



Declassified*

AS/Jur (2017) 32

11 October 2017

ajdoc32 2017

Committee on Legal Affairs and Human Rights

Abolition of the death penalty in Council of Europe member and observer states,¹ Belarus and countries whose parliaments have co-operation status² - situation report

Information note

General rapporteur: Mr Yves CRUCHTEN, Luxembourg, Socialist Group

1. Introduction

1. Appointed general rapporteur on the abolition of the death penalty at the Committee meeting of 13 December 2016, I have had the honour to continue the outstanding work done by Ms Meritxell Mateu Pi (Andorra, ALDE), Ms Marietta Karamanli (France, SOC), Ms Marina Schuster (Germany, ALDE), and before her Ms Renate Wohlwend (Liechtenstein, EPP/CD).³

2. At the Committee meeting in June 2015, Ms Karamanli presented an information note containing her conclusions of her research on national legislation and practices in this area. She had drawn extensively on the work of several leading international NGOs, including Amnesty International, Human Rights Watch, Human Rights House and Penal Reform International. Much of this document reiterates the findings of my predecessor, along with updates to reflect how the situation has evolved since June 2015.

3. This note will first of all provide a brief overview of the international and European legal framework, and then highlight the current situation in States that have abolished the death penalty only for ordinary crimes, those that provide for the death penalty in their legislation but do not implement it and those that actually do apply it. It refers solely to Council of Europe member States (the Russian Federation), observer States, States whose parliaments hold “partner for democracy” status, Kazakhstan and Belarus, which would like to have closer links with the Council of Europe. Since March 2012, the general rapporteurs of the Assembly issued public statements relating to executions and death sentences in these States or have proposed that the Committee adopt statements condemning capital punishment as inhuman and degrading. It is an honour for me to continue this work; accordingly in recent months I have issued several statements condemning the executions that have taken place in the United States, Japan, Belarus and in the Gaza Strip (Palestinian Authority).

2. The international and European legal framework and states’ practice

4. In international law, Article 6 of the International Covenant on Civil and Political Rights (ICCPR) expressly states that “(e)very human being has the inherent right to life. This right shall be protected by law.

* Document declassified by the Committee on 10 October 2017.

¹ Including Israel, whose parliament (the Knesset) has observer status.

² Both the “partners for democracy” (the parliaments of Jordan, Morocco, Kirghizstan and the Palestinian National Council) and Kazakhstan (with co-operation status on the basis of a co-operation agreement signed in 2004).

³ See also her report on “The death penalty in Council of Europe member and observer states: a violation of human rights”, [Doc 12456](#) and Assembly resolution 1807 (2011) on this subject, adopted on 14 April 2011.

No one shall be arbitrarily deprived of his life.” In paragraph 2, it refers to the requirements to comply with the law of treaties and to observe the procedural guarantees for executions in non-abolitionist states, which may only impose a death sentence “for the most serious crimes”. This penalty “can only be carried out pursuant to a final judgement rendered by a competent court”. The Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty provides for the abolition of the death penalty in all circumstances, even for the most serious crimes or in wartime.⁴ The international community has also adopted numerous instruments that prohibit the use of the death penalty, but these are not binding.⁵ In addition, Article 37 of the International Convention on the Rights of the Child prohibits capital punishment for persons under 18 years of age. Pregnant women, mothers of young children and disabled or mentally ill persons must not be executed either.⁶

5. At regional level, the European framework provides more protection. At the Council of Europe, in addition to the right to life guaranteed by Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), Protocol No. 6 to the Convention, which was signed on 28 April 1983 and came into force on 1 March 1985, abolishes the death penalty in peacetime. It has been ratified by 46 member States (the Russian Federation has merely signed it).⁷ Protocol No. 13, which was signed on 3 May 2002 and entered into force on 1 July 2003, abolishes the death penalty in all circumstances. The latter has been signed and ratified by forty-four member states. Azerbaijan and the Russian Federation have not yet signed it, whereas Armenia has signed but not ratified it.⁸ Even though the death penalty is not entirely prohibited in the light of Article 2 of the Convention, developments in the case law of the European Court of Human Rights (“the Court”) particularly with regard to Article 3 of the Convention prohibiting torture and inhuman or degrading treatment or punishment, show that the explicit recognition of this penalty has become virtually obsolete. Accordingly, in the view of the Court, the obligations of the States Parties to the Convention and its protocols also prohibit the extradition or expulsion of individuals to countries where they face the death penalty; such extradition or deportation would then constitute a violation of Article 3 of the Convention. It will be recalled that in the *Soering v. the United Kingdom*⁹ judgment of 1989, the Court found a violation because of the UK authorities’ intention to send the applicant to the United States where there was a risk that he would spend several years on “death row”, pending his execution. In the 2005 *Öcalan v. Turkey* judgment,¹⁰ the Court concluded that the application of the death penalty delivered following an unfair trial would be in breach of Article 3 of the Convention and expressed the view that the use of the death penalty in peace time was unacceptable. In the *Al-Saadoon and Mufdhi v. the United Kingdom*¹¹ judgment of 2010, in the light of the progress made regarding abolition of the death penalty, the Court concluded for the first time that the death penalty was inhuman or degrading treatment irrespective of the circumstances in which it was delivered or applied (violation of Article 3). Furthermore, the Court found against Poland on 24 July 2014¹² for having transferred an alleged terrorist – Mr Al Nashiri – to the United States despite the risk that he could be sentenced to death. The Court found that there had been a violation of Article 2 combined with Article 1 of Protocol No. 6 and Article 3. In the supervision of the execution of this judgment, the Committee of Ministers urged Poland to ensure that such a sentence was not imposed on him in the US.¹³

6. According to the World Coalition Against the Death Penalty,¹⁴ there are currently 104 countries that have completely abolished the death penalty; these include virtually all the Council of Europe member States, Canada, Mexico and Kirghizstan. Seven States have abolished the death penalty for ordinary crimes only, including Israel and Kazakhstan. Thirty (30) provide for the death penalty in their legislation but do not implement it. This is, in particular, the case in Morocco and the Russian Federation. This means that, in all, 141 states, i.e. more than two thirds of the whole world, have abolished the penalty in law or in practice.

⁴ Adopted and proclaimed by the UN General Assembly in resolution 44/128 of 15 December 1989.

⁵ Universal Declaration of Human Rights, and UN General Assembly [resolution 62/149](#) (December 2007), [resolution 63/168](#) (December 2008), [resolution 65/206](#) (December 2010).

⁶ Resolution 1984/50: Safeguards guaranteeing the protection of the rights of those facing the death penalty, 25 May 1984 - UN Economic and Social Council. Resolution 1989/64: implementation of the safeguards guaranteeing the protection of the rights of those facing the death penalty - UN Economic and Social Council.

⁷ As at 29 September 2017. ETS No. 14; https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/114/signatures?p_auth=73pM5mY5.

⁸ As at 29 September 2017. ETS No 187; https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/187/signatures?p_auth=73pM5mY50.

⁹ Judgment of 7 July 1989, Application No. 14038/88.

¹⁰ Judgment of 12 May 2005, Application No. 46221/99.

¹¹ Judgment of 2 March 2010, Application No. 61498/08.

¹² Judgment of 24 July 2014, Application No. 28761/11.

¹³ See the latest [decision](#) of the Committee of Ministers taken at its 1294th meeting (DH) (19-21 September 2017), and the report by our committee colleague Mr Pierre-Yves Le Borgn’ (France, SOC) on “Implementation of judgments of the European Court of Human Rights”, which looks in detail at this question, [Doc. 14340](#), paragraph 33.

¹⁴ As at 29 September 2017, see <http://www.worldcoalition.org/worldday.html>.

Lastly, there are 57 States which carry it out, including the US, Japan, Belarus and the Palestinian Authority.¹⁵ In 2016, two countries (Benin and Nauru) abolished the death penalty for all crimes and one country (Guinea) abolished it for ordinary crimes only. In 2017, Mongolia abolished the death penalty for all crimes. Twenty-three States executed convicted persons in 2016 (compared with 25 in 2015); the largest number of executions took place, in descending order, in China, Iran, Iraq, Pakistan and Saudi Arabia. According to the Amnesty International report "[Death sentences and Executions 2016](#)", published on 11 April 2017, States generally had less recourse to this penalty, with a 37% decrease compared with 2015 (in 2016, at least 1,032 people were executed, whereas the figure for 2015 was at least 1,634). Amnesty International reports that 2015 was the year with the highest number of executions since 1989. In 2016, the total number of executions remained higher than the average recorded for the previous decade. It should be noted that these figures do not include all the executions carried out in China, where data on the use of the death penalty remained classified as a state secret.¹⁶ The methods of execution used included beheading, hanging, firing squad and lethal injections. Public executions were carried out in Iran (at least 33) and North Korea; also in Iran, at least two people were executed for crimes committed when they were under 18 years of age.¹⁷ It should also be noted that in 2016 Amnesty International recorded 3,117 people sentenced to death in 55 countries, constituting a significant increase on the total for 2015 (1,998 sentences in 61 countries).¹⁸ At least 18,848 people were on death row at the end of 2016.¹⁹

3. The situation country by country

3.1. Russian Federation

7. As a new Council of Europe member State the Russian Federation first signed Protocol No. 6 in April 1997. However, the Russian parliament has not yet ratified it. In 2008, the Russian Federation voted for the UN resolution for a global moratorium on executions. There have been no executions in this country since 1999. The Russian Constitutional Court has played an active part in the de facto abolition of the death penalty in the Russian Federation. First of all, it prohibited death sentences until jury trials were established throughout the country. In autumn 2009, the Supreme Court asked the Constitutional Court if the introduction of a jury system by Chechnya²⁰ planned for 1 January 2010 meant the end of the moratorium and would therefore enable the resumption of death sentences.²¹ Subsequently, on 19 November that year, the Constitutional Court decided to extend the moratorium indefinitely on the ground that it was a process that reflected "a trend in international law and was in accordance with the commitments entered into by the Russian Federation". Following that decision, 697 death sentences were commuted to life imprisonment.²²

8. A moratorium is a means of encouraging the permanent abolition of the death penalty. It provides a platform for de jure abolition but it may be dangerous to prolong it indefinitely since executions may be resumed. For example, in 2009 Thailand restarted executions after a six-year moratorium, as did Taiwan, which began executing people again after a five-year moratorium.²³ As in many other countries (including Jordan and Turkey recently) the debate on restoring the death penalty occasionally flares up in the Russian Federation. After the March 2010 attacks on the Moscow metro, the Federation Council's Judicial and Legal Affairs Committee began working on a draft law to reintroduce the death penalty for organisers of terrorist attacks that result in multiple loss of life.²⁴ In March 2016 and June 2017, the question of applying the death penalty, particularly for terrorists, was once again raised by certain members of parliament²⁵ and a bill to reintroduce the death penalty was tabled by some members of the Duma; however, the government and the Supreme Court expressed their opposition to the bill.²⁶ It is therefore important for the Russian Federation to ensure the de jure abolition of the death penalty by ratifying Protocol No. 6 to the Convention and/or signing and ratifying Protocol No. 13.

¹⁵ Amnesty International, *Abolir la peine de mort partout dans le monde, faire cesser les exécutions*, No. 92, 21 March 2015, SF 15 APM 01.

¹⁶ See pages 4 and 9 of this report.

¹⁷ Ibid, pages 5 and 6.

¹⁸ Ibid, p. 5.

¹⁹ <https://www.amnesty.org/en/latest/news/2017/04/death-penalty-2016-facts-and-figures/>.

²⁰ The last Russian republic without a system of jury trials.

²¹ *La Russie s'éloigne de la peine de mort*, Le Monde, 19.11.2009.

²² Amnesty International, *Death sentences and executions in 2010*, 28 March 2011, Index: ACT50/001/2011, p. 25.

²³ *Death Penalty Information Pack*, Penal Reform International, p.15.

²⁴ Kester Kenn Klomegah, *Death Penalty Lingers in Former Soviet Republics*, IPS News, 5 April 2010.

²⁵ *Stay of execution? Russian MP proposes 'delayed death penalty' for convicted terrorists*, article in 'Rossiyskaya gazeta', 13 June 2017.

²⁶ Amnesty International, *Death sentences and executions in 2016*, p. 29.

3.2. United States

9. The United States ratified the International Covenant on Civil and Political Rights on 8 June 1992, making a reservation to Article 6, which enshrines the right to life, but they have not acceded to the Second Optional Protocol aiming at the abolition of the death penalty. The United States has had Council of Europe observer status since 1996. Of the 50 US federal states, 19 have abolished the death penalty (six of these since 2007)²⁷ and four²⁸ have declared moratoriums on executions. Delaware is the latest State to have abolished capital punishment (in August 2016). Unfortunately, attempts by the Nebraska parliament to abolish the death penalty, welcomed by the former Assembly rapporteur Ms Karamanli,²⁹ failed, following a November 2016 vote by the electorate in that state to maintain the penalty. According to the Amnesty International 2016 report, of the 31 States which have not abolished the death penalty, 12 have not carried out any executions for at least ten years.³⁰ Nonetheless, in 2017, executions were carried out in Arkansas. Amnesty International reports that at the end of 2016, 1,832 people were on death row (most of whom were in California, Florida, Texas, Alabama and Pennsylvania). 2016 was the eighth consecutive year in which the United States was the only country on the American continent to have executed prisoners. All the same, the number of executions and death sentences recorded in the US in 2016 continued to fall and for the first time since 2006 the US did not feature among the top five global executioners.³¹ In 2014, 35 people were executed,³² in 2015 – 28³³ and in 2016 – 20 (80% of these executions were carried out in Georgia or Texas), all by lethal injection.³⁴ The number of death sentences has also fallen: in 2014, at least 72 such sentences were handed down, 52 in 2015 and 32 in 2016. Amnesty International considers that these decreases are in part linked to legal challenges which resulted in the revision of lethal injection protocols or problems faced by States in obtaining lethal injection chemicals.³⁵ It also reports that in Florida, several executions and capital trials (which could result in a death sentence) were suspended in 2016 following a Supreme Court judgment (*Hurst v. Florida*) which found that the fact that juries were given only an advisory say in capital sentencing was unconstitutional.³⁶ Nonetheless, despite these advances, in 2017, 18 executions have already been carried out,³⁷ of which five were in Texas, four in Arkansas, two in Alabama, two in Ohio, two in Virginia, one in Florida, one in Georgia and one in Missouri. In reaction to these executions, I have issued a number of written statements.³⁸

10. In the last few years, the United States has encountered difficulties in procuring the products necessary to execute death row prisoners by lethal injection and has consequently resorted to questionable or even secret products or experimental combinations of lethal substances, such as midazolam, the real effects or even origin of which are not known. This difficulty can be partly put down to the fact that some European pharmaceutical groups refuse or no longer have the right to export products for execution purposes.³⁹ There are two major consequences of this situation: some condemned inmates die in agony over an inordinately long period and States are looking for new methods of executing people sentenced to death. In addition, there are many witness reports of botched executions.⁴⁰ In 2014 for example, Dennis McGuire, Clayton Lockett and Joseph Wood were declared dead after many long minutes or even hours during which they gasped and snorted, probably trying to breathe.⁴¹ Some States are attempting to overcome the shortage of the product normally used for lethal injections by testing new substances (as recently in Florida)⁴² or looking for different execution methods. In 2008 the US Supreme Court ruled lethal injections to be constitutional. However, since these products have been in short supply it has again been asked to rule on the matter and on 29 June 2015, in the *Glossip v. Gross* judgment, it upheld the use of

²⁷ See <https://deathpenaltyinfo.org/states-and-without-death-penalty> (as at 9 November 2016).

²⁸ Colorado, Oregon, Pennsylvania and Washington.

²⁹ See <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5626&lang=2&cat=>.

³⁰ Arkansas, California, North Carolina, Colorado, Kansas, Montana, Nebraska, Nevada, New Hampshire, Oregon, Pennsylvania and Wyoming. Amnesty International, Death sentences and executions in 2016, .13.

³¹ Amnesty International, Death sentences and executions in 2016, p. 11.

³² Amnesty International, Death sentences and executions in 2014, p. 4.

³³ Amnesty International, Death sentences and executions in 2015, p. 13.

³⁴ Amnesty International, Death sentences and executions in 2016, p. 12.

³⁵ Amnesty International, Death sentences and executions in 2016, p. 12.

³⁶ *Ibid*, p. 14.

³⁷ As at 2 October 2017, see: <http://www.worldcoalition.org/United-States>.

³⁸ See my statement of 12 April 2017 on the resumption of executions in this State:

<http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6594&lang=2&cat=>

³⁹ Amnesty International, Abolir la peine de mort partout dans le monde, faire cesser les exécutions, n°92, op. cit. p.7.

⁴⁰ <http://www.deathpenaltyinfo.org/some-examples-post-furman-botched-executions?scid=8&did=478>

⁴¹ Amnesty International, Death sentences and executions in 2014, p. 21 et 22.

⁴² See my statement on the execution of Mark Asay, carried out on 24 August 2007:

<http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6751&lang=2&cat=>

mizadolam.⁴³ Some States have already provided for alternatives if the Constitutional Court were to declare lethal injections unconstitutional.⁴⁴ In 2015, Oklahoma and Utah decided to resume the use of firing squads when substances used by the administration are no longer available.⁴⁵ Without a single dissenting vote,⁴⁶ Oklahoma has passed a bill authorising execution through the inhalation of nitrogen gas without oxygen.⁴⁶ Lastly, certain states, such as Oklahoma and Tennessee have authorised electrocution when these substances are unavailable.⁴⁷

11. The use of the death penalty in the United States also raises concerns with regard to the people executed. Although this is prohibited by international law and the Eighth Amendment, the United States has on several occasions executed death row inmates who were in all likelihood suffering from a mental disorder. In January 2015, my predecessor, Ms Karamanli, condemned the execution of Warren Hill (in Georgia) and Robert Ladd (in Texas), both of whom appeared to be suffering from a mental disability.⁴⁸ For the same reason, Amnesty International also expressed its condemnation of the execution of Cecil Clayton, aged 74 (on 17 March 2015, Missouri), Andre Cole (14 April 2015, Missouri), Alfredo Rolando Prieto, an El Salvador national (1 October 2015 in Virginia),⁴⁹ Kenneth Fults (12 April 2016, Georgia) and John Wayne Conner (15 July 2016, Georgia).⁵⁰ Recently, I was also extremely shocked by the execution of Charles Morva, who suffered from a mental disorder, in Virginia on 6 July last.⁵¹ The United States also executes people over 70 years of age,⁵² women⁵³ and foreign nationals,⁵⁴ including those who have not obtained the consular assistance to which they are entitled under the Vienna Convention on consular relations of 24 April 1963, which means it is in breach of international law.⁵⁵ It will be recalled that in 2004 the International Court of Justice, following a lawsuit filed by Mexico, ruled against the United States in the *Avena* case⁵⁶ for a violation of the Vienna Convention. In 2014, despite the recognition by the federal authorities of their international legal obligations in this area Texas executed several Mexican nationals who had been deprived of consular protection – despite my predecessors’ interventions.⁵⁷ Until the 2005 Supreme Court judgment in *Roper v. Simmons* in 2005,⁵⁸ there had even been executions of individuals who were minors at the time the offences were committed.⁵⁹

3.3. Japan

12. Japan has been a Council of Europe observer State since 1996. It ratified the International Covenant on Civil and Political Rights on 21 June 1979 but has not ratified the Second Optional Protocol aiming at the abolition of the death penalty. In Japan, nineteen crimes carry the death penalty. Amnesty International recorded three executions in 2015 (the same number as in 2014), 3 in 2016 (including one man aged 75 and one woman) and 2 in 2017,⁶⁰ all by hanging. Amnesty International also reports new death sentences being handed down: four in 2015 and three in 2016. At the end of 2016, 141 prisoners remained under sentence of

⁴³ <https://deathpenaltyinfo.org/node/6180>.

⁴⁴ For a list of execution methods in the respective states, see: <https://deathpenaltyinfo.org/methods-execution#ut>.

⁴⁵ Gilles Paris, “L’Utah: le peloton d’exécution plutôt que l’injection”, *Le Monde*, 25 March 2015.

⁴⁶ “Oklahoma could execute death row inmates with nitrogen gas”, *BBC News*, 9 April 2015.

⁴⁷ https://deathpenaltyinfo.org/state_by_state.

⁴⁸ [General rapporteur appalled by execution of two men with intellectual disabilities](#) 30 January 2015.

⁴⁹ Amnesty International, *Death sentences and executions in 2015*, p. 21.

⁵⁰ Amnesty International, *Death sentences and executions in 2016*, pp. 15-16.

⁵¹ See: <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6737&lang=2&cat=>.

⁵² On 26 May 2017, Thomas Arthur, aged 75, was executed in Alabama; see; <https://www.amnesty.org/en/documents/amr51/6373/2017/en/>. In 2015, Cecil Clayton, aged 74, was executed in Missouri and, in 2016, Brandon Jones, aged 72, was executed in the State of Georgia; see the database on:

<https://deathpenaltyinfo.org/views-executions>.

⁵³ The latest woman to be executed was Kelly Gisserdamer (30 September 2015 in the State of Georgia).

⁵⁴ The El Salvador national Alfredo Prieto was the latest foreigner to be executed in the United States (on 10 January 2015 in Virginia), despite a request from the Inter-American Commission on Human Rights to halt his execution; Amnesty International, *Death sentences and executions in 2015*, p. 21.

⁵⁵ Amnesty International, *Death sentences and executions in 2014*, p.18.

⁵⁶ <http://www.icj-cij.org/files/case-related/128/128-20040331-JUD-01-00-EN.pdf>.

⁵⁷ See: <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=4969&lang=2&cat=> and

<http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=4806&lang=2&cat=>.

⁵⁸ See <http://www.deathpenaltyinfo.org/u-s-supreme-court-roper-v-simmons-no-03-633>.

⁵⁹ The last person sentenced to death for a crime committed while still a minor was Scott Allen Hain, who was executed on 3 April 2003.

⁶⁰ See my statement of 13 July 2017:

<http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6738&lang=2&cat=>.

death.⁶¹ Under Japanese law, capital punishment may not be imposed on a person who was under 18 when the crime was committed or on an “insane” person”. Most often, prisoners are given only a few hours’ notice of their execution and their families and lawyers are informed only after it has taken place.⁶²

13. Other Japanese practices alarm human rights activists in particular. First of all, Amnesty International points out that people with mental disabilities have been sentenced in Japan⁶³ and are still on death row.⁶⁴ Moreover, people sentenced to death live in very questionable conditions. They are isolated from other inmates and their contacts with the outside world are limited to rare and closely supervised visits from members of their families, their lawyers and other officially authorised visitors. Some inmates, such as Iwao Hakamada and Kenji Matsumoto⁶⁵ show signs of seriously disturbed thinking and behaviour due to their detention. Finally, Japan is one of the countries with the longest periods spent on death row, sometimes over thirty years. Unfortunately, as reported by the International Federation for Human Rights,⁶⁶ Mr Gunnar Jansson, former Chair of the Committee on Legal Affairs and Human Rights, and Emma Bonino, a member of the European Parliament on mission to Japan in 2002, few people can have access to the places where condemned inmates are executed or even meet these people.⁶⁷

14. On 20 August 2014, the United Nations Human Rights Committee voiced its concerns about the situation of the death penalty in Japan in its concluding observations on the sixth periodic report of Japan. Firstly, it was concerned that some of the 19 crimes that carried the death penalty did not comply with the Covenant’s requirement of limiting capital punishment to the “most serious crimes”. Secondly, apart from the above-mentioned faults in the system, the Committee also pointed out that the confidentiality of meetings between lawyers and death row inmates was not guaranteed; thirdly, the examinations to decide whether a prisoner was sane were not independent. Fourthly, it emphasised that an application for a retrial or a pardon did not have the effect of staying the execution and was ineffective. Lastly, the Committee also reported that the death penalty had been handed down on various occasions as a result of forced confessions.⁶⁸ The recent release of death row inmates found to be innocent, or their release pending a retrial, has led to intense debate about the death penalty in Japan. The most recent case is that of Iwao Hakamada, who was released after 45 years on death row. Owing to new doubts about his guilt, the Japanese courts decided to free him in March 2014.⁶⁹ On 7 October 2016, for the first time the Japanese Federation of Bar Associations issued a declaration stating its opposition to the death penalty and calling on the authorities to abolish it by 2020.⁷⁰

3.4. Israel

15. First of all, under a law passed in 1954, Israel has abolished the death penalty for ordinary crimes. This law maintains the legality of the death penalty for certain crimes, such as genocide, crimes against humanity, mass crimes, treason and crimes against the Jewish people. Since the creation of the State of Israel, the death penalty has been carried out only once.⁷¹ In addition to voting in favour of the UN Resolution of 18 December 2008,⁷² Israel sponsored the fifth General Assembly resolution calling for a moratorium on the use of the death penalty,⁷³ thereby demonstrating its commitment to its abolition.

16. However, I believe it is important to point out that this law does not prevent the use of the death penalty, especially as the terms “treason” or “crimes against the Jewish people” are subject to interpretation. In the ongoing climate of conflict experienced by this country, there are more and more calls for the

⁶¹ Amnesty International, Death sentences and executions in 2016, p.22 et Amnesty International, Death sentences and executions in 2015, p. 25.

⁶² <https://www.amnesty.org/en/latest/news/2016/03/japan-two-hanged-as-chilling-executions-continue/>.

⁶³ Amnesty International, Death sentences and executions in 2014, p.7.

⁶⁴ Ibid. p.35.

⁶⁵ Ibid. p.45.

⁶⁶ FIDH, “The Death Penalty in Japan: A Practice Unworthy of a Democracy”, International mission of investigation No. 359, May 2003, p.19.

⁶⁷ PONS Philippe, “[Au Japon, il ne faut pas “troubler l’âme” des condamnés à mort](#)”, *Le Monde*, 25 March 2005.

⁶⁸ Human Rights Committee, Concluding observations on the sixth periodic report of Japan, [CCPR/C/JPN/CO/6](#), 20 August 2014, §13.

⁶⁹ Justin McCurry “[Japanese man freed after 45 years on death row as court orders retrial](#)”, *The Guardian*, 27 March 2014.

⁷⁰ Amnesty International, Death sentences and executions in 2016, p. 22.

⁷¹ In 1962, Adolph Eichmann was hanged for his involvement in the Holocaust.

⁷² Resolution A/RES/63/168, Moratorium on the use of the death penalty, adopted by the UN General Assembly on 18 December 2008, with 106 votes in favour, 46 against and 34 abstentions.

⁷³ Resolution A/RES/69/186, Moratorium on the use of the death penalty adopted by the UN General Assembly on 18 December 2014.

restoration of the death penalty. In 2014, a number of Israeli ministers called for its reintroduction, for example Yisrael Katz, the Minister of Transport, who demanded its reinstatement in May that year as a deterrent for certain Palestinian prisoners.⁷⁴ The Housing Minister, Uri Ariel, also called for its reintroduction for terrorists after the kidnapping and murder of three Jewish teenagers.⁷⁵ In July 2015, the Knesset rejected a bill that would have made it easier for courts to sentence to death those convicted of terrorism-related offences, but in March 2016 the issue was once again raised in the Israeli parliament.⁷⁶ Furthermore, Israel is not Party to the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty.⁷⁷

3.5. *Kazakhstan*

17. Although it is not a Party to the Second Optional Protocol to the ICCPR, Kazakhstan has gradually reduced the scope of the death penalty. Since 1998, the number of crimes that carry the death penalty in peacetime has been significantly reduced. Despite the fact that capital punishment has been abolished for ordinary crimes, the death sentence could still be handed down for 17 offences relating either to terrorism or war crimes; this was criticised by the UN Human Rights Committee in August 2016.⁷⁸ On 18 December 2003, President Nursultan Nazarbayev issued a moratorium on executions, which was welcomed on 19 December 2003 by Mr Peter Schieder, then President of the Assembly.⁷⁹ Article 47.2 of the Kazakhstan Criminal Code of 2014⁸⁰ prohibits the death penalty for individuals under 18 years of age, women and people over 65. In December 2012, Kazakhstan voted in favour of the General Assembly resolution calling for a moratorium on the use of the death penalty.⁸¹

18. I cannot but express regret that in November 2016, Ruslan Kulekbaev was convicted on terrorism-related charges of killing 10 people in Almaty in July and sentenced to death. He was the sixth person to be sentenced to death since President Nazarbayev signed a moratorium on executions in 2003. Since then all death sentences have been commuted to life imprisonment.⁸²

3.6. *Kirghizstan*

19. Kirghizstan abolished the death penalty in 2007. On 11 February 2010, it ratified the Second Optional Protocol to the ICCPR, making any reinstatement of capital punishment impossible,⁸³ a fact welcomed by the Assembly in its Resolution 1984 (2014), Request for Partner for Democracy status with the Parliamentary Assembly submitted by the Parliament of the Kyrgyz Republic.⁸⁴

3.7. *Morocco*

20. Morocco is not a Party to the Second Optional Protocol to the ICCPR. As a Council of Europe Parliamentary Assembly partner for democracy, the Moroccan Parliament has undertaken to continue its efforts “to raise the awareness of the public authorities and the main players in politics and civil society of the need to make progress in the discussion of [...] the death penalty” and to continue “to encourage the authorities concerned to maintain the de facto moratorium that has been established on executions of the death penalty since 1993”.⁸⁵ Morocco has not carried out the death penalty since 1993, although 104 people remain under a death sentence⁸⁶ and such sentences are still handed down. In 2015, as reported by Amnesty International, nine people were sentenced to death.⁸⁷ In 2016, six people were given this sentence (this also includes the Western Sahara) and some people given the death penalty had their sentences commuted or were pardoned.⁸⁸ The Constitution of 2011 expressly enshrines the “right to life” but without abolishing the death penalty.

⁷⁴ Amnesty International, Death sentences and executions in 2014, April 2015, Index: AI ACT 50/001/2015, p. 49.

⁷⁵ Ibid.

⁷⁶ Amnesty International, *Israel: Human Rights Situation Remains Dire*, p. 15.

⁷⁷ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en.

⁷⁸ Concluding observations on the second periodic report of Kazakhstan, CCPR/C/KAZ/CO/2, paragraph 15.

⁷⁹ Peter Schieder welcomes moratorium on executions in Kazakhstan, PACE press release of 19 December 2003, 660a(2003).

⁸⁰ <http://www.legislationline.org/documents/section/criminal-codes/country/21>.

⁸¹ Thomas Hubert, *Kazakh criminal law reform could add capital crimes*, 15 February 2013.

⁸² Amnesty International, *Kazakhstan 2016/2017*.

⁸³ See “[Kirghizstan definitively outlaws death penalty](#)”.

⁸⁴ [Resolution 1984 \(2014\)](#), paragraph 6.

⁸⁵ “Moroccan Parliament obtains ‘Partner for Democracy’ status with PACE”, press release AP032 (2011), 21.06.2011.

⁸⁶ <http://www.worldcoalition.org/Morocco>.

⁸⁷ Amnesty International, Death sentences and executions in 2015, p. 45.

⁸⁸ Amnesty International, Death sentences and executions in 2016, p. 6.

21. The movement to abolish the death penalty, which has its roots in the country's culture and history is very much in evidence in Morocco. The Moroccan Coalition against the Death Penalty, the Network of Parliamentarians against the Death Penalty in Morocco and lawyers from six different bar associations are coming together to fight against capital punishment.⁸⁹ However, in its most recent resolution on evaluation of the partnership for democracy in respect of the parliament of Morocco of June 2015, the Assembly expressed regret that no tangible progress had been achieved with regard to the death penalty and once again called on the Moroccan Parliament to abolish the death penalty in law, and, pending abolition, to declare a *de jure* moratorium on executions.⁹⁰ On 19 December 2016, Morocco abstained for the sixth time in a UN vote on an official moratorium on the death penalty with a view to its abolition.⁹¹ In December 2016, the Human rights Committee also expressed concern about changes to the Criminal Code which would extend the scope of the death penalty to three new categories of offences; these concerns have also been voiced recently by Amnesty International.⁹²

3.8. *Palestinian Authority*

22. By becoming a partner for democracy on 4 October 2011,⁹³ the Palestinian National Council (PNC) undertook to promote discussions in support of the abolition of the death penalty in the Criminal Code and to continue the de facto moratorium in force in the West Bank since 2005. In the territories administered by the Palestinian Authority, the West Bank continues to pass death sentences but no execution has been recorded since 2005. However, death sentences are still handed down and carried out in the Gaza Strip, which has been under Hamas control since 2007. The methods used are hanging or firing squad. According to Palestinian law, death sentences must be carried out with the agreement of the Palestinian President; however, since 2010, this requirement has never been complied with.⁹⁴ In its Resolution 2105 (2016)⁹⁵ on evaluation of the partnership for democracy in respect of the Palestinian National Council, the Parliamentary Assembly noted that while a de facto moratorium on executions had been in place since 2005 in the West Bank, courts in Gaza continued to hand down death penalty sentences and Hamas authorities continued to carry out illegal executions. The Assembly roundly condemned these executions and urged the PNC to intervene with Hamas to stop executions in Gaza and to abolish the death penalty in the Palestinian Criminal Code. Despite this call, further executions have been carried out in the Gaza Strip.

23. No executions were recorded in 2015 although twelve death sentences were handed down (10 in Gaza and two in the West Bank).⁹⁶ In 2016, three executions were carried out and 21 death sentences issued in the Gaza Strip; at least 21 persons were under sentence of death at the end of 2016.⁹⁷ In 2017, six executions have already been carried out in the Gaza Strip (three in April⁹⁸ and three in May⁹⁹). The World Coalition against the Death Penalty reports that 87 people are currently under sentence of death.¹⁰⁰

24. Amnesty International also condemns procedures preceding a death sentence that do not meet international fair-trial standards, with convictions based on confessions probably extracted through torture or ill-treatment. Death sentences have also been passed in absentia.

3.9. *Jordan*

25. Jordan, which is not a Party to the Second Optional Protocol to the ICCPR, is another State whose parliament has recently been granted "partner for democracy" status with our Assembly. In its [Resolution 2086 \(2016\)](#) of 26 January 2016, in which the Assembly conferred this status on the Jordanian parliament, it also called for the abolition of the death penalty in that country.

⁸⁹ Fouâd Harit, [Abolition de la peine de mort au Maroc: les avocats rejoignent le mouvement](#), 9 October 2014.

⁹⁰ [Resolution 2061 \(2015\)](#) adopted on 23 June 2015, paragraph 5.1.

⁹¹ <https://ledesk.ma/2017/04/12/peine-de-mort-le-maroc-pays-abolitionniste-en-pratique/>.

⁹² Human Rights Committee, CCPR/C/MAR/CO/6 of 1 December 2016, paragraph 19, and Amnesty International, [public statement](#) of 21 September 2017.

⁹³ [Resolution 1830 \(2011\)](#) on the Request for partner for democracy status with the Parliamentary Assembly submitted by the Palestinian National Council, 4 October 2011.

⁹⁴ Amnesty International, [Palestine: Hamas must urgently halt executions of three men sentenced after unfair trial](#), 24 May 2017.

⁹⁵ Adopted on 19 April 2016, paragraph 7.3.

⁹⁶ Amnesty International, *Death sentences and executions in 2015*, p. 46.

⁹⁷ Amnesty International, *Death sentences and executions in 2016*, p. 33.

⁹⁸ See my statement of 7 April 2017:

<http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6589&lang=2&cat=>.

⁹⁹ *Supra* note 94.

¹⁰⁰ <http://www.worldcoalition.org/Palestinian-Authority>.

26. In Jordan, there has been a moratorium on executions since 2006. Nonetheless, the death penalty continues to be provided for in the Criminal Code. Amnesty International reports that there were two executions (one of an Iraqi female and one of an Iraqi male; by hanging) and three death sentences passed in Jordan in 2015.¹⁰¹ There were no executions in 2016 but 13 death sentences were passed.¹⁰² However, in March 2017, 15 persons were executed within a day, which was strongly condemned by the President of the Assembly.¹⁰³

27. The Assembly is required to evaluate the partnership with the Jordanian parliament in this part-session on the basis of a report by the Committee on Political Affairs and Democracy¹⁰⁴ with an opinion of the Committee on Legal Affairs and Human Rights.¹⁰⁵ It should be borne in mind that a commitment to take steps towards the abolition of the death penalty is one of the criteria for granting partner for democracy status (Rule 64.2 of the Assembly's Rules of Procedure). Any execution is therefore contrary to this commitment and should prompt the Assembly to review the granting of that status.

3.10. Belarus

28. Belarus entered into international commitments by ratifying the International Covenant on Civil and Political Rights on 12 November 1973, but is not a Party to the Second Optional Protocol. It is the only State on the continent of Europe that still carries out executions in its territory. The method of execution employed is the firing squad. In 2015, Amnesty International reported that there had been no executions but at least two death sentences were recorded.¹⁰⁶ In April 2016, Belarus resumed executions after a 17 month hiatus; at least four executions were carried out (Syarhei Ivanou, Hyanadz Yakavitski, Syarhei Khmialeuski et Ivan Kulesh; the latter apparently suffered from a personality disorder)¹⁰⁷. Amnesty International also reports that there were four death sentences passed in 2016 and two people remained on death row at the end of the year.¹⁰⁸ Nonetheless, according to the World Coalition against the Death Penalty, the number of persons under sentence of death is currently 104.¹⁰⁹ This year, one execution – of Siarhei Vostrykau¹¹⁰ - was carried out in April, despite several appeals not to go ahead from the international community, in particular the rapporteur of the Committee on Political Affairs and Democracy on the situation in Belarus, Mr Andrea Rigoni (Italy, ALDE).¹¹¹ Three other death sentences have been passed this year (on Aliaksei Mikhalenya on 17 March by the Homel Regional Court¹¹² and on Ihar Hershankou and Siamion Berazhnoy on 21 July by the Mahiliou Regional Court¹¹³). It should be borne in mind that since figures on the application of the death penalty are classified as a state secret, these data are minimum estimates and may be higher.

29. The executions in Belarus raise a number of concerns in the light of two practices contrary to international law. Firstly, in the last few years it has been revealed that several sentences have been carried out in secret. The Belarusian authorities execute people sentenced to death without giving them prior notice or informing their families or their lawyers. Furthermore, families are unable to recover the body of the executed family member or even to find out where he or she is buried. For example, on 8 May 2014 the Mogilev Regional Court announced that Rygor Yuzepchuk¹¹⁴ had been executed in Belarus without stating the date of his execution or where the body had been taken. Another example is that of the aforementioned Siarhei Vostrykau: the Homel Regional Court did not inform his mother of his death until the beginning of May. Article 175 of the Criminal Executive Code allows the government not to return the bodies of those executed to relatives and not to disclose the place of burial.¹¹⁵

¹⁰¹ Amnesty International, Death sentences and executions in 2015, p. 46.

¹⁰² Amnesty International, Death sentences and executions in 2016, p. 30.

¹⁰³ See his statement of 4 March 2017: <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6531&lang=2&cat=>.

¹⁰⁴ See the report by Ms Josette Durrieu (France, SOC), [Doc. 14399](#).

¹⁰⁵ The rapporteur for opinion is Mr Andrea Rigoni (Italy, ALDE).

¹⁰⁶ Amnesty International, Death sentences and executions in 2015, p. 43.

¹⁰⁷ Amnesty International, Death sentences and executions in 2016, pp. 28-29.

¹⁰⁸ Amnesty International, Death sentences and executions in 2016, p. 28.

¹⁰⁹ <http://www.worldcoalition.org/Belarus>.

¹¹⁰ Amnesty International, Belarus. [First execution of the year ignores continuing pressure for abolition](#), public statement of 19 May 2017.

¹¹¹ Doc. 1433 of 6 June 2017, section 3.2.

¹¹² Amnesty International, Belarus. [Aliaksei Mikhalenya at risk of imminent execution](#), 13 July 2017.

¹¹³ Amnesty International, [Belarus sentences two men to death](#), 14 August 2017.

¹¹⁴ Alternative spelling: Ryhor Yuzepchuk.

¹¹⁵ Amnesty International, Death sentences and executions in 2013, p. 29.

30. Secondly, many death sentences are passed at the end of unfair trials during which proof of guilt is provided by “confessions” drawn up after the use of torture or in the absence of any defence counsel.¹¹⁶ The Belarusian authorities do not hesitate to carry out secret executions of death row inmates whose cases are being considered by the Human Rights Committee. Recently, in 2016, Syarhei Ivanou and Syarhei Khmialeuski were executed despite the fact that the UN Human Rights Committee had called on the authorities not to carry out the execution pending the examination of their cases.¹¹⁷ Other examples: in April 2014 Belarus executed 23-year-old Pavel Selyun, who had been sentenced to death in June 2013. The Human Rights Committee was considering his case at that moment and had asked the Belarusian authorities to stay the execution pending its conclusions,¹¹⁸ a request that Belarus deliberately failed to comply with. Then, like Pavel Selyun, 25-year-old Alyaksandr Haryunou was executed on 4 November 2014. After his death sentence had been confirmed by the Supreme Court, he appealed to the UN Human Rights Committee in April alleging that he had not had a fair trial. The committee then called on the Belarusian authorities to grant a stay until it had finished considering his case¹¹⁹ but Belarus ignored its request. Once again, Alyaksandr Haryunou’s family and lawyer were not informed about the date of his execution and were therefore unable to meet him one last time. The same day, his mother received the clothes her son had been wearing when he was executed. His lawyer was notified in writing the next day. Finally, these executions that totally ignore requests for the adoption of provisional measures are reminiscent of the executions of Oleg Grishkovtsov and Andrei Burdyko in July 2011, whose cases were being considered by the UN Human Rights Committee (the condemned inmates complained about being tortured and about not having received a fair trial) or of Andrei Zhuk and Vasily Yuzepchuk in March 2010. The President of Belarus, Alexander Lukashenko, has the possibility of granting a pardon after a death sentence has been confirmed, but has made use of it only once since he came to power in 1994.¹²⁰

31. The Council of Europe Parliamentary Assembly has had occasion to express its grave concern about the increase in executions and death sentences in Belarus and the way they are carried out, as in Resolution 1857 (2012) and Resolution 2172 (2017).¹²¹ In the latter, it called on the authorities to introduce a de jure moratorium on the death penalty and executions, with a view to their abolition. Given the fact that no such moratorium had been introduced and no other progress had been made, it concluded that it was not in a position to re-establish the special guest status for the parliament of Belarus.¹²² The rapporteur of the Committee on Political Affairs and Democracy, Mr Rigoni has, on several occasions, emphasised that the death penalty is fundamentally contrary to the Council of Europe’s values.¹²³ Furthermore, the situation in Belarus is being monitored very closely by the European Union which regularly condemns the new cases of executions and death sentences. There are few glimmers of hope but they deserve to be mentioned. Under the UN Human Rights Council Universal Periodic Review (UPR), the authorities undertook to implement a number of recommendations, including to carry out public campaigns explaining the arguments for the abolition of the death penalty and to consider introducing a moratorium on executions.¹²⁴ It would appear that the authorities are adopting an increasingly more positive stance on the abolition of the death penalty. Last May, a working group on the death penalty was set up in the Belarus parliament.¹²⁵

4. Conclusion

32. By and large, the global trend is towards less and less use of the death penalty. This abolitionist trend is even more pronounced in Europe, where it is driven by the Council of Europe, and in neighbouring countries, but there is still work to be done. However, despite the abolitions and moratoriums, within Council of Europe member states, there are still some calls for the restoration of capital punishment. For example, in France several private member’s bills have been tabled to reinstate it, the last dating from 2004.¹²⁶ After the

¹¹⁶ Ibid. p. 28. See also the very controversial case of the executions on 18 March 2012 of Dimitri Konovalov and Vadislav Kovalev, who had been sentenced and executed after a bungled investigation, the apparent lack of a motive on the part of the individuals convicted and the total lack of material evidence. “[Vives critiques après l’exécution de deux condamnés en Biélorussie](#)”, *Le Monde*, 19 March 2012.

¹¹⁷ Amnesty International, *Death sentences and executions in 2016*, p. 29.

¹¹⁸ Amnesty International, *Death sentences and executions in 2014*, p. 42.

¹¹⁹ Ibid. p. 42.

¹²⁰ Supra note 110.

¹²¹ Parliamentary Assembly, [Resolution 1857 \(2012\)](#): The situation in Belarus, 25 January 2012 and [Resolution 2172 \(2017\)](#) on the same subject, adopted on 27 June 2017.

¹²² Paragraphs 5.4.2. and 8 of [Resolution 2172 \(2017\)](#).

¹²³ See his report Doc. 1433 and our joint statements of 5 May 2017 on the execution of Siarhei Vostrykau (on <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6637&lang=2&cat==>) and of 24 July 2017 on the recent death sentences (on <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6743&lang=2&cat==>).

¹²⁴ A/HRC/30/3 of 13 July 2015, paragraph 11 and A/HRC/30/3/Add.1 of 30 July 2015.

¹²⁵ *Belarus parliament discusses death penalty issues*, BelTA (Belarus), of 3 May 2017.

¹²⁶ <http://www.assemblee-nationale.fr/histoire/peinedemort/retablissement.asp>.

January 2015 attacks, the President of the National Front publicly stated that she was in favour of “a referendum on the death penalty in France.”¹²⁷ In Hungary, Prime Minister Viktor Orbán has commented publicly on its reintroduction.¹²⁸ The situation in Turkey, following the attempted coup d’état of 15 July 2016 and President Erdoğan’s statements on organising a referendum on reintroducing the death penalty are even more worrying.¹²⁹ Accordingly, in my statement of 19 April 2017,¹³⁰ I made the point that the rejection of capital punishment was a basic principle of our organisation. The Assembly, which has helped turn Europe into death penalty free continent, by making a moratorium on executions and a commitment to abolition a condition for accession to the Council of Europe, will not accept any backsliding on this question. Reintroducing the death penalty would purely and simply be incompatible with a state’s continuing membership of the Council of Europe.

33. In conclusion, the Council of Europe is endeavouring to protect individuals against the death penalty in both its member and observer States and in neighbouring countries with co-operation status, such as “partner for democracy” status”. The Assembly has always played a key role in this fight and must continue to do so in order to protect the values which it is the Council of Europe’s duty to uphold. It has to remain vigilant about the developments in certain member States, bearing in mind certain political statements promoting the reintroducing of the death penalty.

¹²⁷ “Charlie Hebdo” : Marine Le Pen pour un référendum sur la peine de mort » *Le Point*, 8 January 2015.

¹²⁸ See for example http://www.lemonde.fr/les-decodeurs/article/2015/05/21/viktor-orban-peut-il-retablir-la-peine-de-mort-en-hongrie_4637096_4355770.html and <http://www.theguardian.com/world/2015/apr/30/eu-jean-claude-juncker-viktor-orban-hungary-death-penalty-return>.

¹²⁹ http://www.lepoint.fr/monde/turquie-erdogan-evoque-un-nouveau-referendum-sur-la-peine-de-mort-17-04-2017-2120270_24.php#

¹³⁰ <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6597&lang=2&cat=>