

Report of the Council of Europe on a moratorium on executions by Russia (28 January 1997)

Caption: On 28 January 1997, the Parliamentary Assembly of the Council of Europe considers a report which deplores the continued implementation of capital punishment in Russia despite its accession to the Council of Europe.

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REPORT on the honouring of the commitment entered into by Russia upon accession to the Council of Europe to put into place a moratorium on executions

(Rapporteur: Mrs WOHLWEND, Liechtenstein, Group of the European People's Party)

I. Draft resolution

1. The Assembly has received reliable information that, in the first half of 1996, fifty-three executions were carried out in Russia. It regrets that the Russian authorities have failed to inform it of the number of executions carried out in the second half of the year.
2. Russia entered into a solemn commitment upon accession to the Council of Europe to put into place a moratorium on executions with effect from the day of accession. The executions which have taken place in Russia in 1996 thus constitute a flagrant violation of her commitments and obligations.
3. The Assembly welcomes and supports all efforts in the country, especially in the State Duma, to institute a moratorium on executions, to limit the scope of capital punishment, and to abolish the death penalty.
4. However, the Assembly must condemn Russia for having violated her commitment to put into place a moratorium on executions, and deplores the executions that have taken place. It demands that Russia immediately honour her commitments and halt any executions still pending.
5. The Assembly warns the Russian authorities that it will take all necessary steps to ensure compliance with commitments entered into. In particular, should any more executions be carried out following the adoption of this resolution, the Assembly may consider the non-ratification of the credentials of the Russian parliamentary delegation at its next session.

II. Explanatory memorandum by Mrs WOHLWEND

A. Introduction

1. The Assembly held a debate under urgent procedure on the abolition of the death penalty in Europe in June 1996, following up on the general report by Mr. Franck of October 1994. The Assembly had deemed it necessary to hold an urgent debate six months ago because it had been informed that executions were apparently being carried out in several Council of Europe countries, in violation of commitments entered into by these countries upon accession to the Council of Europe.¹ Since no proof could be obtained, the Assembly limited itself in Resolution 1097 (1996) to a warning: it deplored the executions which had reportedly been carried out in Latvia, Lithuania and Ukraine, condemned Ukraine and Latvia for apparently having violated their commitments, and demanded that Russia — where the moratorium on executions seemed in danger of being broken — carry out no executions, warning these countries that "further violation of their commitments, especially the carrying out of executions, will have consequences under Order No. 508 (1995)".
2. The Committee on Legal Affairs and Human Rights has since received official confirmation that in the first half of 1996, at least fifty-three executions were carried out in Russia, in flagrant violation of the commitment entered into by the country upon accession to the Council of Europe to put into place a moratorium on executions with immediate effect.² Thus the committee feels that the Assembly has to take action, in accordance with its monitoring procedure, to sanction this particular violation of an important human rights commitment by Russia, lest the credibility of the Council of Europe be damaged. For this reason, the committee asked that an urgent debate on the issue be held during the January 1997 part-session.
3. In this report I shall thus deal solely with the commitment entered into by Russia to put into place a moratorium on executions with effect from the day of accession to the Council of Europe.³ I shall touch neither Russia's other commitments, nor the general question of the abolition of the death penalty dealt with in my previous report of June 1996. Suffice it to say that several other new members of the Council of

Europe — Albania, Bulgaria, Estonia, Latvia, Lithuania, Poland — are currently observing moratoria on executions, and Moldova has already abolished the death penalty in full in accordance with its commitment to the Council of Europe (the Czech Republic, Hungary, "the former Yugoslav Republic of Macedonia" and Slovakia had already abolished the death penalty prior to their accession). Thus the Assembly cannot be accused of discriminating between Russia and other countries, nor can Russia use the excuse that her situation is different: several of the countries which are honouring their commitment not to carry out executions, such as Albania, face similar, if not identical problems typical to post-communist societies — including a rapidly rising crime rate and retentionist public opinion — but are still managing to honour their commitment.

4. The Assembly has been trying to help those countries which would like to abolish capital punishment or have committed themselves to do so. The most recent example is the Seminar on the Abolition of the Death Penalty organised by the Committee on Legal Affairs and Human Rights in co-operation with the Ukrainian Ministry of Justice, which took place in Kyiv (Ukraine) on 28 and 29 November 1996. Over a hundred participants, most of them from countries of central and eastern Europe, took part in the seminar, discussing such themes as capital punishment and human rights, the incidence of the death penalty on the crime rate and the influence of public opinion. Several options on how to go about instituting moratoria on executions and abolishing capital punishment, were presented by the experts who spoke at the seminar.⁴

5. The Assembly is aware that it can be a long and laborious process for countries to abolish the death penalty and ratify Protocol No. 6 to the European Convention on Human Rights. However, as the examples of Albania, Bulgaria and Poland show, it is possible to institute moratoria even in the face of retentionist public opinion and a rising crime rate. In any case, it is also to be remembered that Russia freely entered into her commitment to institute a moratorium on executions in order to be admitted to the Council of Europe. The Assembly cannot countenance the violation of commitments freely entered into, since this would engender a breach of confidence between the Council of Europe and the countries concerned. Commitments must be respected. The executions which were carried out in Russia last year are thus wholly unacceptable, especially as the numbers involved are particularly high: only China and Ukraine are known to have executed more prisoners in 1996.

B. Death penalty statistics in Russia

6. Upon accession to the Council of Europe, Russia committed itself to impose a moratorium on executions "with effect from the day of accession", and to abolish the death penalty within three years.

7. The Assembly has reliable official figures on executions of the death penalty in Russia only for the years 1991 to 1995. According to these figures, provided by the Russian Presidential Pardon Commission, the number of executions was as follows:

Year	Pardoned	Executed
1991	37	15
1992	55	1
1993	149	4
1994	134	19
1995	5	86

These figures show that, in 1995, for example, Russia carried out thirty more executions than the United States of America.

8. There are different figures given for 1996. The Chairman of the Russian Presidential Pardon Commission, Mr Anatoly Pristavkin, informed the rapporteurs on the honouring of obligations and commitments by Russia, MM. Bindig and Muehleemann, during their visit to Moscow at the end of December 1996, that fifty-three applications for pardon had been rejected in the first six months of 1996, and that at least forty-nine of these prisoners had already been executed by August 1996. However, the Russian media, for example the magazine *Itoги*, cited the commission as having confirmed that all fifty-three executions had taken place in

the first half year of 1996, and that not a single prisoner had been pardoned in the same time period.⁽⁵⁾ Under these circumstances, I consider the figure of fifty-three executions for the first six months of 1996 as reliable.

9. As to what has happened in the second half of 1996, there are different reports. During her visit to Moscow in October 1996, the President of the Assembly, Mrs Leni Fischer, was told by a Russian official that ninety-six executions had taken place by the time of her visit. Mr Pristavkin, speaking at the Seminar on the Abolition of the Death Penalty organised by the Committee on Legal Affairs and Human Rights in Kyiv in November 1996, put the number of executions since Russia's accession to the Council of Europe in February 1996 at over one hundred. Amnesty International has received information according to which 140 prisoners were executed in 1996, 103 of them since her accession to the Council of Europe.

10. However, the rapporteurs on the honouring of obligations and commitments by Russia were informed by a Russian official in December 1996 that execution rates peaked in the summer, and that since August no more executions had taken place. It is unfortunate that the Assembly has been given no access to Russia's most recent official death penalty statistics, since it is obviously impossible for me to know what information to trust; I can thus base my report only on the fact that at least fifty-three executions have taken place in 1996.

11. Mr Pristavkin further informed the rapporteurs in December 1996 that between 600 and 700 prisoners were currently held on death row in Russia. Of these prisoners, he estimated that 20% would prefer capital punishment because the conditions on death row and in life imprisonment establishments (in particular in two of the special detention camps situated in Yekaterinburg and Vologotsk, far away from any civilisation) were so terrible that death seemed preferable — for example, no adequate medical care was provided. Of the prisoners whose death sentences had been commuted in recent years to life imprisonment, 36% had been chronic alcoholics, and 30% mentally ill. Seventy per cent of these prisoners had no previous criminal record.

12. Russia has not yet fully reformed its judicial system. Even in the few most advanced democracies which apply the death penalty, such as the United States, judicial errors have occurred in capital cases, and innocent people have been executed. In Russia, few judicial safeguards exist in capital cases, and there are numerous allegations of confessions obtained under duress or torture. In these conditions unrectifiable miscarriages of justice seem not only possible, but probable. At a press conference on 24 September 1996 in Russia, Valery Borshev, representative of a public consultative body on human rights under the president, said that according to research carried out in the country, judicial errors were in fact made in 30% of death penalty cases.⁶

13. Amnesty International is also concerned that a number of death row inmates in Russia might be innocent, having received indications that, for example, one prisoner (Mr T. Yeranosyan) was severely ill-treated while in pre-trial detention in order to force him to incriminate his brother (also, now, sentenced to death). There are also allegations that another prisoner (Mr D. Klimantovich), who was sentenced to death for allegedly wounding a police officer whilst resisting arrest at the scene of a burglary, was not involved in any criminal activity and acted only in self-defence when the arresting officers, who were wearing civilian clothes and did not identify themselves as policemen, attacked him (the defendant was shot nine times).

C. Efforts to abolish the death penalty and introduce a moratorium on executions

14. Not all news from Russia is bad, however. A new criminal code came into force on 1 January 1997, which limits the number of capital crimes from the former twenty-eight to only five. However, the impact of this change will be rather limited, since none of the prisoners condemned to death in recent years were condemned on the basis of the twenty-three articles that no longer carry the death penalty. The great majority of all death sentences is handed down for murder in the first degree.

15. As far as a moratorium on executions is concerned, a draft law is currently pending before the State Duma, introduced by Mr V. Borshchev, which would institute such a moratorium, thus ensuring compliance

with Russia's commitment to the Council of Europe. However, the chances of this law being adopted can be regarded as slim, since both the Communist Party and the Agrarian Party have come out against it. According to Russian law, the power to institute a moratorium in any case lies also with the President of the Russian Federation, so it can be hoped that the president would use this power should the initiative in the State Duma fail.

D. Conclusions

16. The Assembly cannot accept that Russia and Ukraine, alone, of several member countries of the Council of Europe, have violated their solemn commitment, entered into upon their accession, to put into place a moratoria on executions. The high number of known executions for the first six months, fifty-three in the case of Russia, surpassed only by China and Ukraine, makes this flagrant violation of commitments even less acceptable. The Assembly thus condemns Russia for having violated her commitment to put into place a moratorium on executions, and deplores the executions that have taken place.

17. The Assembly is aware of tentative steps in the right direction in Russia to institute a moratorium on executions either by virtue of a law passed in parliament or a decree of the president. These efforts enjoy the full support of the Assembly.

18. However, it is most important to the Assembly that no more lives are lost. It thus demands that both Russia and Ukraine immediately honour their commitments and halt any executions still pending, and warns Russia and Ukraine that it will take all necessary steps to ensure compliance with commitments entered into. In particular, should any more executions be carried out following the adoption of this resolution and that pertaining to Ukraine, the Assembly should consider the non-ratification of the credentials of the Russian and Ukrainian parliamentary delegations at its next session.

1. It will be remembered that by virtue of Resolution 1044 (1994), the willingness to sign and ratify Protocol No. 6 to the European Convention on Human Rights and to introduce a moratorium on executions upon accession has become a prerequisite for membership of the Council of Europe on the part of the Assembly.

2. Russia entered into the following commitment by virtue of Opinion No. 193 (1996), paragraph 10.ii: "The Parliamentary Assembly notes that the Russian Federation shares fully its understanding and interpretation of commitments entered into as spelt out in paragraph 7, and intends (...) to sign within one year and ratify within three years from the time of accession Protocol No. 6 to the European Convention on Human Rights on the abolition of the death penalty in times of peace, and to put into place a moratorium on executions with effect from the day of accession". Russia acceded to the Council of Europe on 28 February 1996.

3. Originally, the Committee on Legal Affairs and Human Rights had intended to deal with the violation of the commitments to institute a moratorium on executions entered into by Russia and Ukraine upon accession to the Council of Europe in one report, but on 20 January 1997 the committee decided to handle the two countries separately.

4. The materials of the seminar are available in English, French and Russian from the secretariat of the Committee on Legal Affairs and Human Rights upon request.

5. *Itogi*, December 1996, p. 46.

6. Information contained in the letter of 17 January 1997 addressed to the President of the Assembly by the Director of the Legal and International Organisations Program of Amnesty International, (see appendix in Doc. 7745).