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## Committee on Legal Affairs and Human Rights

# Abolition of the death penalty in Council of Europe member and observer states,<sup>1</sup> Belarus and countries whose parliaments have co-operation status<sup>2</sup> – situation report

## Revised information note

General rapporteur: Mr Titus CORLĂȚEAN, Romania, Socialists, Democrats and Greens Group

### 1. Introduction

1. Having been appointed general rapporteur on the abolition of the death penalty at the Committee meeting of 13 December 2018, I have had the honour to continue the outstanding work done by Mr Yves Cruchten (Luxemburg, SOC), Ms Meritxell Mateu Pi (Andorra, ALDE), Ms Marietta Karamanli (France, SOC), Ms Marina Schuster (Germany, ALDE), and, before her, Ms Renate Wohlwend (Liechtenstein, EPP/CD).<sup>3</sup>

2. This document updates the previous information note with regard to the development of the situation since October 2018, which was considered at the Committee meeting in Strasbourg on 10 October 2018.

3. This note will first of all provide a brief overview of the international and European legal framework, and then highlight the current situation in states that have abolished the death penalty only for ordinary crimes, those that provide for the death penalty in their legislation but do not implement it and those that actually do apply it. It refers solely to Council of Europe member states (the Russian Federation), observer states (United States, Japan and Israel), states whose parliaments hold “partner for democracy” status, Kazakhstan<sup>4</sup> and Belarus, a country which would like to have closer links with the Council of Europe. Since March 2012, the Parliamentary Assembly’s general rapporteurs have issued public statements relating to executions and death sentences in these states or have proposed that the Committee adopt statements condemning capital punishment as inhuman and degrading. It is an honour for me to continue this work. Accordingly, since I took up my remit, and especially in recent months, I have issued several statements condemning an execution that has taken place in Belarus and the death sentences that have been issued in this country as well as in Jordan, Morocco, and the Gaza Strip (Palestinian Authority).

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\* Document declassified by the Committee on 10 December 2019.

<sup>1</sup> Including Israel, whose parliament (the Knesset) has observer status.

<sup>2</sup> Both the “partners for democracy” (the parliaments of Jordan, Morocco, Kyrgyzstan and the Palestinian National Council) and Kazakhstan (with co-operation status on the basis of a co-operation agreement signed in 2004).

<sup>3</sup> See also her report on “The death penalty in Council of Europe member and observer states: a violation of human rights”, [Doc 12456](#), and Assembly [Resolution 1807 \(2011\)](#) on this subject, adopted on 14 April 2011.

<sup>4</sup> Kazakhstan is in particular a party to several Council of Europe conventions and its parliament signed a co-operation agreement with the Assembly in 2004. For more details on its co-operation with the Council of Europe, see Assembly [Resolution 2193 \(2017\)](#) on the relations of the Council of Europe with Kazakhstan, adopted by the Standing Committee on 24 November 2017.

## 2. The international and European legal framework and states' practice

4. In international law, Article 6 of the International Covenant on Civil and Political Rights (ICCPR) expressly states that "(e)very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." In paragraph 2, it refers to the requirements to comply with the law of treaties and to observe the procedural guarantees for executions in non-abolitionist states, which may only impose a death sentence "for the most serious crimes". This penalty "can only be carried out pursuant to a final judgement rendered by a competent court". The Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, provides for the abolition of the death penalty in all circumstances, even for the most serious crimes or in wartime.<sup>5</sup> However, two Council of Europe member states (Armenia and the Russian Federation) have not adhered to this protocol.<sup>6</sup> Moreover, Article 37(a) of the International Convention on the Rights of the Child prohibits capital punishment for persons under 18 years of age. The international community has also adopted numerous instruments that prohibit the use of the death penalty, but these are not binding.<sup>7</sup> For example, according to some resolutions of the UN Economic and Social Council, a pregnant woman, a mother of a young child or a disabled or mentally ill person must not be executed either.<sup>8</sup>

5. At the regional level, the European framework provides more protection. At the Council of Europe, in addition to the right to life guaranteed by Article 2 of the European Convention on Human Rights ("the Convention"), Protocol No. 6 to the Convention, which was signed on 28 April 1983 and came into force on 1 March 1985, abolishes the death penalty in peacetime. It has been ratified by 46 member States (the Russian Federation has only signed it).<sup>9</sup> Protocol No. 13, which was signed on 3 May 2002 and came into force on 1 July 2003, abolishes the death penalty in all circumstances. The latter has been signed and ratified by forty-four member states. Azerbaijan and the Russian Federation have not yet signed it, whereas Armenia has signed but not ratified it.<sup>10</sup> Even though the death penalty is not entirely prohibited in the light of Article 2 of the Convention, developments in the case law of the European Court of Human Rights ("the Court"), particularly with regard to Article 3, which prohibits torture and inhuman or degrading treatment or punishment, show that the explicit recognition of this penalty has become virtually obsolete. Accordingly, in the Court's view, the obligations of the States Parties to the Convention and its protocols also prohibit the extradition or expulsion of individuals to countries where they face the death penalty. Such extradition or expulsion would then constitute a violation of Article 3. It will be recalled that in the *Soering v. the United Kingdom*<sup>11</sup> judgment of 1989, the Court found a violation because of the UK authorities' intention to send the applicant to the United States where there was a risk that he would spend several years on "death row", pending his execution. In the 2005 *Öcalan v. Turkey* judgment,<sup>12</sup> the Court concluded that the application of the death penalty delivered following an unfair trial would be in breach of Article 3 of the Convention and held that the use of the death penalty in peacetime was unacceptable. In the *Al-Saadoon and Mufdhi v. the United Kingdom*<sup>13</sup> judgment of 2010, in the light of the progress made regarding abolition of the death penalty, the Court concluded for the first time that the death penalty was inhuman or degrading treatment irrespective of the circumstances in which it was delivered or applied (violation of Article 3). Furthermore, the Court found against Poland on 24 July 2014<sup>14</sup> for having transferred an alleged terrorist – Mr Al Nashiri – to the United States despite the risk that he could be sentenced to death. The Court found in particular that there had been a violation of Articles 2 and 3 of the Convention in conjunction with Article 1 of Protocol No. 6. In connection with the supervision of the execution of this judgment, the Committee of Ministers urged Poland to ensure that such a sentence was not

<sup>5</sup> Adopted and proclaimed by the UN General Assembly in resolution 44/128 of 15 December 1989.

<sup>6</sup> Armenia has signed it but has not ratified it yet. As at 25 November 2019: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-12&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&clang=en)

<sup>7</sup> Universal Declaration of Human Rights of 1948 and seven resolutions of the UN General Assembly: resolution 62/149 (December 2007), resolution 63/168 (December 2008), resolution 65/206 (December 2010), resolution 67/176 (December 2012), resolution 69/186 (December 2014), resolution 71/187 (2016) and resolution 73/175 (2018).

<sup>8</sup> Resolution 1984/50: Safeguards guaranteeing the protection of the rights of those facing the death penalty, 25 May 1984 – UN Economic and Social Council. Resolution 1989/64: implementation of the safeguards guaranteeing the protection of the rights of those facing the death penalty – UN Economic and Social Council.

<sup>9</sup> As at 25 November 2019. ETS No. 114; [https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/114/signatures?p\\_auth=73pM5mY5](https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/114/signatures?p_auth=73pM5mY5).

<sup>10</sup> As at 25 November 2019. ETS No. 187; [https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/187/signatures?p\\_auth=73pM5mY5](https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/187/signatures?p_auth=73pM5mY5).

<sup>11</sup> Judgment of 7 July 1989, Application No. 14038/88.

<sup>12</sup> Judgment of 12 May 2005, Application No. 46221/99.

<sup>13</sup> Judgment of 2 March 2010, Application No. 61498/08.

<sup>14</sup> *Al Nashiri v. Poland*, judgment of 24 July 2014, Application No. 28761/11.

imposed on him in the United States.<sup>15</sup> In May 2018, the Court delivered a similar judgment in *Al Nashiri v. Romania*.<sup>16</sup>

6. According to the World Coalition Against the Death Penalty<sup>17</sup> there are currently 106 countries that have completely abolished the death penalty. These include virtually all the Council of Europe member States, along with Assembly observers Canada and Mexico and Kyrgyzstan, whose parliament has Partner for Democracy status with the Assembly. Eight states have abolished the death penalty for ordinary crimes only, including Israel (an Assembly observer) and Kazakhstan, and twenty-eight provide for the death penalty in their legislation but do not implement it, including Morocco (whose parliament has Partner for Democracy status) and the Russian Federation (all these 36 states are abolitionist in practice). This means that, in all, 142 states, *i.e.* more than two thirds of the whole world, have abolished the penalty in law or in practice. Lastly, there are 56 states that carry it out (retentionist states), including the US and Japan (both Council of Europe observer states), Belarus and Palestine (whose legislative council has Partner for Democracy status). Since January 2017, three countries (Mongolia, Guinea and Burkina Faso) have abolished the death penalty for all crimes, one country (Guatemala) has abolished it for ordinary crimes only and Gambia and Malaysia have declared a moratorium on executions. Twenty States executed convicted persons in 2018 (three fewer than in 2017). The largest number of executions took place, in descending order, in China, Iran, Saudi Arabia, Vietnam, Iraq, Egypt, the USA, Japan, Pakistan and Singapore. According to the Amnesty International report, “Death sentences and Execution 2018”,<sup>18</sup> published on 10 April 2019, at least 690 executions were known to have taken place globally in 2018 and there has been an overall decrease in States resorting to the death penalty, with a decrease of 31% in the number of executions compared with 2017 (at least 993 executions). This figure represents the lowest number of executions that Amnesty International has recorded in the past decade.<sup>19</sup> This significant reduction is primarily linked to lower figures for some of the countries which had accounted for the majority of the world’s executions in previous years. In particular, following amendments to Iran’s anti-narcotics law, known executions in this country dropped from at least 507 in 2017 to at least 253 in 2018, which constitutes – a decrease of 50%. It should be noted that these figures do not include all the executions carried out in China, where data on the use of the death penalty remain classified as a state secret.<sup>20</sup> The methods of execution used include beheading, hanging, firing squad, lethal injections and stoning (two such executions were reported to Amnesty International in 2018 but have not been verified). The death penalty continued to be used in ways that violated international law and standards in 2018. In Iran, at least 13 public executions were recorded; and at least 7 people were executed for crimes committed while they were under the age of 18. At least one person was executed for such crimes in South Sudan. Juvenile offenders remained on death row in these two countries as well as in Pakistan and Saudi Arabia. In Japan, Maldives, Pakistan and the United States, a number of persons with a mental or intellectual disability were either executed or under sentence of death. Moreover, death sentences were imposed without the defendant being present (*in absentia*), amongst others, in Palestine.<sup>21</sup> It should also be noted that in 2018 Amnesty International recorded globally at least 2,531 death sentences in 54 countries, a slight fall compared with 2076 (2,591 death sentences in 53 countries).<sup>22</sup> Six countries were known to have imposed death sentences in 2018 after a hiatus,<sup>23</sup> while in five other countries Amnesty International did not record any capital sentence.<sup>24</sup> In total, at the end of 2018, at least 19,336 people were under sentence of death.<sup>25</sup> Commutations or pardons of death sentences were recorded in 29 countries (among others, in Morocco and in the USA) and at least 8 exonerations of prisoners under sentence of death in four countries (including two in the USA)<sup>26</sup>.

<sup>15</sup> See the latest decision of the Committee of Ministers adopted at their 1348th meeting (DH) (4-6 June 2019) [CM/Del/Dec\(2019\)1348/H46-18](#), and the report by our Committee colleague, Mr Pierre-Yves Le Borgn’ (France, SOC), on “The implementation of judgments of the European Court of Human Rights”, which discusses this question in detail, [Doc. 14340](#), paragraph 33.

<sup>16</sup> *Al Nashiri v. Romania*, judgment of 31 May 2018, ), Application No. 33234/12. See also the latest decision of the Committee of Ministers adopted at their 1348th meeting (DH) (4-6 June 2019) [CM/Del/Dec\(2019\)1348/H46-19](#).

<sup>17</sup> As at 25 November 2019, see <http://www.worldcoalition.org/worldday.html>.

<sup>18</sup> Amnesty International, [Global Report. Death sentences and executions 2018](#), 10 April 2019, p. 8.

<sup>19</sup> *Ibid.* It is possible that the total reported for 2018 represents one of the lowest figures that Amnesty International has recorded in any given year since it began its monitoring in 1979. However, changes in access to information, configuration of countries and methodology over the decades make it challenging to accurately compare this figure over a longer period.

<sup>20</sup> *Ibid.*, p. 9.

<sup>21</sup> *Ibid.*, p. 12. This also happened in Bangladesh and Egypt.

<sup>22</sup> *Ibid.*, p. 10. Amnesty International did not have official figures for death sentences in Nigeria, Sri Lanka and Zambia.

<sup>23</sup> Chad, Mauritania, Oman, Papua New Guinea, South Korea and Uganda.

<sup>24</sup> Brunei Darussalam, Equatorial Guinea, Laos, Maldives and Trinidad and Tobago.

<sup>25</sup> Amnesty International, *op. cit.*, p. 11.

<sup>26</sup> *Ibid.*

### 3. The situation country by country

#### 3.1. Russian Federation

7. As a new Council of Europe member state, the Russian Federation first signed Protocol No. 6 in April 1997. However, the Russian parliament has not yet ratified it. In 2008, the Russian Federation voted for the UN resolution for a global moratorium on executions. There have been no executions in the country since 1999<sup>27</sup>. The Russian Constitutional Court has played an active part in the *de facto* abolition of the death penalty in the Russian Federation. First of all, it prohibited death sentences until jury trials were established throughout the country. In autumn 2009, the Supreme Court asked the Constitutional Court if the introduction of a jury system by Chechnya<sup>28</sup> planned for 1 January 2010 meant the end of the moratorium and would therefore enable the resumption of death sentences.<sup>29</sup> Subsequently, on 19 November that year, the Constitutional Court decided to extend the moratorium indefinitely on the ground that it was a process that reflected “a trend in international law and was in accordance with the commitments entered into by the Russian Federation”. Following that decision, 697 death sentences were commuted to life imprisonment.<sup>30</sup>

8. A moratorium is a means of encouraging the permanent abolition of the death penalty. It provides a platform for *de jure* abolition but it may be dangerous to prolong it indefinitely since executions may be resumed. For example, in 2009 Thailand restarted executions after a six-year moratorium, as did Taiwan, which began executing people again after a five-year moratorium.<sup>31</sup> As in many other countries (including Turkey recently) the debate on restoring the death penalty occasionally flares up in the Russian Federation. After the March 2010 attacks on the Moscow metro, the Federation Council’s Judicial and Legal Affairs Committee began working on a draft law to reintroduce the death penalty for organisers of terrorist attacks that result in multiple loss of life.<sup>32</sup> In March 2016 and June 2017, the question of applying the death penalty, particularly for terrorists, was once again raised by certain members of parliament<sup>33</sup> and a bill to reintroduce the death penalty was tabled by some members of the Duma. In November 2017, Ramzan Kadyrov, the President of the Republic of Chechnya, also called for the restoration of the death penalty for terrorist offences.<sup>34</sup> In March 2018, a Russian MP proposed restoring it in cases of meddling in election campaigns.<sup>35</sup> However, a spokesman for the president and the Russian ombudsman stated that the government did not envisage suspending the moratorium on capital punishment.<sup>36</sup> In October 2019, after the dead body of a missing 9-year-old girl, Lisa Kiselyova, had been found, a large number of people called for restoration of the death penalty for perpetrators of paedophilia and infanticide. On 11 October 2019, Mr Yevgeny Primakov, a deputy of the State Duma, asked for the reintroduction of the death penalty.<sup>37</sup> According to the independent Levada Center’s<sup>38</sup> survey, the number of Russians supporting the death penalty increased from 44% to 49% in 2017. 33% of the respondents supported capital punishment as it had been used in the 1990s, while 16% favoured its use in even wider circumstances.<sup>39</sup> However, the Russian Orthodox Church strongly opposes the reinstatement of the death penalty. I wish to reiterate that it is very important for the Russian Federation to abolish the death penalty *de jure*, in particular by ratifying Protocol No. 6 to the Convention and/or signing and ratifying Protocol No. 13.

<sup>27</sup> The Russian Federation introduced a moratorium on executions in August 1996. However, executions were carried out between 1996 and 1999 in the Chechen Republic. *Ibid*, p. 49.

<sup>28</sup> The last Russian republic without a system of jury trials.

<sup>29</sup> “[La Russie s'éloigne de la peine de mort](#)”, *Le Monde*, 19 November 2009.

<sup>30</sup> Amnesty International, [Death sentences and executions 2010](#), 28 March 2011, p. 25.

<sup>31</sup> [Death Penalty Information Pack](#), Penal Reform International, p. 15.

<sup>32</sup> Kester Kenn Klomegah, [Death Penalty Lingers in Former Soviet Republics](#), IPS News, 5 April 2010.

<sup>33</sup> *Stay of execution? Russian MP proposes 'delayed death penalty' for convicted terrorists*, article in ‘Rossiyskaya gazeta’, 13 June 2017.

<sup>34</sup> RT, “Kadyrov proposes death penalty for terrorist recruiters”, 16 November 2017, [www.rt.com/politics/410062-kadyrov-backs-tougher-punishment-for/](http://www.rt.com/politics/410062-kadyrov-backs-tougher-punishment-for/).

<sup>35</sup> Moscow Times, [Russian Deputy Proposes Death Penalty for Foreigners Guilty of Election Meddling](#), 5 March 2018.

<sup>36</sup> Tass, “Kremlin does not discuss cancellation of freeze on capital punishment”, 15 June 2017, [www.tass.com/politics/951633](http://www.tass.com/politics/951633); RT/Russia, “Death penalty moratorium will never be lifted – Russian ombudsman”, 1 December 2017.

<sup>37</sup> *Deputy says Russia must re-introduce death penalty after Liza Kiseleva murder*, article in ‘Crime Russia’, 11 October 2019.

<sup>38</sup> Levada Analytical Center (Levada-Center) conducted the survey among 1,616 respondents across 50 Russian regions on 24-30 October 2019. Levada-Center is a Russian non-governmental research organisation. For further information: <https://www.levada.ru/en/about-us/>

<sup>39</sup> *Half of Russians Want the Death Penalty Back – Poll*, article in ‘The Moscow Times’, 7 November 2019.

### 3.2. United States

9. The United States ratified the International Covenant on Civil and Political Rights on 8 June 1992, making a reservation to Article 6, which enshrines the right to life, but it has not acceded to the Second Optional Protocol, aiming at the abolition of the death penalty. The United States has had Council of Europe observer status since 1996. Of the 50 US federal states, 21 (plus the District of Columbia) have abolished the death penalty (nine of these since 2007)<sup>40</sup> and four<sup>41</sup> have declared moratoriums on executions. In October 2018, the Supreme Court of the state of Washington declared the state's death penalty statute unconstitutional.<sup>42</sup> In March 2019, the Governor of California signed a moratorium on executions and in May 2019, the legislature of New Hampshire abolished capital punishment.<sup>43</sup> In August 2019, the governor of the state of Oregon signed a bill aimed at limiting the use of the death penalty, restricting its use only to certain types of murders.<sup>44</sup> In November 2019, activists from the NGO Virginians for Alternatives to the Death Penalty announced a new initiative aiming to end the death penalty in Virginia, the State with the second highest number of executions<sup>45</sup>. By contrast, in May 2019, the State of Delaware raised the possibility of reintroducing capital punishment<sup>46</sup>. Furthermore, in 2018, Nebraska, South Dakota and Tennessee resumed executions.<sup>47</sup> In February 2019, the Wyoming Senate rejected repeal of the death penalty for the sixth year in a row.<sup>48</sup>

10. However, the most regrettable decision as that of the Federal Government to resume capital punishment, announced on 25 July 2019 by the Department of Justice. As of July 2019, 62 inmates were on the federal death row.<sup>49</sup> I expressed my disappointment about the Federal Government's decision to reinstate the death penalty after a *de facto* 16-year moratorium on executions. This decision goes against the growing trend to eliminate the death sentence both in the United States and around the world<sup>50</sup>. In the previous 56 years, the Federal Government had executed only three persons. Although it had already scheduled three executions for December 2019, all these executions have been stayed.<sup>51</sup> One of was blocked by the 9th Circuit U.S. Court of Appeals on 4 October 2019 following a motion for stay of execution. The two other executions scheduled for December and two executions scheduled for January 2020 were halted by a decision of U.S. District Court Judge Tanya Chutkan of 20 November 2019 following complaints about the new execution protocol. The judge ruled that the new protocol violated longstanding federal law because the procedures to be used varied from state law. The Attorney General William Barr said that he would take the case to the Supreme Court if necessary.<sup>52</sup> According to an opinion poll, 46% of Americans support the federal government's decision to resume executions.<sup>53</sup>

11. Again according to Amnesty International, at the end of 2018 a total of 2,654 people were under sentence of death in the United States of America (most of them in California, Florida, Texas, Alabama and Pennsylvania). According to the Death Penalty Information Center, as of 1 July 2019, there were 2,656 people on death row. 2018 was the tenth consecutive year in which the United States was the only country on the American continent to have executed people. All the same, although the number of executions and death sentences recorded there in 2018 rose slightly compared with 2017, the country remained within the historically low trends of recent years. For the third year in a row, and the third time since 2006, it did not feature among the top five global executioners, with its position in the global ranking at 7<sup>th</sup>. In 2014, 35 people were executed,<sup>54</sup> in 2015 – 28,<sup>55</sup> in 2016 – 20, in 2017 – 23<sup>56</sup> and in 2018 – 25.<sup>57</sup> In 2019, 20 executions have already been carried out, eight in Texas, three in Georgia, three in Alabama, two in Florida, one in Missouri, two in

<sup>40</sup> See <https://deathpenaltyinfo.org/states-and-without-death-penalty> (as at 25 November 2019).

<sup>41</sup> California, Colorado, Oregon and Pennsylvania.

<sup>42</sup> See *State v. Gregory*. The Washington's Supreme Court ruled that the system of death penalty used by the state was arbitrary and racially discriminatory.

<sup>43</sup> I welcomed these positive developments by statements of [14 March 2019](#) and [5 June 2019](#).

<sup>44</sup> [Oregon Governor's Signs Bill Narrowing the Use of Death Penalty](#), 2 August 2019.

<sup>45</sup> [Could Virginia abolish the death penalty in 2020?](#), WUSA news, 20 November 2019.

<sup>46</sup> [Delaware lawmakers consider reinstating death penalty](#), The Associated Press, 15 May 2019.

<sup>47</sup> Amnesty International 2018, p. 14.

<sup>48</sup> Death Penalty News, [Wyoming Senate rejects death penalty repeal, one senator citing Jesus' crucifixion as her rationale](#), 15 February 2019.

<sup>49</sup> [Federal Government announces new execution protocol, sets five executions dates](#), 25 July 2019.

<sup>50</sup> See my [statement of 2 August 2019](#).

<sup>51</sup> <https://deathpenaltyinfo.org/executions/upcoming-executions>

<sup>52</sup> [Trump administration vows to take case to bring back death penalty to Supreme Court](#), CBS News, 22 November 2019.

<sup>53</sup> [46% of Americans support federal government resuming executions](#), YouGov, 1<sup>st</sup> août 2019.

<sup>54</sup> Amnesty International, [Death sentences and executions in 2014](#), p. 4

<sup>55</sup> Amnesty International, [Death sentences and executions in 2015](#), p. 12.

<sup>56</sup> Amnesty International, [Death sentences and executions in 2017](#), p. 13.

<sup>57</sup> Amnesty International 2018, p. 9.

Tennessee and one in South Dakota.<sup>58</sup> The number of death sentences also rose slightly compared with 2017: in 2014, at least 72 were handed down, followed by 52 in 2015, 32 in 2016,<sup>41</sup> in 2017 and 45 in 2018. According to Amnesty International, the decreases can be partly explained by the legal challenges that resulted in the revision of lethal injection protocols or problems faced by states in obtaining substances used in lethal injection procedures.<sup>59</sup> However, the resumption of executions in Florida and other states were linked to the resolution of legal or other obstacles relating to sourcing of substances used in lethal injection protocols.<sup>60</sup> Executions are mainly carried out in a limited number of states, especially in the south of the country. As at the end of 2018, according to the Amnesty International report for 2018, of the 30 non-abolitionist states, 11 have not carried out an execution for ten years.<sup>61</sup> However, Nebraska carried out its first execution since 1997, South Dakota - since 2012 and Tennessee - since 2009. In 2018, Texas nearly doubled its figure compared to the previous year (from 7 to 13), accounting for just over half of the country's total, after fewer stays of executions were issued by the state Supreme Court. In July 2018, Nevada came close to carrying out its first execution since 2006.<sup>62</sup> Moreover, in 2018, Arkansas, Missouri and Virginia refrained from carrying out any executions, but Missouri has already executed one person in 2019.<sup>63</sup>

12. According to the Death Penalty Information Center, since July 2010 almost all executions in the United States have been by lethal injection (with the exception of a small number of executions by electrocution). Several states use a mixture of three drugs: an anaesthetic or sedative, a paralysing agent and a drug to stop the heart. However, in the last few years the United States has encountered difficulties in procuring products for this purpose, especially anaesthetics, and has consequently resorted to questionable or even secret products or experimental combinations of substances, such as midazolam (a sedative the real effects or even origin of which are not known), pentobarbital or fentanyl (an opioid used as a pain medication). This difficulty can be partly put down to the fact that some European pharmaceutical groups refuse or no longer are allowed to export products for execution purposes. There are major consequences of this situation: some condemned inmates die in agony over an inordinately long period<sup>64</sup>, there are many witness reports of botched executions and cases showing that prison staff are not always qualified to carry out death sentence decisions (see, for example, the cases of , Alva Campbell <sup>65</sup> or Doy Lee Ham) .<sup>66</sup> In addition, after the release on 5 July 2018 of a revised protocol for lethal injections, 33 death row inmates in Tennessee brought a civil action because of the lack of clarity with regard to the new rules governing executions by means of the controversial use of a mixture of drugs, including midazolam.<sup>67</sup> Furthermore, some drug companies have even brought legal proceedings against states that use their products, including midazolam, in executions.<sup>68</sup> For example, in July 2018, an American drug company brought legal proceedings against the state of Nevada, and, as a result of it, in September 2018, the execution of Scott Raymond Dozier was halted.<sup>69</sup> Moreover, in August 2019, the Indiana Department of Correction confirmed that the state did not have the drugs necessary to execute any of the eight men who were on death row.

13. In 2008, the US Supreme Court ruled lethal injections constitutional; this position was also reaffirmed in the *Glossip v. Gross* judgment of 2015, in which it upheld the use of midazolam.<sup>70</sup> Some states are trying to get around the shortage of the drug normally used for lethal injections by testing new substances (such as fentanyl, which was used for the first time in a four-drug combination in Nebraska in the execution of Carey Dean Moore).<sup>71</sup> Others are considering other execution methods. In 2015, Utah decided to reinstate death by

<sup>58</sup> As at 26 November 2019. See <https://deathpenaltyinfo.org/executions/2019>. Last update: 13 November 2019.

<sup>59</sup> Amnesty International 2018, p. 14.

<sup>60</sup> Amnesty International 2018, p. 14.

<sup>61</sup> California, North Carolina, Colorado, Kansas, Kentucky, Montana, Nevada, New Hampshire, Oregon, Pennsylvania and Wyoming. Amnesty International 2018, p. 15.

<sup>62</sup> <https://deathpenaltyinfo.org/news/nevada-execution-halted-on-claims-state-obtained-execution-drug-through-subterfuge>

<sup>63</sup> Amnesty International 2018, p. 14 and <https://deathpenaltyinfo.org/executions/2019>.

<sup>64</sup> <http://www.deathpenaltyinfo.org/some-examples-post-furman-botched-executions?scid=8&did=478>.

<sup>65</sup> See Mr Cruchten [statement](#) of 16 November 2017 on the "failed" execution of Alva Campbell.

<sup>66</sup> Tracy Connor, [Lawyer describes aborted execution attempt for Doyle Lee Hamm as 'torture'](#), NBC News, 25 February 2018.

<sup>67</sup> [Tennessee: Inmate's lawyers look for holes in lethal injection rules during penalty challenge](#), 13 July 2018, Death Penalty News.

<sup>68</sup> "Drug companies don't want to be involved in executions, so they're suing to keep their drugs out", *Washington Post*, 13 August 2018.

<sup>69</sup> [Nevada delays its first execution in 12 years after a drug company objects](#), 12 July 2018, Death Penalty News and [Judge stops Nevada from using drug in execution](#), Las Vegas Review-Journal, 28 September 2018.

<sup>70</sup> [Indiana DOC doesn't have the drugs to execute death row inmates](#), Associated Press, 19 August 2019.

<sup>71</sup> <https://deathpenaltyinfo.org/node/6180>

firing squad.<sup>72</sup> Since 2018, Tennessee has re-introduced electrocution as a choice of the prisoner. Similarly, in South Carolina a bill was proposed in order to change the main method of execution.<sup>73</sup> Louisiana considered the reintroduction of hanging, firing squads or electrocution<sup>74</sup>, after a federal court order of December 2018 imposed a moratorium on executions.<sup>75</sup> Alabama has asked a Tennessee company's assistance to develop a new (controversial) protocol with nitrogen hypoxia, which deprives the condemned of oxygen,<sup>76</sup> Mississippi and Oklahoma have already authorised such method of executions<sup>77</sup> and, in Alabama, some inmates asked to be executed using it.<sup>78</sup> Lastly, some states also permit hanging.

14. The use of the death penalty in the United States also raises concerns with regard to the people executed. Although this is prohibited by international law and the Eighth Amendment to the United States Constitution, the United States has on several occasions executed death row inmates who were in all likelihood suffering from a mental disorder. According to some researchers, about one-fourth of people executed in the U.S.A. had a history of being diagnosed with a mental illness.<sup>79</sup> In particular, my predecessor, Mr Cruchten, was extremely shocked by the execution of Charles Morva, who had suffered from a mental disorder, in Virginia on 6 July 2017.<sup>80</sup> On 9 August 2018, Tennessee executed Billy Ray Irick, who showed signs of mental illness and, according to some witnesses, had not been sufficiently anaesthetised.<sup>81</sup> In August 2019, Tennessee executed, by electric chair, Stephen West, who had been receiving mental health treatment in prison.<sup>82</sup>

15. Until the 2005 Supreme Court judgment in *Roper v. Simmons* in 2005,<sup>83</sup> there had been executions of individuals who were minors at the time of the offences.<sup>84</sup> The United States also executes people over 70 years of age,<sup>85</sup> women<sup>86</sup> and foreign nationals,<sup>87</sup> including those who have not obtained the consular assistance to which they are entitled under the Vienna Convention on Consular Relations of 24 April 1963, which means it is in breach of international law.<sup>88</sup> It will be recalled that in 2004 the International Court of Justice (ICJ), following a lawsuit filed by Mexico, ruled against the United States in the *Avena* case<sup>89</sup> for a violation of the Vienna Convention and ordered the United States to carry out a judicial review of the convictions of 52 Mexican nationals. Nevertheless, Texas executed several Mexican nationals who had been deprived of consular protection.<sup>90</sup> For example, despite the calls by the United Nations' special rapporteurs and the Inter-

<sup>72</sup> Gilles Paris, "L'Utah: le peloton d'exécution plutôt que l'injection", *Le Monde*, 25 March 2015. According to the Death Penalty Information Center, this method is also used in Mississippi and Oklahoma.

<sup>73</sup> [Proposed SC bill would make electrocution main method of execution for death penalty inmates](#), WMBF News, 17 January 2019.

<sup>74</sup> [Electrocution, firing squads should be options for death penalty in Louisiana, AG Jeff Landry tells Gov. Edwards](#), KALB news, July 25, 2018.

<sup>75</sup> [Death sentences drastically decline: report says there was 'a sea change in public opinion'](#), The Advocate, 30 December 2018.

<sup>76</sup> [Sick and Shrouded in Secrecy: Alabama's Contract to Gas Humans to Death](#), Counterpunch, 5 November 2019.

<sup>77</sup> Washington Post, *Drug companies don't want to be involved in executions, so they're suing to keep their drugs out*, 13 August 2018.

<sup>78</sup> [Alabama: 8 death row inmates request execution by nitrogen gas](#), The Associated Press, 11 July, 2018.

<sup>79</sup> [Some Prisoners Executed Despite Mental Illness Diagnosis](#), MedPage Today, 28 October 2018,

<sup>80</sup> See Mr Cruchten statement of [13 July 2017](#).

<sup>81</sup> ["Tennessee executes Billy Ray Irick"](#), *Tennessean*, 10 August 2018; "Tennessee execution: Billy Ray Irick tortured to death, expert says in new filing", eu.tennessean.com, 7 September 2018.

<sup>82</sup> [Tennessee executes Stephen West by electric chair](#), USA Today, 15 August 2019.

<sup>83</sup> See <http://www.deathpenaltyinfo.org/u-s-supreme-court-roper-v-simmons-no-03-633>.

<sup>84</sup> The last person sentenced to death for a crime committed while still a minor was Scott Allen Hain, who was executed on 3 April 2003.

<sup>85</sup> See Mr Cruchten's statement of 20 April 2018, in which he condemned the execution of Walter Leroy Bloody, aged 83, by Alabama after spending 30 years in prison. Moreover, on 26 May 2017 Thomas Arthur, aged 75, was executed in Alabama – <https://www.amnesty.org/en/documents/amr51/6373/2017/en/>. In 2015, Cecil Clayton, aged 74, was executed in Missouri and in 2016 Brandon Jones, aged 72, was executed in Georgia. In February 2019, Texas executed Billie Coble, a 70-year-old man. See the database at <https://deathpenaltyinfo.org/views-executions>.

<sup>86</sup> The last woman to be executed was Kelly Gisserdamer (30 September 2015 in the state of Georgia).

<sup>87</sup> The El Salvador national Alfredo Prieto was executed in the United States (on 10 January 2015 in Virginia), despite a request from the Inter-American Commission on Human Rights to halt his execution Amnesty International [2015](#), p. 22.

<sup>88</sup> Amnesty International, [2014](#), p. 18.

<sup>89</sup> International Court of Justice, *Avena and Other Mexican Nationals (Mexico. v. United States of America)*, judgment of 31 March 2004, I. C. J. Reports 2004, p.12. See also the reactions by my predecessor Ms Karamanli:

<http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=4969&lang=2&cat=and>

<http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=4806&lang=2&cat=>

<sup>90</sup> See: <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=4969&lang=2&cat=and>  
<http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=4806&lang=2&cat=>

american Commission on Human Rights to stop the execution<sup>91</sup>, in November 2018, it executed Robert Moreno Ramos, who probably suffered from a mental disability.<sup>92</sup> Furthermore, prisoners remain on death row for a very long period after being sentenced to death. For example, in 2018 six people (out of 25) were executed after they had spent more than 30 years on death row and four people had been awaiting execution for 20-30 years. In 2019, eleven inmates (out of 20) were executed after at least 20 years spent on death row, out of whom three had spent more than 30 years there.<sup>93</sup>

16. The percentage of Americans who believe that the death penalty is applied fairly continues to decrease, falling below 50% in October 2018 for the first time: 49% of respondents said that the death penalty was applied fairly and 45% said that it was applied unfairly.<sup>94</sup> NGOs (such as Sister Helen Prejean's Ministry Against the Death Penalty) and lawyers are continuing to work for the complete abolition of capital punishment, especially by giving media exposure to executions and cases of wrongful convictions. However, despite some positive abolitionist tendencies, President Trump's Administration's restoration of the death penalty at federal level hardly seems likely to change the direction of the debate around the country.

### 3.3. Japan

17. Japan has been a Council of Europe observer state since 1996. It ratified the International Covenant on Civil and Political Rights on 21 June 1979 but has not ratified the Second Optional Protocol, aiming at the abolition of the death penalty. In Japan, nineteen crimes carry the death penalty (including crimes that do not involve the death of the victim). Amnesty International recorded three executions in 2015 (the same number as in 2014), three in 2016 (including one man aged 75 and one woman), four in 2017 and four in 2018<sup>95</sup> all by hanging. Amnesty International also reports new death sentences being handed down: four in 2015, three in 2016, three in 2017 and fifteen in 2018.<sup>96</sup> In 2018, the country more than tripled its annual figure (4 to 15) as a result of the hanging of 13 men in the high-profile case of the Aum Shinrikyo cult responsible for the deadly sarin gas attack on the Tokyo metro in 1995.<sup>97</sup> In August 2019, two men (of 64 and 50 years of age) were executed by hanging after being convicted for murder<sup>98</sup>; At the end of 2016, 141 prisoners remained under sentence of death,<sup>99</sup> but this figure was down to 116 at the end of 2018 (109 of these 116 convicts were at risk of execution).<sup>100</sup> Currently, 114 persons remain on death row.<sup>101</sup>

18. Many Japanese practices relating to the death penalty alarm human rights activists in particular. Some executions involved men whose appeal to secure a retrial was still pending before the courts. For example, nine of those who were executed in July 2018 had made applications for a retrial that were still before the courts at the date of their execution.<sup>102</sup> Another disturbing fact was that Teruhiko Seki was executed in December 2017 even though he was only 19 years of age at the time of the crime of which he was convicted.<sup>103</sup> Under Japanese law, capital punishment may not be imposed on a person who was under 18 when the crime was committed or on an "insane" person". Prisoners are often given only a few hours' notice of their execution and their families and lawyers are informed only after it has taken place.<sup>104</sup>

19. Amnesty International points out that people with mental disabilities have been sentenced to death in Japan and are still on death row.<sup>105</sup> Moreover, people sentenced to death live in very questionable conditions. They are isolated from other inmates and their contacts with the outside world are limited to rare and closely supervised visits from members of their families, their lawyers and other officially authorised visitors. Some

<sup>91</sup> UN, Office of the High Commissioner for Human rights (OHCHR), [UN experts urge US to halt Texas execution of Mexican Roberto Ramos Moreno](#), 13 November 2018.

<sup>92</sup> [Texas executes Robert Moreno Ramos, amid pleas for case review](#), The Texas Tribune, 14 November 2019.

<sup>93</sup> As of 25 November 2019, <https://deathpenaltyinfo.org/executions/2019>.

<sup>94</sup> [New Low of 49% in U.S. Say Death Penalty Applied Fairly](#), Gallup, 22 October 2018.

<sup>95</sup> Amnesty International 2017, p. 19.

<sup>96</sup> *Ibid.*

<sup>97</sup> Amnesty International 2018, pp. 19 and 20, and Mr Cruchten's [statement of 9 July 2018](#). In addition, two men were executed on 27 December 2018.

<sup>98</sup> Amnesty International, [Japan: two hanged in deplorable move](#), 2 August 2019.

<sup>99</sup> Amnesty International 2016, p. 22, and Amnesty International [2015](#), pp. 33-34.

<sup>100</sup> *Ibid.*, p. 23.

<sup>101</sup> As of 26 November 2019, see at <http://www.worldcoalition.org/Japan>.

<sup>102</sup> Amnesty International, [Japan: Unprecedented spate of executions continues as six more Aum cult members hanged](#), 26 July 2018, and [Japan: Executions of seven Aum cult members fails to deliver justice](#), 6 July 2018.

<sup>103</sup> [Japan hangs two death row inmates, including man who killed Chiba family as a minor](#), *The Japan Times*; 19 December 2017.

<sup>104</sup> Amnesty International, [Japan: Two hanged as reprehensible executions continue](#), 13 July 2017.

<sup>105</sup> Amnesty International 2018, p. 22.



inmates, such as Iwao Hakamada (see below) and Kenji Matsumoto<sup>106</sup> showed signs of seriously disturbed thinking and behaviour due to their detention. Finally, Japan is one of the countries with the longest periods spent on death row, sometimes over thirty years. Unfortunately, as reported by the International Federation for Human Rights,<sup>107</sup> Mr Gunnar Jansson, a former Chair of the Committee on Legal Affairs and Human Rights, and Emma Bonino, a member of the European Parliament on a visit to Japan in 2002, few people can have access to the places where condemned inmates are executed or even meet them.<sup>108</sup> The release of death row inmates found to be innocent or their release pending a retrial has sparked heated debate in Japan concerning the death penalty. The best-known case is that of 83-year-old Iwao Hakamada, who has spent more than 40 years on death row. Owing to new doubts about his guilt (it is likely that his “confessions” were forced out of him by the police during a twenty-day interrogation), the Japanese courts decided to release him in March 2014. However, in June 2018 the Tokyo High Court refused to grant him a retrial. Following an appeal, the case is currently being considered by the Supreme Court.<sup>109</sup>

20. On 20 August 2014, the United Nations Human Rights Committee voiced its concerns about the situation of the death penalty in Japan in its concluding observations on the sixth periodic report of Japan. Firstly, it was concerned that some of the 19 crimes that carried the death penalty did not comply with the Covenant’s requirement of limiting capital punishment to the “most serious crimes”. Secondly, apart from the above-mentioned faults in the system, the Committee also pointed out that the confidentiality of meetings between lawyers and death row inmates was not guaranteed; thirdly, the examinations to decide whether a prisoner was sane were not independent. Fourthly, it emphasised that an application for a retrial or a pardon did not have the effect of staying the execution and was ineffective. Lastly, the Committee also reported that the death penalty had been handed down on various occasions as a result of forced confessions.<sup>110</sup> The situation in Japan was again discussed by the UN Human Rights Committee on 11 December 2017 and a list of issues was drawn up prior to the seventh periodic report of Japan.<sup>111</sup> In response to the recommendations and remarks in the 2014 report, NGOs emphasised that the problems identified had not been resolved.<sup>112</sup> The number of crimes subject to the death penalty (19) is still the same, an independent system for considering the mental health of inmates has still not been put in place and applications for a review of procedures have no suspensive effect. There is a ray of hope in the Supreme Court’s ruling of 10 December 2013 that meetings between persons sentenced to death and their lawyers should be confidential, save in exceptional circumstances. However, discussions between the members of the Aum Shinrikyo cult and their lawyers were held in the presence of prison staff.

21. On 7 October 2016, for the first time, the Japanese Federation of Bar Associations issued a declaration stating its opposition to the death penalty and calling on the authorities to abolish it by 2020.<sup>113</sup> However, capital punishment still has the broad support of Japanese society (according to a survey conducted in 2014, more than 80% of the population consider the death penalty as an ‘unavoidable punishment’ for those who have committed heinous crimes<sup>114</sup>) and the authorities are not considering abolishing it or introducing a new moratorium on executions (a moratorium was instituted between November 1989 and March 1993),<sup>115</sup> despite the most recent recommendations made by a large number of states in connection with the last Universal Periodic Review (UPR) by the United Nations.<sup>116</sup> Last December, dozens of parliamentarians established a group for discussing the future of Japan’s death penalty system, including the potential introduction of lifetime imprisonment without parole<sup>117</sup>.

<sup>106</sup> Amnesty International, p. 32.

<sup>107</sup> FIDH, [“The Death Penalty In Japan, A Practice Unworthy of a Democracy”](#), Report of the International investigation mission, no. 359, March 2003, p. 19.

<sup>108</sup> Philippe Pons, [“Au Japon, il ne faut pas ‘troubler l’âme’ des condamnés à mort”](#), *Le Monde*, 25 March 2005.

<sup>109</sup> Justin McCurry [“Japanese man freed after 45 years on death row as court orders retrial”](#), *The Guardian*, 27 March 2014, and Amnesty International, [Japan: Longest-serving death row inmate deserves retrial despite court ruling](#), 11 June 2018.

<sup>110</sup> Human Rights Committee, Concluding observations on the sixth periodic report of Japan, [CCPR/C/JPN/CO/6](#), 20 August 2014, para. 13.

<sup>111</sup> [CCPR/C/JPN/QPR/7](#), 11 December 2017.

<sup>112</sup> See the reports of the International Federation for Human Rights (FIDH) and the Center for Prisoners’ Rights (CPR), Joint submission for the adoption of the List of Issues, Japan, United Nations Human Rights Committee (CCPR) – 121st session, 27 July 2018, and Human Rights Now, Information for LOIPR, Report on Japan, 24 July 2017.

<sup>113</sup> Amnesty International 2016, , p. 22.

<sup>114</sup> [Japan’s new Justice Minister Katsuyuki Kawai pledges reform with a focus on immigration](#), Japan Times, 30 September 2019.

<sup>115</sup> [“Japan has no immediate plans to review death penalty, says minister”](#), *The Mainichi*, 27 July 2018.

<sup>116</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Japan, A/HRC/37/15, 4 January 2018.

<sup>117</sup> [Japan hangs 2 death-row inmates: 1st executions this year](#), Japan Today, 2 August 2019..

### 3.4. Israel

22. First of all, under a law passed in 1954, Israel has abolished the death penalty for ordinary crimes. This law maintains the legality of the death penalty for certain crimes, such as genocide, crimes against humanity, mass crimes, treason and crimes against the Jewish people. Since the creation of the State of Israel, the death penalty has been carried out only once.<sup>118</sup> The country has sponsored General Assembly resolutions calling for a moratorium on the use of the death penalty, the most recent of these being the fifth and sixth resolutions,<sup>119</sup> thereby demonstrating its commitment to its abolition.

23. However, it is important to point out that this law does not prevent the use of the death penalty, especially as the terms “treason” or “crimes against the Jewish people” are subject to interpretation. In the ongoing climate of conflict experienced by the country, there are more and more calls for the restoration of the death penalty. In 2014, a number of Israeli ministers called for its reintroduction, for example Yisrael Katz, the Minister of Transport, who demanded its reinstatement in May that year as a deterrent for certain Palestinian prisoners. The Housing Minister, Uri Ariel, also called for its reintroduction for terrorists after the kidnapping and murder of three Jewish teenagers.<sup>120</sup> In July 2015, the Knesset rejected a bill that would have made it easier for courts to sentence to death those convicted of terrorism-related offences, but in March 2016 the issue was once again raised in the Israeli parliament.<sup>121</sup> On 3 January 2018, the Knesset gave its preliminary agreement to this draft law – a worrying development to which Mr Cruchten responded with a statement reiterating that observer status with the Assembly encourages commitment to the abolition of the death penalty.<sup>122</sup> The adoption of this draft law been postponed on several occasions since last January and the Defence Minister, Avigdor Liberman, has called for it to be passed to make it easier to sentence terrorists (*i.e.* Palestinians) to death, by requiring only majority, as opposed to unanimous agreement of the three judges. However, the Attorney General, Avichai Mandelblit, has come out against such a law.<sup>123</sup> In November 2018, the then Minister of Defence, Avigdor Liberman, accused his coalition partners of sabotaging the draft law.<sup>124</sup> In February 2019, some ministers called for the use of the death penalty after the savage murder in Jerusalem of a teenage girl by a Palestinian man.<sup>125</sup> Furthermore, Israel is not a Party to the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty.<sup>126</sup>

### 3.5. Kazakhstan

24. Although it is not a Party to the Second Optional Protocol to the ICCPR, Kazakhstan has gradually reduced the scope of the death penalty. Since 1998, the number of crimes that carry the death penalty in peacetime has been significantly reduced. Although capital punishment has been abolished for ordinary crimes, it still applies to offences that constitute either terrorist acts leading to loss of life or to certain serious crimes committed in wartime, a fact criticised by the UN Human Rights Committee in August 2016.<sup>127</sup> However, a 2014 reform of the Criminal Code raised the number of offences subject to the death penalty from 18 to 19 and came into force on 1 January 2018.<sup>128</sup> On 18 December 2003, President Nursultan Nazarbayev issued a moratorium on executions, which was welcomed on 19 December 2003 by Mr Peter Schieder, then President of the Assembly.<sup>129</sup> Since 12 May 2003 (the date of the last execution), no execution has been carried out in the country. Article 47(2) of the Kazakhstan Criminal Code of 2014<sup>130</sup> prohibits the death penalty for individuals under 18 years of age, women and people over 65. In December 2012, 2014, 2016 and 2018, Kazakhstan voted in favour of the UN General Assembly resolutions calling for a moratorium on the use of the death penalty.<sup>131</sup>

<sup>118</sup> In 1962, Adolph Eichmann was hanged for his involvement in the Holocaust.

<sup>119</sup> Resolutions A/RES/69/186 and A/RES/71/187, Moratorium on the use of the death penalty, adopted on 18 December 2014 and 19 December 2016 respectively.

<sup>120</sup> Amnesty International [2014](#), p. 49.

<sup>121</sup> Amnesty International, [Israel: Human Rights Situation Remains Dire](#), p. 15.

<sup>122</sup> See his statement of 4 January 2018.

<sup>123</sup> Toi Staff, [“Defense minister urges colleagues to endorse death penalty for terrorists”](#), *The Times of Israel*, 25 July 2018.

<sup>124</sup> *Peine de mort: Liberman accuse la coalition d’avoir sabordé son projet de loi*, *Times of Israel*, 21 November 2018.

<sup>125</sup> [Death Penalty for Palestinian Who Savagely Murdered Jewish Teen?](#), *Israel Today*, 10 February 2019.

<sup>126</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-12&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en).

<sup>127</sup> Concluding observations on the second periodic report of Kazakhstan, CCPR/C/KAZ/CO/2, paragraph 17.

<sup>128</sup> International Commission against the Death Penalty, [How States abolish the death penalty. 29 Case-Studies, Second edition](#), May 2018, p. 32.

<sup>129</sup> Peter Schieder welcomes moratorium on executions in Kazakhstan, PACE press release of 19 December 2003, 660a(2003).

<sup>130</sup> <http://www.legislationline.org/documents/section/criminal-codes/country/21>.

<sup>131</sup> International Commission against the Death Penalty, [How States abolish the death penalty. 29 Case-Studies, Second edition](#), May 2018, p. 32. (Fn 34).

25. At the end of 2017, following a judgment in November 2016, Ruslan Kulekbayev was still sentenced to death for terrorism-related acts<sup>132</sup> having killed 10 people in Almaty in July that year. This was the sixth death sentence handed down since President Nazarbayev signed a moratorium on executions in 2003. Since then, all death sentences have been commuted to life imprisonment<sup>133</sup> and no execution or death sentence has been recorded.

### 3.6. *Kyrgyzstan*

26. Kyrgyzstan abolished the death penalty in 2007. On 11 February 2010, it ratified the Second Optional Protocol to the ICCPR, making any reinstatement of capital punishment impossible,<sup>134</sup> a fact welcomed by the Assembly in [Resolution 1984 \(2014\)](#), Request for Partner for Democracy status with the Parliamentary Assembly submitted by the Parliament of the Kyrgyz Republic.<sup>135</sup>

### 3.7. *Morocco*

27. Morocco is not a Party to the Second Optional Protocol to the ICCPR. As an Assembly partner for democracy, the Moroccan Parliament has undertaken to continue its efforts “to raise the awareness of the public authorities and the main players in politics and civil society of the need to make progress in the discussion of [...] the death penalty” and to continue “to encourage the authorities concerned to maintain the de facto moratorium that has been established on executions of the death penalty since 1993”.<sup>136</sup> Morocco has not carried out the death penalty since 1993, although 93 people remain under a death sentence.<sup>137</sup> However, such sentences are still handed down. In 2015, as reported by Amnesty International, nine people were sentenced to death.<sup>138</sup> In 2016, six people were given this sentence (as in 2015, this figure also includes the Western Sahara), while some people given the death penalty had their sentences commuted or were pardoned.<sup>139</sup> In 2017, at least 15 people were given death sentences and the authorities commuted four sentences.<sup>140</sup> In 2018, ten people were sentenced to death. The 2011 Constitution expressly enshrines the “right to life” but without abolishing the death penalty. In 2018, the authorities granted five pardons<sup>141</sup> and in 2019, King Mohammed VI has pardoned a total of 33 people, commuting their death sentences to life imprisonment.<sup>142</sup> However, on 18 July 2019, the anti-terrorist court in Sale issued death sentences against three men accused of the savage murder of two Scandinavian tourists in the Atlas mountains in December 2018 and of belonging to a group associated with Daesh. I reacted to this decision in my statement of 24 July 2019, in which I stressed that neither the fight against terrorism nor the most serious crimes could justify the death penalty, calling on the Moroccan authorities not to apply this penalty. On 31 October 2019, however, the Rabat Court of Appeal upheld these sentences.<sup>143</sup>

28. The Moroccan Coalition against the Death Penalty, which groups together seven NGOs, is the leading organisation in Morocco’s abolition movement.<sup>144</sup> It is accompanied in this fight by the Network of Parliamentarians against the Death Penalty in Morocco, the National Human Rights Council and lawyers from six different bar associations. They come together to fight against capital punishment.<sup>145</sup> However, Moroccan society is still split regarding its abolition.<sup>146</sup> In its most recent resolution on evaluation of the partnership for democracy in respect of the parliament of Morocco, of May 2019, the Assembly expressed regret that few progress had been achieved with regard to the death penalty and once again called on the Moroccan Parliament to abolish the death penalty in law, and, pending abolition, to declare a *de jure* moratorium on executions.<sup>147</sup> This question was also considered in the recent report of the Committee on Political Affairs and

<sup>132</sup> Amnesty International [2017](#), p. 33.

<sup>133</sup> Amnesty International, [Kazakhstan 2017/2018](#).

<sup>134</sup> See “[Kirghizstan definitively outlaws death penalty](#)”.

<sup>135</sup> [Resolution 1984 \(2014\)](#), paragraph 6.

<sup>136</sup> “Moroccan Parliament obtains ‘Partner for Democracy’ status with PACE”, Press release – AP032(2011), 21 June 2011.

<sup>137</sup> As at 26 November 2019, see <http://www.worldcoalition.org/Morocco>.

<sup>138</sup> Amnesty International [2015](#), p. 65.

<sup>139</sup> Amnesty International [2016](#), pp. 5-6.

<sup>140</sup> Amnesty International [2017](#), pp. 30 and 32.

<sup>141</sup> Amnesty International 2018, p. 37.

<sup>142</sup> <https://www.peinedemort.org/document/actualites?zonegeo=MAR>

<sup>143</sup> [Morocco backpacker murders: Court confirms death penalty for killers](#), *Deutsche Welle*, 31 October 2019.

<sup>144</sup> Téo Cazenaves, “[Peine de mort: le Maroc, ‘pays abolitionniste en pratique’](#)”, *Le Desk*, 12 April 2017.

<sup>145</sup> Fouâd Harit, “[Abolition de la peine de mort au Maroc: les avocats rejoignent le mouvement](#)”, 9 October 2014.

<sup>146</sup> Yassine Benargane, “[Au Maroc, la journée mondiale de l’abolition de la peine de mort est passée presque inaperçue](#)”, Yabiladi, yabiladi.com, 11 October 2016.

<sup>147</sup> [Resolution 2282 \(2019\)](#) adopted by the Assembly’s Standing Committee on 24 May 2019 paragraph 5.1.

Democracy on the “Evaluation of the partnership for democracy in respect of the Parliament of Morocco”<sup>148</sup>. . In December 2018 the Moroccan delegation abstained<sup>149</sup> in the vote on the seventh UN Resolution on a moratorium on the use of the death penalty<sup>150</sup>; it had abstained on the previous six votes on similar resolutions.<sup>151</sup> In December 2016, the Human Rights Committee also expressed concern about proposed changes to the Criminal Code which would extend the scope of the death penalty to three new categories of offences (despite a reduction in the number of offences that carry capital punishment). These concerns were also voiced by Amnesty International in September 2017.<sup>152</sup> After undergoing the Universal Periodic Review by the United Nations, Morocco rejected in May 2018<sup>153</sup> the recommendation that it bring about the immediate and total abolition of the death penalty.<sup>154</sup> In January 2019, the Moroccan Organisation of Human Rights urged Morocco to join an international agreement ending capital punishment and the new president of the National Council of Human Rights, Ms Amina Bouayach, strongly criticised the ‘indecisiveness’ of the government towards the complete abolition of the this sentence.<sup>155</sup>

### 3.8. *Palestinian Authority*

29. By becoming a partner for democracy on 4 October 2011,<sup>156</sup> the Palestinian National Council (PNC) undertook to promote discussions in support of the abolition of the death penalty in the Criminal Code and to continue the de facto moratorium in force in the West Bank since 2005. In the territories administered by the Palestinian Authority, the West Bank continues to pass death sentences, but no execution has been recorded since 2005. However, death sentences are still handed down and carried out in the Gaza Strip, which has been under Hamas control since 2007. The methods used are hanging or firing squad. According to Palestinian law, death sentences must be carried out with the agreement of the Palestinian President; however, since 2010, this requirement has never been complied with.<sup>157</sup> In [Resolution 2105 \(2016\)](#)<sup>158</sup> on evaluation of the partnership for democracy in respect of the Palestinian National Council, the Assembly noted that while a *de facto* moratorium on executions had been in place since 2005 in the West Bank, courts in Gaza continued to hand down death penalty sentences and Hamas authorities continued to carry out illegal executions. The Assembly roundly condemned these executions and urged the PNC to intervene with Hamas to stop executions in Gaza and to abolish the death penalty in the Palestinian Criminal Code. Despite this call, further executions have been carried out in the Gaza Strip.

30. No executions were recorded in 2015 although twelve death sentences were handed down (10 in Gaza and two in the West Bank).<sup>159</sup> In 2016, three executions were carried out and 21 death sentences issued in the Hamas-run Gaza Strip; at least 21 persons were under sentence of death at the end of 2016.<sup>160</sup> In 2017, six executions were carried out in the Gaza Strip (three in April and three in May), and 16 death sentences were handed down (including one in absentia).<sup>161</sup> No execution was recorded in 2018, but thirteen death sentences were issued by courts in the Gaza strip under the Hamas administration (including three in absentia).<sup>162</sup> According to the World Coalition against the Death Penalty and 46 people are currently under sentence of death.<sup>163</sup> In 2019, three death sentences were issued in Palestinian Authority controlled areas<sup>164</sup>.

<sup>148</sup> [Doc. 14659](#), adopted on 21 October 2018, rapporteur: Mr Bogdan Klich (Poland, EPP/CD), Section 3.1. See also [Doc. 14853](#), this committee’s opinion, rapporteur Mr André Vallini (France, Socialists, Democrats and Greens Group), 1 April 2019.

<sup>149</sup> See [Doc. 14853](#), Committee Opinion, Committee on Legal Affairs and Human Rights, Rapporteur Mr André Vallini (France, Socialists, Democrats and Greens Group), 1 April 2019.

<sup>150</sup> See UN General Assembly, Resolution A/RES/73/175, adopted on 17 December 2018.

<sup>151</sup> <https://ledesk.ma/2017/04/12/peine-de-mort-le-maroc-pays-abolitionniste-en-pratique/>.

<sup>152</sup> Human Rights Committee, CCPR/C/MAR/CO/6 of 1 December 2016, paragraph 19, and Amnesty International, [public statement](#) of 21 September 2017.

<sup>153</sup> Amnesty International, [Death sentences and executions in 2017](#), p. 32.

<sup>154</sup> The Kingdom of Morocco’s position on the Recommendations issued after review of its National Report under the third cycle of the Universal Periodic Review, August 2017, Addendum 1 of the outcome of the review, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MAIndex.aspx>.

<sup>155</sup> [Justice Minister: Morocco is Taking Steps Toward Ending Death Penalty](#), Morocco World News, 19 January 2019.

<sup>156</sup> [Resolution 1830 \(2011\)](#) on the Request for partner for democracy status with the Parliamentary Assembly submitted by the Palestinian National Council, 4 October 2011.

<sup>157</sup> Amnesty International, [Palestine: Hamas must urgently halt executions of three men sentenced after unfair trial](#), 24 May 2017.

<sup>158</sup> Adopted on 19 April 2016, paragraph 7.3.

<sup>159</sup> Amnesty International 2015, , p. 65.

<sup>160</sup> Amnesty International 2016, , p. 38.

<sup>161</sup> Amnesty International 2017, , p. 32.

<sup>162</sup> Amnesty International 2018, p. 37.

<sup>163</sup> As at 26 November 2019, see <http://www.worldcoalition.org/Palestinian-Authority>.

<sup>164</sup> The first two death sentences were handed down on 29 January and 3 February, while the last one, against a 69-year-old man, on 9 July; see my statements of 21 February 2019 and of 16 July 2019.

31. Some NGOs, including Amnesty International and the PCHR, also condemn procedures preceding a death sentence that do not meet international fair-trial standards, with convictions based on confessions probably extracted through torture or ill-treatment. Death sentences have also been passed in absentia.

32. On 6 June 2018, the Palestinian Authority signed the Second Optional Protocol to the ICCPR, a fact that Mr Cruchten welcomed in a statement, stressing the need to adopt legislative measures that guarantee compliance of the Criminal Code with these new international commitments. After the signing, the establishment of a moratorium on executions in the Gaza Strip is all the more necessary.<sup>165</sup> In my statements of 21 February and 16 July 2019, I strongly urged Hamas not to implement any death sentence and to abstain from using the death penalty. I also called on the Palestinian authorities to introduce without delay a moratorium on all executions within its jurisdiction and to amend its criminal legislation in compliance with their international obligations<sup>166</sup>.

### 3.9. Jordan

33. Jordan is not a Party to the Second Optional Protocol to the ICCPR. In Resolution 2086 (2016) of 26 January 2016, in which the Assembly conferred “partner for democracy” status on the Jordanian parliament, it also called for the abolition of the death penalty in that country.

34. In Jordan, a moratorium on executions was imposed in 2006. Nonetheless, the death penalty continues to be provided for in the Criminal Code. Amnesty International reported that there had been two executions (one of an Iraqi female and one of an Iraqi male, by hanging) and three death sentences passed in Jordan in 2015.<sup>167</sup> There were no executions in 2016 but thirteen death sentences were handed down.<sup>168</sup> However, despite the moratorium, in March 2017, fifteen persons were executed (one convicted of murder and fourteen others of terrorism-related offences) within a day, which was strongly condemned by the President of the Assembly.<sup>169</sup> In all, there were fifteen executions in 2017 and at least ten death sentences were recorded.<sup>170</sup> In 2018, no execution took place, but at least 16 people were condemned to death sentence.<sup>171</sup> To the knowledge of the World Coalition Against the Death Penalty, 120 people are currently under a death sentence.<sup>172</sup> On 10 February 2019, the Jordan State Security Court issued its second and final ruling concerning a terrorist attack that had taken place in southern Jordan in December 2016: two brothers were sentenced to death by hanging.<sup>173</sup>

35. In Resolution 2183 (2017) of October 2017,<sup>174</sup> the Assembly regretted the fact that while a de facto moratorium on executions was purportedly introduced in 2006, the courts continue to hand down death sentences. It called on the Jordanian Parliament to intervene with the authorities to stop executions and reinstate the moratorium pending the abolition of the death penalty in the Criminal Code, in keeping with the commitment to act to abolish capital punishment, which is one of the criteria for granting partner for democracy status (Rule 64.2 of the Assembly’s Rules of Procedure). The Assembly has decided to continue to follow the implementation of the reforms in Jordan very closely and to offer the Jordanian Parliament its full assistance and to I make a new assessment of this partnership within two years from October 2017. In my statement of 21 February 2019, backed by Mr Mogens Jensen (Denmark, SOC), rapporteur of the Committee on Political Affairs and Democracy on the evaluation of the partnership for democracy with the Parliament of Jordan, we strongly condemned the two death sentences passed on 10 February 2019 and called on the Jordanian authorities not to implement any death sentence and to abolish the capital punishment set out in the Criminal Code, stressing that the death penalty was not an acceptable weapon in the fight against terrorism.

<sup>165</sup> See Mr Cruchten statement of 14 June 2018.

<sup>166</sup> See my statement of 16 July 2019.

<sup>167</sup> Amnesty International 2015, p. 52.

<sup>168</sup> Amnesty International 2017, p. 30.

<sup>169</sup> See his statement of 4 March 2017.

<sup>170</sup> Amnesty International 2017, pp. 38 and 39.

<sup>171</sup> Amnesty International, p. 31.

<sup>172</sup> As at 26 November 2019, see: <http://www.worldcoalition.org/Jordan>.

<sup>173</sup> See my statement of 21 February 2019.

<sup>174</sup> Evaluation of the partnership for democracy in respect of the Parliament of Jordan, Resolution 2183 (2017), adopted by the Assembly on 10 October 2017, paragraphs 6.8 and 13. See also the report of the Committee on Political Affairs and Democracy, rapporteur: Ms Josette Durrieu (France, SOC), Doc. 14399 and addendum, and the opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Andrea Rigoni (Italy, ALDE), Doc. 14412.

### 3.10. Belarus

36. Belarus entered into international commitments by ratifying the International Covenant on Civil and Political Rights on 12 November 1973 but is not a Party to the Second Optional Protocol. It is the only state on the continent of Europe that still carries out executions in its territory. The method of execution employed is the firing squad. In 2015, Amnesty International reported that there had been no executions but at least two death sentences were recorded.<sup>175</sup> In April 2016, Belarus resumed executions after a 17-month hiatus; at least four executions were carried out<sup>176</sup> (including that of Ivan Kulesh, who apparently suffered from a personality disorder).<sup>177</sup> Amnesty International also reported that four death sentences had been handed down in 2016.<sup>178</sup> In 2017, there were at least two executions and at least four death sentences.<sup>179</sup> Nonetheless, according to the World Coalition against the Death Penalty, the number of persons under sentence of death currently stands at four.<sup>180</sup> At least four executions (of Aliaksei Mikhalenya, Viktor Liotau in May and of Ihar Hershankou and Syamyon Berazhny in November) were carried out – doubling the yearly total persons compared to 2017 – and at least two death sentences handed down (Viachaslau Sucharka and Aliaksandr ZylNIKau) in 2018.<sup>181</sup> So far in 2019, three persons have been sentenced to death (Aliaksandr Asipovich, Viktor Paulau and Viktor Serhil; the judgments against the latter two are not yet final). In June 2019, Aliaksandr ZylNIKau was executed, which I condemned in my statement of 17 June 2019.<sup>182</sup> As of July 2019, Viachaslau Sucharka was still awaiting execution.<sup>183</sup> It should be borne in mind that since figures on the application of the death penalty are classified as a state secret, these are minimum estimates and the actual figures may be higher. Indeed, the exact number of persons sentenced to death and/or executed in Belarus is unknown; however, the Belarusian Minister of Justice estimated that 245 death sentences had been pronounced between 1994 and 2014, while human rights NGOs affirmed that at least 400 persons had been executed since 1991 (when the country gained its independence).<sup>184</sup>

37. The executions in Belarus raise a number of concerns in the light of two practices contrary to international law. Firstly, in the last few years, it has been revealed that several sentences have been carried out in secret. The Belarusian authorities execute people sentenced to death without giving them prior notice or informing their families or their lawyers. Furthermore, families are unable to recover the body of the executed family member or even to find out where he or she is buried. For example, on 8 May 2014 the Mogilev Regional Court announced that Rygor Yuzepchuk<sup>185</sup> had been executed in Belarus without stating the date of his execution or where the body had been taken. Another example is that of the aforementioned Siarhei Vostrykau, executed in April 2017: the Homel Regional Court did not inform his mother of his death until the beginning of May 2017. Article 175 of the Criminal Executive Code allows the government not to return the bodies of those executed to relatives and not to disclose the place of burial.<sup>186</sup> Recently, Aliaksandr ZylNIKau's lawyer was not informed about his client's execution in June 2019.<sup>187</sup>

38. Secondly, many death sentences are passed at the end of unfair trials during which proof of guilt is provided by "confessions" drawn up after the use of torture or in the absence of any defence counsel.<sup>188</sup> The Belarusian authorities do not hesitate to carry out secret executions of death row inmates whose cases are being considered by the Human Rights Committee. In 2010 and 2011, Andrei Zhuk and Vasily Yuzepchuk, as well as Oleg Grishkovtsov and Andrei Burdyko, whose cases were being considered by the UN Human Rights Committee, were executed despite complaining that they had been tortured and not been given a fair trial. In April 2014, Belarus executed 23-year-old Pavel Selyun, who had been sentenced to death in June 2013. At

<sup>175</sup> Amnesty International 2015,, p. 44.

<sup>176</sup> European Union, Directorate General for External Policies of the Union, "Human rights in Belarus: The EU's role since 2016", PE 603.870, June 2018, p. 38.

<sup>177</sup> Amnesty International 2016,, pp. 28-29.

<sup>178</sup> *Ibid*, p. 28.

<sup>179</sup> Amnesty International 2017, p. 28, and European Union, Directorate General for External Policies, "[Human rights in Belarus: The EU's role since 2016](#)", PE 603.870, June 2018, p. 38 (Fn 152).

<sup>180</sup> As at 26 November 2019, see: <http://www.worldcoalition.org/Belarus>.

<sup>181</sup> Amnesty International 2018, pp. 29-30.

<sup>182</sup> See my statement of 17 June 2019.

<sup>183</sup> UN, Report of the Special rapporteur on the human rights situations in Belarus, A/HRC/41/52, examined at the Human Rights Council, 24 June-12 July 2019, para. 21.

<sup>184</sup> [Yet again: EU calls on Belarus to abolish death penalty](#), Belsat, 10 October 2019.

<sup>185</sup> Alternative spelling: Ryhor Yuzepchyk.

<sup>186</sup> Amnesty International, [Death sentences and executions in 2013](#), p. 28.

<sup>187</sup> <https://www.amnesty.org/download/Documents/EUR4905352019ENGLISH.pdf>

<sup>188</sup> Amnesty International [2013](#), p. 29. See also the very controversial case of the executions on 18 March 2012 of Dimitri Konovalov and Vadislav Kovalev, who had been sentenced and executed after a bungled investigation, compounded by the apparent lack of a motive on the part of the individuals convicted and the total lack of material evidence. "[Vives critiques après l'exécution de deux condamnés en Biélorussie](#)", *Le Monde*, 19 March 2012.

that time, the Human Rights Committee was considering the case of Pavel Selyun and had asked the Belarusian authorities to stay the execution pending its conclusions,<sup>189</sup> a measure that Belarus deliberately failed to comply with. In November 2014, 25-year-old Alyaksandr Haryunou was executed even though he had appealed to the UN Human Rights Committee alleging that he had not been given a fair trial. The Committee then called on the Belarusian authorities to stay his execution until it had finished considering his case.<sup>190</sup> In 2016, Syarhei Ivanou, Hyanadz Yakavitski and Syarhei Khmialeuski were executed in spite of the Human Rights Committee having asked the authorities not to carry out the execution while it considered the case.<sup>191</sup> Aliaksei Mikhalenya, sentenced to death in 2017, was executed in May 2018 despite the UN's request for an interim measure.<sup>192</sup> The Belarusian President, Alexander Lukashenko, can grant a pardon after the confirmation of a death sentence but has only done so once since he came to power in 1994.<sup>193</sup> In his report published in April 2017, the then UN Special Rapporteur, Mr Miklós Haraszti, on the situation of human rights in Belarus emphasised that the death sentences handed down in the country were disputable owing to the failure to comply with the guarantees of a fair trial and the lack of judicial independence, adding that "the secrecy surrounding executions and the fact that no details on executions or places of burial are given to the families also amount to torture".<sup>194</sup> The current UN special rapporteur on the human rights situation in Belarus, Ms Anaïs Marin, has also considered the practice of not informing relatives about the circumstances of death of their close ones as inhuman treatment, violating Article 7 of the ICCPR.<sup>195</sup>

39. The Assembly has had occasion to express its grave concern about the increase in executions and death sentences in Belarus and the way they are carried out, as in [Resolution 1857 \(2012\)](#) and [Resolution 2172 \(2017\)](#).<sup>196</sup> In the latter, it called on the authorities to introduce a *de jure* moratorium on the death penalty and executions, with a view to their abolition. Given the fact that no such moratorium had been introduced and no other progress had been made, it concluded that it was not in a position to re-establish the special guest status for the parliament of Belarus.<sup>197</sup> The rapporteur of the Committee on Political Affairs and Democracy, Mr Rigoni, and my predecessor Mr Cruchten on several occasions emphasised that the death penalty is fundamentally contrary to the Council of Europe's values.<sup>198</sup> I have also followed this line. In October 2017,<sup>199</sup> the Council of Europe Committee of Ministers reiterated its request to the Belarusian authorities to introduce an official moratorium on executions without delay and commute all death sentences handed down. In November 2017, in its response to Assembly [Recommendation 2107 \(2017\)](#) on the situation in Belarus, it once again deplored the fact that the country's authorities are continuing to carry out death sentences.<sup>200</sup> In July 2019, the Committee of Ministers adopted a Council of Europe Action Plan 2019-2021, a strategic programme providing several approaches aiming to bring Belarus's legislations, institutions and practices into line with European standards. In this Action Plan, the Council of Europe and the authorities of Belarus agreed to jointly foster dialogue on the death penalty through co-operation programmes.<sup>201</sup> The situation in Belarus is also being closely monitored by the European Union, which regularly condemns new executions and death sentences. In a [joint statement](#) of 10 October 2019, issued on the occasion of the European and World Day against the Death Penalty), European Union High Representative for Foreign Affairs and Security Policy, Ms. Federica Mogherini, and Council of Europe Secretary General, Ms Marija Pejčinović Burić, once again urged Belarus to abolish the death penalty and to "join the community of nations that have chosen to replace vengeance with human dignity". As far as the UN is concerned, the Special Rapporteurs on the situation of human rights in Belarus have contributed to monitoring the development of the situation and makes recommendations, assists the Belarusian government in fulfilling its international human rights obligations and submits annual reports to the Human Rights Council and the UN General Assembly.. In connection with the

<sup>189</sup> Amnesty International, [Death sentences and executions in 2014](#), p. 42.

<sup>190</sup> *Ibid*, p. 42.

<sup>191</sup> Amnesty International, [Death sentences and executions in 2016](#), p. 28.

<sup>192</sup> Directorate General for External Policies of the Union, Human rights in Belarus: The EU's role since 2016, PE 603.870, June 2018, p. 38.

<sup>193</sup> Amnesty International, Belarus. [Belarus: first execution of 2017 ignores continuing pressure for abolition](#), public statement of 19 May 2017.

<sup>194</sup> UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Belarus, A/HRC/35/40, 21 April 2017, para. 103.

<sup>195</sup> UN, A/HRC/41/52, *op. cit.*, para. 22.

<sup>196</sup> [Resolution 1857 \(2012\)](#), The situation in Belarus, 25 January 2012, and [Resolution 2172 \(2017\)](#) on the same subject, adopted on 27 June 2017.

<sup>197</sup> Paragraphs 5.4.2. and 8 of [Resolution 2172 \(2017\)](#).

<sup>198</sup> See his report, [Doc. 14333](#), and their joint statements of 5 May 2017 on the execution of Siarhei Vostrykau (and of 24 July 2017).

<sup>199</sup> Committee of Ministers, Decision on the abolition of the death penalty, adopted at the 1298th meeting, CM/Del/Dec(2017)1298/4.1, 25 October 2017, para. 8.

<sup>200</sup> [Doc. 14446](#), Reply to Assembly [Recommendation 2107 \(2017\)](#), adopted at the 1301st meeting of the Ministers' Deputies, 29 November 2017.

<sup>201</sup> Council of Europe Action Plan for Belarus 2019-2021, p. 2.

UN Human Rights Council's Universal Periodic Review, the authorities undertook to implement a number of recommendations, including to carry out public campaigns explaining the arguments for the abolition of the death penalty and to consider introducing a moratorium on executions.<sup>202</sup> Unfortunately, like Morocco, Belarus abstained from voting on the last UN resolution on a moratorium on the death penalty.

40. In May 2017, a working group on the death penalty was set up in the Belarus parliament.<sup>203</sup> It is cooperating with several international experts, including from the United Kingdom, on the question of abolition and has organised round tables on legal Aspects of the Abolition of the Death Penalty in cooperation with the Council of Europe.<sup>204</sup> On 27 August 2019, I took part in a conference organised in Minsk by the Belarussian National Assembly, in co-operation with the Council of Europe Directorate General on Human Rights and the Rule of Law (DG 1). Moreover, at its meeting on 1 October 2019, the committee held a discussion with Mr Maxim Misko, Deputy Chairman of the Standing Committee on Law of the House of Representatives of Belarus, who stressed that the authorities were studying new initiatives on how to influence public opinion on the abolition of the death penalty issue before organising a new referendum. The authorities' official line, that the death penalty should be maintained until a majority of the population supports its abolition, should be reconsidered. Recently, the President of Belarus, Alyaksandr Lukashenko, stated that only a new referendum could lead to the abolition of the capital punishment<sup>205</sup>.

41. In my statements on the executions and death sentences in Belarus, I expressed condemnation and reiterated the need for Belarus to abolish the death penalty and to establish a moratorium on its use as soon as possible. Although I welcome the work of the parliamentary working group on the question of the death penalty, concrete steps are needed to eliminate the handing down and execution of death sentences. The continuous application of the death penalty is the reason for which Belarus is not a State Party of the Council of Europe. I firmly believe that the only way to improve relations between Belarus and the Council of Europe is to impose a moratorium on the death penalty.

#### 4. Conclusion

42. By and large, the global trend is towards less and less use of the death penalty. This abolitionist trend is even more pronounced in Europe, where it is driven by the Council of Europe, and in neighbouring countries, but there is still work to be done. However, despite the abolitions and moratoriums, within Council of Europe member states, there are still some calls for the restoration of capital punishment. For example, in France several private member's bills have been tabled to reinstate it, the last dating from 2004.<sup>206</sup> After the January 2015 attacks, the President of the National Front, Marine Le Pen, publicly stated that she was in favour of "a referendum on the death penalty in France".<sup>207</sup> In Hungary, in 2015, Prime Minister Viktor Orbán commented publicly on its reintroduction.<sup>208</sup> The situation in Turkey, following the attempted coup d'état of 15 July 2016, and President Erdoğan's statements on organising a referendum on reintroducing the death penalty are even more worrying.<sup>209</sup> The discovery in Turkey in 2017 of children who had disappeared and were found dead reignited the debate on the death penalty. President Erdoğan voiced his support for its restoration for terrorist offences. In July 2018, he agreed with Devlet Bahçeli, the leader of the Nationalist Movement Party (MHP), a member of the governing coalition, on the idea of amending the criminal law to introduce the possibility of handing down the death penalty for perpetrators of terrorist offences and serious crimes against children and women.<sup>210</sup> In the United Kingdom, the government's decision to extradite Alexandra Kotey and El Shafee Elsheikh, both accused of committing crimes as members of IS, to the United States rekindled the debate on the United Kingdom's commitment to the abolition of the death penalty.

43. In several statements, the Committee on Legal Affairs and Human Rights<sup>211</sup> and its general rapporteurs have reiterated that the rejection of capital punishment is a basic principle of our Organisation. The Assembly,

<sup>202</sup> A/HRC/30/3 of 13 July 2015, paragraph 11, and A/HRC/30/3/Add.1 of 30 July 2015.

<sup>203</sup> DD(2019)1222, 30 October 2019.

<sup>204</sup> For example, see the news item at <https://www.coe.int/en/web/national-implementation/-/abolition-of-death-penalty-discussed-in-minsk>.

<sup>205</sup> *Death penalty in Belarus can only be abolished through referendum, Lukašenka says*, Belapan, 13 November 2019.

<sup>206</sup> <http://www.assemblee-nationale.fr/histoire/peinedemort/retablissement.asp>, retrieved on 2 August 2018.

<sup>207</sup> "Charlie Hebdo: Marine Le Pen pour un référendum sur la peine de mort", *Le Point*, 8 January 2015.

<sup>208</sup> See, for example, [http://www.lemonde.fr/les-decodeurs/article/2015/05/21/viktor-orban-peut-il-retablir-la-peine-de-mort-en-hongrie\\_4637096\\_4355770.html](http://www.lemonde.fr/les-decodeurs/article/2015/05/21/viktor-orban-peut-il-retablir-la-peine-de-mort-en-hongrie_4637096_4355770.html) and

<http://www.theguardian.com/world/2015/apr/30/eu-jean-claude-juncker-viktor-orban-hungary-death-penalty-return>.

<sup>209</sup> AFP, "Turquie: la France s'inquiète d'un référendum sur la peine de mort", *Le Point*, 17 April 2017.

<sup>210</sup> Mehmet Cetingulec, "Child tragedies reignite death penalty calls in Turkey", *Al-Monitor*, 17 July 2018; "Turkish leader in death penalty vow after bomb kills mother and baby", *middleasteye.net*, 2 August 2018, and "Turkish leaders agree to bring back death penalty", *middleasteye.net*, 29 August 2018.

<sup>211</sup> See, for example, the committee's statement of 10 October 2019.



which has helped turn Europe into death penalty free continent, by making a moratorium on executions and a commitment to abolition a condition for accession to the Council of Europe, will not accept any backsliding on this question. Reintroducing the death penalty would purely and simply be incompatible with a state's continuing membership of the Council of Europe. It should also be noted that in January 2018, in [Recommendation 2123 \(2018\)](#) on "Strengthening international regulations against trade in goods used for torture and the death penalty",<sup>212</sup> the Assembly called for a ban on the trade in goods that have no practical use other than for the purposes of the death penalty or torture and called on Council of Europe member states to apply the approach adopted by the European Union (see Council Regulations 1236/2005 and 2016/2134).<sup>213</sup> According to the Assembly, on the basis of their existing legal obligations "Council of Europe member states are required to take effective measures to prevent activity within their jurisdictions that might contribute to or facilitate capital punishment, torture and inhuman or degrading treatment or punishment in other countries, including by effectively regulating the trade in goods that may be used for such purposes".<sup>214</sup> In its reply to this recommendation, the Committee of Ministers reiterated its commitment to the abolition of capital punishment and expressed its support for international regulations against the trade in goods used for torture and the death penalty.<sup>215</sup>

44. Reference should also be made to an important step forward by the Catholic Church (the Holy See has observer status with the Council of Europe): on 2 August 2018, Pope Francis inserted into the Catechism a reference to the Catholic Church's categorical opposition to the death penalty, which is considered "inadmissible". He now wants the Church to work "with determination" for its abolition worldwide.<sup>216</sup>

45. In conclusion, the Council of Europe is endeavouring to protect individuals against the death penalty in both its member and observer states and in neighbouring countries with co-operation status, such as "partner for democracy" status. The Assembly has always played a key role in this fight and must continue to do so in order to protect the values that it is the Council of Europe's duty to uphold. It has to remain vigilant about the developments in certain member states, bearing in mind certain political statements promoting the reintroduction of the death penalty.

<sup>212</sup> [Recommendation 2123 \(2018\)](#), adopted by the Assembly on 26 January 2018.

<sup>213</sup> See our Committee's report, rapporteur: Mr Vusal Huseynov (Azerbaijan, EPP/CD), [Doc. 14454](#).

<sup>214</sup> Paragraph 3 of [Recommendation 2123 \(2018\)](#).

<sup>215</sup> [Doc. 14614](#) of 14 September 2018.

<sup>216</sup> "[Le pape inscrit dans le catéchisme une opposition catégorique à la peine de mort](#)", *Le Monde*, 2 August 2018.