCE Advisory and Monitoring Group in Belarus and the Delegation of the Republic of Belarus to the OSCE who completed our questionnaire on the death penalty.

⁶⁹ Article 24 of the Constitution of the Republic of Belarus, 27 November 1996.

⁷⁰ Article 59 of the Criminal Code of the Republic of Belarus, 9 July 1999.

⁷¹ Articles 122(2), 124(2), Article 126, 127, 128, 139(2), 289(3), 359, 356(2), 367(3), 360(2), 362, 134, 135(3). Articles 134 and 135(3) of the Criminal Code can only be applied in times of war.

Moratorium:

There is no moratorium on executions in place. In a 1996 referendum, which was not recognized by the international community due to serious irregularities, the majority of voters voiced their support for the continued use of the death penalty. On 30 May 2002 the House of Representatives held hearings on the issue of the death penalty. The majority of the parliamentarians opposed the abolition of the death penalty or the introduction of a moratorium⁷².

Method of execution:

Shooting⁷³. The relatives are not informed of the date of execution, the body is not returned to the family and the place of burial is not disclosed.

STATISTICS

Number of death sentences passed:

According to official statistics⁷⁴, four persons were sentenced to death in 2000 and seven persons were sentenced to death in 2001. All those sentenced to death were sentenced for murder under aggravating circumstances⁷⁵.

Number of executions:

According to official statistics, ten persons were executed in 2000 and seven persons were executed in 2001. As of 30 June 2002, three persons have been executed.

INTERNATIONAL STANDARDS

Juvenile Offenders:

Persons who were below the age of 18 at the time when the crime was committed cannot be sentenced to death⁷⁶.

⁷² Belarussian Parliament fails to abolish death penalty, *Belorussyyka Gazeta*, Minsk, 3 June 2000. Article 59(1) of the Criminal Code.

⁷³ Official statistics provided by the Delegation of the Republic of Belarus to the OSCE.

⁷⁵ In 2000, the sentences were passed under Article 100 of the previous Criminal Code of the Soviet Socialist Republic of Belarus 1960. In 2001 the sentences were passed under Article 139 of the Criminal Code of 1999.

⁷⁶ Article 59(2)(1) of the Criminal Code.

Pregnant women:

Women cannot be sentenced to death⁷⁷.

Clemency/Pardon:

The Constitution gives the President authority to grant clemency⁷⁸. The Criminal Code of Belarus states that the death penalty can be replaced by an act of clemency with life imprisonment⁷⁹. A Clemency Commission prepares cases that are then considered by the President who takes the final decision on whether to grant clemency. Statistics and other information on acts of clemency are not publicised. According to unofficial information, the President did not authorize any acts of clemency in 2001⁸⁰.

ADDITIONAL COMMENTS

There are concerns that fair trial guarantees are not complied with in some trials that lead to the death penalty⁸¹.

⁷⁷ Article 59(2)(2) of the Criminal Code. In addition, Article 59(2)(3) also stipulates that the death penalty cannot be applied to men who are over the age of 65 at the time when the sentence is pronounced.

⁷⁸ Article 84(19) of the Constitution.

⁷⁹ Article 59(3) of the Criminal Code.

⁸⁰ Human Rights in the OSCE Region, Report 2002, International Helsinki Federation, Vienna, p. 57.

⁸¹ Urgent Action, AI EUR 49/10/98, Amnesty International, London. Urgent Action, AI EUR 49/14/99, Amnesty International, London.

4.5

BOSNIA AND HERZEGOVINA⁸²

RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Signed	Ratified
Article 6 of the ICCPR	Yes	Yes
Second Optional Protocol to the ICCPR	Yes	Yes
Article 37 (a) of the CRC	Yes	Yes
Protocol No.6 to the ECHR	Yes	Yes
Protocol No.13 to the ECHR	Yes	No

LEGAL FRAMEWORK

Status:

Abolitionist⁸³

Scope:

The country has ratified the Second Optional Protocol to the ICCPR and Protocol No. 6 to the ECHR. It has not made a reservation under Article 2 of the Second Optional Protocol to apply the death penalty in wartime. Accordingly, the application of the death penalty for crimes committed in peacetime and in wartime is prohibited throughout the entire country. However, certain provisions on the death penalty are still retained in the law of the two entities.

⁸² This entry was written with the assistance of the OSCE Mission to Bosnia and Herzegovina. The Delegation of Bosnia and Herzegovina to the OSCE did not complete our questionnaire on the death penalty.

⁸³ Bosnia and Herzegovina has been classified as abolitionist. However the classification is not strict as certain legal provisions providing for the death penalty are retained.

REPUBLIKA SRPSKA

The Constitution of Republika Srpska provides that the death penalty may be pronounced for the most serious crimes⁸⁴. However, there is no provision for the death penalty in the Republika Srpska Criminal Code⁸⁵.

FEDERATION OF BOSNIA AND HERZEGOVINA

In contrast, the Constitution of the Federation does not provide for the death penalty but the Criminal Code does⁸⁶. It provides that severe crimes that are ordinarily punishable by long-term imprisonment may be punishable by the death penalty when committed in a state of war or imminent danger of war⁸⁷. The Criminal Code includes a long list of crimes that may ordinarily be punishable by long-term imprisonment.

There are 19 relevant crimes in total. There are six relevant crimes in Chapter XV on Criminal Offences Against the Constitutional Establishment of the Federation of Bosnia and Herzegovina, nine relevant crimes in Chapter XVI on Criminal Offences Against Humanity and International Law, one relevant crime in Chapter XVII on Criminal Offences Against Life and Limb, one relevant crime in Chapter XXV on Criminal Offences Against Property and two relevant crimes in the Chapter on Criminal Offences Against Safety of Public Transportation.

There is a new draft Criminal Code for the whole of Bosnia and Herzegovina. It does not refer to the death penalty at all. If the draft law is adopted, the entity codes will be harmonized with this Code.

⁸⁴ Article 11(2) of the Constitution of Republika Srpska. (As amended by 21/92, 28/94, 8/96, 13/96, 15/96, 16/96, 21/96, 21/02, 31/02.)

⁸⁵ Criminal Code of Republika Srpska, RS Official Gazette 22/00.

⁸⁶ Criminal Code of the Federation of Bosnia and Herzegovina, F BiH Official Gazette 43/98.

⁸⁷ Article 34(2) of the Criminal Code of the Federation of Bosnia and Herzegovina.

4.6 CYPRUS⁸⁸

RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Signed	Ratified
Article 6 of the ICCPR	Yes	Yes
Second Optional Protocol to the ICCPR	Yes	Yes ⁸⁹
Article 37 (a) of the CRC	Yes	Yes
Protocol No.6 to the ECHR	Yes	Yes
Protocol No.13 to the ECHR	Yes	No

LEGAL FRAMEWORK

Status:

Abolitionist

Scope:

The death penalty was abolished for all crimes committed in peacetime in 1999. Until recently the death penalty was retained for certain wartime offences under the Military Criminal Code. Accordingly, upon ratification of the Second Optional Protocol to the ICCPR, Cyprus entered a reservation under Article 2 enabling the use of the death penalty in wartime pursuant to a conviction of a most serious crime of a military nature committed during wartime.

However, on 19 April 2002 the Military Criminal Code was amended to remove the death penalty for crimes committed in wartime⁹⁰. The process of drafting a ratification law to enable Cyprus to ratify Protocol No. 13 to the ECHR is now underway and Cyprus intends to withdraw its earlier reservation to the Second Optional Protocol to the ICCPR. Cyprus is now abolitionist for crimes committed in peacetime and in wartime.

⁸⁸ This entry was written with the assistance of the Delegation of Cyprus to the OSCE who completed our questionnaire on the death penalty.

⁸⁹ Ratification was subject to a reservation enabling the use of the death penalty in wartime.

⁹⁰ Law 39(1)/2002.

4.7 GEORGIA⁹¹

RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Signed	Ratified
Article 6 of the ICCPR	Yes	Yes
Second Optional Protocol to the ICCPR	Yes	Yes
Article 37 (a) of the CRC	Yes	Yes
Protocol No.6 to the ECHR	Yes	Yes
Protocol No.13 to the ECHR	Yes	No

LEGAL FRAMEWORK

Status:

Abolitionist (except for Abkhazia and South Ossetia)

Scope:

The death penalty has been abolished for crimes committed in peacetime and in wartime. However, the Constitution of Georgia still contains a provision that states that capital punishment may be envisaged for extremely serious crimes directed against a person's life⁹². The provision is essentially an anachronism because the death penalty is not provided for in national legislation and Georgia is party to international instruments which prohibit the use of the death penalty.

Whilst the death penalty has been abolished in Georgia, it is still retained in the internationally unrecognized separatist regions of Abkhazia and South Ossetia.

⁹¹ This entry was written with the assistance of the OSCE Mission to Georgia. The delegation of Georgia to the OSCE did not complete our questionnaire on the death penalty.

⁹² Article 15 of the Constitution of Georgia, 24 August 1995.

ABKHAZIA⁹³**LEGAL FRAMEWORK****Status:**

De facto abolitionist

Scope:

The death penalty is legal punishment for crimes in peacetime and in wartime. The de facto Criminal Code in force in Abkhazia is the Criminal Code of the former Soviet Socialist Republic of Georgia of 1961 with a number of changes and amendments. It provides that the death penalty is admitted as an exceptional measure of punishment until it is repealed in full. It envisages the death penalty for nine peacetime crimes. These are betrayal of motherland, espionage, act of terrorism, act of terrorism against a representative of a foreign state, subversive activity, banditry and actions to disorganize the functioning of penitentiary institutions, intentional homicide committed under aggravating circumstances and rape⁹⁴. The death penalty is also envisaged for at least 15 military crimes committed in wartime, imminent threat of war or during operations⁹⁵.

Moratorium:

A moratorium on executions is in place. The de facto Abkhaz authorities declared a moratorium in 1993.

Method of execution:

Shooting⁹⁶.

STATISTICS**Number of death sentences passed:**

According to unofficial statistics⁹⁷, 18 people have been sentenced to death since 1993 when Abkhazia declared its independence. The number of death sentences passed in recent years has decreased. It is reported that an average of one death sentence is passed each year. There are currently 13 persons on death row.

⁹³ This entry was written with the assistance of the United Nations Human Rights Office in Abkhazia, Georgia.

⁹⁴ Articles 65, 66, 67, 68, 69, 78, 78-I, 104 and 117 of the de facto Criminal Code.

⁹⁵ Articles 256, 258, 260, 265, 267, 268-I, 273, 275, 278, 279, 280, 281, 282, 284 and 285 of the de facto Criminal Code.

⁹⁶ Article 24 of the de facto Criminal Code.

⁹⁷ Information provided by the United Nations Human Rights Office in Abkhazia, Georgia.

Number of executions:

None.

INTERNATIONAL STANDARDS

Juvenile Offenders:

Persons who were below the age of 18 at the time when the crime was committed cannot be sentenced to death⁹⁸.

Pregnant women:

Women who were pregnant at the time when the crime was committed or at the time when the sentence is pronounced cannot be sentenced to death⁹⁹.

Clemency/Pardon:

In a number of cases, persons sentenced to the death penalty have reportedly been fully pardoned or had their death sentences commuted¹⁰⁰.

SOUTH OSSETIA

LEGAL FRAMEWORK

Status:

De facto abolitionist

Scope:

The death penalty is a legal punishment for crimes in peacetime and in wartime. The de facto Criminal Code in force in South Ossetia is the Criminal Code of the Russian Federation of 1996, which envisages the death penalty for five crimes¹⁰¹. These are premeditated murder with aggravating circumstances, assassination attempt against a state or public figure, assassination attempt against a person administering justice or conducting a preliminary investigation, assassination attempt against a law enforcement officer and genocide¹⁰².

⁹⁸ Article 24 of the de facto Criminal Code.

⁹⁹ Article 24 of the de facto Criminal Code.

¹⁰⁰ Information provided by the United Nations Human Rights Office in Abkhazia, Georgia.

¹⁰¹ In 1992 the de facto South Ossetian Cabinet of Ministers issued a decree under which Russian legislation shall be operational.

¹⁰² Articles 105(2), 277, 295, 317 and 357 of the de facto Criminal Code.

Moratorium:

There has been an unofficial de facto moratorium on executions in place since 1996 following the example of the Russian Federation.

Method of execution:

Shooting¹⁰³.

STATISTICS

Number of death sentences passed:

None.

Number of executions:

None.

INTERNATIONAL STANDARDS

Juvenile Offenders:

Persons who were below the age of 18 at the time that the crime was committed cannot be sentenced to death¹⁰⁴.

Pregnant women:

Women cannot be sentenced to death¹⁰⁵.

Clemency/Pardon:

The Criminal Code gives the de facto President authority to grant clemency on the basis of an appeal from the sentenced person¹⁰⁶. The death penalty can be replaced by an act of clemency with life imprisonment or deprivation of liberty for 25 years¹⁰⁷.

¹⁰³ Article 186 of the Criminal Executive Code of the Russian Federation, 8 January 1997.

¹⁰⁴ Article 59(2) of the de facto Criminal Code.

¹⁰⁵ Article 59(2) of the de facto Criminal Code. This article also provides that the death penalty cannot be applied to men who are over the age of 65 at the time when the sentence is pronounced.

¹⁰⁶ Article 85 of the de facto Criminal Code.

¹⁰⁷ Articles 59(3) and 85 of the de facto Criminal Code.

4.8

GREECE¹⁰⁸

RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Signed	Ratified
Article 6 of the ICCPR	Yes	Yes
Second Optional Protocol to the ICCPR	Yes	Yes ¹⁰⁹
Article 37 (a) of the CRC	Yes	Yes
Protocol No.6 to the ECHR	Yes	Yes
Protocol No.13 to the ECHR	Yes	No

LEGAL FRAMEWORK

Status:

Partly abolitionist

Scope:

The death penalty has been abolished for all crimes committed in peacetime. The Constitution of Greece provides that the death penalty may not be imposed, except in cases which are prescribed by law for felonies which are committed in time of war and are connected with it¹¹⁰. The Military Penal Code¹¹¹ retains the death penalty for certain grave military crimes committed in wartime and connected to war¹¹². Accordingly, upon ratification of the Second Optional Protocol to the ICCPR, Greece entered a reservation enabling it to apply the death penalty in wartime pursuant to a conviction for a most serious crime of a military nature committed during wartime.

However, Greece signed Protocol No. 13 to the ECHR on 3 May 2002 and is due to ratify it shortly. Steps will also be taken to remove the remaining provisions of the Military Penal Code, which retain the death penalty¹¹³.

¹⁰⁸ This entry was written with the assistance of the Delegation of Greece to the OSCE who completed our questionnaire on the death penalty.

¹⁰⁹ Ratification was subject to a reservation enabling the use of the death penalty in wartime.

¹¹⁰ Article 7(3) of the Constitution of Greece 1975.

¹¹¹ Article 8 of the Military Penal Code provides that the death penalty can be imposed only after a court of law has examined the possible perilous implications of the crime on state security or the military effectiveness of the armed forces.

¹¹² Article 6(2) of Law 2287/95. Official Gazette A'20.

¹¹³ It is presumed that the Reservation to the Second Optional Protocol to the ICCPR allowing the death penalty in wartime will also be removed.

4.9 KAZAKHSTAN¹¹⁴

RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Signed	Ratified
Article 6 of the ICCPR	No	No
Second Optional Protocol to the ICCPR	No	No
Article 37 (a) of the CRC	Yes	Yes

LEGAL FRAMEWORK

Status:

Retentionist

Scope:

The death penalty is a legal punishment for crimes committed in peacetime and in wartime¹¹⁵. The Constitution of the Republic of Kazakhstan states that the death penalty can be provided by law for premeditated and aggravated crimes¹¹⁶. The death penalty is envisaged for 18 crimes. These are aggravated murder, terrorism, assault on the life of a person who administers justice or conducts preliminary investigations, assault on the life of the President, high treason in wartime or during combat operations under aggravating circumstances, sabotage, conduct of aggressive war, application of weapons of mass destruction, genocide, mercenary participation in an armed conflict which results in death or other grave consequences, insubordination or disobeying an order, opposition to a superior or forcing him to violate his duties, violence against a superior, desertion, evasion from military service by mutilation or other means, violations of vigil duty rules, abuse of power, or exceeding one's authority or administrative dereliction and abandonment or surrender of weapons to the enemy¹¹⁷.

¹¹⁴ This entry was written with the assistance of the OSCE Centre in Almaty, Kazakhstan, which received information from the Ministry of Foreign Affairs. The Delegation of the Republic of Kazakhstan to the OSCE did not respond directly to our questionnaire on the death penalty.

¹¹⁵ Article 49(1) of the Criminal Code of the Republic of Kazakhstan, 1 January 1998.

¹¹⁶ Article 15 of the Constitution of the Republic of Kazakhstan 30 August 1995.

¹¹⁷ Articles 96(2), 233, 340, 167, 165, 171, 156(2), 159(2), 160, 162(4), 367(3), 368(3), 369(3), 373, 374(3), 375(3), 380(3) of the Criminal Code.

In 1999 the Supreme Court stated that whilst the criminal law permits the death penalty, it does not actually require it for premeditated and aggravated crimes. The Court stated that the death penalty should only be pronounced if there are aggravating circumstances and the person poses an exceptional danger to society¹¹⁸.

Moratorium:

There is no moratorium in place. However, the possibility of introducing a moratorium is under discussion. This follows a statement by the President in his annual address to Parliament on 29 April 2002, stating that it is necessary to study the question of introducing a moratorium with a view to abolishing capital punishment¹¹⁹.

Method of execution:

Shooting¹²⁰. Relatives are not informed of the date of execution. The location of the burial place is not disclosed to the relatives until at least two years after the moment of the burial¹²¹.

STATISTICS

Number of death sentences passed:

According to official statistics¹²², 40 persons were sentenced to death in 2000 and 39 persons were sentenced to death in 2001¹²³.

Number of executions:

According to official statistics, 22 persons were executed in 2000¹²⁴ and 15 persons were executed in 2001¹²⁵.

¹¹⁸ Resolution #1 of the Supreme Court Plenary of the Republic of Kazakhstan 'On the Observation of the Rule of Law at the Stage of Imposition of Punishment', 30 April 1999.

¹¹⁹ Kazakhstan's President addresses Parliament, Radio for Europe/Radio Liberty, 30 April 2002.

¹²⁰ Article 167 of the Penitentiary Code of the Republic of Kazakhstan, 13 December 1997.

¹²¹ Article 167 of the Penitentiary Code.

¹²² Official statistics provided by the Ministry of Foreign Affairs.

¹²³ All of these sentences were made on the basis of convictions for aggravated murder under the Article 96(2) of the Criminal Code.

¹²⁴ According to 'Moratorium and the abolition of the death penalty', Kuanshy Baltabaev, Member of the Constitutional Council, 2002. 11 people were executed during 2000.

¹²⁵ Amnesty International reports that at least 30 executions were carried out in 2001. See Amnesty International Report 2002, AI POL 10/001/2002, page 143. According to the Almaty Helsinki Committee, the number of executions may have increased due to the recent discussions on a moratorium.

INTERNATIONAL STANDARDS

Juvenile Offenders:

Persons who were below the age of 18 at the time when the crime was committed cannot be sentenced to death¹²⁶.

Pregnant women:

Women cannot be sentenced to death¹²⁷.

Pardon/Clemency:

The death penalty can be replaced with life imprisonment or 25 years imprisonment in a high security prison¹²⁸. The Pardon Commission under the President of the Republic of Kazakhstan has the right to satisfy appeals for pardon¹²⁹. The President approves each decision of the Pardon Commission and issues a Pardon Decree¹³⁰. The Pardon Commission has been criticized due to the perceived over-representation of state officials and under-representation of independent experts within the Commission¹³¹. In the past, only very few acts of clemency have been made¹³². In 2000 there were four and in 2001 there were two acts of clemency¹³³.

ADDITIONAL COMMENTS

There are concerns that international fair trial standards are not complied with in all cases in which the death penalty is pronounced¹³⁴. The death penalty cannot be executed until one year after the sentence is passed¹³⁵.

¹²⁶ Article 49(2) of the Criminal Code.

¹²⁷ Article 49(2) of the Criminal Code. This article also stipulates that the death penalty cannot be applied to men who are over the age of 65 at the time the sentence is pronounced.

¹²⁸ Article 49(4) of the Criminal Code.

¹²⁹ The Supreme Court of the Republic of Kazakhstan under the cassation procedure is also vested with a power to substitute the death penalty with deprivation of liberty. This power was exercised in relation to seven persons in 2000 and nine persons in 2000. In addition, the Supreme Court has the right to revoke the death sentence and order a retrial. Three sentences were revoked in 2000 and seven in 2001. This information was received from the General Prosecutor's Office via the Ministry of Foreign Affairs.

¹³⁰ Article 44 of the Decree of the President # 2975 'On Provisions for Pardoning Procedure by the President of the Republic of Kazakhstan', 7 May 1996.

¹³¹ On the basis of the Decree of the President 'On Composition of the Pardon Commission', 13 September 1996, the Pardon Commission is comprised of parliamentarians, representatives of the Presidential Administration, Presidential Human Rights Commission, former law enforcement officers, Chairperson of the National Commission on Family and Women Affairs and academics. The General Prosecutor and the Minister of Justice are also members of the Commission.

¹³² Between 1997 and 2000, 27 acts of clemency were made. 'Moratorium and the abolition of the death penalty', Kuanshy Baltabaev, Member of the Constitutional Council, 2002.

¹³³ 'Capital punishment has its alternative', Interview with Vladimir Rot, Deputy Head of the Department in the General Prosecutor's Office, Astana, *Kazakhstanskaya Pravda* # 107, 14 May 2002.

¹³⁴ Concluding Observations of the Committee Against Torture, 17/05/2001.CAT/C/XXVII/Concl.7/Rev.1. See also, 'Courts without Corruption: July 2000-August 2001', Public Fund 'Transparency Kazakhstan', Almaty, 2001.

¹³⁵ Article 49(3) of the Criminal Code.

4.10 KYRGYZSTAN¹³⁶

RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Signed	Ratified
Article 6 of the ICCPR	Yes	Yes
Second Optional Protocol to the ICCPR	No	No
Article 37 (a) of the CRC	Yes	Yes

LEGAL FRAMEWORK

Status:

De facto abolitionist

Scope:

The death penalty is a legal punishment for crimes committed in peacetime and in wartime. The Constitution states that the death penalty can only be used in exceptional cases¹³⁷. The Criminal Code envisages the death penalty for six crimes. These are murder, rape of a juvenile under the age of 14, assassination of a governmental or public official for the purpose of seizing his public or political activities or taking revenge, assassination of a person who is administering justice or conducting a preliminary investigation, assassination of a person working for a law enforcement body, and genocide¹³⁸.

In December 2000 the President recommended to the Kyrgyz government to take all necessary measures to enable accession to the Second Optional Protocol to the ICCPR. Furthermore, the national human rights program for 2002-2010 of 2 January 2002 includes a provision on the development of a draft law on the abolition of the death penalty in the Kyrgyz Republic that is to be implemented between 2004-2006. However, no measures have yet been taken towards the practical implementation of this program.

¹³⁶ This entry was written with the assistance of the OSCE Centre in Bishkek, Kyrgyzstan and the Kyrgyz-American Bureau for Human Rights, Kyrgyzstan. The Delegation of the Kyrgyz Republic to the OSCE did not complete our questionnaire on the death penalty.

¹³⁷ Article 18 of the Constitution of the Kyrgyz Republic, 5 May 1993.

¹³⁸ Articles 97, 129, 294, 319, 340 and 373 of the Criminal Code of the Kyrgyz Republic, 1 October 1997.

Moratorium:

There is an official moratorium on executions in place. A two-year moratorium was introduced by a Presidential Decree that entered into force on 8 December 1998. This has been further extended by two subsequent Presidential Decrees of 2 December 2000 and 11 January 2002. The current moratorium will be in place until the end of 2002.

Method of execution:

Shooting¹³⁹. The body is not returned to relatives for burial and the place of burial is not disclosed¹⁴⁰.

STATISTICS

Number of death sentences passed:

According to unofficial statistics, 39 persons were sentenced to death in 2000 and 55 persons were sentenced to death in 2001. As of 30 June 2002, 14 persons have been sentenced to death.

Number of executions:

None.

INTERNATIONAL STANDARDS

Juvenile Offenders:

Persons who were below the age of 18 at the time when the crime was committed cannot be sentenced to death¹⁴¹.

Pregnant women:

Women cannot be sentenced to death¹⁴².

Clemency/Pardon:

The Constitution of the Kyrgyz Republic gives the President authority to grant clemency¹⁴³. The Presidential Clemency Commission considers all cases where the convicted person has been sentenced to death. This is an automatic procedure that is not dependent on the convicted person making an appeal for clemency/pardon¹⁴⁴.

¹³⁹ Article 155(2) of the Criminal Executive Code of the Kyrgyz Republic, 13 December 1999.

¹⁴⁰ Article 155 of the Criminal Executive Code.

¹⁴¹ Article 50(2) of the Criminal Code.

¹⁴² Article 50(2) of the Criminal Code.

¹⁴³ Article 46 of the Constitution.

¹⁴⁴ The Clemency Commission and procedure is governed by a Presidential Decree of 13 April 1995.

4.11 LATVIA¹⁴⁵

RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Signed	Ratified
Article 6 of the ICCPR	Yes	Yes
Second Optional Protocol to the ICCPR	No	No
Article 37 (a) of the CRC	Yes	Yes
Protocol No.6 to the ECHR	Yes	Yes
Protocol No.13 to the ECHR	Yes	No

LEGAL FRAMEWORK

Status:

Partly abolitionist

Scope:

The death penalty has been abolished for crimes committed in peacetime. However, the Criminal Law of Latvia envisages the death penalty for murder in especially aggravating circumstances, committed in wartime¹⁴⁶.

Moratorium:

N/A.

Method of execution:

Shooting¹⁴⁷.

STATISTICS

Number of death sentences passed:

None.

Number of executions:

None.

¹⁴⁵ This entry was written with the assistance of the Delegation of Latvia to the OSCE who completed our questionnaire on the death penalty.

¹⁴⁶ Article 37 of the Criminal Law of Latvia, 15 October 1998.

¹⁴⁷ Article 37 of the Criminal Law.

INTERNATIONAL STANDARDS

Juvenile Offenders:

Persons who were below the age of 18 at the time when the crime was committed cannot be sentenced to death¹⁴⁸.

Pregnant women:

Women cannot be sentenced to death¹⁴⁹.

Clemency/Pardon:

It has not been possible to obtain this information.

¹⁴⁸ Article 37 of the Criminal Law.

¹⁴⁹ Article 37 of the Criminal Law.

4.12

MOLDOVA¹⁵⁰

RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Signed	Ratified
Article 6 of the ICCPR	Yes	Yes
Second Optional Protocol to the ICCPR	No	No
Article 37 (a) of the CRC	Yes	Yes
Protocol No.6 to the ECHR	Yes	Yes
Protocol No.13 to the ECHR	Yes	No

LEGAL FRAMEWORK

Status:

Abolitionist (except for Transdniestria)

Moldova abolished the death penalty for crimes committed in peacetime and in wartime in 1995. The death penalty has been retained in the internationally unrecognized separatist entity of Transdniestria.

TRANSDNIESTRIA

Status:

De facto abolitionist

Scope:

The death penalty is a legal punishment for crimes committed in peacetime and in wartime. Under the new de facto Criminal Code of Transdniestria, the death penalty is envisaged for especially grave offences against life¹⁵¹. The death penalty is envisaged for six crimes. These are murder, attempt to murder

¹⁵⁰ This entry was written with the assistance of the OSCE Mission to Moldova. The Delegation of Moldova to the OSCE did not complete our questionnaire on the death penalty.

¹⁵¹ Article 58(1) of the Criminal Code of Transdniestria, 15 May 2002.

a state or public official, armed rebellion, attempt to murder a magistrate or investigator, attempt to murder a law enforcement agent and genocide¹⁵².

Moratorium:

On 6 July 1999, the de facto President signed a decree introducing a moratorium on executions with retroactive effect from 1 January 1999. The moratorium is still in place.

Method of execution:

Shooting¹⁵³.

STATISTICS

Number of death sentences passed:

None. There is one person on death row.

Number of executions:

None.

INTERNATIONAL STANDARDS

Juvenile Offenders:

Persons who were below the age of 18 at the time when the crime was committed cannot be sentenced to death¹⁵⁴.

Pregnant women:

Women cannot be sentenced to death¹⁵⁵.

Clemency/Pardon:

The Criminal Code gives the President authority to grant clemency¹⁵⁶. The death penalty can be replaced with life imprisonment or deprivation of liberty for a period of 25 years.

ADDITIONAL COMMENTS

There are concerns that fair trial guarantees were not complied with in some trials that lead to the death penalty.

¹⁵² Articles 104, 273, 275, 291, 314 and 353 of the de facto Criminal Code.

¹⁵³ This information was received from the OSCE Mission to Moldova. It has not been possible to obtain the exact legal provision.

¹⁵⁴ Article 58(2) of the de facto Criminal Code.

¹⁵⁵ Article 58(2) of the de facto Criminal Code. In addition, the same article also prohibits the imposition of the death penalty on men who are over 65 at the time of sentencing.

¹⁵⁶ Article 84 of the de facto Criminal Code.

4.13

RUSSIAN FEDERATION¹⁵⁷

RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Signed	Ratified
Article 6 of the ICCPR	Yes	Yes
Second Optional Protocol to the ICCPR	No	No
Article 37 (a) of the CRC	Yes	Yes
Protocol No.6 to the ECHR	Yes	No
Protocol No.13 to the ECHR	No	No

LEGAL FRAMEWORK

Status:

De facto abolitionist

Scope:

The death penalty is a legal punishment for crimes committed in peacetime and in wartime. The Constitution of the Russian Federation provides for the death penalty as an exceptional punishment for especially grave crimes threatening life¹⁵⁸.

The federal Criminal Code of the Russian Federation envisages the death penalty for five crimes. These are premeditated murder with aggravating circumstances, assassination attempt against a state or public figure, assassination attempt against a person administering justice or conducting a preliminary investigation, assassination attempt against a law enforcement officer and genocide¹⁵⁹. With the introduction of the Criminal Code of the Russian Federation of 1996 the number of capital offences was reduced from 33 to five. However, the five crimes that were retained were those that had previously accounted for the majority of death sentences¹⁶⁰.

¹⁵⁷ This entry was written with the assistance of the Delegation of the Russian Federation to the OSCE and the NGO 'Institute for Human Rights', Moscow who completed our questionnaire on the death penalty. Article 20(2). of the Constitution of the Russian Federation, 25 December 1993.

¹⁵⁸ Articles 105(2), 277, 295, 317 and 357 of the Criminal Code of the Russian Federation, 13 June 1996.

¹⁶⁰ 'Death is not justice, The Council of Europe and the Death Penalty', Directorate General of Human Rights, Council of Europe, October 2001.

Upon accession to the Council of Europe on 28 February 1996, the Russian Federation committed itself to sign Protocol No. 6 to the ECHR within a year and to ratify it within three years. A Presidential Decree was issued on 16 May 1996 which requested the Government to elaborate a draft law on the ratification of Protocol No. 6 to the ECHR¹⁶¹. As of 30 June 2002, Protocol No. 6 to the ECHR has still not been ratified.

Moratorium:

A draft moratorium law was rejected by the Parliament on 14 March 1997. Despite this a two-tier de facto moratorium is currently in place that prohibits both the application and execution of death sentences. Firstly, executions have not been carried out since August 1996, as the President exercises his authority to issue pardon as a matter of course. On 3 June 1999 President Yeltsin signed a Decree commuting the death sentence of all 713 convicts on death row to either life imprisonment or 25-year prison terms¹⁶².

The second tier of the moratorium is a Resolution of the Constitutional Court¹⁶³. The Resolution prevents courts from passing death sentences on the basis that the Russian Constitution provides for the right to trial by jury in cases where the death penalty is envisaged for the crime that has been committed¹⁶⁴. At the time of the decision jury trials were only available in nine of the 89 subjects of the Federation¹⁶⁵. However, the new Criminal Procedure Code, which entered into force on 1 July 2002, foresees the introduction of juries throughout the entire Federation. This will remove the bar that the Constitutional Court has placed upon death sentences, and will make the continuation of the de facto moratorium dependent on the political will of the President.

The existence of the moratorium remains a controversial subject in the Russian Federation, however the President is firmly against reinstating the death penalty¹⁶⁶.

Method of execution:

Shooting¹⁶⁷. Relatives are not informed of the date of execution. The location of the burial place is not disclosed to the relatives¹⁶⁸.

¹⁶¹ Decree # 724 'On Gradual Decrease of Death Penalty Application in Connection with Accession of Russia to the Council of Europe'.

¹⁶² Gazeta.Ru, 3 June 1999

¹⁶³ Resolution of the Constitutional Court of the Russian Federation, 2 February 1999.

¹⁶⁴ Article 20 (2) of the Constitution.

¹⁶⁵ The ruling was applied to the whole Federation to prevent inequality before the law.

¹⁶⁶ Death Penalty News, September 2001, AI ACT 53/004/2001, Amnesty International, London. p. 1.

¹⁶⁷ Article 186 of the Criminal Executive Code.

¹⁶⁸ Article 186(4) of the Criminal Executive Code.

STATISTICS

Number of death sentences passed:

None.

Number of executions:

None.

INTERNATIONAL STANDARDS

Juvenile Offenders:

Persons who were below the age of 18 at the time that the crime was committed cannot be sentenced to death¹⁶⁹.

Pregnant women:

Women cannot be sentenced to death¹⁷⁰.

Clemency/Pardon:

The Constitution and the Criminal Code gives the President authority to grant clemency on the basis of an appeal from the sentenced person¹⁷¹. All appeals are reviewed by the President¹⁷². The death penalty can be replaced by an act of clemency with life imprisonment or deprivation of liberty for 25 years¹⁷³.

¹⁶⁹ Article 59(2) of the Criminal Code.

¹⁷⁰ Article 59(2) of the Criminal Code. This article also stipulates that the death penalty cannot be applied to men who are over the age of 65 at the time when the sentence is pronounced.

¹⁷¹ Article 89 (c) of the Constitution and Article 85 of the Criminal Code.

¹⁷² Article 184 of the Criminal Executive Code. Following amendments in January 1998, even if a person waives his/her right to appeal for clemency, the person will not be executed until the President has reviewed the waiver.

¹⁷³ Article 89/c of the Constitution and Articles 59(3) and 85 of the Criminal Code.

4.14

TAJKISTAN¹⁷⁴

RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Signed	Ratified
Article 6 of the ICCPR	Yes	Yes
Second Optional Protocol to the ICCPR	No	No
Article 37 (a) of the CRC	Yes	Yes

LEGAL FRAMEWORK

Status:

Retentionist

Scope:

The death penalty is legal punishment in peacetime and in wartime. The Constitution of the Republic of Tajikistan provides that "No one shall be deprived of his life except by order of the court for the gravest crimes"¹⁷⁵. The Criminal Code envisages the death penalty for 15 crimes. These are murder, rape, terrorism, taking hostages, hijacking, banditry, illicit trafficking of narcotics, illicit cultivation of illegal substances, robbery, attempted killing of a statesman or a public figure, violent capture of authority, war of aggression, genocide, biocide, and the deliberate infringement of the norms of international humanitarian law¹⁷⁶.

The Presidential Administration of Tajikistan has set up a working group to review the current Criminal Code. There have been indications that the death sentence may be removed for certain crimes. These are genocide, biocide and the cultivation of illegal substances.

¹⁷⁴ This entry was written with the assistance of the OSCE Mission to Tajikistan. The Delegation of the Republic of Tajikistan to the OSCE did not complete our questionnaire on the death penalty.

¹⁷⁵ Article 18 of the Constitution of the Republic of Tajikistan, 6 November 1994.

¹⁷⁶ Articles 104(2), 138(3), 179(4), 181(3), 184(3), 186(1) and (3), 200(3), 204(3), 249(4), 310, 306, 395(2), 398, 399 and 403(2) of the Criminal Code, 21 May 1998.

Moratorium:

There is no moratorium on executions in place.

Method of execution:

Shooting¹⁷⁷. Information concerning the place of execution and burial are considered a state secret and relatives are often informed about the execution after a considerable delay. In violation of Tajik law, relatives are often unaware whether a prisoner is still alive or has already been executed¹⁷⁸.

STATISTICS

Number of death sentences passed:

According to unofficial statistics¹⁷⁹, at least 38 persons were sentenced to death in 2000 and at least 74 persons were sentenced to death in 2001.

Number of executions:

At least five persons were executed in 2001 although the real figure is believed to be much higher¹⁸⁰.

INTERNATIONAL STANDARDS

Juvenile Offenders:

Persons who were below the age of 18 at the time when the crime was committed cannot be sentenced to death¹⁸¹.

Pregnant women:

Pregnant women cannot be sentenced to death¹⁸². The working group, which is reviewing the current Criminal Code, is considering a proposal to exempt all women from the death penalty¹⁸³.

¹⁷⁷ Article 219 of the Code of Execution of Criminal Sentences, 6 August 2001.

¹⁷⁸ Article 221 of the Code of Execution of Criminal Sentences.

¹⁷⁹ Death Penalty News, June 2002, AI ACT 53/003/2002, Amnesty International, London. p.3.

¹⁸⁰ Report 2002, AI POL 10/001/2002, Amnesty International, London. p.239.

¹⁸¹ Article 59 of the Criminal Code.

¹⁸² Article 59(2) of the Criminal Code.

¹⁸³ Death Penalty News, June 2002, AI ACT 53/003/2002, Amnesty International, London. p.3. The working group is also considering a proposal to exempt all men over the age of 60 from the death penalty.

Clemency/Pardon:

The Constitution of the Republic of Tajikistan gives the President authority to grant clemency¹⁸⁴. Accordingly the Criminal Code provides that the death sentence can be replaced with 25 years imprisonment by a special act of the President¹⁸⁵. There is no official information on the numbers of pardons that are made by the President. According to unofficial information, five persons were granted clemency in 2001 whilst at least 51 appeals for clemency were turned down¹⁸⁶.

ADDITIONAL COMMENTS

There are concerns that people have been executed before the appropriate authority has taken a decision regarding their appeal or pardon. Gaybullojon Saidov was reportedly executed on 4 April 2001 despite a request by the United Nations Human Rights Committee to the government asking the authorities not to execute him whilst his case was under examination by the Committee¹⁸⁷.

¹⁸⁴ Article 69 (27) of the Constitution.

¹⁸⁵ Article 59 of the Criminal Code.

¹⁸⁶ Human rights in the OSCE region, Report 2002, International Helsinki Federation, Vienna, p. 294. Amnesty International reports that two death sentences were known to have been commuted in 2001. See Report 2002, AI POL 10/001/2002, Amnesty International, London, p. 239.

¹⁸⁷ Saidov v. Tajikistan (964/00). Tajikistan did not comply with a request for interim measures. The merits of the case have not yet been decided by the UN Human Rights Committee. There had been allegations of unfair trial and ill-treatment in pre-trial detention.

4.15 TURKEY¹⁸⁸

RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Signed	Ratified
Article 6 of the ICCPR	Yes	No
Second Optional Protocol to the ICCPR	No	No
Article 37 (a) to the CRC	Yes	Yes
Protocol No.6 to the ECHR	No	No
Protocol No.13 to the ECHR	No	No

LEGAL FRAMEWORK

Status:

De facto abolitionist

Scope:

The death penalty is a legal punishment for crimes committed in peacetime and in wartime. The Constitution, which was amended on 3 October 2001 to reduce the scope of the death penalty, now provides that the death penalty can only be imposed for terrorist crimes and crimes committed in times of war or imminent threat of war¹⁸⁹. The amended Penal Code envisages the death penalty for 12 crimes¹⁹⁰. These are seven wartime crimes¹⁹¹ and five crimes against the state¹⁹². In addition, the Forests Law¹⁹³ and the Law on the Interdiction and Pursuit of Smuggling¹⁹⁴ also contain provisions that envisage the death penalty.

¹⁸⁸ This entry was written with the assistance of the Delegation of Turkey to the OSCE who completed our questionnaire on the death penalty.

¹⁸⁹ Article 38 of the Constitution of the Republic of Turkey 1982, as amended by Law No.4709, 17 October 2001.

¹⁹⁰ Prior to the constitutional amendment, the death penalty had been envisaged for 13 crimes in the Turkish Penal Code, Law no. 765, 1926. The amendment only removed the death penalty for one crime, aggravated murder, from the Penal Code. The Turkish Military Code also envisages the death penalty for 12 crimes committed by military personnel in wartime or imminent threat of war.

¹⁹¹ Articles 126, 127, 129, 131, 136 and 137 of the Penal Code.

¹⁹² Articles 125, 146, 147, 149 and 156 of the Penal Code.

¹⁹³ Law no. 6831, 1956.

¹⁹⁴ Law no. 1918, 1932.

When the European Union granted Turkey candidate status in December 1999, the abolition of the death penalty and the ratification of Protocol No. 6 to the ECHR were among the political criteria for accession¹⁹⁵. During the reporting period covered by this paper, neither of these criteria had been satisfied¹⁹⁶. Since then, there have been some significant developments. On 3 August 2002, a 14-point reform package, including the abolition of the death penalty for all crimes other than those committed in times of war or imminent threat of war was passed by the Parliament. The package was ratified by the President and was published in the Official Gazette on 9 August 2002.

Moratorium:

A de facto moratorium on executions has been in place since 1984. Death sentences can only be carried out if they are approved by Parliament¹⁹⁷. The Judicial Committee of the Parliament de facto prevents executions by not reviewing cases or forwarding them to the General Assembly of the Parliament for approval. As of October 2001, 117 cases were pending at the Judicial Committee of the Parliament¹⁹⁸.

Method of execution:

Hanging¹⁹⁹.

STATISTICS

Number of death sentences passed:

According to official statistics²⁰⁰, 56 persons have been sentenced to death in 20 cases since 1 January 2000²⁰¹.

Number of executions:

None.

¹⁹⁵ These criteria are contained in the Accession Partnership adopted on 8 March 2001. The obligation to abolish the death penalty and ratify Protocol No. 6 is listed as a medium-term criteria. The short-term criteria require Turkey to maintain the de facto moratorium on the death penalty.

¹⁹⁶ As stated in the introduction, the reporting period covered by this paper is from 30 June 2001 to 30 June 2002.

¹⁹⁷ Article 87 of the Constitution.

¹⁹⁸ 'Constitutional Amendments: Still a long way to go', AI EUR 44/007/2002, Amnesty International, London. p.9.

¹⁹⁹ Article 2(4) of the Law on the Execution of Penalties, Law no.647, 1965.

²⁰⁰ Official statistics provided by the Delegation of Turkey to the OSCE.

²⁰¹ Of these, 13 persons were convicted of aggravated murder (Article 450), five were convicted of separatist acts (Article 125) and 38 were convicted of attempt to overthrow the existing constitutional system by force (Article 146). According to Amnesty International, at least 81 death sentences were passed in 2000 and at least 24 death sentences were passed in 2001. See 'Constitutional Amendments: Still a long way to go', AI EUR 44/007/200, Amnesty International, London.

INTERNATIONAL STANDARDS

Juvenile Offenders:

There is no explicit prohibition on sentencing persons who were below the age of 18 at the time when the crime was committed to the death penalty. However, the heaviest penalty foreseen for persons who were below the age of 18 at the time the crime was committed is 15 years imprisonment²⁰².

Pregnant women:

The law does not prohibit sentencing pregnant women to death. However, it does prohibit the execution of pregnant women before they have given birth²⁰³.

Clemency/Pardon:

The Penal Code makes provision for the commutation of death sentences²⁰⁴. According to the Constitution, the President is empowered to commute or lift death sentences on the grounds of age, disability or ill health²⁰⁵.

ADDITIONAL COMMENTS

Abdullah Öcalan, leader of the Kurdistan Workers' Party, was sentenced to death on 29 June 1999. He was found guilty of treason and separatism. The sentence, which was confirmed by the Turkish Appeal Court in November 1999, is being held at the Office of the Prime Minister. Öcalan brought an application before the European Court of Human Rights claiming that the use of the death penalty would violate his right to life²⁰⁶. The application has been declared admissible and is due to be heard on its merits at some point this year²⁰⁷.

²⁰² Article 54(2) of the Penal Code.

²⁰³ Article 2(3) of the Law on Execution of Penalties.

²⁰⁴ Article 59 of the Penal Code.

²⁰⁵ Article 104 of the Constitution.

²⁰⁶ The European Court of Human Rights will consider whether there would be a violation of the right to life per se, and also whether the right to life would be violated when taken together with violations of the right to due process and fair trial.

²⁰⁷ Öcalan v. Turkey, Application Number 00046221/99.

4.16 UNITED STATES OF AMERICA (USA)²⁰⁸

RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Signed	Ratified
Article 6 of the ICCPR	Yes	Yes (with reservation) ²⁰⁹
Second Optional Protocol to the ICCPR	No	No
Article 37 (a) of the CRC	Yes	No
Article 4 of the American Convention on Human Rights	Yes	No

LEGAL FRAMEWORK

Status:

Retentionist

Scope:

The death penalty is a legal punishment for crimes committed in peacetime and in wartime. The death penalty is retained at the federal and at the State level²¹⁰. At the federal level, the death penalty is envisaged for 55 crimes in the United States Code²¹¹. At the State level, the death penalty is retained in 38 of the 50 States of the USA. All of the 38 States envisage the death penalty for murder and in practice the death penalty is most often applied for murder in aggravating circumstances²¹².

²⁰⁸ The Delegation of the United States of America to the OSCE did not complete the questionnaire.
²⁰⁹ The USA made a reservation to Article 6 of the ICCPR to the effect, 'That the United States reserves the right, subject to its constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age.'

²¹⁰ The death penalty is also retained for 15 crimes in the Uniform Code of Military Justice, 31 May 1951.

²¹¹ Capital punishment: An overview of federal death penalty statutes, E. Bazan, Congressional Research Service, 9 May 2001. The Anti-Drug Abuse Act of 1988 envisages the death penalty for murder in the course of a drug kingpin conspiracy. The scope of crimes that carry the death penalty was later expanded by the Violent Crime Control and Law Enforcement Act of 1994 and the Antiterrorism and Effective Death Penalty Act of 1996.

²¹² In 12 of the States that retain the death penalty, murder is not the sole capital crime. www.deathpenaltyinfo.org

Moratorium:

There is no moratorium on executions in place at the federal level. At the State level only two of the 38 States that retain the death penalty have instituted a moratorium on executions. These are Illinois and Maryland. In addition there is currently an indefinite stay on executions in Florida²¹³.

Method of execution:

At the federal level, the method of execution is dependent on the State where the crime was committed. If the crime was committed in a State that does not have the death penalty, the execution is carried out by lethal injection²¹⁴. At the State level, the possible methods of execution are lethal injection, electrocution, gas chamber, hanging and shooting by the firing squad. Some States stipulate for a sole method of execution whereas others provide for a choice between two methods. The most widely used method of execution is lethal injection, which is either the sole or possible method of execution in all States except Nebraska²¹⁵. The second most widely used method is electrocution, which is a possible method of execution in ten States.

STATISTICS

Number of death sentences passed:

According to unofficial statistics²¹⁶, 275 persons were sentenced to death in 2000 and 275 persons were sentenced to death in 2001. As of 30 June 2002, 140 persons have been sentenced to death.

Number of executions:

According to official statistics, 85 persons were executed in 2000²¹⁷. According to unofficial statistics, 66 persons were executed in 2001. As of 30 June 2002, 35 persons have been executed²¹⁸.

²¹³ In July 2002 the Florida Supreme Court issued an indefinite stay on executions. This follows the ruling in *Ring v. Arizona* (No. 01-488, 24 June 2002).

²¹⁴ The Anti-Drug Abuse Act of 1988 did not link the method of execution to State methods. In 1993 President Bush issued a Regulation indicating lethal injection as the method of execution for persons convicted and sentenced to death under this Act.

²¹⁵ Nebraska is the only state, which retains the electric chair as the sole method of execution. www.deathpenaltyinfo.org

²¹⁶ Death Penalty for Female Offenders, Victor L. Streib, www.law.onu.edu/faculty/streib/femdeath.html, 9 July 2002.

²¹⁷ Capital punishment 2000, Bureau of justice statistics bulletin, NCJ 190598, December 2001, p.1.

²¹⁸ www.deathpenaltyinfo.org

INTERNATIONAL STANDARDS

Juvenile Offenders:

At the time of ratification, the USA entered a reservation to Article 6(5) of the ICCPR to enable it to impose the death penalty on persons who were below the age of 18 at the time when the crime was committed²¹⁹. At the federal level, persons who were below the age of 18 at the time when the crime was committed cannot be sentenced to death²²⁰. At the State level, 22 of the 38 States that retain the death penalty allow the death penalty to be imposed for crimes that were committed by people who were under the age of 18²²¹.

Four persons who were under the age of 18 at the time when the crime was committed were executed in 2000. One person was executed in 2001 and as of 30 June 2002, one person has been executed²²². As of 31 May 2002, 83 child offenders await execution in the USA²²³.

Pregnant women:

Pregnant women cannot be executed²²⁴.

Clemency/Pardon:

At the federal level, the President has the sole authority to grant clemency. At the State-level, most States provide for a clemency process for death penalty cases. The process differs from State to State. However, very few acts of clemency are actually made. Two acts of clemency were made in 2000 and three in 2001. As of 30 June 2002, two acts of clemency have been made²²⁵.

ADDITIONAL COMMENTS

Competent Court

In the wake of the September 11 terrorist attacks in the USA, President Bush issued a Military Order pursuant to which the USA may establish military

²²⁰ The United Nations Human Rights Committee has expressed concern that this reservation may be incompatible with the object and purposes of the ICCPR, CCPR/81/Add.4, Concluding Observations to the initial report of the USA. The US Supreme Court has prohibited the death penalty for persons who were below the age of 16 at the time when the crime was committed. See *Thompson v. Oklahoma* 487 U.S. 815, No. 86-6169, 29 June 1988.

²²¹ 18 U.S.C. § 3591(a)(2)(D), 18 U.S.C. § 3591 (b)(2).

²²² World Report 2002, Human Rights Watch, New York, p. 500 states that 23 states retain such legislation. In April 2002 Governor O'Bannon signed into law legislative changes to Indiana Death Penalty Law raising the minimum age for death penalty eligibility from 16 to 18 at the time of the crime. See www.clarkprosecutor.org.

²²³ Death Penalty News, March 2002, AI ACT 53/002/2002, Amnesty International, London, p.5.

²²⁴ www.deathpenaltyinfo.org.

²²⁵ 18 U.S.C § 3596 (b).

²²⁶ www.deathpenaltyinfo.org.

commissions to prosecute terrorists for the violations of the laws of war and other applicable laws²²⁷. A later Order, which sets out the procedures for trials before the military commissions, makes provision for the death penalty²²⁸. The inclusion of the death penalty in the Order has been controversial due to the perceived failure of the trial procedures set out in the Order to comply with international fair trial standards. Of particular concern is the fact that convictions leading to death sentences cannot be appealed before a civilian court independent of the executive branch. The Order limits appellate review to a specially created three member Panel appointed by the Secretary of Defense. In addition, the President retains the final review of convictions and sentences.

Mental Retardation

At the federal level, the execution of mentally retarded persons is prohibited²²⁹. In addition, the U.S Supreme Court has recently ruled that the execution of persons with mental retardation would be contrary to the constitutional prohibition on cruel and unusual punishment²³⁰. This ruling will require 20 States to amend their legislation.

The right to a jury

The U.S Supreme Court has recently ruled that the decision to apply the death sentence must be decided by juries as opposed to judges²³¹. This ruling, which is based upon the sixth amendment of the American Constitution, will affect the way that the death penalty is imposed in five States. These are Arizona, Idaho, Montana, Colorado and Nebraska²³².

Innocence Protection Act

On 18 July 2002 the United States Senate Judiciary Committee approved a draft law titled the Innocence Protection Act. This Act seeks to improve the administration of justice in death penalty cases by ensuring the availability of post-conviction DNA testing in appropriate cases. In addition, the Act will encourage States to establish standards for the appointment of legal counsel for defendants facing the death penalty.

²²⁷ Military Order, Detention, treatment, and trial of certain non-citizens in the war against terrorism, 13 November 2001.

²²⁸ Military Commission Order No. 1, Procedures for trials by military commissions of certain non-united states citizens in the war against terrorism, 21 March 2002, Part 6(g).

²²⁹ 18 U.S.C. § 3596 (c).

²³⁰ 8th Amendment of the American Constitution 1788. *Aitkins v. Virginia*, No. 00-8452, 20 June 2002.

²³¹ *Ring v. Arizona*, No. 01-488, 24 June 2002.

²³² The exact number of cases to be reviewed in these five states is still to be determined. Four further states (Alabama, Delaware, Florida, Indiana) have hybrid systems whereby the jury provides an advisory sentencing opinion but the judge makes the ultimate sentencing decision.

4.17

UZBEKISTAN²³³

RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Signed	Ratified
Article 6 of the ICCPR	Yes	Yes
Second Optional Protocol to the ICCPR	No	No
Article 37 (a) of the CRC	Yes	Yes

LEGAL FRAMEWORK

Status:

Retentionist

Scope:

The death penalty is a legal punishment for crimes committed in peacetime and in wartime. The death penalty is envisaged for four crimes²³⁴. These are murder with aggravating circumstances, terrorism, act of aggression, and genocide²³⁵.

In 1998 the Parliamentary Commissioner for Human Rights announced that Uzbekistan was following a policy of abolishing the death penalty in stages. Accordingly on 29 August 1998 the Uzbek parliament abolished the death penalty in relation to five criminal offences. On 29 August 2001 the death penalty was removed for four other offences. These were treason, organization of criminal conspiracy, illegal sale of large quantities of narcotics and rape of women under 14 years of age.

Moratorium:

There is no moratorium on executions in place.

Method of execution:

Shooting²³⁶. After an execution has taken place, the body is not returned to the relatives and the place of burial is not disclosed²³⁷.

²³³ This entry was written with the assistance of the OSCE Centre in Tashkent, Uzbekistan and the Delegation to the Republic of Uzbekistan to the OSCE who completed our questionnaire on the death penalty.

²³⁴ Article 51 of the Criminal Code of the Republic of Uzbekistan, 22 September 1994, last amended on 29 August 2001.

²³⁵ Articles 97(2), 155(3), 151(2) and 153 of the Criminal Code.

²³⁶ Article 140 of the Criminal Penalty Code, 1 October 1997.

²³⁷ Article 140 of the Criminal Penalty Code.

STATISTICS

Number of death sentences passed:

No official statistics were made available.

Number of executions:

No official statistics were made available. However, President Karimov has been quoted as saying that approximately 100 people are executed each year²³⁸.

In its Concluding Observations on the second periodical report submitted by Uzbekistan, the UN Human Rights Committee deplored Uzbekistan's refusal to reveal the number of persons who have been executed or condemned to death and the grounds for their conviction. It urged Uzbekistan to provide such information as soon as possible²³⁹.

INTERNATIONAL STANDARDS

Juvenile Offenders:

Persons who were below the age of 18 at the time when the crime was committed cannot be sentenced to death²⁴⁰.

Pregnant women:

Women cannot be sentenced to death²⁴¹.

Pardon/clemency:

The right to ask for pardon is stipulated in the Criminal Penalty Code²⁴². The death penalty can be substituted by 25 years imprisonment. The clemency procedure is set out in a separate by-law that states that only the President can pardon convicted criminals²⁴³. All appeals are submitted to the Commission on Clemency under the Presidential Office. There are no official statistics on acts of clemency.

ADDITIONAL COMMENTS

There are concerns that international standards of fair trial are not complied with in all cases that result in the death sentence.

²³⁸ Mothers against the death penalty, AI EUR 62/009/2002, Amnesty International, London.

²³⁹ Concluding Observations of the Human Rights Committee, Uzbekistan, Paragraphs 6 and 7, 26 April 2001. CCPR/CO/71/UZB.

²⁴⁰ Article 51(2) of the Criminal Code.

²⁴¹ Article 51(2) of the Criminal Code. In addition, this article also stipulates that the death penalty cannot be applied to men who are over the age of 60 at the time when the sentence is pronounced.

²⁴² Article 138 of the Criminal Penalty Code.

²⁴³ Procedure of Clemency in the Republic of Uzbekistan, 11 September 1997. This principle can also be found in Article 93(20) of the Constitution.

4.18

FEDERAL REPUBLIC OF YUGOSLAVIA²⁴⁴

RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Signed	Ratified
Article 6 of the ICCPR	Yes	Yes
Second Optional Protocol to the ICCPR	Yes	Yes
Article 37 (a) of the CRC	Yes	Yes

LEGAL FRAMEWORK

Status:

Abolitionist²⁴⁵

Scope:

The Federal Republic of Yugoslavia amended the Federal Constitution in 1992 and removed the provision on the death penalty. The Federal Criminal Code was amended accordingly in 1993²⁴⁶.

The Republic of Serbia removed the death penalty from its Criminal Code in 2002²⁴⁷ although the Constitution of the Republic of Serbia still retains a provision on the death penalty²⁴⁸.

In the Republic of Montenegro the death penalty was still retained in the Criminal Code for crimes committed in peacetime and in wartime until very recently. The Constitution continues to provide that capital punishment may be ruled and pronounced for the most serious criminal offences²⁴⁹. However, on 19 June 2002, the National Assembly of Montenegro passed a Law on Amendments to the Criminal Code that completely abolished the use of the death penalty²⁵⁰.

²⁴⁴ This entry was written with the assistance of the OSCE Mission in the Federal Republic of Yugoslavia and the Delegation of the Federal Republic of Yugoslavia to the OSCE who completed our questionnaire on the death penalty.

²⁴⁵ We have classified the Federal Republic of Yugoslavia as abolitionist. However the classification is not strict as certain legal provisions providing for the death penalty are retained.

²⁴⁶ Law on Amendments and Addenda to the Criminal Code of the Federal Republic of Yugoslavia, Official Gazette of the Federal Republic of Yugoslavia, No.37/93.

²⁴⁷ Official Gazette of the Republic of Serbia, No.10/2002, 1 March 2002.

²⁴⁸ Article 14 of the Constitution of the Republic of Serbia.

²⁴⁹ Article 21 of the Constitution of the Republic of Montenegro.

²⁵⁰ Official Gazette of the Republic of Montenegro, No.30/2002, 26 June 2002.

ANNEX 1

OSCE COMMITMENTS RELATING TO THE DEATH PENALTY

Concluding Document of the 1989 Vienna Follow-up Meeting

Questions relating to security in Europe

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

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

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

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

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

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

Concluding Document of the 1992 Helsinki Summit

The participating States

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

Concluding Document of the 1994 Budapest Summit

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

ANNEX 2

OTHER INTERNATIONAL STANDARDS RELATING TO THE DEATH PENALTY

United Nations

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.

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;

Council of Europe

Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty, as amended by protocol no. 11

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.

ANNEX 3

Participating State	Status	ICCPR	CRC Ratified	2nd Optional Protocol Signed	2nd Optional Protocol Ratified	Protocol No 6 Signed	Protocol No 6 Ratified	Protocol No 13 Signed	Protocol No 13 Ratified
Albania	PA	yes	yes	no	no	yes	yes	no	no
Andorra	A	yes	yes	no	no	yes	yes	yes	no
Armenia	DA	yes	yes	no	no	yes	no	no	no
Austria	A	yes	yes	yes	yes	yes	yes	yes	no
Azerbaijan	A	yes	yes	yes	yes	yes	yes	no	no
Additional information:		1. No abolition in the internationally unrecognized separatist region of Nagorno-Karabakh 2. Azerbaijan have entered a reservation under Art. 2 of Second Optional Protocol to the ICCPR							
Belarus	R	yes	yes	no	no	n/a	n/a	n/a	n/a
Belgium	A	yes	yes	yes	yes	yes	yes	yes	no
Bosnia-Herzegovina	A	yes	yes	yes	yes	yes	no	yes	no
Bulgaria	A	yes	yes	yes	yes	yes	yes	no	no
Canada	A	yes	yes	no	no	n/a	n/a	n/a	n/a
Croatia	A	yes	yes	yes	yes	yes	yes	yes	no
Cyprus	A	yes	yes	yes	yes	yes	yes	yes	no

Additional information: Cyprus have entered a reservation under Art. 2 of the Second Optional Protocol of the ICCPR

Participating State	Status	ICCPR	CRC Ratified	2nd Optional Protocol Signed	2nd Optional Protocol Ratified	Protocol No 6 Signed	Protocol No 6 Ratified	Protocol No 13 Signed	Protocol No 13 Ratified
Czech Republic	A	yes	yes	no	no	yes	yes	yes	no
Denmark	A	yes	yes	yes	yes	yes	yes	yes	no
Estonia	A	yes	yes	no	no	yes	yes	yes	no
Finland	A	yes	yes	yes	yes	yes	yes	yes	no
France	A	yes	yes	no	no	yes	yes	yes	no
Georgia	A	yes	yes	yes	yes	yes	yes	yes	no
Additional information:		No abolition in the internationally unrecognized separatist region of Abkhazia and South Ossetia							
Germany	A	yes	yes	yes	yes	yes	yes	yes	no
Greece	PA	yes	yes	yes	yes	yes	yes	yes	no
Additional information:		Greece have entered a reservation under Art. 2 of the Second Optional Protocol of the ICCPR							
Holy See	A	no	yes	no	no	n/a	n/a	n/a	n/a
Hungary	A	yes	yes	yes	yes	yes	yes	yes	no
Iceland	A	yes	yes	yes	yes	yes	yes	yes	no
Ireland	A	yes	yes	yes	yes	yes	yes	yes	yes
Italy	A	yes	yes	yes	yes	yes	yes	yes	no
Kazakhstan	R	no	yes	no	no	n/a	n/a	n/a	n/a
Kyrgyzstan	DA	yes	yes	no	no	n/a	n/a	n/a	n/a

Participating State	Status	ICCPR	CRC Ratified	2nd Optional Protocol Signed	2nd Optional Protocol Ratified	Protocol No 6 Signed	Protocol No 6 Ratified	Protocol No 13 Signed	Protocol No 13 Ratified
Slovenia	A	yes	yes	yes	yes	yes	yes	yes	no
Spain	A	yes	yes	yes	yes	yes	yes	yes	no
Sweden	A	yes	yes	yes	yes	yes	yes	yes	no
Switzerland	A	yes	yes	yes	yes	yes	yes	yes	yes
Tajikistan	R	yes	yes	no	no	n/a	n/a	n/a	n/a
Turkey	DA	yes	yes	no	no	no	no	no	no
Turkmenistan	A	yes	yes	yes	yes	n/a	n/a	n/a	n/a
Ukraine	A	yes	yes	no	no	yes	yes	yes	no
United Kingdom	A	yes	yes	yes	yes	yes	yes	yes	no
USA	R	yes	no	no	no	n/a	n/a	n/a	n/a
Uzbekistan	R	yes	yes	no	no	n/a	n/a	n/a	n/a
F. R. Yugoslavia	A	yes	yes	yes	yes	n/a	n/a	n/a	n/a