

Analysis

The Death Penalty in Russia

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Summary

The death penalty is still part of the Russian penal code, but a presidential moratorium and a Constitutional Court ruling block courts from imposing this sentence or implementing it under current conditions. There is no majority in the Duma for changing the law, even though Russia, as a member of the Council of Europe, is obliged to do so. At the present time, this question remains completely unresolved.

The Council of Europe and the Death Penalty – A Russian Dilemma?

The Russian Federation is the only member of the Council of Europe (CE) that has not ratified the Sixth Additional Protocol to the European Human Rights Convention, which would abolish the death penalty. However, President Boris Yeltsin imposed a moratorium on death penalty executions in 1996. Furthermore, on 2 February 1999 the Russian Constitutional Court forbid the use of capital punishment until all Russian republics and regions have introduced jury trials in accordance with the constitution. This condition will be fulfilled on 1 January 2007, when juries will be introduced in Chechnya, the last region to do so.

Against the background of these changing circumstances, Russia has yet to make a decision on abolishing the death penalty rather than simply suspending it. The issue is all the more sensitive because Russia has been presiding over the CE Committee of Ministers since mid-May.

Death Penalty Provisions in Russian Law

Article 20 of the Russian Constitution of 12 December 1993 states that “the death penalty may be imposed, until it is abolished by a federal law, as an exceptional sanction for particularly serious crimes against life; the accused has the right to a jury trial in court.” This wording implies that while the abolition of the death penalty is acknowledged as an ultimate goal, it is still regarded at this point as the penal sanction of last resort. Accordingly, the number of capital crimes has been reduced from 28 to five. The penal code that came into effect on 1 January 1997 still provides for capital punishment in the cases of murder (Article 105, Section 2); attempts on the lives of state officials or notable public figures (Article 277), judges or public investigators (Article 295), or members of a law enforcement agency (Article 317); and genocide (Article 357).

The death penalty cannot be applied to defendants under 18 or over 65 years of age, as well as females, even though they are equal before the law in principle. The death penalty can be commuted in response to a

clemency plea into a life sentence or a 25-year prison term. The procedure for capital punishment is specified in the penal code. The death sentence is to be executed by firing squad. The law also stipulates that the next of kin are not to receive the remains of the condemned, and are not to be told where they are buried.

The Moratorium

Russia imposed and carried out death sentences on this legal basis until mid-1996. These practices contravened the obligations Russia undertook under international law when it joined the CE on 28 February 1996. That is why Yeltsin introduced several measures with a view to the abolition of capital punishment in his Decree No. 724 “On the Gradual Reduction of Applications of the Death Penalty in Connection With Russia’s Accession to the Council of Europe” of 16 May 1996: It instructed the government to prepare a draft law on the ratification of the Sixth Additional Protocol to the European Human Rights Convention (EHRC), which includes the abolition of the death penalty.

However, the decree explicitly refrained from banning death sentences. Instead, it recommended to the Duma that the number of capital crimes in the penal code be reduced. The Ministry of the Interior was charged with bringing the conditions of confinement for death row or life imprisonment up to the UN’s minimum standards, while the prosecutor-general was made responsible for monitoring adherence to applicable laws. Nevertheless, the prosecuting authorities, as well as all other relevant state bodies and the media, interpreted this decree as a moratorium.

This presidential decree was also the basis for Russia’s signing of the Sixth Additional Protocol to the EHRC on 6 April 1997. However, all subsequent attempts to ratify the protocol in parliament, and thus to abolish capital punishment in Russia once and for all, have failed. At the first Duma vote in 1997, only 78 out of 450 deputies supported this proposal. The second attempt in 1998 also failed. On 15 February 2002, the Duma addressed President Vladimir Putin in a statement declaring it would be “premature” to ratify the Sixth Additional Protocol at this stage. This

reticence was justified by the high level of crime and the inefficient work of the Justice Department and prosecutors. According to the Duma deputies, the tens of thousands of cases of murder and manslaughter every year, as well as numerous petitions submitted by citizens, made it impossible for them to sacrifice the will of the people to foreign-policy interests. In another round of voting on ratification on 22 September 2004, only 95 deputies were in favor and the quorum of 226 votes was not met.

To date, however, death sentences and capital punishment are suspended not only by Yeltsin's decree, but also by a decision handed down by the Russian Constitutional Court on 2 February 1999. In that case, three defendants in the Moscow Municipal Court had been sentenced to death, but the legal proceedings had not – despite a motion to this effect – been transferred to a jury, since at that time, juries had only been instituted in nine of the 89 Russian regions, but not in Moscow. The court found that under the assurances included in Article 22 of the Constitution, a death penalty could only be imposed by a jury. Until all Russian republics and regions had introduced juries, capital punishment was suspended on the entire territory of the Russian Federation, including in those regions that had already introduced jury trials. This ruling was based on the right to a fair trial enjoyed by all defendants (equality before the law pursuant to Article 19 of the Constitution).

This reasoning will no longer hold after 1 January 2007, when Chechnya will become the last region to introduce jury trials. As part of a fundamental reform of the legal system, and with a view to the 19th-century legal tradition in Russia, juries were first re-established in nine regions – initially on an experimental basis – and then across the entire country; today, they are responsible for a large number of court cases. Since

the presidential decree does not explicitly ban death sentences or the execution of convicts, there is only a very weak legal case to be made against demands for capital punishment in the cases envisioned in the penal code.

International Obligations

Russia has ratified the International Covenant on Civil and Political Rights, which permits capital punishment under certain conditions, but not the Second Facultative Protocol, which abolishes it altogether, and has thus undertaken no obligations at the international level in this respect.

The situation is different with regard to the CE. One of the conditions of Russia's accession in 1996 was that it would ratify the Sixth Additional Protocol to the EHRC by 1999. However, the legal nature of these obligations is disputed. The statement of the Parliamentary Assembly of the Council of Europe (PACE) on Russia's admittance refers to its "commitments." In the view of the CE, these are legal obligations, while some Russian sources have argued that they are only non-binding recommendations. In any case, Russia signed the Sixth Additional Protocol on 16 April 1997. In terms of international law, while signing a treaty is not in itself a legally-binding act, it does imply an obligation "to abstain from acts that would defeat the object and purpose of a treaty."

To suspend the moratorium or to re-introduce the death penalty would be a violation of international law applying to Russia. The statements issued by the CE in this matter are unambiguous. The deadline for Russia to abolish the death penalty *de jure* by 31 December 2005, set by the PACE in its exhaustive 3 June 2005 statement, has passed without effect. Most recently, the PACE demanded in its Recommendation No. 1760 (2006) – referring to its earlier resolutions of

Life on Death Row

According to the spokesman for the Federal Penitentiary Service (Federalnaya Sluzba Ispolneniya Nakazaniyi, FSIN), Alexander Sidorov, there are currently 660 prisoners serving life sentences in the five so-called "Correctional Labor Colonies" with a strict regime, as well as another 697 inmates whose death sentences have been commuted to life in prison. In another 211 cases, the death sentence was commuted into a 25-year prison sentence; 51 prisoners received sentences of between 15 and 20 years in lieu of execution. The vast majority of the convicts have been found guilty of multiple murders.

The following sociological data can give us a better picture of conditions on death row: The average age of convicts is 33. Considerably more than half the inmates did not have any family ties at the time they committed their crimes.

Even if the phrase "life sentence" suggests that the inmates will never be released again, it is actually limited in time. Inmates are first eligible for early parole after 25 years. This requires a court decision stating that further punishment can be waived. Should the court decline to issue such a waiver, another application can be submitted after three years. However, few inmates survive long enough to benefit from these terms. As one commentator wrote in *Rossiiskaya gazeta*, the conditions of imprisonment in Russia's penitentiaries suggest "death by installments," with the passing of time taking on the role of the executioner. Many inmates serving life sentences are suicidal or simply "expire" spiritually and physically. The report of Russian author Anatoly Pristavkin, "I Plea for Execution," on the experiences and impressions of his work as chairman of the Clemency Commission of the Russian President, reads like a modern-day Gulag Archipelago.

1999, 2002, and 2005 – that Russia show “the same determination and conviction” as the other members of the CE and abolish capital punishment by law. In similar cases where Ukraine and Armenia had failed to meet their obligations to abolish capital punishment, the CE had imposed sanctions and revoked their PACE delegates’ mandates.

Although the CE’s position in this matter is non-negotiable, it has avoided an immediate confrontation. For example, CE Secretary-General Terry Davis emphasized during his trip to Russia in March 2006 that Russia must not be forced to abolish capital punishment, but should decide to do so of its own free will.

In theory, however, the CE might even sanction Russia with expulsion. Article 8 of the CE Statute states that:

Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine.

However, such a step would seem to be out of the question for the Europeans even as a measure of last resort, since it is precisely because of the dialogue with Russia that the CE continues to play an important role in European politics after the expansion of the European Union.

The Current Political Debate and Its Social Context

The current debate on the re-introduction or complete abolition of the death penalty is thus conducted in a highly charged environment where obligations under international law clash with domestic preferences. The Beslan trial, where the final verdict was pronounced in May 2006, has refocused public attention on the problem.

This trial focused on the only surviving perpetrator of the Beslan hostage crisis of September 2004 in which 331 people, including 186 children, were killed. The Supreme Court of the Republic of North Ossetia found the defendant, Nur-Pashi Kulayev, guilty of banditry, illegal purchase and possession of weapons, attempted hostage-taking, terrorism, homicide, an attempt on the life of a member of a law enforcement agency, and attempted homicide. Although Federal Deputy Prosecutor-General Shepel caused a stir by requesting the death sentence for the defendant in his final arguments, the court did not comply with the prosecutor’s request. It did state, however, that while the defendant deserved to be executed due to the extraordinary danger he posed to society, the moratorium on capital punishment in the Russian Federation prevented such a step. Kulayev therefore received a life sentence instead.

A study of Russian opinion polls clearly shows that the Russian public is opposed to abolishing the death penalty. The latest survey conducted by the Russian Public Opinion Foundation in February 2006 reveals that 74 percent of the population support capital punishment, while only 15 percent are opposed (see Figures 6 and 7). Russian preferences are not unusual in cross-national perspective. Popular surveys from all over the world show that executions of murderers are regarded as just punishment.

It is equally clear, though, that there are good counter-arguments to be advanced against this “eye for an eye” philosophy. In Russia, the various contributors to the debate offer no clues as to how to solve the dilemma of reconciling a popular domestic move with contrary foreign-policy constraints. A number of observers believe that it is feasible to abolish capital punishment. For example, Duma Speaker Boris Gryzlov assured the participants at the PACE meeting in Moscow that ratifying the Sixth Additional Protocol was one of the priorities of national politics, regardless of how much effort or time might be required. Foreign Minister Sergei Lavrov also emphasized that Russia stood by its commitments, and that the ratification of the Sixth Additional Protocol was “a matter of time and not of political will.” But at the same time, he declared that popular opinion and the mood in parliament should not be disregarded.

The difficulty is that four of the five factions in the Duma are still categorically opposed to abolishing capital punishment. Unless a political solution can be found, there is still the possibility of a legal “nyet” putting an end to the practice. The chairman of the Supreme Court of the Russian Federation, Vyatcheslav Lebedev, has announced that the Supreme Court would uphold the de facto ban on the death penalty even after the introduction of juries in Chechnya. If individual courts should hand down death sentences, these rulings would be overturned on appeal. On the other hand, the deputy prosecutor-general of the Russian Federation, Vladimir Kolesnikov, who played a key role in the trial of Mikhail Khodorkovsky, does not want to exclude the possibility that capital punishment will be revived after Chechnya introduces jury trials, but believes that the death penalty is a necessary part of “adequate measures for combating crime,” especially in terms of punishing terrorists and their supporters. On the whole, the current discussion is so wide ranging and controversial that there is no way of predicting what decision will be reached at the end of the year.

Prospects

The reform of the Russian justice system has been underway for more than a decade. In an attempt to improve the negative image of the Russian legal system, the authorities are taking recourse to institutions that harken back to the days of the Tsar, such as jury

trials or justices of the peace, and are also adopting European legal regulations. Even if a new penal code and a new criminal procedure code have now been adopted, the reform process is still far from complete. However, these modernizing tendencies are offset by the archaic desire for punishment or vengeance; the perceived threat of terrorism in particular has prompted calls for “tough measures.” It is a dangerous misconception when calls for severe punishment are introduced into the discussion as if they constituted effective means of improving shortcomings in the judicial system; it is obvious that the severity of the punishments imposed can never compensate for the inadequate work of prosecutors and law enforcement authorities, but rather further aggravates the potential negative consequences of this inadequacy. Public opinion is not sufficiently attuned to the proven fact that the application of capital punishment has no impact on a country’s crime rate. Neither is the threat

of execution useful in preventing terrorist incidents, since it is unlikely to have any deterrent effect on suicide attackers. When we take into account the general state of the Russian legal system, even 15 years after the beginning of efforts to eradicate “telephone justice,” there is a clear need for a mechanism to correct miscarriages of justice. In particular, the bias of the courts in favor of the prosecution needs to be taken into account. While in other European countries, about 20 percent of criminal procedures end in acquittals, the corresponding figure in Russia is between 0.5 and 3 percent.

The decision for or against capital punishment ultimately requires Russia to make a commitment under time pressure. There are two alternatives. Russia can agree to be part of the European (legal) community, or it can search for a uniquely Russian response to the question of “Crime and Punishment.”

Translated from German by Christopher Findlay

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Diagrams

Russian Public Opinion on Capital Punishment

Source: Survey by FOM Institute, 18–19 February 2006 (<http://bd.fom.ru/zip/tb0608.zip>)

Do You Believe that it is Acceptable to Condemn a Criminal to Death?

