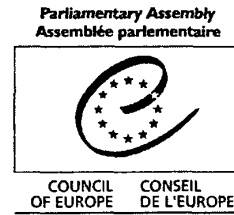


Parliamentary Assembly Assemblée parlementaire



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Position of the Parliamentary Assembly as regards the Council of Europe member and observer states which have not abolished the death penalty

Report
Committee on Legal Affairs and Human Rights
Rapporteur: Mrs Renate Wohlwend, Liechtenstein, Group of the European People's Party

Summary

Application of the death penalty is a violation of the most fundamental of human rights, the right to life. Capital punishment must be totally removed once and for all from the legislation of all countries which strive to uphold democracy, the rule of law and human rights.

The death penalty has been abolished in all Council of Europe member states, with just one exception: more than ten years after accession, the Russian Federation retains the death penalty in its legislation, although it does respect a moratorium on executions since 1996. In recent years, the Assembly has made repeated appeals to the Russian authorities on the matter of the abolition of the death penalty, urging them to ratify immediately Protocol No. 6 to the European Convention on Human Rights in compliance with their commitments. The deadline initially set for honouring this commitment expired in 1999.

Of the states which hold Council of Europe observer status, both Japan and the United States continue to apply the death penalty and violate their fundamental obligation to uphold human rights, pursuant to Statutory Resolution (93) 26. The Assembly's appeals made in its previous two resolutions, in which it calls on Japan and the United States to establish an immediate moratorium on executions and to take the necessary steps to abolish capital punishment, have gone unheeded. There have been 1,016 executions in the United States since the death penalty was reinstated in 1977; eight executions have taken place in Japan since 2001.

The Committee on Legal Affairs and Human Rights invites the Assembly to affirm its position and adopt recommendations for the attention of the Committee of Ministers as regards the Council of Europe member and observer states concerned.

A. Draft recommendation

1. Application of the death penalty is a violation of the most fundamental of human rights, the right to life. Capital punishment must be totally removed once and for all from the legislation of all countries which strive to uphold democracy, the rule of law and human rights.
2. The Parliamentary Assembly welcomes the fact that, less than four years after Protocol No. 13 to the European Convention on Human Rights on the abolition of the death penalty in all circumstances (CETS No. 187) was opened for signature, it has already been ratified by 36 of the 46 Council of Europe member states and signed by a further seven. Only Armenia, Azerbaijan and Russia have not yet signed it.
3. The death penalty has been abolished in all Council of Europe member states, with just one exception. The Assembly points out that the Russian Federation, upon accession, solemnly undertook to abolish the death penalty and, more specifically, to sign Protocol No. 6 to the European Convention on Human Rights on the abolition of the death penalty in peacetime (CETS No. 114) within one year of accession and to ratify it within three years.
4. The Assembly finds it regrettable that this undertaking has been only partly honoured and that, more than ten years after accession, the Russian Federation retains the death penalty in its legislation, although it does respect the moratorium on the executions it decided in 1996. Whilst recognising the efforts made by the Russian parliamentary delegation to promote the respect of the commitment undertaken, the Assembly regrets that it has so far not received any clear indication from the Russian authorities, at the highest level, as to their intentions on this issue. It urges the Russian authorities to show vis-à-vis public opinion in their country, the same determination and persuasiveness displayed by the other Council of Europe member states, which had the political will and courage to abolish the death penalty despite the potential unpopularity of the measure.
5. In this regard, the Assembly recalls Resolutions 1455 (2005), 1277 (2002) and 1187 (1999), in all of which it made repeated appeals to the Russian authorities on the matter of the abolition of the death penalty, urging them to ratify immediately Protocol No. 6 to the European Convention on Human Rights. The Assembly points out that the deadline initially set for honouring this commitment passed in 1999.
6. In respect of countries having observer status with the Council of Europe, the Assembly refers to Resolutions 1349 (2003) and 1253 (2001), in which it calls on Japan and the United States to place an immediate moratorium on executions and to take the necessary steps to abolish the death penalty. It finds it inadmissible that these appeals have gone unheeded and that both Japan and the United States continue to apply the death penalty and violate their fundamental obligation to uphold human rights, pursuant to Statutory Resolution (93) 26. There have been 1,016 executions in the United States since the death penalty was reinstated in 1977; eight executions have taken place in Japan since 2001.
7. With regard to the Council of Europe member states, the Assembly recommends that the Committee of Ministers:
 - 7.1. pursue its efforts to ensure that Protocol No. 13 (CETS No. 187) is ratified by all Council of Europe member states as soon as possible;
 - 7.2. oblige the Russian Federation to ratify Protocol No. 6 on the abolition of the death penalty in peacetime (CETS No. 114) without further delay;
 - 7.3. invite Albania and Latvia to amend their domestic legislation so as to abolish the death penalty for crimes committed in wartime or during a state of emergency;
 - 7.4. clarify with Azerbaijan the situation of the prisoners sentenced to death prior to the abolition of capital punishment in that country in 1998, whose sentences have apparently still not been commuted and who therefore continue to be held on death row.
8. With regard to countries having observer status with the Council of Europe, the Assembly refers to its Recommendations 1627 (2003) and 1522 (2001) and urgently calls on the Committee of Ministers to:
 - 8.1. give practical follow-up to the Assembly previous recommendations on the abolition of the death penalty in observer states and draw the appropriate conclusions from the attitude of the authorities of both countries on this question;

8.2. engage as a matter of urgency in an active and substantive political dialogue with Japan and the United States to encourage both countries at last to place an immediate moratorium on executions, by stressing the position of principle that it is now impossible for the Council of Europe to accept that states enjoying observer status apply the death penalty;

8.3. urge Japan to abolish the death penalty as soon as possible, and in any event before the implementation of its judicial reform and the introduction in 2009 of citizens' juries;

8.4. urge the United States to abolish the death penalty as soon as possible;

8.5. include on its agenda by the end of 2006 the question of the suspension of Japan's and the United States' observer status if no progress on this question has been made by then.

9. The Assembly also recommends that the Committee of Ministers urges the European Union to raise the issue of the death penalty in its political dialogue with China.

B. Explanatory memorandum
by Mrs Wohlwend, Rapporteur

I. Introduction

1. Over the past twelve years, the Parliamentary Assembly has adopted no fewer than five resolutions and four recommendations on the abolition of the death penalty, ceaselessly reaffirming its absolute opposition to capital punishment, which it regards as an act of torture and an inhuman and degrading punishment, and undeniably the most serious of all human rights violations.

2. The fight for abolition of the death penalty in Europe has been one of the Council of Europe's greatest successes. The battle is unrelenting and will come to an end only when capital punishment has been eliminated once and for all from the continent, as well as from other parts of the world. Within Europe, only one of the Council of Europe's 46 member states has still not officially abolished the death penalty, and that is Russia.

3. In view of the situation in both member and observer states, I felt that it was vital to continue the work begun. This is why, in 2004, I took the initiative of tabling a new motion for a recommendation¹, which was referred for report to the Committee on Legal Affairs and Human Rights on 30 April 2004.

4. On 7 June 2004, the Committee on Legal Affairs and Human Rights again showed its confidence in me by appointing me rapporteur on this subject again. On 16 December 2004, I put my initial thoughts to the Committee, and I presented another information memorandum on 6 October 2005.

5. The purpose of this report is therefore to take stock of the current situation as regards the death penalty in Council of Europe member and observer states, and, something which is a first for me, in the states in geographical proximity to the Council of Europe with which the Council of Europe and its Parliamentary Assembly engage in, or have recently engaged in, political contacts.

II. The situation in Council of Europe member states

i. Signature and ratification of the relevant legal instruments

6. 45 member states have ratified **Protocol No. 6** to the European Convention on Human Rights on the abolition of the death penalty in peacetime, leaving only the Russian Federation, which has signed but not yet ratified it.

7. 36 member states have ratified **Protocol No. 13** to the European Convention on Human Rights on the abolition of the death penalty in all circumstances, and seven have signed it. It came into force on 1 July 2003. **Armenia, Azerbaijan** and the **Russian Federation** are the only member states that have neither signed nor ratified it.

8. It is interesting to note that **Albania** and **Latvia** have abolished the death penalty only for ordinary crimes. They are the only two Council of Europe member states whose legislation has retained the death penalty for crimes with aggravating circumstances committed in wartime (and during a state of emergency, in the case of Albania).

ii. The Russian Federation, the only Council of Europe member state to retain the death penalty in its legislation

9. Russia is the only one of the 46 Council of Europe member States that has still not abolished the death penalty *de jure*². Russia placed a moratorium on the death penalty ten years ago, under a presidential decree of May 1996. Moreover, in February 1999, the Constitutional Court decided that the courts could no longer pass death sentences until the jury system had been established throughout the country for trials relating to crimes punishable by the death sentence. Courts with juries have been gradually introduced in various parts of the country since 1 July 2002; this reform is due to be completed by 1 January 2007, when it is to be extended to the Chechen Republic. Accordingly, even if the 1996 moratorium were lifted, the Constitutional Court's 1999 decision would prevent death sentences until 2007 at least.

¹ Doc. 10152.

² Also see the report on the "Honouring of obligations and commitments by the Russian Federation" (co-rapporteurs Mr Bindig and Mr Atkinson), presented by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Doc. 10568), of 3 June 2005.

10. In May 2005 Pavel Krasheninnikov, Chairperson of the Duma Legislative Commission, called on parliamentarians to adopt a law confirming the abolition of the death penalty in Russia. This is an encouraging, but unfortunately isolated development.

11. In practice, certain Russians in positions of political responsibility, regrettably including some members of the Russian parliamentary delegation to the Parliamentary Assembly, still regularly advocate publicly the lifting of the moratorium and the reinstatement of the death penalty, particularly for the instigators of terrorist acts. In February 2004, Dmitry Rogozin, former chair of the Russian parliamentary delegation - he of all people - publicly stated that he was in favour of the death penalty for acts of terrorism and drugs trafficking. In October 2004, Vladimir Zhirinovskiy proposed the introduction into a draft criminal law against pederasty of the death penalty for homosexual activities. In March this year, on the occasion of the commemoration of the 10th anniversary of Russia's accession to the Council of Europe, Guennady Ziuganov called on the authorities to lift the moratorium on executions.

12. Finally, it is clear that certain events, particularly the Beslan tragedy, weigh very heavily on Russian public opinion in this context.

13. During the Beslan trial, held in Vladikavkaz, deputy chief prosecutor Nikolai Shepel called in February 2006 for the death penalty to be imposed on Nur-Pashi Kulayev, the only surviving hostage-taker. The Vice-President of the Duma, Vladimir Pekhtin, did nevertheless tell the press, at that time, that the Duma was unwilling to lift the moratorium on the death penalty for Kulayev.

iii. Attempts to restore the death penalty

14. Russian politicians are not the only ones to err in this way. On 8 April 2004, 48 members of the French National Assembly tabled a bill aimed at restoring the death penalty for terrorists. I personally reacted strongly to this idea, and many members of this Assembly joined me in publishing a declaration³.

15. In October 2004, the Polish Diet, by a tiny majority (194 members in favour, 198 against and 14 abstentions), rejected a proposal made by the Law and Justice Party, which at the time was in opposition but is now in power, for the reintroduction of the death penalty. President Kwasniewski had made it clear that, had the vote gone in favour of the proposal, he would have vetoed it. The result hardly gives cause for rejoicing; there is, quite the contrary, every reason to be disturbed, even scandalised, by such a result. After all, 194 MPs were willing to vote for the restoration of the death penalty in Poland!

16. It should not be forgotten, finally, that the current President of Poland, Lech Kaczynski, who with his brother Jaroslaw founded the Law and Justice Party which came to power in the 2005 elections, has on many occasions made it clear, as has his brother, that he is in favour of restoration of the death penalty.

III. The situation in Council of Europe observer states

17. Of the states which hold observer status, only the United States and Japan retain the death penalty. The Assembly has twice, in 2001 and 2003, asked Japan and the US to establish an immediate moratorium on executions and to take all the necessary steps to abolish capital punishment. These appeals have gone unheeded.

18. **Mexico**, where the death penalty had not been carried out since 1937, officially abolished capital punishment on 17 March 2005.

i. United States

19. **Sixty convicts under sentence of death were executed** in 2005 (19 in Texas alone). 59 prisoners had been executed in 2004 (23 of these in Texas), while the figure had been 65 in 2003 and 71 in 2002.

20. As at 1 January 2006, some 3,400 convicted prisoners were on death row. Another twelve executions took place in the first three months of 2006, bringing the total number executed since the death penalty was restored in 1977 to **1,016**.

³ See Written Declaration No. 353 (Doc. 10211) on the "Recent initiative in France to reintroduce the death penalty for the perpetrators of terrorist acts", signed by 36 members of the Parliamentary Assembly.

21. **38 of the 50 states** of the Union still have criminal legislation which provides for the death penalty, and capital punishment is still applicable under federal military and civil legislation as well.

22. Some major steps have nevertheless been taken towards abolition. Not only have NGOs and civil society as a whole campaigned extremely actively for abolition over the past few years, but the US Supreme Court has also moved the law forward decisively.

23. In a leading case of 1 March 2005 (*Roper v. Simmons*), the Supreme Court held that death was a disproportionate punishment for under-age criminals and declared unconstitutional the sentencing to death of persons who had been under the age of 18 at the time of the offences for which they were on trial, in pursuance of the 8th Amendment prohibiting cruel and unusual punishments⁴.

24. Between 1977 and 2003, the United States executed 22 persons who had been minors when they committed their offences. Around 70 under-age offenders were still on death row in 2004, over a third of these in Texas.

25. In June 2002, in the *Atkins* case, the Supreme Court declared unconstitutional the sentencing to death of mentally retarded persons (in a previous judgment of 1986 it had declared their execution to be contrary to the Constitution). Individuals with a history of serious mental illness nevertheless continue to be sentenced to death, and three were executed in 2004 and 2005⁵.

26. Moreover, on 31 March 2004, the International Court of Justice handed down a judgment in the case between Mexico and the United States concerning *Avena* and other Mexican nationals. The Court held that, by sentencing 51 Mexicans to death without informing their country's consular authorities, the United States had violated the Vienna Convention on Consular Relations. It demanded a review of the convictions and the sentences imposed. The US Supreme Court is currently considering the action to be taken on the ICJ judgment via an appeal lodged by a Mexican prisoner, José Medellín, who is on death row in Texas.

27. Yet several cases have received wide media coverage and mobilised both American and international opinion. Among them is that of Frances Newton, who had always proclaimed her innocence, but nevertheless became the first black woman executed since 1977 when her death sentence was carried out in Texas in September 2005. Another is that of Stanley Tookie Williams, a former gang leader who had changed his ways and become an advocate of non-violence, but was executed in California in December 2004 after Governor Arnold Schwarzenegger rejected his plea for clemency. 77-year-old John Nixon was executed in December 2005 in Mississippi, becoming the oldest person to be executed in the United States since 1997, and Clarence Ray Allen, the oldest person in California under sentence of death, was executed in January 2006 at the age of 76.

ii. *Japan*

28. 77 persons are currently on death row. One inmate has been there for 36 years. Their numbers are growing, as Japanese courts continue to impose the death sentence, most recently on 26 September 2005, when Horie Morio was condemned to death despite suffering from severe mental illness.

29. More recently, on 29 March 2006, the Supreme Court of Japan confirmed the death sentence passed in 1995 on Kazutoshi Takahashi, a 71-year-old man convicted of the 1988 murder of a couple who were estate agents. His defence lawyer has always proclaimed his innocence, saying that he was not a killer and that his confession had been forced out of him by investigators: there is no real evidence of his guilt.

30. Executions have taken place every year since 1993, which is when a four-year moratorium came to an end. Eight persons have been executed since 2001, two of them in September 2004 and another in September 2005.

31. Furthermore, the conditions in which the death penalty is carried out in Japan continue to be rigorously denounced: condemned persons are executed (by hanging) in the greatest secrecy, without their family being told beforehand, and they themselves are given notice of only a few hours, or just an hour.

⁴ See Appendix II, declaration adopted by the Committee on Legal Affairs and Human Rights on 3 March 2005.

⁵ Also see the Amnesty International report entitled "United States of America - The execution of mentally ill offenders" (31 January 2006) <http://web.amnesty.org/library/index/ENGAMR510032006>.

32. The latest opinion polls (December 2004) showed that over 81% of the population support capital punishment, which 80% consider to be a deterrent. In this context, the implementation of judicial reform and the introduction, in 2009, of a system of "citizens' juries" are extremely disturbing developments.

33. In the face of radical public opinion on this issue, politicians do not have an easy task. The efforts of the abolitionist association of Japanese MPs, which remains highly active – like other associations⁶ -, have to be applauded. One story clearly illustrates the situation. At a press conference when he had just taken up office on 31 October 2005, the new Japanese Minister of Justice, Sugiura Seiken, declared that he would not sign execution orders, saying that all civilisations were moving over the longer term towards the abolition of capital punishment. He subsequently had to retract and say that he had been expressing his personal opinion.

IV. The situation in the Council of Europe's neighbours

34. It is difficult to know exactly how many executions have been carried out in some countries: in Belarus and in the republics of central Asia this information is an official secret, with just occasional snippets of information getting through via convicted persons' families or NGOs.

35. **Belarus** is the only country in mainland Europe still passing the death sentence and carrying it out. According to the country's Supreme Court President, Belarus carried out two executions in 2005 and four in 2004, with eight individuals sentenced to death in 2005 and two in 2004. The actual figures are likely to be higher than these official ones. The most recent death sentence was passed in January 2006 on a man found guilty of murdering two young women and a child while under the influence of alcohol.

36. In May 2002, the national parliament held a hearing on the death penalty and subsequently made a number of recommendations to the government. The Assembly at that time welcomed the parliament's efforts to begin a public discussion of abolition⁷. For all that, the majority of members of the Belarus parliament were still opposed not only to abolition of the death penalty, but also to the immediate introduction of a moratorium on executions for certain serious crimes.

37. On 11 March 2004, the Constitutional Court, on a reference from parliament, issued a ruling on the conformity with the Constitution of those provisions of the Criminal Code which relate to capital punishment. It concluded that certain provisions were unconstitutional and pointed out that it was for the head of state and parliament to draw appropriate conclusions, place a moratorium on executions and abolish the death penalty.

38. Outside Belarus, there is reason to welcome the progress achieved in other nearby countries of Europe: in February 2005, **Tajikistan** abolished capital punishment, the second republic of central Asia, following **Turkmenistan** in 1999, to do away with the death penalty.

39. In December 2003, **Kazakhstan** introduced a moratorium on executions (the last ones had taken place earlier that year, when at least 19 persons were executed).

40. In **Uzbekistan** on 1 August 2005, and again on 1 January 2006, President Islam Karimov signed a decree abolishing capital punishment with effect from 1 January 2008, and replacing it with life imprisonment. This long wait of three years is, according to the Uzbek authorities, due to the need to build new prisons to hold long-term convicts. It is, however, difficult to avoid thinking that the reason for the delay might be a purely political calculation, leaving President Karimov completely free to seal the fate of the political opposition and the Andijan rebels. Approximately 50 people were executed in 2004.

41. **Kyrgyzstan** has extended by one year the statutory moratorium on executions decided in 1998. In October 2005, President Kurmanbek Bakiyev, who has led the country since April 2005, announced his wish to amend its Constitution in order to abolish the death penalty.

42. The Assembly ought also to pay more attention to the situation in the Maghreb countries, **Algeria, Morocco and Tunisia**, all three of which still have the death penalty on their statute book.

⁶ An "International Leadership Conference on Human Rights and the Death Penalty" took place in Tokyo on 6 and 7 December 2005, jointly organised by the European Commission and the Japanese and American Bar Associations.

⁷ See Doc. 9543, report of 13 September 2002 on the situation in Belarus, Political Affairs Committee (rapporteur Mr Wolfgang Behrendt, Germany, Socialist Group) and Resolution 1306 (2002).

43. Algeria has observed a de facto moratorium on executions since 1993, although its courts did pass 14 death sentences in 2003. However, the question is now a matter of public debate, and various personalities have expressed their viewpoint via the media. While national and international observers were expecting abolition to come soon, Algeria's new Criminal Code, now being considered in parliament, still provides for the death penalty.

44. Tunisian legislation still provides for capital punishment. The last execution carried out there was in 1991, and the last death sentence was passed in 1996.

45. The death penalty also continues to exist officially in Morocco, where the last execution took place in 1993 and the most recent death sentences were passed in August 2005. There are said to be some 150 prisoners in the country under sentence of death.

46. On the subject of the **Middle East**, the Assembly raised this question during its latest debate on the situation in the Middle East⁸. In Resolution 1452 (2005), it decided "to enter into a dialogue with the Palestinian Legislative Council in order to support legislators in their endeavours to reinstitute a moratorium on executions and abolish the death penalty, and to engage the opponents of abolition in an informed debate" and to offer "its support and expertise to the Palestinian Legislative Council with a view to introducing a moratorium on executions and abolishing the death penalty, and to engaging the opponents of abolition in an informed debate".

47. It is for the Committee on Legal Affairs and Human Rights to discuss the follow-up action to take on this resolution, inter alia by drawing up practical proposals to be put to the Bureau of the Assembly. It might decide to hold a conference, in co-operation with the Palestinian Authority, either on the spot or in Paris. Clearly, the political situation in the Middle East, and more specifically the recent formation of a Hamas-led Palestinian government, hardly augur well for a positive response to any co-operation initiative that the Parliamentary Assembly might take in this context.

V. The situation of separatist territories

48. It is too often forgotten that there are some separatist territories within Europe, which are not officially recognised internationally and are not subject to international conventions. While **Nagorno-Karabakh** abolished the death penalty on 1 August 2003, when it decided to implement the Republic of Armenia's new Criminal Code on its territory, the other territories, **Abkhazia, Transnistria and South Ossetia**, have not done so, retaining capital punishment in their legislation both in peacetime and in wartime. As South Ossetia decided in 1992 to make Russian legislation applicable on its territory, it has observed a moratorium on executions since 1996. Abkhazia introduced a similar moratorium in 1993, but its courts have subsequently continued to impose death sentences. The death penalty is in the Transnistrian Criminal Code which came into force in 2002. In July 1999, de facto President Smirnov ordered a moratorium on executions, and there is said to be only one prisoner on death row in Transnistria. These territories are subject to the direct influence of the Russian Federation, and no decisive progress seems likely until such time as Russia sets an example.

VI. Conclusion

49. It is taking a long time to bring about abolition of the death penalty. Since the last Parliamentary Assembly report on the subject, back in October 2003, there has been little true progress. Some advances in American case-law have, of course, been welcome, as has central Asia's move towards support for abolition. Another cause for huge satisfaction is the considerable number of ratifications of Protocol No. 13 to the European Convention on Human Rights.

50. However, the anxieties felt by the Assembly for the past decade remain: Russia has not yet officially abolished the death penalty and is the last member state still taking this reactionary stance, while Japan and the United States continue both to pass the death sentence and to carry out executions.

⁸ See the opinion presented by the Committee on Legal Affairs and Human Rights, rapporteur Mr Kevin McNamara (United Kingdom, Socialist Group), Doc. 10594, 20 June 2005.

APPENDIX I

World Day against the Death Penalty: 'The fight is far from being over', says Assembly President

Strasbourg, 10.10.2005 – "The Council of Europe is rightly proud of its achievement in making a *de facto* death-penalty-free zone of its 46 members, but the fight is far from being over," Council of Europe Parliamentary Assembly President René van der Linden said today in a statement on the occasion of the World Day Against the Death Penalty.

"Belarus and Uzbekistan are the last executioners in the former Soviet space. The Uzbek authorities recently informed me that they are now ready to undertake serious steps towards the abolition of the death penalty. This move shall be supported by the Assembly," he said.

"In June the Assembly urged Russia to ratify Protocol No. 6 to the European Convention on Human Rights abolishing the death penalty," René van der Linden said, recalling that Russia has already instituted a moratorium on executions. "The Assembly has also called on the Palestinian Authority to re-introduce an immediate moratorium on executions and abolish the death penalty within two years as well as to launch a campaign in favour of abolition."

"The Council of Europe should also draw attention to the situation in Abkhazia, Transnistria and South Ossetia, whose *internationally-unrecognised regimes* have not yet abolished the death penalty."

Mr van der Linden made clear that the Assembly will continue dialogue with the United States and Japan in order to encourage abolition of the death penalty in these two Council of Europe observer states, which, he said, "consider themselves as members of our community of shared values".

In 2006, the Assembly will present a report on the abolition of the death penalty in Council of Europe member and observer states.

Finally he called for the release of the five Bulgarian nurses and one Palestinian doctor facing the death penalty in Libya after being found guilty of deliberately infecting with HIV/AIDS some 426 children in a Benghazi hospital. In line with a recommendation passed by the Assembly last week, he said "we believe they are innocent and are being used as scapegoats for a dilapidated Libyan health system."

PACE urges Palestinian Authority to abolish the death penalty

Strasbourg, 21.06.2005 – The Parliamentary Assembly of the Council of Europe (PACE) today urged the Palestinian Authority to abolish the death penalty within two years, and decided to support Palestinian legislators in their endeavours to reinstitute a moratorium on executions.

Adopting a resolution on the situation in the Middle East on the second day of its plenary session in Strasbourg, PACE strongly condemned the executions of four detainees on 12 June 2005 and said it was "appalled" by the decision of Palestinian President Mahmoud Abbas to end the moratorium on executions decided by his predecessor in 2002.

The Assembly also called for parliamentary elections, recently postponed, to be held before the end of 2005 and said the Palestinian Authority should considerably increase efforts to dismantle and disarm terrorist groups.

Israel should revise its position on the security wall, refrain from confiscation of land and property and immediately stop construction of illegal settlements, the parliamentarians said.

Finally, PACE resolved to "consider granting observer status to the Palestinian Legislative Council following the forthcoming parliamentary elections, subject to the evaluation that they are fair and free, and to the abolition of the death penalty".

APPENDIX II

Declaration adopted by the Committee on Legal Affairs and Human Rights at its meeting in Paris on 3 March 2005

US Supreme Court outlaws the death penalty against minors: "a step in the right direction"

The Committee on Legal Affairs and Human Rights notes with satisfaction that the United States Supreme Court, in its judgement of 1 March 2005 in *Roper v. Simmons* found the application of the death penalty against persons who were minors at the time of the crime unconstitutional.

The Supreme Court held that the execution of minors constitutes "cruel and unusual punishment" within the meaning of the 8th Amendment, according to the "evolving standards of decency that mark the progress of a maturing society" that the Court had already referred to in earlier judgements restricting the application of the death penalty against the mentally handicapped and minors under 16 years of age.

The Committee considers that *Roper v. Simmons* is but a step in the right direction, which should soon be followed by further steps leading to the complete abolition of the death penalty, which should be recognised as "cruel and unusual punishment" in all cases.

The Committee once more reaffirms the Assembly's position – as expressed in Resolution 1349 (2003) – of complete opposition to capital punishment, which has no legitimate place in the penal systems of modern civilised societies. The Committee considers that its application constitutes torture and inhuman and degrading punishment and is thus a severe violation of universally recognized human rights.

The Committee recalls that at its initiative, the Council of Europe had joined in the international *amicus curiae* brief submitted to the United States Supreme Court in 2004 by the European Union. Justice Kennedy, writing for the majority, refers to this expressly, pointing out that "*As respondent and a number of amici emphasize, Article 37 of the United Nations Convention on the Rights of the Child, which every country in the world has ratified save for the United States and Somalia, contains an express prohibition on capital punishment for crimes committed by juveniles under 18*".

Justice Kennedy acknowledges that "our determination that the death penalty is disproportionate punishment for offenders under 18 finds confirmation in the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty. [...] The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions".

Reporting committee: Committee on Legal Affairs and Human Rights

Reference to committee: Doc. 10152, Reference 2961 of 30 April 2004

Draft recommendation unanimously adopted by the Committee on 13 April 2006

Members of the Committee: Mr Dick **Marty** (Chairperson), Mr Erik Jurgens, Mr Eduard **Lintner**, Mr Adrien **Severin** (Vice-Chairpersons), Mrs Birgitta **Ahlqvist**, Mr Athanassios **Alevras**, Mr Rafis Aliti, Mr Alexander **Arabadjiev**, Mr Miguel Arias, Mr Birgir Ármannsson, Mr José Luis **Arnaut**, Mr Abdülkadir Ateş, Mr Jaime Bartumeu Cassany (alternate: Mr Vincenç **Alay Ferrer**), Mrs Meritxell Batet, Mrs Soledad Becerril, Mrs Marie-Louise Bemelmans-Videc, Mr Giorgi Bokeria, Mrs Olena Bondarenko, Mr Erol Aslan **Cebeci**, Mrs Pia **Christmas-Møller**, Mr Boriss Cilevičs, Mr Domenico Contestabile, Mr András Csáky, Mrs Herta Däubler-Gmelin, Mr Marcello Dell'Utri, Mrs Lydie Err, Mr Jan **Ertsborn**, Mr Václav **Exner**, Mr Valeriy **Fedorov**, Mr György Frunda, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Stef Goris, Mr Valery Grebennikov, Mrs Gultakin **Hajiyeva**, Mrs Karin Hakl, Mr Nick Harvey, Mr Michel **Hunault**, Mr Rafael **Huseynov**, Mrs Fatme Ilyaz, Mr Kastriot Islami, Mr Sergei Ivanov, Mr Tomáš Jirsa, Mr Antti Kaikkonen, Mr Uryiy Karmazin, Mr Karol **Karski**, Mr Hans Kaufmann, Mr Nikolay Kovalev, Mr Jean-Pierre Kucheida, Mrs Darja **Lavtižar-Bebler**, Mr Andrzej Lepper (alternate: Mrs Ewa **Tomaszewska**), Mrs Sabine Leutheusser-Schnarrenberger, Mr Tony Lloyd, Mr Humfrey Malins, Mr Andrea Manzella, Mr Alberto Martins, Mr Tito Masi, Mr Andrew McIntosh, Mr Murat **Mercan**, Mr Philippe Monfils, Mr Philippe Nachbar, Mr Tomislav Nikolić (alternate: Mr Ljubiša **Jovašević**), Ms Ann Ormonde, Mr Rino Piscitello, Mrs Maria Postoico, Mr Christos Pourgourides, Mr Jeffrey Pullicino Orlando, Mr Martin Raguž, Mr François Rochebloine, Mr Armen **Rustamyan**, Mr Michael Spindelegger, Mrs Rodica Mihaela **Stănoiu**, Mr Christoph **Strasser**, Mr Petro Symonenko, Mr Vojtech **Tkáč**, Mr Øyvind Vaksdal, Mr Egidijus Vareikis, Mr Miltiadis Varvitsiotis (alternate: Mrs Elsa **Papadimitriou**), Mrs Renate **Wohlwend**, Mr Krzysztof Zaremba, Mr Vladimir Zhirinovskiy, Mr Zoran **Žižić**, Mr Miomir Žužul

N.B.: The names of the members who took part in the meeting are printed in **bold**

Secretariat of the Committee: Mr Drzemczewski, Mr Schirmer, Mrs Clamer, Ms Heurtin

