**CONTRIBUTION TO OHCHR ON THE QUESTION OF THE DEATH PENALTY**

**PURSUANT TO DECISION 18/117 AND RESOLUTION 22/11 OF THE HUMAN RIGHTS COUNCIL**

Strasbourg, 20 mars 2020

The territory of the 47 Council of Europe member states is a death-penalty-free zone, with no executions having taken place since 1997. The absolute ban on the death penalty in all circumstances is entrenched in both Protocols No 6 and No 13 to the European Convention on Human Rights. Protocol No 6, which prohibits the death penalty in peace time, was signed by all 47 member States, and only the Russian Federation has not ratified it yet. To date, Protocol No. 13, prohibiting the death penalty during war time, and which entered into force on 1 July 2003, has been ratified by 44 member States and signed by one other member State (Armenia). Two member States have not yet signed the Protocol (Azerbaijan and the Russian Federation). Since 2001, the Committee of Ministers has held regular exchanges of views on the abolition of the death penalty in all member States.

During the Second Summit of Heads of States and Governments in 1997, the member States called for the universal abolition of the death penalty. Thus, the Council of Europe welcomes the global trend towards abolition of the death penalty and encourages all member States to urge the authorities of those countries which still use the death penalty to follow this global trend; in this context, it welcomed the adoption on 17 December 2018 by the United Nations General Assembly of a resolution calling for a worldwide moratorium on the use of death penalty and will support the adoption of the resolution in 2020.

The Council of Europe calls for abolition of the death penalty in Belarus, the only European country where capital punishment still exists. While a formal moratorium could be a first step, all executions should be stopped, with the executions of those in death row put on hold. Alternative punishments, including life sentence, are available in the Criminal Code and should be used systematically. Deploring the executions that took place in the last years, the Council of Europe has reiterated its readiness to provide the authorities of Belarus with assistance to formalise these steps[[1]](#footnote-1). Fostering the dialogue on the death penalty issue is therefore a priority of the Council of Europe Action Plan for Belarus 2019-2021, in close co-operation with the Belarussian Parliamentary working group on the abolition of death penalty. The Parliamentary Assembly of the Council of Europe is engaged in parallel exchanges with the National Assembly of Belarus. A delegation from Belarus attended the 7th World Congress Against death penalty held in Brussels in February 2019. A round table on the situation in Belarus was organised in that context by the Council of Europe, with the participation, *inter alia*, of the chair of the parliamentary working group, civil society representatives and relatives of executed persons. Within the framework of the joint programme between the Council of Europe and the European Union "Partnership for Good Governance-II", a conference on the role of public opinion in the abolition of death penalty held in Minsk on 27 August 2019 as a part of the project " Strengthening the right to a fair trial in Belarusian criminal justice”, brought major inputs to the discussions. The Council of Europe stands ready to provide support to the relevant authorities, the Parliamentary Working Group in its new composition, and work with the civil society and media to raise awareness of the population on the death penalty issue and to rally greater public opinion support in favour of abolition.

The Committee of Ministers deeply regrets that executions continue to be carried out in Japan and the United States, two Council of Europe observer States[[2]](#footnote-2). At the same time, it has welcomed the progressive changes adopted in the States of California and Washington as well as the decision of the U.S. Supreme Court in December 2019 postponing the end of the moratorium on executions decided previously by the Federal Government. The Council of Europe is however concerned about the United States Administration’s plans to fight opioid drug addiction by calling for tougher penalties for drug traffickers, including the death penalty where feasible under current national laws.

The Parliamentary Assembly of the Council of Europe has actively contributed to the advocacy against the death penalty since the sixties. More recently, the Committee on Legal Affairs and Human Rights completed a report on 11 October 2018 on the Abolition of the death penalty. It provides an overview of the international and European legal framework, highlighting the situation in Council of Europe member States (the Russian Federation), observer States (United States, Japan and Israel) and States whose parliaments hold “Partner for democracy” status, Kazakhstan and Belarus. The report examines thoroughly the conditions and methods of executions and cases of death sentences carried out in those countries where death penalty is still applied on people with mental disability, mental illness, minors, elderly people, women and foreign nationals, including those deprived of the consular assistance they are entitled to under the Vienna Convention on consular relations of 24 April 1963.

In February 2020, the Committee of Ministers instructed its intergovernmental Steering Committee for Human Rights (CDDH) to prepare a recommendation to member States concerning the trade in goods used for torture or other cruel, inhuman or degrading treatment or punishment and the death penalty, expected by June 2020. The previous study conducted by CDDH concluded on the need to strengthen international regulations to ensure that the activities of Council of Europe member States comply with their human rights obligations to prevent torture, ill-treatment and the death penalty. It includes an exhaustive appendix of the law enforcement equipment and weapons designed to or that can be misused to torture and ill-treat people, such as for example body worn electric shock devices, mechanical restraints or kinetic impact weapons, and investigates the misuse of pharmaceutical chemicals for lethal injection executions.

On the occasion of the European and World day against the death penalty, the High Representative for Foreign Affairs and Security Policy, on behalf of the EU, and the Secretary General of the Council of Europe issue a joint statement every year. In 2018 and 2019, the Council of Europe and the EU exhorted Council of Europe member States which have not yet acceded to Protocols No 6 and 13 to the European Convention on Human Rights to do so without delay, urged Belarus to abolish the death penalty and incited all countries to join the global Alliance for Torture-Free Trade.

The Joint Statement of 2018 put particular emphasis on the conditions of detention and the respect of human dignity pending the introduction of a moratorium, on the executions of minors, pregnant women and people with mental illness or intellectual disabilities, and the use of death penalty sentences for economic crimes and self-defence crimes of victims of crimes such as marital rape. Member States were urged to refrain from supporting, through mutual legal assistance or other forms of co-operation, the drug policies of countries where drug offences may be sanctioned with the death penalty.

The Joint Statement of 2019 noted the socioeconomic realities of death penalty, disproportionately affecting members of vulnerable groups unable to afford experienced defense lawyers, death row prisoners continuing to represent the most marginalised sections of society. It also brought in the foreground the deep and lasting grief and trauma of relatives of people subjected to the death penalty, first and foremost their children, denied of their right for family burial or cremation and to be free from cruel, inhuman and degrading treatment.

Abolition of the death penalty is not an end in itself. The Council of Europe is also engaged in supporting its member States to move from punitive justice to restorative justice, bearing in mind the victims’ rights and the legitimate right for detainees to hope for their release and reintegration into society. To this effect, in the framework of cooperation projects, the Council of Europe supports its member States and beyond to build criminal justice systems that will guarantee justice for all.

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1. See statement on reported executions of Mr Syamyon Berazhny and Mr Ihar Henrshankow in October 2018, Declaration of 19 June 2019 on execution of Mr Alyaksandr Zhylnikau and planned execution of Mr Vyachaslau Sukharko [↑](#footnote-ref-1)
2. See statement of 15 November 2018 on the execution of Mr. Roberto Ramos Moreno in Texas. [↑](#footnote-ref-2)