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## DEATH PENALTY

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## Analysis

### The Death Penalty in Russia

Angelika Nussberger and Dmitry Marenkov, Cologne

#### 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 19<sup>th</sup>-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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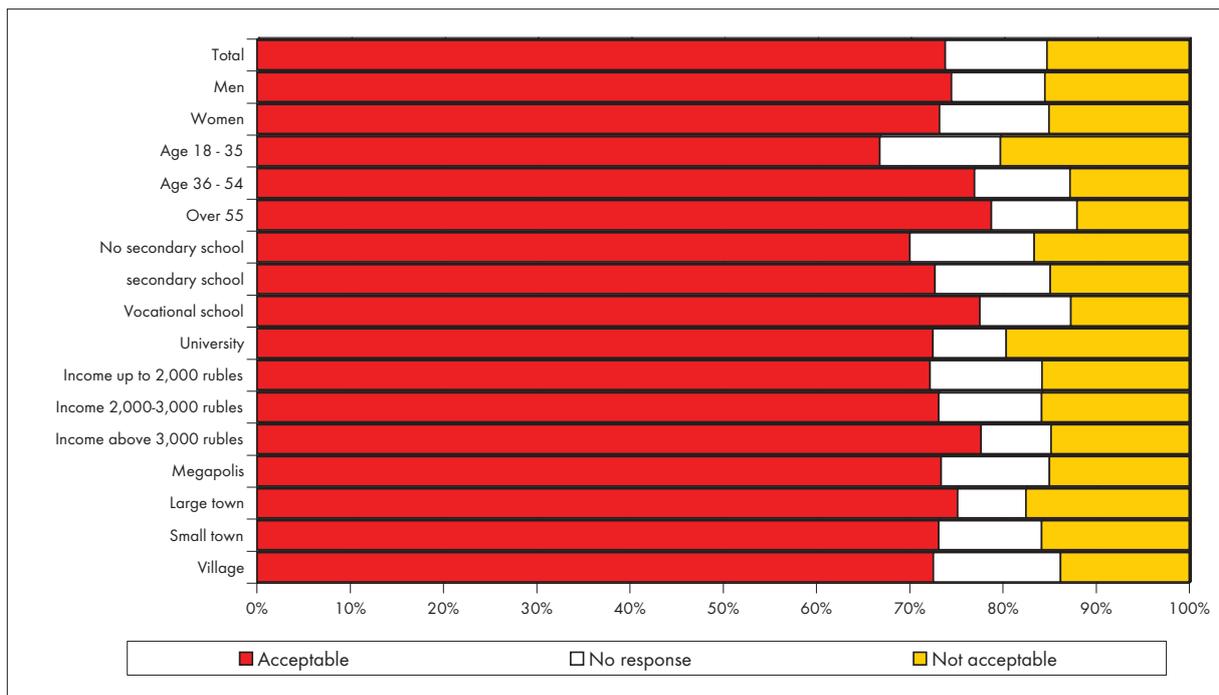
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**Diagrams**

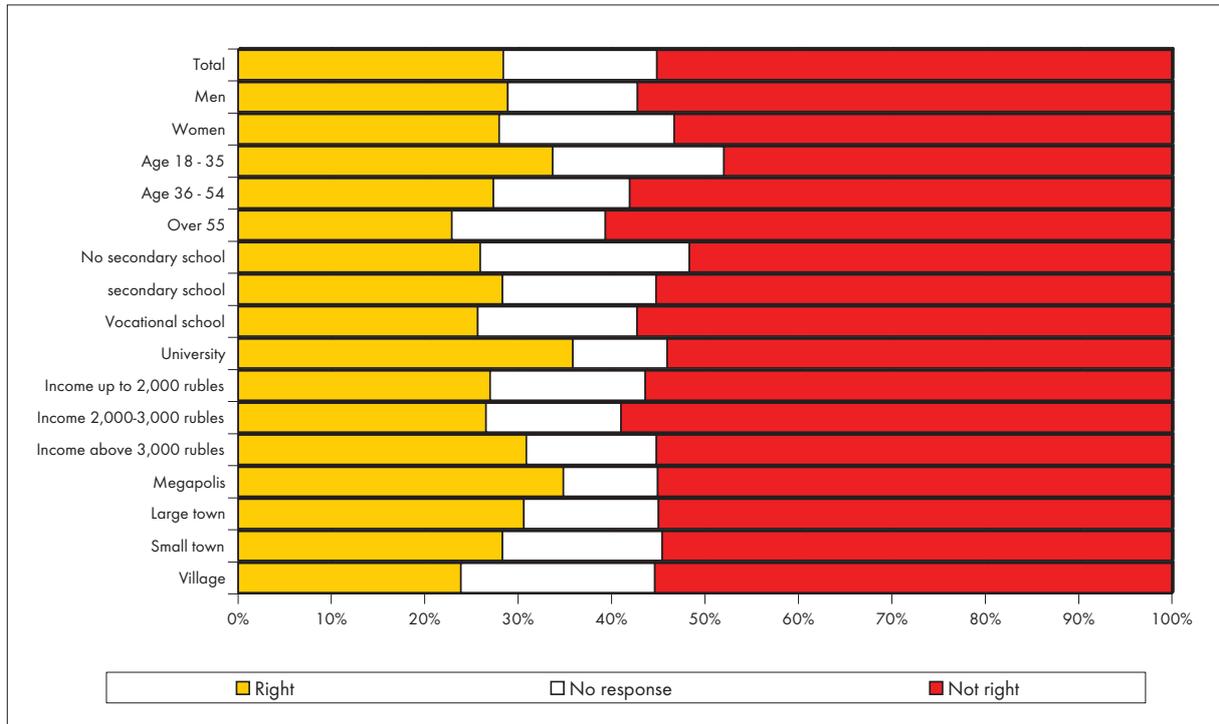
**Russian Public Opinion on Capital Punishment**

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

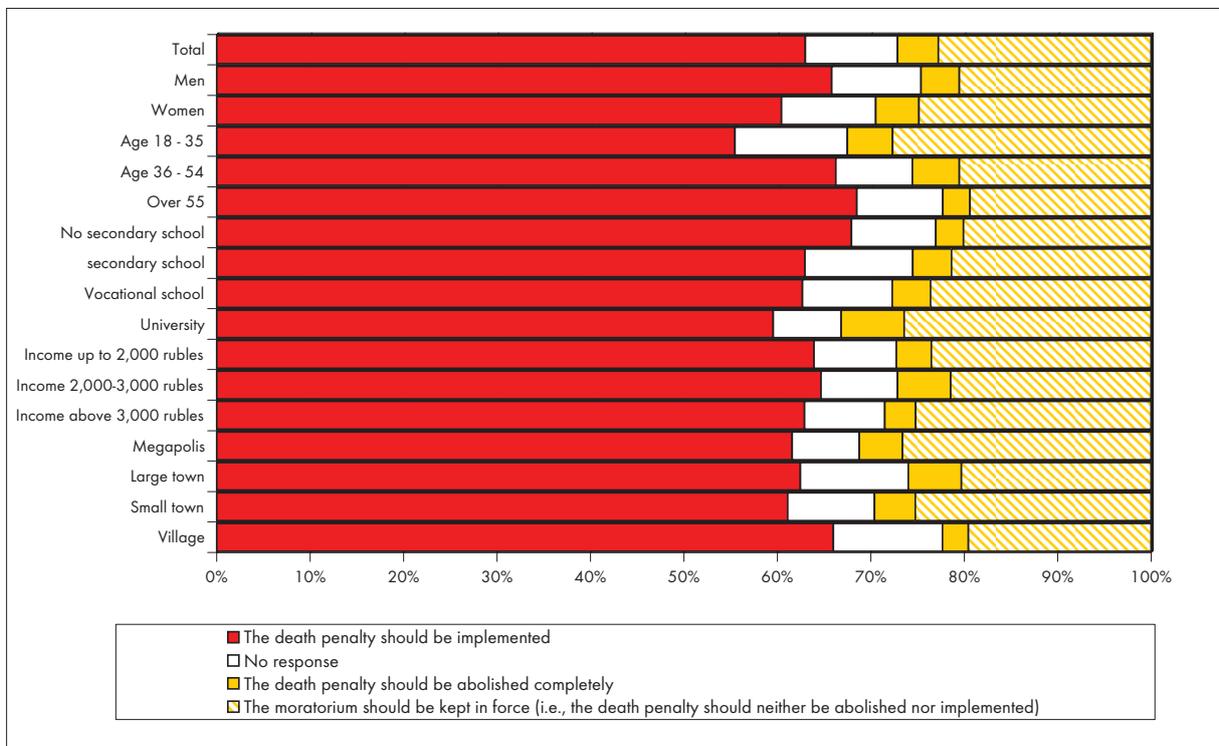
**Do You Believe that it is Acceptable to Condemn a Criminal to Death?**



### Was it Right to Implement a Moratorium on of the Death Penalty?



### Should Russia Resume Implementing the Death Penalty?



## Regional Report

### Russian Regions Back Death Penalty

By Igor Rabinovich, Ufa

Even though it has been more than ten years since President Boris Yeltsin imposed a ban on the death penalty and “opened a window” to the Council of Europe, Russia has yet to abolish capital punishment completely. The question is extremely controversial in Russian society and the moratorium does not have wide support. After the terrorist act in Beslan, 84 percent of Russians supported removing the ban, according to the Kremlin-friendly All-Russian Center for the Study of Public Opinion (VTsIOM).

In regions where terrorist attacks have taken place and among members of the law enforcement community, the number of death penalty supporters is even higher. In the city of Moscow, 89 percent of population support capital punishment, while 96 percent of the employees of the Ministry of Internal Affairs back the ultimate sanction. As Federation Council Speaker Sergei Mironov said recently in Strasburg, “the number of supporters of the death penalty grows with the number of terrorist atrocities and criminal excesses.”

#### Strong Political Support for the Death Penalty

Opposing the death penalty is politically unpopular in today’s Russia. “From the political point of view, nobody wants to propose abolishing the death penalty while terrorist acts are taking place,” according to Pavel Krashennnikov, chairman of the State Duma Committee on Legislation. That is why the State Duma has not ratified the Sixth Additional Protocol to the European Human Rights Convention, which would abolish the death penalty. There have been several attempts to overturn the moratorium, usually citing the extensive amount of crime, including drug sales and terrorism, but none have succeeded. Additionally, the Duma leadership sometimes considers imposing the death penalty for particularly egregious crimes connected to terrorism, but has so far refrained from this step.

Following the Beslan tragedy, all of the parties currently represented in the Duma supported various initiatives calling for the abolition of the death penalty. In Kemerovo Oblast, even the usually competing Communists and United Russia had a similar position on this question. Both groups demanded from the State Duma “the most severe penalty” for people who organize and carry out terrorist acts. They supported Governor Aman Tuleev’s demands for the death penalty for terrorists, their supporters, and even their relatives. In Bashkortostan, Rodina proposed introducing the death penalty for terrorism and the distribution of narcotics. This proposal suggested delaying court-ordered executions for 10 years to reduce the probability of executing an innocent person. Earlier the Union of Right Forces had proposed a Russian referendum in-

roducing the death penalty for drug dealers and even collected more than one million signatures in support of this idea in half of Russia’s 88 regions.

Across the regions, the most consistent supporters of reinstating the death penalty are the leaders of Dagestan and North Osetia, where many terrorist attacks occur. After each attack, these North Caucasus leaders appeal to the federal leaders to reinstate the penalty. So far, President Vladimir Putin has not lifted the moratorium, but has said that that he would take public opinion and the mood of the deputies into account.

#### The Toll of Crime

The inability of the law enforcement agencies to deal with rising crime in Russia, as well as the proliferation of “razborky”, violent settlings of account among various crime groups leading to numerous killings, also prevent citizens and politicians alike from supporting efforts to end the death penalty. Members of the Krasnodar Krai Legislative Assembly recently sent appeals to Putin favoring a return of executions. They were inspired by an open letter to the president published by the journalists of the Volnaya Kuban newspaper and the Kuban television and radio company angered by the brutal murder of their young colleague. The legislators pointed out that during the last month, eight people had been killed in Krasnodar. “People are afraid to go on the streets and parents fear for their children.” Governor Aleksandr Tkachev backed them, pointing out that assassins had recently murdered several public officials in the krai. Tkachev said “the hands of the law enforcement agencies should be freed so that in the battle with insolent bandits, they will know that if they kill a person, they will pay with their own lives.”

In fact, many observers blame the rising crime rate on the introduction of the death penalty moratorium. Viktor Shepty, a member of the Sverdlovsk Oblast legislature and a former employee of the Alfa special forces group, believes that following the introduction of the moratorium, the number of crimes for which this sanction can be applied grew 5-10 times. In calling on Putin to end the moratorium, the deputies

of the State Duma from Stavropol Krai argued that Russia has one of the highest crime rates in the world. They claim that banning the death penalty neither improved the situation, nor made society more humane. In their view, the best way for the state to address the rising level of crime is to provide punishments that are equivalent to the crimes committed.

### Using the Death Penalty to Achieve Humanitarian, Social Goals

Reinstating the death penalty would be a humanitarian gesture, according to Sergei Golubev, the chairman of the Committee on State and Legal Affairs of the Vologda Legislative Assembly. Currently, convicts who would have faced the death penalty now get life terms. Golubev, a former employee of the Ministry of Internal Affairs, said that many of those he met in prison would rather die than spend the rest of their natural life behind bars.

Feelings of social justice also stimulate support for the death penalty in the regions. When Edvard Musin, a member of the Bashkortostani legislature, introduced an initiative to amend the penal code to remove the death penalty, his colleagues refused to even consider the measure. They argued that capital punishment was necessary in Russia in order to “punish criminals like Mikhail Khodorkovsky” who, in their opinion, “stole billions of rubles.” While Russian legislation does not provide for the death penalty for the kind of crimes these legislators accuse Khodorkovsky of committing, they remembered that Soviet law foresaw death sentences for the theft of state property.

### Some Express Reservations

Several representatives to the upper house Federation Council agree with the general idea of abolishing the death penalty, but argue that such a step is not acceptable for Russia today. Yury Sharandin, a representative of Evenkia, believes that Russia should ratify protocol number 6 since the country has committed itself to doing so. However, he points out, “Russia is on the front line in the war on terrorism and the highest possible punishment should remain for those who kill innocent people.” According to Stanislav Vavilov, representing the Jewish Autonomous Oblast, Russia needs a transitional period during which it can prepare public opinion to accept the abolition of the death penalty. The moratorium should be in effect during this period. However, he believes that the death penalty should be preserved for particularly vicious crimes against children and terrorist acts. Ryazan Senator Rafgat Altynbaev, chairman of the Committee on Federal Affairs and Regional Policy, argues that Russian society is not ready to abolish the death penalty. “Of course, you cannot take away someone’s right to

life,” he noted. “However, this thesis applies only to those countries where most people obey the law and the conditions for committing crime are minimized. At the same time, Altynbaev says “there are some crimes which must be punished adequately.”

Savagery and violence used in interethnic and religious conflicts are also reasons for preserving the death penalty, according to some observers. A St. Petersburg jury recently heard the case against a group of youths who attacked a family of refugees from Tajikistan, killing a 9-year-old girl and wounding other family members. Kamilzhan Kaladarov, the director of the Institute for Human Rights and a member of the Russian Public Chamber, said that “as a human rights defender, I am against the death penalty, but as an ordinary person I understand that abolishing the death penalty is not possible.” He also said that he would treat Aleksandr Koptsev, convicted of wounding visitors to a Moscow synagogue, the same as the murderers of the Tajik girl.

### A Few Exceptional Politicians Reject the Death Penalty

The death penalty does not enjoy universal support in Russia. For example, the members of the Committee on Legislation of the Tatarstan State Council at first unanimously supported a return to the death penalty and even adopted a resolution describing Yeltsin’s decree as “contradicting the will of the people.” However, they subsequently changed their position, announcing that they considered life imprisonment to be a harsher penalty. According to reports about this action, the legislators were particularly interested in fulfilling Russia’s obligations in joining the Council of Europe.

Even in regions where a majority of regional legislators support the death penalty, there are exceptions. For example, in Ivanovo Oblast, where almost all deputies called for canceling the moratorium, Deputy Sergei Val’kov did not back his colleagues, reporting that his constituents were opposed to the death penalty.

Krasnoyarsk Krai Legislative Assembly Member Aleksandr Shvedov declared his opposition to the capital punishment and claimed that “the campaign to overturn the moratorium on the death penalty was planned from above.” Chairman of the Chelyabinsk Public Chamber Vyacheslav Skvortsov argued that introducing the most extreme measures of criminal punishment would not solve society’s problems with crime and terrorism. He blamed these problems on the weakness of Russian civil society. These death penalty opponents, however, are exceptions to the general rule.

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The Research Centre possesses a unique collection of alternative culture and independent writings from the former socialist countries in its archive. In addition to extensive individual research on dissidence and society in socialist societies, in January 2007, a group of international research institutes will be assembled for a collaborative project on the theme "The other Eastern Europe – the 1960s to the 1980s, dissidence in politics and society, alternatives in culture. Contributions to comparative contemporary history" which will be funded by the Volkswagen Foundation.

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